44.19

START

FIRST

SIDE

40-112

Pte. Dubeau L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D.93988 Pte Dubeau, L. - 4 VRD 1 CCOD RCOC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec. 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and as loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which N/L days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for Fifty (50) days

(Sgd) Judge-Advocate, if any. 26 Jan 45 Date awarded. (Sgd) President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sentence back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further order~~ (1) (Sgd)

(1. AA 57A. Delete if not used.)

Date 27 Jan 45 Commanding F Sp CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
1. 93988 Pte Dubeau L.	30 Jan 45	
2.		

4 VRD 1 CCOD RCOC — HQ 1 CCOD RCOC

1 CCOD Pt II DO 16 DATED 1 FEB 45 — HQ 1 CCOD RCOC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, P 40-112

FIELD GENERAL COURT-MARTIAL

CFA66 (In lieu of AFA81) 40/P & B/1698 16(44) 4/38B

Convened by Order of Brigadier J.E. Seger Comd F Sp CRU dated 24 Jan 45

ACCUSED.

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

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D.93988	Private		Lionel	DUBEAU	4 VRD 1 CCOD RCOC

PROCEEDINGS REVIEWED 14 Feb 45

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Ceylon on (date(s)) 26 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

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

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 102-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1150 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

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

A5. President to accused : ~~Do you object to~~ as interpreter ? Ans

~~The interpreter is sworn.~~(1) Do you object to 5616/7 Lt W Bardswell as shorthand writer ? Ans No

The shorthand writer is sworn.(1) 1 CCRU

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

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

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 15, 71, 18, MML p 742.)

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

President	Major	R.Th Mussen ED KC	HQ CRU
Member	Capt	R A McCabe	1 CCS Regt
Member	Lieut	J D McGuigan	1 CCS Regt
~~Judge-Advocate~~			
Prosecutor	Lieut	H.N. Green	4 VRD 1 CCOD
Defending Offr	Lieut	W J Eeden	4 VRD 1 CCOD

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

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

A8. The accused before arraignment make(s) (no) (a) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 112), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 73, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

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

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and (1) reconsiders the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A) see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (b), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Not required. Character witness
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(*1. AFB 255 or AFB 294. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Nil (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any.~~(2).
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 128, 182, RP 46-50, 68, 118, 119(A), KR Can 308, 330, 363-366, Overseas RO 309, 1323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3), 68(1), KR Can 364. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B-93928, Pte. Lionel Dubeau, 4 V.R.D., 1 C.C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, is charged with:

When on Active Service

1st CHARGE
ARMY ACT
Sec 15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 0815 hours 27 Dec 44 until apprehended by Canadian Provost Corps in London at 2250 hours, 17 Jan 1945 (Total Time absent 21 days, 14 hours, 35 minutes)

O.C., Depot Bn., HQ, 1COOD

10 Jan 1945

To be tried by Field General Court Martial.

BORDON, Hants,
24 Jan 45

(J.E. [illegible]) Brigadier,
Comd [illegible] Gp, C.A.V.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 181, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.93928	Private		Lionel	DUBEAU	4 VRD 1 CDN RCOC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on 24 Jan 45 (date) endorsed by me, (or by an offr of my staff on my behalf) "To be tried by Field General Court-Martial".

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

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

4. ~~I am unable to appoint (a) the Offr to form the Court, (b) an Offr as Prosecutor for the reasons stated briefly.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

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

PRESIDENT.

Major (Rank.)	E.N. Miller, E.D., K.C. (Must be named. RP 106.)	Mx. CDN (Const.)

MEMBERS.

A Capt	from and to be detailed by OC	1 CDN (Const.)
A Lieut (Rank.)	from and to be detailed by OC (Named or detailed. RP 106.)	1 CDN (Const.)

WAITING MEMBER.

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

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Const.)

On Active Service in the Fd

in England (Country.)

J.E. Page (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Dat 24 Jan 45

Commanding 2nd Gp, C.A.V.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAO 16 (In lieu of AFA 3 & 5/Short Trials)

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

Medical Officers' Certificate
KR(Can) para 557

I certify that I have this morning examined No. B-93928....

Rank....Pte....Name..Dubeau, L.....of..4 VRD,1 CCOD,RCOC(Unit)

and in my opinion he is ~~fit~~* ~~unfit~~ to undergo trial by Court Martial.

.....(Rank)
Unit 4 V.R.D., 1 C.C.O.D., RCOC
Medical Offr., RCAMC

Station..Field....

Date..26 Jan 45.....
(of Court Martial)
26 07 45 A Jan 45

* Cross out one N/A and initial

CASE OF

B-93928 Private DUBEAU, L. 4 VRD, 1 CCOD, RCOC

DEFENCE

CHARACTER WITNESS
FIRST WITNESS

B8284 Cpl PAYNE, V.J., 4 VRD, 1 CCOD, RCOC, having been duly sworn, states:-

Sir, Pte Dubeau has been on the strength of my section since Sep last year and I have found him at all times a very capable and an exceptional worker. He was employed as hut orderly, Sir. I had no other work I could give him as he was L-4 and it also was the RSM's order.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH KR 83(B)

PLEA IN MITIGATION

THE DEF OFFR SAID: I have NO PLEA IN MITIGATION AND JUST WISH TO SAY THAT THE ACCUSED CAN GIVE NO REASON FOR GOING AWL AND HE WAS QUITE SATISFIED WITH THE JOB OF HUT ORDERLY ON WHICH HE HAD BEEN PUT FOR QUITE SOME TIME AND IS QUITE WILLING TO GO BACK TO THAT JOB.

SUMMARY OF EVIDENCE

in the case of

B-93928 Pte. Dubeau, L., of 4 V.R.D., on the strength of 1 C.C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas.

By Direction of the O. i/c 4 V.R.D., the Summary of Evidence is taken on oath.

FIRST WITNESS

for the Prosecution

Lieut. N.J.F. McLeod, of 4 V.R.D., on the strength of No. 1 C.C.O.D., R.C.O.C., an Officer of the Canadian Army Overseas, having been duly sworn, states:-

I am Adjt. at 4 V.R.D., 1 C.C.O.D., R.C.O.C.

I produce a certificate pursuant to A.A. 163(1)(j) purporting to be signed by Admin. Officer D.P.M's Branch, C.M.H.Q., relating to the accused whom I now recognize.(Certificate marked as Exhibit "A")

I produce a certified true copy of 1 C.C.O.D., R.C.O.C. Part II Orders No. 3, dated 5 Jan 45 in connection with the accused.(Part II D.O. marked Exhibit "B"

The accused declines to cross examine the witness.

N.J.F. McLeod Lt

The accused was cautioned as follows:-

"Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

After the above caution, the accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c)(d)(e)(f) and (g) have been complied with.

H.O. Trist Lieut

Officer Detailed to take Summary of Evidence.

Bordon, Hants.

CERTIFICATE IN ACCORDANCE WITH P.C. 6795 of 10 SEPT 44

EXHIBIT 'A'

I certify that No. B-98928 Rank Pte. Name Dubeau L.

Unit No.1.C.C.O.D. (CRU) was arrested at London Place

at 2250 (Hour) on 17-Jan-45 (Date) and that at the time of his arrest he was wearing (Military Uniform) ~~XXXXXXXXXXXXXXXXXX~~, Signature of Provost-Marshal, Assistant Provost-Marshal, or other Officer or the Commanding Officer of the portion of His Majesty's Forces or the Officer, Warrant Officer or non-commissioned Officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

London
18-Jan-45

J. A. Thomson Lieut.
J.A.Thomson
Admin.Officer-D.P.M's Branch.
C. M. H. Q.

7. ABSENT WITHOUT LEAVE (Cont'd)

C9657 (3)	Pte	Bristow H M BR Coy	Returned from absent without leave wef 0730 hrs 4 Jan 45
C49328 (4)	Pte	Couture A J MT Coy	Absent without leave wef 2359 hrs 25 Dec 44 Still absent without leave 2359 hrs 2 Jan 45 (8th day)
F75922 (5)	Pte	Dalton C 1 VRD	Absent without leave wef 0845 hrs 30 Dec 44 Still absent without leave 0845 hrs 31 Dec 44 (1st day)
B73728 (6)	Pte	Demmans C A 3 VRD	Absent without leave wef 0800 hrs 22 Dec 44 Still absent without leave 0800 hrs 30 Dec 44 (8th day)
B93928 (7)	Pte	Dubeau L 4 VRD	Absent without leave wef 0815 hrs 27 Dec 44 Still absent without leave 0815 hrs 28 Dec 44 (1st day)
H65147 (8)	Pte	Fisher W 3 VRD	Absent without leave wef 1300 hrs 1 Jan 45 Still absent without leave 1300 hrs 2 Jan 45 (1st day)
H26092 (9)	Pte	Godfrey E HQ	Absent without leave wef 0600 hrs 22 Dec 44 Still absent without leave 0600 hrs 30 Dec 44 (8th day)
H144609 (10)	Pte	Hunter C G MT Coy	Apprehended from absent without leave wef 1900 hrs 19 Dec 44
A29028 (11)	Cfn	Lee A 1 VRD	Returned from absent without leave wef 1300 hrs 27 Dec 44
D61191 (12)	Pte	Malo H 1 VRD	Returned from absent without leave wef 0845 hrs 28 Dec 44
D175560 (13)	Pte	Officer M 2 VRD	Absent without leave wef 0810 hrs 30 Dec 44 Still absent without leave 0810 hrs 31 Dec 44 (1st day)
D175560 (14)	Pte	Officer M 2 VRD	Returned from absent without leave wef 2300 hrs 1 Jan 45
B6911 L64994 (15)	Pte Pte	Peterkin E Thackeray D G 3 VRD	Absent without leave wef 2230 hrs 23 Dec 44 Still absent without leave 2230 hrs 31 Dec 44 (8th day)
H41926 (16)	Pte	Poitra J G SR Coy	Absent without leave wef 0600 hrs 27 Dec 44 Still absent without leave 0600 hrs 4 Jan 45 (8th day)
A55212 (17)	Pte	Porter H E 2 VRD	Absent without leave wef 2359 hrs 28 Dec 44 Still absent without leave 2359 hrs 29 Dec 44 (1st day)
A55212 (18)	Pte	Porter H E 2 VRD	Returned from absent without leave wef 1900 hrs 30 Dec 44
R193643 (19)	Pte	Rajala G 4 VRD	Absent without leave wef 0800 hrs 26 Dec 44 Still absent without leave 0800 hrs 27 Dec 44 (1st day)

(OVER)

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

Sheet No. 6 — This Order No. 3 d/5 Jan 45

7. ABSENT WITHOUT LEAVE

M505 (20)	Pte Garasin O F 2 VRD	Absent without leave wef 2359 hrs 28 Dec 44 Still absent without leave 2359 hrs 29 Dec 44 (1st day)
M505 (21)	Pte Garasin O F 2 VRD	Returned from absent without leave wef 1400 hrs 31 Dec 44
(Amend.) B144609 (22)	Pte Hunter C G MT Coy	Part II DO 181 para 5(2) d/27 Dec 44 insofar as it refers to this soldier is hereby cancelled
(Amend) K50063 (23)	Pte Gleson A C 1 VRD	Part II DO 182 para 7(9) d/29 Dec 44 insofar as it refers to this soldier is hereby cancelled

8. HOSPITALIZATION

A50267 (1)	Pte Cheyne R C 4 VRD	Adm to 3 CMC wef 29 Dec 44
A57051 (2)	Pte Clark T M 1 VRD	Removed from 82 U S Army Gen Hosp to Rexon Emergency Hosp wef 26 Dec 44 Removed from Rexon Emergency Hosp to 2 CMC wef 1 Jan 45 Discharged from 2 CMC wef 2 Jan 45
M28009 (3)	Pte Gerlitz H 2VRD	Adm to 2 CMC wef 2 Jan 45
H103715 (4)	Gnr Gimby F J (2 CAMU) 2 VRD	Disch from 2 CMC wef 2 Jan 45
A105978 (5)	Pte Hughes G J 1 VRD	Disch from 2 CMC wef 2 Jan 45
H37875 (6)	Pte Johnston J R HQ	Adm to 2 CMC wef 3 Jan 45
L3044 (7)	Pte Lamont T G 1 VRD	Adm to 2 CMC wef 29 Dec 44
H142595 (8)	Pte McNeil R A 3 VRD	Adm to 2 CMC wef 30 Dec 44
C94810 (9)	Pte Manley J J 1 VRD	Adm to 1 CMC wef 2 Jan 45
K67156 (10)	Pte Mead L J 2 VRD	Disch from 2 CMC wef 2 Jan 45
D56463 (11)	Pte Riopel A 5 VRD	Adm to 2 CMC wef 30 Dec 44
A102678 (12)	Pte Weymouth DA 1 VRD	Disch from 2 CMC wef 3 Jan 45
F96401 (13)	Pte Whilt F W (1 CCPC) 1 VRD	Adm to 3 CMC wef 2 Jan 45
(Amend) D61191 (14)	Pte Wylo H 1 VRD	Part XI DO 1 Para 7(7) d/2 Jan 45 insofar as it refers to this soldier is hereby cancelled (duplicate entry)

(OVER)

9. PUNISHMENTS

K83706 (1)	Gfn Barrett E G 2 VRD	On 3 Jan 45 awarded a forf of 3 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 2230 hrs 1 Jan 45 to 1900 hrs 2 Jan 45 (absent 20 hrs 30 mins) Forfs 1 days pay FR&I 149(1)(a) (Total forf 4 days pay)
A3682 (2)	Pte Bonney W S MT Coy	On 28 Dec 44 awarded a forf of 5 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 1600 hrs 26 Dec 44 to 1400 hrs 27 Dec 44 (absent 22 hrs) Forfs 1 days pay FR&I 149 (1)(a) (Total forf 6 days pay)
D126433 (3)	Pte Burgess B E 4 VRD	On 3 Jan 45 awarded a forf of 7 days pay FR&I 149(2) and placed under stoppage of pay in the amount of £4-0-0 FR&I 158(2) for an offence under Sec 40 A A (RAR)
F50454 (4)	Pte Curf A R MT Coy	On 28 Dec 44 awarded a forf of 10 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 2359 hrs 25 Dec 44 to 1030 hrs 27 Dec 44 (absent 1 day 10 hrs 31 mins) Forfs 2 days pay FR&I 149(1)(a) (Total forf 12 days pay)
B68984 (5)	Pte Deremo C N MT Coy	On 1 Jan 45 awarded a forf of 7 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 1600 hrs 26 Dec 44 to 1330 hrs 30 Dec 44 (absent 3 days 21 hrs 30 mins) Forfs 4 days pay FR&I 149(1)(a) (Total forf 11 days pay)
A55300 (6)	Pte Dicks F 1 VRD	On 29 Dec 44 awarded a forf of 10 days pay FR&I 149(2) for two offences under Sec 40 A A
C15762 (7)	Pte Gordon J M MT Coy	On 3 Jan 45 awarded a forf of 5 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 2359 hrs 29 Dec 44 to 0835 hrs 2 Jan 45 (absent 3 days 8 hrs 36 mins) Forfs 4 days pay FR&I 149(1)(a) (Total forf 9 days pay)
U2161 Z49674 (8)	Pte Grover A R P Pte Lebel J H H L 3 VRD	On 29 Dec 44 awarded a forf of 1 days pay FR&I 149(2) for (1) an offence under Sec 15(1) A A, A W L from 1200 hrs 28 Dec 44 to 2215 hrs 28 Dec 44 (absent 10 hrs 15 mins) for (2) an offence under Sec 40 A A Forfs 1 days pay FR&I 149(1)(a) (Total forf 2 days pay)
B144609 (9)	Pte Hunter C G MT Coy	On 29 Dec 44 awarded a forf of 14 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 2359 hrs 13 Dec 44 to 1500 hrs 19 Dec 44 (absent 5 days 19 hrs 1 min) Forfs 6 days pay FR&I 149(1)(a) (Total forf 20 days pay)
D167145 (10)	Pte Keller E 1 VRD	On 3 Jan 45 awarded a forf of 3 days pay FR&I 149(2) for an offence under Sec 40 A A

(OVER)

9. PUNISHMENTS (Cont'd)

A27028 (11)	Pte Leader B R MT Coy	On 28 Dec 44 awarded a forf of 10 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 2359 hrs 22 Dec 44 to 2200 hrs 27 Dec 44 (absent 4 days 22 hrs 1 min) Forfs 5 days pay FR&I 149(1)(a) (Total forf 15 days pay)
F36050 (12)	Pte MacLean H C (1 CONSERU) 4 VRD	On 3 Jan 45 awarded a forf of 14 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 0800 hrs 26 Dec 44 to 1800 hrs 2 Jan 45 (absent 7 days 10 hrs) Forfs 8 days pay FR&I 149(1)(a) (Total forf 22 days pay)
B97012 (13)	Pte MacDermott R MT Coy	On 1 Jan 45 awarded a forf of 7 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 1600 hrs 26 Dec 44 to 1530 hrs 30 Dec 44 (absent 3 days 21 hrs 30 mins) Forfs 4 days pay FR&I 149(1)(a) (Total forf 11 days pay)
A58599 (14)	Pte Mattusch F N MT Coy	On 3 Jan 45 awarded 5 days C B for an offence under Sec 15(1) A A, A W L from 2350 hrs 1 Jan 45 to 1200 hrs 2 Jan 45 (absent 12 hrs 10 mins) Forfs 2 days pay FR&I 149(1)(a)
D175580 (15)	Pte Officer N 2 VRD	On 2 Jan 45 awarded a forf of 6 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 0810 hrs 30 Dec 44 to 2300 hrs 1 Jan 45 (absent 2 days 14 hrs 50 mins) Forfs 3 days pay FR&I 149(1)(a) (Total forf 9 days pay)
C4122 (16)	Pte Palmer P MT Coy	On 2 Jan 45 awarded a forf of 10 days pay FR&I 149(2) for (1) an offence under Sec 15(1) A A, A W L from 1600 hrs 26 Dec 44 to 1530 hrs 27 Dec 44 (absent 21 hrs 30 mins) for (2) an offence under Sec 15(1) A A, A W L from 1315 hrs 28 Dec 44 to 2150 hrs 31 Dec 44 (absent 3 days 8 hrs 35 mins) Forfs 1 days pay FR&I 149(1)(a) Forfs 4 days pay FR&I 149(1)(a) (Total forf 15 days pay)
A55212 (17)	Pte Porter H E 2 VRD	On 2 Jan 45 awarded a forf of 2 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 2359 hrs 28 Dec 44 to 1900 hrs 30 Dec 44 (absent 1 day 19 hrs 1 min) Forfs 2 days pay FR&I 149(1)(a) (Total forf 4 days pay)
B137645 (18)	Pte Mizzo C 2 VRD	On 29 Dec 44 awarded a forf of 7 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 0810 hrs 26 Dec 44 to 1700 hrs 27 Dec 44 (absent 1 day 8 hrs 50 mins) Forfs 2 days pay FR&I 149(1)(a) (Total forf 9 days pay)

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1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

Sheet No. 9 — This Order No. 3 d/5 Jan 45

9. PUNISHMENTS (Cont'd)

M505 (19)	Pte Sarasin O F 2 VRD	On 2 Jan 45 awarded a forf of 3 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 2359 hrs 28 Dec 44 to 1400 hrs 31 Dec 44(absent 2 days 14 hrs 1 min) Forfs 3 days pay FR&I 149(1)(a) (Total forf 6 days pay)
A9471 (20)	Pte Saylor D H 2 VRD	On 29 Dec 44 awarded a forf of 3 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 2230 hrs 27 Dec 44 to 1315 hrs 28 Dec 44 (absent 14 hrs 45 mins) Forfs 1 days pay FR&I 149(1)(a) (Total forf 4 days pay)
C100019 (21)	Pte Thivierge E 2 VRD	On 29 Dec 44 awarded a forf of 4 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 2230 hrs 25 Dec 44 to 1700 hrs 27 Dec 44 (absent 1 day 18 hrs 30 mins) Forfs 2 days pay FR&I 149(1)(a) (Total forf 6 days pay)
H195272 (22)	Pte Tintinalli L MT Coy	On 28 Dec 44 awarded a forf of 3 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 1600 hrs 26 Dec 44 to 1400 hrs 27 Dec 44 (absent 22 hrs) Forfs 1 days pay FR&I 149(1)(a) (Total forf 4 days pay)
B29847 (23)	Sgt Tremblay M (1 CEMS) MT Coy	On 28 Dec 44 awarded a forf of 3 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 2359 hrs 25 Dec 44 to 1155 hrs 27 Dec 44 (absent 1 day 11 hrs 56 mins) Forfs 2 days pay FR&I 149(1)(a) (Total forf 5 days pay)
M107570 (24)	Pte Vandal W R (1 CITR) 2 VRD	On 29 Dec 44 awarded a forf of 6 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 2100 hrs 25 Dec 44 to 2030 hrs 27 Dec 44 (absent 1 day 23 hrs 30 mins) Forfs 2 days pay FR&I 149(1)(a) (Total forf 8 days pay)
C4219 (25)	Pte Wheeler L R 2 VRD	On 2 Jan 45 awarded a forf of 6 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 2230 hrs 16 Dec 44 to 2130 hrs 26 Dec 44 (absent 9 days 23 hrs) Forfs 10 days pay FR&I 149(1)(a) (Total forf 16 days pay)
C113 (26)	Pte Willis J 2 VRD	On 2 Jan 45 awarded a forf of 6 days pay FR&I 149(2) for an offence under Sec 15(1) A A, A W L from 2230 hrs 19 Dec 44 to 2145 hrs 27 Dec 44 (absent 7 days 23 hrs 15 mins) Forfs 8 days pay FR&I 149(1)(a) (Total forf 14 days pay)

10. QUALIFICATIONS

019543 (1)	Pte Moulton D B 3 VRD	Qualified as Light "A" Vehicle Driver wef 2 Jan 45 in accordance with CA (O/B) No 3921 d/14 Oct 43

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PART II ORDERS

Sheet No. 10 — This Order No. 3 d/5 Jan 45

10. QUALIFICATIONS (Cont'd)

B17881 (2)	Pte Mooney E F 1 VRD	Qualfied as Lt & Med "B" Vehicle Drivers wef 2 Jan 45 in accordance with CA(O/S)RO 3921 d/14 Oct 43

11. TRADESMEN'S QUALIFICATIONS

C38673 (1)	Pte Sheridan J A 1 VRD	Having been TT by STTB as Clerk Typist "B" is now shown as qualified wef 28 Dec 44 (Auth: Nom Roll for TT (20256) d/14 Dec 44)

12. TRADESMEN'S RATES OF PAY

C38673 (1)	Pte Sheridan J A 1 VRD	Cease T/Pay Clerk "C" wef 27 Dec 44 Granted T/Pay Clerk "B" wef 28 Dec 44

13. CHANGE OF ADDRESS NEXT OF KIN

C30789 (1)	Pte Boisvenue H HQ	Change of address N-of-K to: Mrs Lilianne Boisvenue (wife), 57 George Street, Brockville Ontario Canada
L7805 (2)	Pte Downing R M 4 VRD	Change of address N-of-K to: Mrs Bridget Downing (wife), 11 Glendun Road, Larkhill Whitehall Dublin Eire
B84917 (3)	Pte Hill L L 4 VRD	Change of address N-of-K to: Mrs Grace Hill (wife), 082 Avenue Richvale Ontario Canada
B10378 (4)	Pte Morrisson R MT Coy	Change of address N-of-K to: Mr Donald Morrisson(brother) Lake Magantic, Box 426, P.Q., Canada
L104829 (5)	Pte May W M 4 VRD	Change of address N-of-K to: Mrs Mollie Aileen May (wife) 139 Middlegate Winnipeg Manitoba Canada
B143638 (6)	Pte Spencer L MT Coy	Change of address N-of-K to: Mrs Evaline Spencer (mother) 308 Pine Street S., Timmins, Ontario Canada
B57481 (7)	Pte Spry W A 4 VRD	Change of address N-of-K to: Mrs Gladys Spry (mother) 286 Major Street West, Toronto, Ontario Canada
Z20553 (8)	Pte Vincent A C 4 VRD	Change of address N-of-K to: Mrs Anne Vincent (mother) c/o Mrs George Duncan, 506 Walnut Avenue, St. Lambert Chambly Co., Quebec, Canada
B132251 (9)	Pte Wilson J M 4 VRD	Change of address N-of-K to: Mrs Annie May Wilson (mother) 81 Crawford Street, South Porcupine, Ontario Canada

14. CHANGE OF NEXT OF KIN

D81377 (1)	Pte Lalonde A MT Coy	Change of N-of-K from: Mrs Bridget Mary Lalonde (wife) to: Mrs Mary Gauthier Lalonde (mother) 11 Alice St., S., Cornwall Ontario Canada

(OVER)

14. CHANGE OF NEXT OF KIN (Cont'd)

B113774 (2)	Cfn Maudsley W A 1 VRD	Change of N-of-K from: Mrs Katherine Maudsley (mother) to: Mr Walter Maudsley (father) Box 537 New Hamburg Ontario Canada
C11646 (3)	Pte Ray R J 1 VRD	N-of-K verified as follows: Mrs Ruby Ray (wife) 76 Preston Street Ottawa Ontario Canada
H16775 (4)	Pte Tio F 3 VRD	Change of N-of-K from: Mr Robert Tio (father) to: Mrs Maud Kathleen Tio (wife) 29 Hermit St., Goswell Road, London E.C.1., England

15. PERMISSION TO MARRY

M56470 (1)	Pte Calon J E 1 VRD	Granted permission to marry Miss Jean Evelyn Inwood on or after but not before 28 Feb 45 (Auth: CMHQ 1000:110a d/1 Jan 45)

16. MARRIAGES BIRTHS & DEATHS

B113774 (1)	Cfn Maudsley W A 1 VRD	Wife, Mrs Rose Lorriane Maudsley, died at Toronto, Ontario on 10 Dec 44
H16775 (2)	Pte Tio F 3 VRD	Married with permission to Miss Maud Kathleen Pack at the Register Office Finsbury London E.C.1., England wef 22 Dec 44

17. ATTACHMENTS INTER UNIT

Att to 4 VRD wef 2 Jan 45

F94611	Pte	Botts J E	A60043	Pte	Boyne J C
L9773	Pte	Cairns K	B78058	Pte	Ford W R
B1022	Pte	Kinnear R J	A107893	Pte	Lauzon D T
C36691	Pte	Milne W H	F31004	Pte	Robinson F W
C94811	Pte	Sills E A	B77542	Pte	Taylor N L
(1)	2 VRD				

Att to 4 VRD wef 2 Jan 44

L101824	Pte	Brissette A L	B44777	Pte	Hawkins J G
B82167	Pte	Hraynyk N	B95776	Pte	Holmes C J
B2457	Pte	Jobb G A	C94418	Pte	Kenny J H
B60910	Pte	Reinbird J F	F43932	Pte	Roper G H
C98917	Pte	Ryan C T	A64145	Pte	Sullivan J M
(2)	5 VRD				

Att to 4 VRD wef 2 Jan 44

B83999	SQMS	McClelland G E	F35260	S/Sgt	Beveridge A G
F52209	Pte	Collins G S	L53332	Pte	Crawford C G
B113035	Pte	Hatfield G D	B74614	Pte	Leclerc M
H10585	Pte	MacDougall G P	B127672	Pte	Turner L H
C5646	Pte	Vollans H	A11125	Pte	WestbrookL J
(3)	5 VRD				

(OVER)

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

Sheet No. 12

This Order No. 3
d/5 Jan 45

17. ATTACHMENTS INTER UNIT (Cont'd)

C15614 (4)	Pte McGregor E G C MT Coy	Att to 4 VRD wef 2 Jan 45
M66429 (5)	A/Cpl Magwood H S 3 VRD	Att to 4 VRD wef 3 Jan 4

Att to 4 VRD wef 2 Jan 45

A9357	Cpl Percival G W	F65412	Pte Beck L M
D36574	Pte Collins A J	F76433	Pte Burden W H
L67031	Pte Heartwell F V	M66171	Pte McLeod D N
K45617	Pte Graham W H	C100496	Pte Prout A T
M102248 (6)	Pte Robinson L 1 VRD	B113710	Pte Harris W E

(Amend)

B13091 (7)	Pte Groves A W 1 VRD	Part II DO 177 para 18(1) d/15 Dec 44 insofar as it refers to this soldier is hereby am'd to read for "14 Dec 44" read "11 Dec 44"

RML/

.....
(J C McGleshan) Capt & Adjt
for Commandant, 1 Cdn Central Ord Depot

4 VRD

EXHIBIT "B"

RECEIVED JAN 1945

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

Issued by Brigadier R J Henderson, Commandant, 1 Cdn C O D

Last Order No. 2
d/3 Jan 45

This Order No. 3
d/5 Jan 45

"A" OFFICERS

1. ATTACHMENTS

Lieut (1)	L M Harris 5 VRD	Cease att fap from 2 CARU wef 2 Jan 45 (Auth: CRU(PERS)A311 d/20 Dec 44)

2. LEAVE OF ABSENCE

Capt (1)	H H Darling 2 VRD	Granted 7 days P L and 48 hrs pass (total leave and entitlement - 9 days) from 29 Dec 44 to 6 Jan 45 with money allce in lieu of rations under FR&I (O/S) Art 789 (3) and (4)

3. ATTACHMENTS INTER UNIT

Lieut (1)	J H Weaver 4 VRD	Att to 5 VRD wef 29 Dec 44

"B" OTHER RANKS

1. STRENGTH INCREASE

TOS from 1 CASCRU wef 3 Jan 45 and posted to Veh Coy (Auth: CRU 444/Unfits/1 (PTA) d/28 Dec 44)

B56237	Pte	Alcock C T	M38484	Pte	Bablitz H F
M38523	Pte	Dickens R E	B160595	Pte	Haynes W H
M12436	L/Cpl	McDonald L J	F78471	Pte	McKay A
M1563	Pte	Nixon R J	L100175	Pte	Olynich A
G28842	Pte	Ouellet E J	B157709	Pte	Post A H
D142476	Pte	Rochon H	L103572	Pte	Scott E D
M52922	Pte	Thorseth L J	C30952	Pte	Tierney J P
(1)	5 VRD		F88001	Pte	Watson H M

(Amend) C32047 (2)	Pte 1 VRD	Cornwall G (Veh Coy)	Part II DO 183 (pge 6) d/30 Dec 44 insofar as it refers to this soldier is hereby cancelled
(Amend) C38477 (3)	Pte 5 VRD	Lamothe C C	Part II DO 138 para 1(12) d/28 Sep 44 insofar as it refers to this soldier is hereby am'd to read for "Clk "C"" read "Stmn "C""
C38477 (4)	Pte 5 VRD	Lamoth C C	Part II DO 183 para 1 d/30 Dec 44 insofar as it refers to this soldier is hereby am'd by adding "Stmn "C""
(Amend) D129487 (5)	Pte 4 VRD	Prieur L	Part II DO 183 para 1 (Sheet 20) d/30 Dec 44 insofar as it refers to this soldier is hereby am'd by adding "Dvr Mech "C""
(Amend) B77727 (6)	Pte 3 VRD	Smith C P	Part II DO 183 para 1 (Sheet 23) d/30 Dec 44 insofar as it refers to this soldier is hereby am'd by adding "Stmn "C""

(OVER)

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

Sheet No. 2 | This Order No. 3 d/5 Jan 45

1. STRENGTH INCREASE (Cont'd)

(Amend) A117234 (7)	Pte 5 VRD	Steer N B	Part II DO 183 para 1 d/30 Dec 44 insofar as it refers to this soldier is hereby am'd by adding "Stmn "C""
(Amend) M60158 (8)	Pte 3 VRD	Stewart R C	Part II DO 183 para 1 (Sheet 23) d/30 Dec 44 insofar as it refers to this soldier is hereby am'd by adding " "Stmn "C""
(Amend) F65406 (9)	Pte 1 VRD	Swim N A	Part II DO 183 para 1 (Sheet 24) d/30 Dec 44 insofar as it refers to this soldier is hereby am'd by adding "Clerk "C""

2. STRENGTH DECREASE

SOS to 1 COMERU wef 2 Jan 45 (Auth: CRU/444 Unfits/1 (PTA) d/28 Dec 44)

D129236	Pte	Bujold J R (Veh Coy)	B83373	Pte	Charrette J E (Veh Incr)
C122289	Pte	Dancy L S (Dvr Mech "C") (Veh Incr)			
F57284	Pte	Farrell U J (Veh Coy)	A107038	Pte	Fess N F (Veh Incr)
G4909	Pte	Fullerton H L(Veh Incr)	B80372	Pte	Gee S (Veh Coy)
B86336	Pte	Grant W (Veh Coy)	C98736	Pte	Groleau A H J (Veh Coy)
G558	Pte	Haney L H (Veh Coy)	B144897	Pte	Hogan J C (Veh Coy)
A89098	Pte	Pulling A R (Veh Coy)	B60669	Pte	Huntley G A R (Veh Incr)
B2479 (1)	Pte 5 VRD	Marshalle H F (Veh Coy)	C38669	Cfn	Storms W R (Incr)(RCEME)

B57004 (2)	Pte 2 VRD	Faichney J B (Veh Coy)	SOS to 1 COMERU wef 3 Jan 45 (Auth: 444/Remuster/1 (PTA) 408/1 COMERU/1 (PTA) 452/Faichney BJ/1 d/27 Dec 44)
A29544 (3)	Cpl 2 VRD	Grant F K (Dvr Mech "C")(Veh Coy)	SOS to Y3 list 1 COMERU wef 30 Dec 44 on adm to 22 Cdn Gen Hosp
H100231 (4)	Pte 4 VRD	Joye M (Veh Coy)	SOS to 22 Spec Emp Coy wef 18 Dec 44 (Auth: 408/Spec Emp Coy/1 (PTA) 452/Joye M/1 d/13 Dec 44)
F52104 (5)	Pte 3 VRD	Kaulback W H (Veh Coy)	SOS to CMHQ "Q" Br (Batman Pool) wef 2 Jan 45 (Auth: CMHQ/REC/6649 d/28 Dec 44)
K40981 (6)	Pte 4 VRD	McLannan L W (Surp to WE)	SOS to 1 CERU wef 3 Jan 45 (Auth: 408/1 CERU/1 (PTA) 452/McLannan/LW/1 d/26 Dec 44)
L86791 (7)	Pte 3 VRD	Paczay D (Veh Coy)	SOS to 1 CORU wef 3 Jan 45 (Auth: 408/1 CORU/1 (PTA) 452/Paczay D/1 d/26 Dec 44)
K71278 (8)	Pte 1 VRD	Plested A (Veh Incr)	SOS to Y3 list 1 COMERU wef 3 Jan 45 on adm to 22 Cdn Gen Hosp
K16086 (9)	Pte 4 VRD	Yeoman R M (Surp to WE)	SOS to 1 NETD wef 28 Dec 44 (Auth: CRU(PTA)A324 d/20 Dec 44 & CMHQ/11/Standards/2/3(AAG(REQ)) d/18 Nov 44)
(Amend) M56173 (10)	Pte 3 VRD	Lambourne R J	Part II DO 134 para 3(2) d/19 Sep 44 insofar as it refers to this soldier is hereby am'd by deleting "Dvr Mech "C")

(OVER)

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

Sheet No. 3 — This Order No. 3 d/5 Jan 45

2. STRENGTH DECREASE (Cont'd)

(Amend) C38477 (11)	Pte	Lamothe C C 5 VRD	Part II DO 133 para 2(1) d/18 Sep 44 insofar as it refers to this soldier is hereby am'd by adding "Stmn "C""
(Amend) C38477 (12)	Pte	Lamothe C C 5 VRD	Part II DO 136 para 1(4) d/22 Sep 44 insofar as it refers to this soldier is hereby am'd by adding "Stmn "C""
(Amend) B28769 (13)	Cpl	Watson M H 3 VRD	Part II DO 183/para 1(Sheet 25) d/30 Dec 44 insofar as it refers to this NCO is hereby am'd by adding "Stmn "C""

3. TRANSFERS

Transferred from RCASC to RCOC wef 3 Jan 45 and remains posted to 1 CCOD (Auth: CMU/444 Unfits/1 (PTA) d/28 Dec 44)

B56237	Pte	Alcock C T	M38484	Pte	Bablitz H F
M38523	Pte	Dickens R E	B160595	Pte	Haynes A H
M12436	L/Cpl	McDonald L J	F78471	Pte	McKay A
M1563	Pte	Nixon R J	L100175	Pte	Clynick A
G28842	Pte	Ouellet E J	B157709	Pte	Post A H
D142476	Pte	Rochon H	L103572	Pte	Scott E D
M52922	Pte	Thorseth L J	C30952	Pte	Tierney J P
(1)	5 VRD		F88001	Pte	Watson H M
B55410 (2)	Pte 1 VRD	Deering V L	Transferred from RCOC to RCEME wef 28 Dec 44 and remains posted to 1 CCOD (Auth: CMU/408/Trans "D"/1 (PTA) 452/ Deering VL/1 d/29 Dec 44)		

4. ATTACHMENTS

B63078 C54280 F86731 C17403 K73439 (1)	Pte Pte Pte Cpl Pte 1 VRD	Aubin J Baker A F Deveau G L Dickson J G Kirk T B	Att fap (except disc) to 1 VRD from 1 CCPC wef 2 Jan 45
B73741 (2)	Cpl 4 VRD	Bennett R W	Att fap to 4 VRD from 1 COMEME wef 2 Jan 45 (Auth: CMU/408/1 CCOD/1 (PTA) 452/Bennett R W/1 d/28 Dec 44)
G4841 (3)	Cfn 3 VRD	Boucher N J (RCEME)	Cease att fap from 1 COMEME wef 2 Jan 45 Att fap to 4 VRD from 1 COMEME wef 3 Jan 45
B85452 (4)	Pte MT Coy	Burritt R C	Cease att fap (except duty) from 12 Cdn Aux Ser Sec wef 2 Jan 45 on adm to 22 Cdn Gen Hosp
C21097 E4585 D124382 (5)	A/Cpl Pte Pte 3 VRD	Caldwell D V Lalonde B Lecompte R B	Att fap (except disc) to 3 VRD from 1 CCPC wef 2 Jan 45
F50185 (6)	Gnr 2 VRD	Faulkner T R	Cease att fap (except disc) from 1 CCPC wef 29 Dec 44 on being declared a deserter by Ct of Inquiry from 1600 hrs 7 Dec 44 Def in Kit to the value of £8-8-4½

(OVER)

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

Sheet No 4 — This Order No. 3 d/5 Jan 45

4. ATTACHMENTS (Cont'd)

H100231 (7)	Pte 4 VRD	Joye M	Att fap to 4 VRD from 22 Spec Emp Coy wef 19 Dec 44 Cease att fap from 22 Spec Emp Coy wef 28 Dec 44
E100692 (8)	Pte 2 VRD	Lamontagne L (	Cease att for disc action from 1 COMDMU wef 3 Jan 45 (Auth: CMU(PTA)A140 4/15 Dec 44)

5. COURSES

B130054 (1)	L/Cpl 3 VRD	Boyce A J	Proceeded on PAD Light Rescue Course Ser 18 wef 31 Dec 44
C94972 (2)	Pte 4 VRD	Conklin C L	Proceeded on CMHQ Course 138 Ser 24 (Regt'l Clerks) wef 17 Dec 44
K98434 (3)	L/Cpl 4 VRD	Griffiths C N P	Proceeded on PAD Light Rescue Course Ser 13 wef 31 Dec 44

6. LEAVE OF ABSENCE

Granted 7 days P L and 48 hrs pass (total leave and entitlement - 9 days) from 29 Dec 44 to 6 Jan 45 with money allce in lieu of rations under FR&I (O/S) Art 789 (3) and (4)

C94303	Cpl	Abson H W	L9018	Sgt	Barns J C
F57828	Pte	Blagdon G H	A59629	Pte	Clements R A R
A28437	Pte	Cook A V	D166968	Pte	Desgrosseilliers J
L61757	Gnr	Perkes F W J	L8813	Cfn	Gerwing A C
A84488	Pte	Huculak J	A105817	Pte	Koehler H A
C102870	Pte	Marshall A J	A25569	Pte	Maxim P
L9593	Cpl	Morgan A W	F76281	Pte	MacKinnon M J
D129059	Pte	McCoy F M	F52026	Pte	Mice M J
B139408 (1)	Pte 5VRD	Spooner C A	F66549	Cfn	Trask W A
			B96940	Cfn	Wilson A G

Granted 7 days P L and 48 hrs pass (total leave and entitlement - 9 days) from 30 Dec 44 to 7 Jan 45 with money allce in lieu of rations under FR&I (O/S) Art 789 (3) and (4)

D129344	Cfn	Blakemore S J	B10104	A/Sgt	Body S G
H3761	L/Cpl	Bruce D A	B58820	Pte	Cook G D
A104245	Pte	Evey E T	B89403	L/Cpl	Henderson W J
L9108	Sgt	Lang D	L93628	Sgt	Kirkpatrick F W
L13273	Pte	Pycroft G C (1 COMDMU)	H16879	Pte	Watson W E C
D96784 (2)	Pte 5 VRD	Tennant G B	B81777	S/Sgt	Withrow J F

B114494 (3)	Pte 5 VRD	Crosby T J	Granted 7 days P L and 48 hrs pass (total leave and entitlement - 9 days) from 29 Dec 44 to 6 Jan 45 with money allce in lieu of rations under FR&I (O/S) Art 789 (3) and (4)
M42078	A/Sgt	Ihne J A	

7. ABSENT WITHOUT LEAVE

C101916 (1)	Pte MT Coy	Barton G H	Absent without leave wef 1400 hrs 2 Jan 45 Still absent without leave 1400 hrs 3 Jan 45 (1st day)
B81686 (2)	Pte 4 VRD	Bowie D H	Absent without leave wef 2359 hrs 30 Dec 44 Still absent without leave 2359 hrs 31 Dec 44 (1st day)

(OVER)

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-93928	Pte.	Dubeau, L.,	4 V.R.D., 1 C.C.O.D., R.C.O.C.

1. The following is a fair and true summary of the entries in the ~~[illegible]~~ conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~[illegible]~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.A. 40	-	times	A.A. 40	1 times
For A.A. 15(1)	4	times	A.A. 15(1)	12 times
For A.A. 24(2)	-	times	A.A. 24(2)	1 times
For A.A. 8(2)	-	times	A.A. 8(2)	1 times

~~[illegible]~~

or,

~~[illegible]~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~[illegible]~~

or,

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

3. The accused is not under sentence at the present time.

or,

~~[illegible]~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 39 days in military custody, making a total of 39 days in custody, of which NIL days were spent in hospital. as of 29 Jan 45

5. The present age of the accused according to his record of service is 35 yrs, 6 mos, 19 days

6. The date of his attestation specified in his record of service is 8 Feb 1941

7. ~~[illegible]~~

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused ~~[illegible]~~ is in possession of or entitled to). State any military decoration or reward. NIL

10. ~~[illegible]~~

11. [illegible]

12. [illegible]

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number B-93928 Rank Pte. Name Dubeau, L. of 4 V.R.D., 1 C.C.O.D., RCOC Unit

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
Civil	8 Feb 1943 Camp Borden, Canada	Civil Conviction for theft Sec 386 C.C.	30 days in common Gaol.	
Civil	20 May 1943 Aldershot	Stealing two Gold rings	Fined £5-0-0	

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

Signed this 26 day of Jan 1945

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked is signed by the president, and annexed to the proceedings.

M.F.M. 6
(A.F. B.122)
40/P & /8130 (2965)

No. B.9392 Name Dubeau, L. | Sqn., Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 8-2-41 | G.C. Badges N/A | Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature O.C. Company, etc. "C.Hillmer, Lieut." | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Bordon	17-10-41	Pte	NIL	A.A.Sec.40 An act to the prejudice of good order and military discipline (Loaned his greatcoat)	Pte.Talbot Cpl.Shipman CSM Martin	7 days C.B.	23-10-41	Major Oppeland	"H.E.K."
Camp Bordon	26-10-41	Pte	NIL	A.A.Sec.15(1)A.W.L. Absenting himself without leave.(Absent 14 hrs 40 min.)	Cpl.Shipman	7 days C.B.	27-10-41	Lt. B.H. Thomas	Forfeits 1 days pay."HEK
Camp Bordon	4-12-41	Pte	NIL	A.A.Sec.15(1)A.W.L. Absenting himself without leave.(Absent 5 days, 2 hrs 30 mins)	Documentary	7 days C.B.	20-12-41	Major J.E. Roberage	Forfeits 6 days pay. "H.E.K."
Camp Bordon	31-1-42	Pte	NIL	A.A.Sec.15(1)Absenting himself without leave.(Absent 35 days, 16 hrs 30 min.)	Documentary	28 days detention	25-2-42	Lt.-Col. Rutton	Forfeits 36 days pay.
Camp Bordon	4-1-43	Pte	NIL	A.A.Sec.15(1)Absenting himself without leave(Absent 18 days,9 hrs,15 min)	Documentary	168 hrs Detention	4-1-43	Major JER Roberage	Forfs 19 days pay under FRI

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23 Oct 43			WOAS AWL from 2359 hrs 23 Oct 43 until 2000 hrs 1 Nov 43. (TTA 8 days, 20 hrs, 1 min). A.A.Sec. 15(1)	Documentary	27 days F.P.	4 Nov 43	Major W.A. DeGraves	Forf 9 days pay FR&I 149 (1)(a) Forf 27 days pay FR&I 149 (2) Cost of apprehension £0-8-0 FR&I 172

No. B.93928 Name DUBEAU, Lionel Sqn., Battery, or Company A/19 R.C.A.S.C. (A)T.C Corps Date of enlistment 8-2-41 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F. B.122) 40/P & /S136 (2965)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. "J.D.Patterson, Lieut." Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
CAMP BORDON Ontario	18-1-43	Pte.		A.W.L. from 0600 hrs. 18-1-43 until 1800 hrs 24-1-43 (Absent 6 days, 12 hrs) A.A.Sec 15(1). Cost of apprehension $7.16	un-Documentary Evidence	14 hrs Detention.	23-2-43	Lieut.Col. E.M.Rimmer	Forfs 36 days pay Art. 149 F.R.& I. Total. forf 50 days pay plus stoppage
C.Bordon	26-2-43	Pte.		Losing by neglect Sec. 24(2) 1 pr. boots, amt. $4.09	Sgt. Cross	Admonished	26-2-43	Major P. Houghton	Stoppage of pay $4.09
C.Bordon	24-1-43	Pte		Civil conviction for theft Sec. 386 C.C.		30 days in Common Gaol	8-2-43	W.F. Woodliffe, Esq.	
Field	6-5-43	Pte.		AWL. Sec. 15(1). TTA 21 hrs & 30 mins.)	Documentary	7 days C.B.	8-5-43	Major J.M McGown	Forf 1 days pay FR&I 149 (1)(a)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	6-5-43	Pte.		Stole 2 Gold rings the property of Georgina Gertrude Jones, valued at £7-15-0		Fined £5-0-0	20-5-43	Civil Court	"H.W.Reden,Capt."
Field	15 Aug 43	Pte.		AA Sec 15(1) Absent from 2359 hrs 15 Aug 43 until 0445 hrs 23 Aug 43. (Absent 7 days, 4 hrs and 46 mins).	Documentary Sgt.Dougall	28 days Detn.	24-8-43	Major W.A. Degraves	Forf 8 days pay FR&I 149(1)(a) Forf 28 days pay, FR&I 149(1)(b)
Field	8 Jul 44	Pte		WOAS AWL from 0600 hrs 8 Jul 44 till 1930 hrs 17 Jul 44 TTA 9 days 13 hrs 30 mins A.A. Sec 15(1)	Documentary	28 days Detn 28 days pay FR&I 149(1)(b)	28 Jul 44	Lt.Col.KK Thomson	10 days pay FR&I 149 (1) (a) Total forf. 38 days pay.

No B.93928 Name Dubeau, L. | Sqn., Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 8-2-41 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /3136 (2965)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 3 | Signature O.C. Company, etc. "RD Munnoch, Lt." | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of other disposing with trial	By whom awarded	Remarks
Field	1 Dec 43	Pte.		A.A. Sec 8(2) Using threatening language to his superior officer	L/Cpl.Sole	14 days F.P.	3 Dec 43	Lt.Col.W.C Fletcher	Awarded 14 days pay FR&I 149(2)
U.K.	15-1-44	Pte		AWL 100 hrs 15-1-44 until 0800 hrs 17-1-44 (TTA 1 day 22 hrs) A.A. Sec 15(1)	Cpl.Stevens	2 days auto forf-Admonished	29-1-44	Major S.E. Thomson	Auto-forf 2 days pay FR&I 149(1)(a)
U.K.	18-1 44	Pte		AA Sec 15(1)AWL from 1400 hrs 18-1-44 until apprehended at 2310 hrs 27-1-44(TTA 9 days, 9 hrs 10 mins) Close arrest-2310 hrs 27-1 44 until 0900 hrs 29-1-44	Cpl.Stevens Cpl. Wilson Documentary	Forf 14 days pay FR&I 149 (2) 2 days pay FR&I 149(1)(c) (ii)	29-1-44	Major S.E. Thompson "SES"	Auto forf 10 days pay FR&I 149(1)(a) 2 days Forf FR&I 149(1)(c) (ii) 14 days pay FR&I 149(2) (P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field U.K.	17 SEP 44	Pte.		Sec. 15(1) AA-AWL from 2230 hrs. 17 Sep 44 to 1615 hrs. 18 SEP 44 (Absent: 17 hrs. & 45 mins)	Sgt. Lee,R.H	Forf. 5 days pay FR&I 149 (2).	28-9-44	Major R.C.Kelly	Forf. 1 days pay FR&I 149 (1)(a).

CERTIFIED TRUE COPY

7 JAN 45 .....
(Officer having custody of Regimental Books)

I, B-93928 Pte. Dubeau, L., of 4 V.R.D., 1 C.C.O.D., wish to have an Officer detailed to represent me at my trial by F.G.C.M.

L Dubeau

LIST OF EXHIBITS

"A" Certificate of Apprehension

"B" Part II D.O. of 1 C.C.O.D., R.C.O.C.

LIST OF WITNESSES FOR PROSECUTION

Lieut. N.J.F. McLeod, 4 V.R.D., 1 C.C.O.D., R.C.O.C.

LIST OF WITNESSES FOR DEFENCE

"NIL"

Certified that I have received the following documents:-

Copy of Summary of Evidence

Copy of Charge Sheet

Copy of List of Witnesses

[redacted]

337A. Pte. Dubec. J. J.
S. Sask. Rgt.

10/D/383/

Correspondence to be PINNED here.

337

Army Form A.3.

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

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this Twenty-Sixth day of March, 19 41

Whereas it appears to me, the undersigned, an officer in Command of 6 Canadian Infantry Brigade, 2 Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

* Omit if not applicable.

*~~I am unable to appoint~~

*~~(a Three Officers to form the Court)~~

*~~(a A Field Officer as President)~~

*~~(a Three Officers having more than one year's service)~~

for the following reasons, namely :—]

President.

Rank.	Name.	Regiment.
Major	J.C. McTavish	S. Sask. R.

Members.

Rank.	Name.	Regiment.
Captain	B.T. MacFarlane	Camerons of C.
Lieutenant	W. Osler	Camerons of C.
~~Lieutenant~~ WAITING MEMBER	T.A. Miller	S. Sask. R.

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

*Signed D.M. Cargill, Brigadier
Commanding 6 Cdn Inf Bde
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
L-12185 Pte. Dubec, J.J.	Absenting himself without leave, in that he, at Toronto, Ontario, absented himself without leave from 0600 hrs 31 Oct 41 until 1600 hrs 6 Jan 41, when he surrendered himself to the Commander of the Guard of 12th District Depot, Canadian Army (Active) at Regina, Sask. A.A. Sec. 15 (1)	not Guilty	Guilty	Confirmed [illegible]

Sentenced to undergo Detention for 46 days

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

(Signed) [signature] Brigadier (Signed) J. C. MacLaurin Major
D.N. Sergent, Commanding 6 Cdn. Inf. Bde.
Convening Officer (e) President.

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

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

51

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 28 day of March 41, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) short hand writer [illegible]
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 28 day of March 1941

J. C. MacLaurin Major
President of the Court Martial.

C. Certificate in case of death sentences.

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

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

Signed this day of 19

~~President of the Court Martial.~~

D. Confirmation.

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

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

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

Signed this 2nd day of April 1941.

[signature]
Major General Comd. 2 Cdn Div
Confirming Officer.

Promulgated and extracts taken in the case of
(a) (Dated) 7 April, 41 (Signed) [signature] Major

Promulgated and extracts taken in the case of
(Dated) (Signed)

Promulgated and extracts taken in the case of
(Dated) (Signed)

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

3

CHARGE SHEET

THE ACCUSED, No. L12185, Private John Joseph Debec, a soldier of the Canadian Army, (Active) is charged with:

FIRST CHARGE
A.A.Sec. 15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

at Toronto, Ontario, absented himself without leave from 0600 hours 31 Oct 41, till 1600 hours 6 Jan 41, when he surrendered himself to the Commander of the Guard of 12th District Depot, Canadian Army (Active), at Regina, Saskatchewan.

Dated at Aldershot, Hants,
this 12 Mar 41

Lt-Col A.O.D.
Commanding S. Sask R.
Canadian Army (Active)

TO BE TRIED BY F.G.C.M.

Brigadier
D.E. Sargent Comd.
6 Can Inf Bde

26 March. 41.

To:

5

MEDICAL OFFICER'S CERTIFICATE

I certify that No. L12185 Pte Dubec J.J. South Sask. Regiment,

is* fit to undergo trial by Court-Martial.

28 Mar 41

B C Miller Capt. RCAMC.
Signature of the Medical Officer.

*Insert "fit" or "unfit."

(a) Here insert name of:—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence (R.P. 19 (B) (iii)).
(b) To be filled in if there has been a Court of Enquiry respecting any matters connected with the charges; otherwise to be struck out (R.P. 19 (B) (iii)).
(c) To be filled in by the Commanding Officer.
(d) Any items not applicable to be struck out.
(e) One copy to be sent to the President; one copy to be filed with the application for trial.
(f) Original summary of evidence to be sent to the President.
(g) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.
(h) 5 and 8 to be sent to the President.
(If the accused has elected to be tried under A.A. 46 (8), the fact should be recorded at the top of this form.)

M.F.B. 321
1M—8-39
H.Q. 1772-39-481

H.Q., 2 Cdn. Div.
26 M.A.R 41

Re: W.C.S.M.
L12185 Pte. Dubec, J.F.
R. Sask. R.
and Application for Advice
re a legal point arising therein.

The request for advice by the president of the Court presiding at the trial of the m/n soldier and exhibits P.2 and P.3 are hereby acknowledged.

2. The objection set out in said request to the production of the foregoing two exhibits is in my opinion one that should be disallowed by the Court.

(V.W. Odlum)
Major-General,
Comd. 2 Cdn. Div.
Confirming Officer

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD AT MORVAL BARRACKS, COVE, HANTS ON FRIDAY the 28th MARCH 1941

Trial of No. L12185, Pte. John Joseph Dubec, South Sask. Regiment.

Prosecutor: Capt. J. R. Painchaud, Pus. M. R.

Defending Officer: Lieut. D. A. Croll, Cdn Base Units

Shorthand Writer: D24030, S/Sgt. J. H. Spence, H.Q. 2 Cdn Div.

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1. The Order convening the Court is read in the presence of the accused.

2. The following questions are asked of the accused:

"Do you object to be tried by me as President, or by any of the other Members of the Court whose names you have heard read over?
Answer: No.

"Do you object to the shorthand writer being present and taking down the evidence in shorthand?
Answer: No.

2A The President, Members and Shorthand Writer are sworn

3.(a) The accused answers to His name and number, and the charge is read over.

(b) The accused pleads "Not Guilty".

4. The accused is asked the question at the foot of page 2 of A.F.A. B, and his answer is "No."

5. The Prosecutor: The prosecution intends to prove the charge submitted in this case by submitting as evidence the following exhibits: Firstly, declaration of a Court of Inquiry which was held in Canada; secondly a confession of desertion, signed by the accused; thirdly a certificate of surrender, signed by the Commandant of the Guard in Canada, at the Depot, South Sask. R.; and fourthly a guard report from the same Depot.

The 1st Witness for the Prosecution, Lieut. C. W. Mason, Asst.Adjutant, S. Sask. R., having been duly sworn, is examined:

Q. 1 Mr. Mason, will you please give your name and appointment?
A 1 Lieut. C. W. Mason, Assistant Adjutant, S. Sask. R.
Q 2 As Asst. Adjutant you are in charge, or deal with documents relating to the Unit, or to members of the Unit?
A 2 Yes, sir.
Q 3 Now, this is a record of a Court of Inquiry which was held on 27 Nov 40, for the purpose of investigating and recording the absence without leave from His duty, and deficiencies of kit, if any, of No. L12185, Private John Joseph Dubec, S. Sask. R. Mr. Mason, do you know Private Dubec, J. J.?
A 3 Yes, sir.
Q 4 Could you identify him if he was in this Court here?
A 4 He is the accused.
Q 5 Would you have knowledge of this document here?
A 5 Yes, this was submitted to us for record purposes. It is the declaration of the Court of Inquiry held in Toronto on 27 Nov 40.
Q 6 Now, I see on this document that it is marked "Certified a true copy of the original page in M.S.88, insofar as it concerns this man" and it is signed "Geo. B. Buchanan, Lieut." Is Mr. Buchanan still with your unit?
A 6 Yes, sir.
Q 7 Is he actually here?
A 7 Yes, sir, he is Intelligence Officer.

Q 8 Well, I should, to satisfy the Court, bring him as a witness and have him say this is a certified copy of the proceedings.

THE DEFENDING OFFICER: I am not questioning the document. I will admit, for the purposes of the record that it is not necessary to bring Mr. Buchanan here, if my learned friend says his signature is there.

A 8 It is there.
Q 9 Do you produce this to the Court as Exhibit P. 1?
A 9 Yes, sir, I do.
Q 10 Now, here is another document which the prosecution want to submit to the Court as Exhibit P. 2. It is a document which reads "Confession of Desertion, I Pte. Dubec, John, do hereby confess that I am--

THE COURT: Well, we had better have it marked first, does the defence object?

THE DEFENDING OFFICER: No, let him put it in for what it is worth.

(Document referred to now produced and marked Exhibit P. 2)

Q 10 (continuing) "I am No, L128185 of the South Saskatchewan Regt., and that I deserted from that corps on 0600 hrs Oct 21/40 and remained absent till 1600 hrs Jan 6 1941, when I surrendered, signed seventh day of January, 1941, J. Dubec, signature of soldier" and then it is marked below "I have explained to the above soldier the effect of this confession and I am satisfied that he understands thoroughly the nature and consequences of the same and that he is not immune from trial under Section 161 of the Army Act. signed A. Driver, Major, 12th District Depot, Regina."

THE DEFENDING OFFICER: We cannot admit that document. The Court will appreciate that I didn't know what was in that document until my friend read it out and for that reason I could raise no objection to it until I knew what there was in it, but I am now submitting to the Court that the charge here is one of absence without leave and any other confession that may be made has nothing to do with this immediate case. He may have been guilty of a charge of murder, and if he was charged with stealing chickens, a confession of murder wouldn't enter the charge against him; it is an entirely different charge and I point out to the Court that it isn't relevant. I am not going to put any obstacles in the way of getting the facts of the case before the Court, except that legally that isn't a document which is admissible; it might be if it dealt with the immediate charge, but it deals with a different charge entirely and for that reason it is not admissible.

THE COURT: It is an admission that he was absent during these dates, though.

THE DEFENCE: It is an admission, sir, that he deserted, but not on the main question of absence, I don't think the Court should pick out there these first four lines for an admission that we are interested in and leave out the rest of the document that we are not interested in. I don't think there is any question about his being absent; he has pleaded not guilty, but I am not going to try and prove he was there when he wasn't there. I am only asking that the evidence be put in properly. I am here to protect whatever rights the accused has under the law.

THE COURT: Do you object to that being admitted as evidence?

THE DEFENCE: Yes, sir, I do.

THE PROSECUTOR: May I answer the objection put forward by the defence? May I submit to the Court that, although, as the defending officer mentioned the declaration mentions desertion from the unit, still I submit that in a case of desertion and absence without leave, I don't agree with the defending officer that there is totally two different charges. As a matter of fact, when a man is accused-- even if a charge is laid for desertion against him-- the prosecution has the right to change the charge to read only absence without leave, so in the first point I bring this to the

Court, that in a case of desertion and absence without leave, they are really one and the same thing and can be made no distinct charges, because they are really one and the same thing, but this man is not charged with desertion, he is just charged with absence without leave, and that document is an admission made by him that he was absent without leave. We are not trying to prove by that that he was a deserter. But if a man has been a deserter, or has confessed that he is a deserter, we can involve him there that he has been unnecessarily absent without leave.

THE DEFENDING OFFICER Another point I might bring to the Court's notice is that this document purports to be signed by "J. Dubec", but they are not offering any proof that the accused actually did sign that document, or that if he did he knew what he was signing.

THE PROSECUTOR: On that point as submitted by the Defending Officer about the signature of Major Driver, I quite agree with the defending officer that in cases of confession made by the accused it must be proved by the prosecution that the statement or declaration or confession has been made voluntarily by the accused, and we intend to prove this by the statement which is on there and signed by Major Driver that the accused has signed this confession, after it had been explained to him and he knew very well the consequences of it, so that would cover what the prosecution has now brought out.

THE DEFENDING OFFICER: My friend has made a submission that I can't quite agree with. We have made a ladder you can walk down but you can't walk up the ladder. If he was charged with desertion it might be quite properly found that he was simply guilty of absence without leave, but if he is charged with absence without leave the Court has no jurisdiction to find his guilty of desertion. The essence of the charge of being absent without leave is the fact of being absent and the essence of the charge of desertion is the intention. He may be absent the same length of time, but one contains the essence of intention to desert and the other is merely a lengthy absence.

THE PROSECUTOR: I think that we are just going in a circle. The point which was raised by the defending officer is a very fine point, but if we look at it in a straight way, we are not submitting this to make any proof of desertion or to make any proof of intention. He might very well object if we were trying to make a proof of desertion out of it, but we are just showing a confession which was made by the accused and which involves and which covers the point that he has been absent without leave.

THE COURT: The Court has decided that it is not admissible as evidence.

THE PROSECUTOR: Then the Court's decision is that the confession is not admissible as evidence?

THE COURT: That is the opinion of the Court. How is it going to affect the prosecution?

THE PROSECUTOR: Well, I will admit, frankly, that it was one of the main grounds for the prosecution; this case is one in which most of the dealings took place in Canada, and we have brought the proof available, which was the certificateof the declaration of the Court of Inquiry which was held in Canada and which established that the accused had been absent without leave and which has been produced as Exhibit P. 1, and there was no objection raised--

THE COURT: The Court will close untilwe decide this question

THE COURT IS RE-OPENED Dealing with absence without leave, the two exhibits which are offered as evidence. Objection was made by Counsel for the defence that they were not admissible on the grounds that they dealt with an entirely different offence, that of desertion. The Court asks to be directed by the Convening Officer.

THE COURT IS ADJOURNED UNTIL 1400 HOURS.

THE COURT RESUMES AT 1400 HOURS, 28 MARCH 1941

THE PRESIDENT: Now, the reply has been received on the legal question raised this morning, would you care to see it?

(Letter from Major-General V.W. Odlum, disallowing the objection raised by the defence handed to the Defence and Prosecution in turn)

THE DEFENDING OFFICER: Without commenting on the reply at all I should have felt better if there had been some reason for it. I am not quarrelling with it at all, but just so that I don't ever make the same mistake again, or the Court, if it is possible that some reason, and they are able to give a reference, I think it would help the Court a great deal.

THE PRESIDENT: You did find a reference for that, didn't you, Mr. Newman?

LIEUT. NEWMAN: That is the opinion of the Major-General, actually, and neither I nor anybody else can assign the reason. If he wishes to make a request that--

THE DEFENDING OFFICER: No, no, let's go on.

THE PROSECUTOR: I will have to call Mr. Mason again.

The 1st Witness for the prosecution, Lieut. C. W. Mason is recalled:

Q 11 You are still on oath, Mr. Mason?
A 11 Yes, sir.
Q 12 Mr. Mason, this is the document I read over to you this morning; it is purported to be a confession by the accused, to which the objection was raised, and now we are authorized to have it as an exhibit. I would like to point out to the Court that the intention of the prosecution, while using this confession, is only to use it to prove the absence without leave and that it is submitted as such and with the reservation that it should not be prejudicial to the accused in this way that it might not be used against him in any further proceedings with reference to any desertion charge that might be made against him. Will you read this document again, please?
A 12 Exhibit P. 2 is read by the witness.
Q 13 Now, Mr. Mason, did you have occasion-- did you know Major Driver?
A 13 Yes, sir.
Q 14 Did you have occasion before to see his signature?
A 14 Yes, sir.
Q 15 Could you tell the Court, in your opinion and knowledge, that this is Major Driver's signature?
A 15 Yes, sir, that is Major Driver's signature.
Q 16 And you are very familiary with his signature, you say?
A 16 Yes, I was associated with Major Driver for about two years.
Q 17 And do you recognize this as being his signature as you saw it?
A 17 Yes, sir.

(Document referred to again produced and marked as Exhibit P.2)

Q 18 Now, here is another document, which purports to be a certificate of surrender by the accused and which is purported to be signed by Major Driver. I would ask the witness to read it to the Court?
A 18 Yes. (witness reads document, which is produced and marked Exhibit P. 3.)
Q 19 Now, will you tell the Court if you recognize the signature appearing there as being Major Driver's signature?
A 19 Yes, I do.
Q 20 Now, the fourth document is a copy of the guard report, the return of offenders confined to the Guard Detention room at Regina on 7-1-41, which I ask the witness to produce as Exhibit P. 4 before the Court. This document here contains a few names on the back which I understand are the names of those who were in the guard detention room at that time, and among other names there is the name Liptag, Private Dubec J. J., S. Sask. R., which shows that he was confined at 1600 hours on 6-1-41, and I would ask the witness to read it, as far as it refers to the accused, Dubec?

THE PROSECUTOR: The prosecution wish to draw the attention of the Court again at this time that the charge mentioned on this document refers to desertion and it is the intention of the prosecution to use this document only to prove that the accused was absent up until the 6th of January, 1941 and that it is produced without any prejudice being caused to the accused on account of the fact that desertion is mentioned there.

Q 20 (continuing) Is that Capt Hogg's signature?
A 20 Well, I am not familiary with Capt. Hogg's signature.
Q21 Would there be anyone in your unit who would be familiar with Capt. Hogg's signature, to your knowledge?
A 21 Not that I know of.
Q 22 Now, there is another document here which is an extract from Daily Orders, Part II, South Saskatchewan Regiment, and which refers to the accused, John Joseph Dubec. It is the same thing, it is a certified true copy by Capt. Hogg, Adjutant, 12th District Depot. Will you please give to the Court what entries in that document refer to the accused?

(Document referred to now produced and marked Exhibit P. 8.)

A 22 Yes, sir. (Witness reads relevant entries in Exhibit P.8)
Q 23 Mr. Mason, will you now tell the Court if the name, number and rank mentioned in these documents, and referring to Private Dubec is the same man as the accused in this case?
A 23 Yes, sir.

THE DEFENCE DECLINES TO CROSS-EXAMINE THE WITNESS.

THE PROSECUTOR: Well, that is all for the prosecution.

THE COURT: Has the defence any evidence?

THE DEFENDING OFFICER: Yes, sir, provided you keep them from taking a second bite at me; they were very clear in saying that my friend had completed his case and I hope, for once, it is complete. I must submit to the Court that there is not any evidence before it at all to show that the man who signed that exhibit P. 2, is the same man who is sitting here. No one has said that; no one has intimated that and no one has suggested that-- that the same man who signed that statement which is before you at the present time, that this statement, upon which so much is based, was signed by the same man whom I am defending at the present time. Now, if before my friend had closed the case he had brought, in order to give the Court the benefit of all the evidence-- evidence to show that this was the same man, he could have been called, it could easily have been proved, and I am submitting, as a very serious objection, that the case is incomplete in the respect that no identification has been made of the Dubec who is alleged to have signed that document and the man who is here at the present time, defending himself against the charges. Mr. Hogg's signature has not been verified by anyone here; there is no one here to say that that is his signature on either one of the documents, and I assume that the Court may take some general knowledge, but this is a specific charge. There are some sections in the Act which give the Court great leeway, but where evidence is procurable, and I emphasize that-- you might very well toss me out on my neck, with respect to Hogg, but I don't think you can so easily set aside the argument that I present with respect to my client, who is here in Court and who could very well have been asked "Is that your signature, or is that not your signature?"

THE PROSECUTOR: I am sorry to interrupt the defending officer, but he seems to be pleading his case now. I said my evidence was closed. I have no witnesses to be heard right now. But if he is going to make his plea now, then I should have an opportunity of making my plea first.

THE DEFENDING OFFICER: I am making a preliminary objection; I am proposing to the Court that there isn't sufficient evidence at the present time to put the accused on his defence and I am asking the Court to dismiss it, because there was no identification of him, and if the Court comesto a different conclusion I know what I can do under the circumstances, but I am proposing that to the Court, and I say where evidence is available it was the duty of my friend to call such evidence, to make it clear, to clear up any question in your mind. The evidence was available, he didn't call it; he closed his case and I am asking that the case be dismissed.

THE PROSECUTOR: My answer to this is these documents which the prosecution has produced as exhibits here do give the evidence that we require. The point just raised by the defending officer is only to the effect that he says that no proof was given that this confession was signed by the accused. Well, I don't agree with that. On this document, which was read to the Court, and which is submitted and at that time I mentioned this morning, that this is going to be proved by the other statements included in it and signed by Major Driver, and here is evidence that we submitted for the signature of the accused on this confession, the statement which is put there by Major Driver, and he says "I have explained to the above soldier the effect of this confession, and I am satisfied he understands the nature of it," and Major Driver's signature as a witness to the accused's signature has been recognized, and we have submitted evidence of Major Driver's signature through Mr. Mason, and he says he knows the Major's signature very well. And then we have the accused's number here, as a further identification of the accused being the same man, and he is the only man in the British Army with that number and so I submit that there is all the evidence required covering the point submitted by the Defending Officer and this is the best proof.

THE DEFENDING OFFICER: If Major Driver were in this country I should demand that Major Driver be brought here to identify his signature, as he is not in this country a man comes forward and says this is his signature, all right, well and good, but Dubec is here in this room and it is your duty to place before the Court his positive identification. He is here, right in this room, and he isn't called, and what inference can the Court possibly come to except that legally he isn't the same man, until such time you prove he is the same man. On that I say you have completed your case, and the whole case hinges on the fact you haven't identified Dubec as the very same man; it might be somebody else. Why wasn't Dubec called? Surely the Court can take only one inference that he isn't the same man.

THE PROSECUTOR: Is the defending officer referring to the fact that the party or the man mentioned in that document has not been proved that it is the accused? Or if you are talking about the signature of the accused? If you are saying that it isn't proved that the man referred to isn't the accused, I don't see any other evidence that can be submitted than by the regimental number. There is only one man in the whole British Army with that number.

DEFENDING OFFICER:

THE/~~XXXXXXXXX~~: Men have been known to sign the wrong signatures--

THE PROSECUTOR: Are you raising the fact of identifying the accused? I say the accused is perfectly identified as being the same man as appears there. Now, secondly, if you are talking about the fact that you are saying no proof was given as to the signature appearing there as being that of the accused, I say, yes there is a statement signed by Major Driver, and as to the use of Major Driver's signature there, we have one witness who came along and positively identified Major Driver's signature. He said he had been with him a good many times and he recognized his signature, very well, and there is evidence. Now, if the defending officer wants to make a case and say that it wasn't signed by the accused, well then it is up to him to prove that point. It certainly is not given to the prosecution to call the accused as a witness against himself.

DEFENDING OFFICER:
THE/XXXXXXXXXX I have had some experience in prosecuting and on many occasions we have called the evidence of the accused, and there is nothing wrong with calling an accused person in order to prove something, but you would have to take what he says, and for that reason I say you wouldn't take the chance and for that reason you wouldn't call him, and my friend can't show me anything in the Army Act where the accused can't be called, and all they have to do is call him and put him in the witness box and say "Dubec is this your signature?"

*** R. P. 73(B) and Sec. 1 (a) of the Criminal Evidence Act, 1898 were drawn to the attention of the Defending Officer.

THE COURT: I think we may assume that the Dubec who signed this statement is the same one that is present here in this Court Room.

THE DEFENDING OFFICER: I am going to let the case rest. At that I think my point is well taken and while I don't like to put you in such a very embarrassing position, But I think my point is well taken in connection with identification. I don't think they have made out a case and I am resting on that ground. I am not offering any evidence at all. I am submitting that there isn't a case sufficient to put my client on trial, because he hasn't been identified as the man who signed that particular document and I pointed out to the Court that he was here in the room and available for identification purposes. Now, I have rested on that and I want to say that if the Court comes to the conclusion that this is a case where the man is proven guilty, I think there are some things that ought to be taken into consideration and I want the Court to know that this man has been confined for 80 days. He has been in close arrest since the 5th of January; he has been handcuffed and kept in close arrest, and from just looking at my client you can very easily come to the conclusion that he is a man of nervous temperament and you will have to take my word for some of the history of the case and it can be easily confirmed. In trying to transform a civilian into a soldier we sometimes do it a little too quickly; It isn't done too gently and you all know what problems confront you. My client, when five years old, was sent to a Children's shelter. I don't think that is any cause for sympathy, but I bring that up because of the certain amount of discipline that must have come to him; it wasn't the kind of discipline that you knew in your home or I knew in mine. He got his discipline in the children's shelter and the discipline in a Children's shelter, is necessary, but often it is laid on pretty hard. And then when he joins the army to fight for his country he goes to Shilo, I think it is about 200 miles fromhis home; he was newly married and in March he was taken away for an offence he committed. He was handcuffed and left for Toronto without being given an opportunity to see his wife, without an opportunity to see his people, and the natural thing that appealed to him was to get back there as soon as he possibly could. Now, the facts of the case and I am able to prove them with another witness who is here at the present time, a fellow named Norton, are that he did go back and he xx stayed in Estevan in his home, not only did he do that but he had chicken pox for a period of five weeks and Doctor Milke attended him and when he got better he sent word to Major Driver by a man called John Pless, telling the Major where he was and asking for transportation, which wasn't sent to him. He then went to see the Chief of Police, who paraded him to a Major Kerr, and they said "no, we are not interested, you go back to your unit some way and he finally did, in desperation, hitch-hike back to Regina. I point that out to the Court because, unfortunately, or perhaps fortunately, in handing out justice, the Court takes the attitude that all men should be punished equally, and I submit to the Court that that sometimes isn't the fair thing to do. Here is a boy who is lacking in home discipline, who suddenly finds the strictest and harshest of discipline, and he is quite helpless. These people don't realize that they break themselves when they try to xxxxxxx break the army. I think that the fact of his urge to see his wife and his family and then he was confined for 5 weeks with Chicken Pox, and he returned himself, and I think all these things should be taken in his favour

and I would ask the Court to be lenient and give him a chance once again to start soldiering like a man.

THE COURT: You are not calling any witnesses?

THE DEFENDING OFFICER: No, sir, I am resting on that.

THE COURT IS CLOSED FOR CONSIDERATION OF FINDING.

THE COURT IS RE-OPENED AND THE ACCUSED IS BROUGHT IN

THE DEFENDING OFFICER ADMITS THE ACCURACY OF THE A.F.B. 296 and M.F.M. 6, in connection with the accused, and they are filed by consent.

THE COURT: Has the accused anything he wishes to say in mitigation of punishment?

THE DEFENDING OFFICER: No, I think there is nothing more, except what I have already said.

THE COURT IS CLOSED FOR CONSIDERATION OF SENTENCE.

I HEREBY CERTIFY that the foregoing pagess of typewritten matter, numbered Sheet one to Sheet 8, is a true and correct transcript of shorthand notes taken by me in the above matters at the time and place first hereinbefore written.

Aldershot, Hants, 1 Apr 41.

J. H. Spence

DC4030 S/Sgt. JH Spence, HQ 2 Cdn Div.

25

SUMMARY OF EVIDENCE

Charges against L-12185 Private Dubec, John Joseph

Taken before

Captain J.R. Mather

South Saskatchewan Regiment

C.A. (A).

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12 Mar 41

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SUMMARY OF EVIDENCE

Charge against L-12185 Pte. Dubec, John Joseph

The Commanding Officer Directs the Evidence to be taken under oath.

1st Charge - Absenting himself without leave

1st Witness

Lieut. A.F. Dawson S. Sask. R. having been duly sworn, states:

I produce a certified copy of an entry in M.B. 68 referring to L-12185 Pte. Dubec, J.J. S. Sask. R. as exhibit P 1 and I certify that the person named herein is the accused.

The accused declines to cross examine. A.F. Dawson Lieut.

2nd Witness

Lieut. G.W. Mason S. Sask. R. having been duly sworn, states:

I ~~have thorough support that~~ duly tender in connection with JM the accused L-12185 Pte. Dubec John Joseph

(1) A confession of desertion p 2 signed by the accused which I submit as evidence. Also a certificate under A.A. 163 (1) (j) K.R. Can 500 (iv) which is signed by Major A. Driver of the 12th District Depot Regina Saskatchewan which certifies that the accused surrendered himself to K-74761 L/Cpl. Brown H. who was Corporal of the Guard. I also have to submit a certified true copy of guard report signed by Capt. T. Hogg, Adjutant 12th District Depot Regina Saskatchewan Canada.

In all I tender three exhibits on each of which the name of L-12185 Pte. Dubec John, appears and I certify the accused soldier to be the same person.

The accused declines to cross examine. G.W. Mason Lieut.

Question to the accused:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by the accused:

Yes Sir, I wish to make a statement.

Statement by the accused after having been duly sworn.

In the event that the statement which I gave in Regina Saskatchewan Canada before Capt. T. Hogg, be used as evidence at my trial, I request that the witnesses present thereat be called as witnesses at my trial.

J.J. Dubec

I certify that the foregoing summary of evidence consisting of one page, was taken down before me in the presence of the accused and rules of procedure 4 (c), (d), (e) and (f) have been complied with.

J.R. Martin Capt.

Date 12 May 41. Place Cove Hants

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Cove Hants
12 Mar 41

"I, L-12185 Pte. Dubec John Joseph do desire an officer assigned to represent me at my trial by court marshal." I desire the services of Lieut. David Croll, the Essex Scottish Regiment, if he is available.

Date 12 Mar 41

Witness [illegible] Capt

List of Exhibits.

Exhibit "P.1."

Declaration of Court of Inquiry.

Exhibit "P.2"

Confession of Desertion.

Exhibit "P.3"

Certificate of surrender.

Exhibit "P.4"

Guard Report.

Charges against L-12165 Pte. Dubec, John Joseph.

Witnesses for the prosecution

Lieut. A.F. Dawson	Morval Barracks Cove Hants.
Lieut. G.W. Mason	Morval Barracks Cove Hants.

Witnesses for the defence

B25340 Spr. Smith, C.H.	2nd. Field Coy., R.C.E.
L-12722 Pte. Barrett, P.P.	Witley Camp No. 3 Infantry Holding Unit.
L-12608 Pte. Hoefner, J.H.	S. Sask. R.

These witnesses are requested by the accused to be present at his Trial by Court Martial.

35 P.I

RECORD of the Declaration of a Court of Inquiry assembled at on the 27th day of November, 1940 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Intruments, Regimental Necessaries, or Clothing of No. L-12185 Pte. Dubec, J.J.

DECLARATION

The Court declare, L-12185 Pte. Dubec, J.J. of the S.S.R. C.A.S.F. is illegally absent since the 31st day of October, 1940, and that he may therefore be proceeded against ass deserter, and that he is also deficient of the following of the arms, ammunition, equipment, Regimental necessaries, or clothing, which it was his duty to have, Viz.

Anklets	Web	prs	1	.82
Badges	Cap		1	.14
Badges	Cloth Shoulder		1	.08
Boots	Ankle	prs	2	9.60
Cap Field Service			1	.98
Greatcoat Drab 1939 Patt			1	17.63
Discs Identity & Cord			1	.09
Drawers Woolen		Prs	1	1.15
Battle Dress Blouse			1	6.40
Battle Dress Trousers			1	6.25
Jacket Sweater			1	1.90
Shirts Flannel			1	2.10
Shirts Woolen			1	1.15
Gloves Woolen prs			1	.59
Straps Shoulder Haversack R				.74
Straps Shoulder Haversack L				.74
				50.29

Names of President and Members.

PRESIDENT	E.W.White	Major
Members	A.F. Dawson	Lieut.
	L.G. Kempton	Lieut.

Signature of Commanding Officer....J.E.Wright..Lt.Col.

Certified a true copy of the original page in M.B.68 in so far as it concerns this man.

Geo. B. Buchanan.....Lieut.
(G.B.Buchanan)
A/Adjutant
S.Sask.R., CASF.

P 6m 4

JAN 22 1941
12th DIST. DEPOT

K. R. Can. 519.

Confession of Desertion

I, Pte Dubec John do hereby confess that I am No. L 12185 of the South Saskatchewan Reg't corps and that I deserted from that corps on 0600 hrs Oct 31/40 and remained absent till 1600 hrs JAN 6 1941 when I (surrendered) ~~(was apprehended)~~. (Enlisted in SS Reg't)

Signed this Seventh day of January 1941.

J. Dubec
(Signature of Soldier.)

I have explained to the above soldier the effect of this confession and I am satisfied that he understands thoroughly the nature and consequences of the same and that he is not immune from trial under Section 161 of the Army Act.

(Signature of Commanding Officer.)

12th DIST. DEPOT Regina

37 P.3

Certificate under Army Act Section 163 (1) (J)
K. R. Can. 500 (iv)

I Major A. Driver certify that L12185 Pte Dubec J

of the South Saskatchewan Reg't surrendered himself to

K47641 L/cpl Brown H at 1600 hrs

the Sixth day of January ~~1940~~ 1941 as a

deserter ~~(or absentee without leave).~~

Date January 7th/41

A. Driver Maj

12th DIST. DEPOT Regina

44

Soldiers under Sentence Confined in Detention Barracks or Civil Prison

No.	Corps	Coy. Etc.	RANK AND NAME	SENTENCE	HOURS DONE	HOURS TO DO	REMARKS
				Nil			

No. 12 District Depot, Station Regina

REPORT OF THE Quarter Guard

Mounted at 0910 (Hour) 6-1-41 (Date)

Dismounted at 0910 (Hour) 7-1-41 (Date)

12 Dist. Depot

To the Officer Commanding Regina

Regt

COPY

Report of Offenders, and Soldiers under Sentence, Confined in the Hospital

No.	Regt. No.	RANK AND NAME	Corps	Coy. Etc.	DATE OF OFFENCE	Days	Nights	REMARKS
								Nil

Cpl. Brown, H. Commanding Guard

OBSERVATIONS

	Barometer at Temperature	Wind	Rain	Clouds
0400				
0800				
1200				
1600				
2000				
2400				

I certify that the observations, thermometer hours of snow and rain reported by the sentry were entered in the Observation Book in the Guard-Room.

Cpl. Brown, H. Commanding Guard

41 PA

DETAIL					SENTRIES		ARTICLES IN CHARGE OF GUARD																								
Officers	Sergeants	Bombardiers or Corporals	Lance-bombardiers or Lance-corporals	Acting Lance-bombardiers or Acting Lance-corporals	Trumpeters or Buglers	Troopers, Gunners, Privates, etc.	Tables	Forms	Fire Shovels	Hot Pokers	Rifle, Electric	Water Pails	Long Scrubbers	Hand Scrubbers	Lanterns	Mops	Coal Tray	Sentry Boxes	Locks and Keys	Pokers	Fenders	Buckets	Water Cans	Arm Racks	Accoutrements, etc.	Boards of Orders	Handcuffs	Drier Tubs	Inventory Boards	Coal Box	Stretchers	Ladders
		1	1			13	2	2	2	1	4	2	1	2	2	1		3					1		4		3	1	1		

Parole

Countersign

BROKEN OR DAMAGED

By whom	When	Remarks

CERTIFICATE

I Relieved Cpl. Griffiths, W.R. at 0910 o'clock. Previously to the old Guard marching off, I inspected the several articles in charge of the Guard, and found them correct according to the above list, the Guard Room clean, and the Board of Orders legible. Immediately after the old Guard marched off, I read the orders to the Guard, and again to the sentries first posted, after they had been relieved, after which I visited the Sentries and found them properly posted and acquainted with their orders, and the Board of Orders hung up in the Sentry Boxes and complete. I inspected all Reliefs both going out and coming in, and found them regular. I also visited the Sentries frequently during my Guard and found them alert and on their posts and correct in their orders. The Guard was under arms at Retreat, Tattoo and Reveille sounding when all were present and sober. I inspected the Kits of the men on Guard and found them Correct

Visited by the Field Officer ..... o'clock by Day, and at ..... o'clock by Night

" Captain at 1030 o'clock by Day, and at 0300 o'clock by Night

" Subaltern at ..... o'clock by Day, and at ..... o'clock by Night

Report by Guard Commander of any special occurrences during tour of duty (attached if necessary):—

Cpl. Brown, H. Commanding Guard

TIME AND POST ROLL

Regt. No.	NAME	Corps	Bombdrs. Cpls. Coy.	Post	Time From	Time To	Time From	Time To	Time From	Time To	Time From	Time To	Time From	Time To	Time From	Time To	REMARKS
	A/Sgt Leduc, J.L.			1	0910	1000	1400	1600	2000	2200	0200	0400	0800	0910			
34004	LaBossiere, J.			2	0910	1000	1400	1600	2000	2200	0200	0400	0800	0910			
014	Pedard, L.			3	0910	1000	1400	1600	2000	2200	0200	0400	0800	0910			
009	MacLaren, D.			4	0910	1000	1400	1600	2000	2200	0200	0400	0800	0910			
12244	Wypon, H.J.			1	1000	1200	1600	1700	2200	2400	0400	0600					
002	Fung, C.F.			2	1000	1200	1600	1700	2200	2400	0400	0600					
031	Donaldson, G.			3	1000	1200	1600	1700	2200	2400	0400	0600					
033	Stewart, M.D.			4	1000	1200	1600	1700	2200	2400	0400	0600					
7082	Mohr, J.			1	1200	1400	1800	2000	2400	0200	0600	0800					
025	Beaton, G.			2	"												
019	Brown, H.			3	"	Cpl. Brown, H.											Commanding Guard
013	Leadbetter, E.J.			4	1200	1400	1800	2000	2400	0200	0600	0800					
18311	Love, A.L.																

RETURN of Offenders Confined to the Guard Detention Room at REGINA on 7-1-41 193

No.	Regt. No.	RANK AND NAME	Corps	When Confined	Date of Offence	CHARGE	EVIDENCE	DECISION	REMARKS
M-224	Gnr	Johnston, T.E.	13th D.D.	1915 hrs 2-1-41		A.W.L.	L/Cpl. Hale	Remanded	
L-34012	Pte.	Stewart, A.P.	12th D.D.	1145 hrs 3-1-41		A.W.L.	Sgt. Ganier		Committed to Detention 6-1-41, 1030 hours
L-19170	Pte.	Johnston, J.V.	12th D.D.	0545 hrs 5-1-41		A.W.L.	Pte. Teneycke, C.M.P.		Committed to Detention 6-1-41, 1030 hours
L-22193	Pte.	Robertson, J.J.	12th D.D.	9-12-40		Creating a disturbance in Regina Hospital after lights out.			
L-17230	Pte.	Keith, E.D.	12th D.D.	9-12-40		Creating a disturbance in Regina Hospital after lights out.			
L-27328	Pte.	McAuley, W.G.	R.R.R.	20-12-40		A.W.L.			
* L-12185	Pte.	Dubec, J.	W.S.H.	1600 hrs 6-1-41		Desertion	Cpl. Brown, H.		Cpl. Brown, H.

Certified True Copy

Thogg Capt

adjt 12th DIST. DEPOT Regina Sask

Exhibit P-5

EXTRACTS FROM DAILY ORDERS PART II OF

SOUTH SASKATCHEWAN REGIMENT.

Re: John Joseph Dubec, Pte.
L-12185

Certified true copy
V. Hogg Capt
adjt
12th DIST. DEPOT

I.
ABSENT WITHOUT LEAVE:

L.12185 Pte. Dubec, J.J.	HQ	from 0600 hours 31-10-40 SORS 31-10-40

SSR D.O. Part II #302 Para 3, d/2-11-40.

II.
ABSENT WITHOUT LEAVE:

L.12185 Pte. Dubec, J.J.	HQ	from 0600 hrs 31-10-40 (8th day)

SSR D.O. Part II #308 Para 2, d/8-11-40.

III.

L.12185 Pte. Dubec, J.J.	H.Q.	from 0600 hrs 31-10-40 (22nd day)

SSR D.O. Part II #320 Para 5, d/22-11-40.

IV.

3. STRENGTH DECREASE / DESERTER:

L.12185 Pte. Dubec, J.J.	HQ	HAVING BEEN DECLARED BY A COURT OF INQUIRY held 27-11-40 to have been illegally absent since 0600 hrs, 31-10-40 and to have deficiencies in his kit and equipment to the amount of $50.29 is S.O.S. with effect from 27-11-40. Forfeits 28 days pay and allowances under Art. 149 (1) (a) F.R. & I. for CASF.

SSR D.O. Part II #326 Para 3, d/29-11-40.

EXTRACTS FROM DAILY ORDERS PART II OF
No. 12 DISTRICT DEPOT, C.A.A.F., REGINA

I.
2. ATTACHED:

(c)

L.12185 Pte. Dubec, J.J.	Attached for rations while held under close arrest for desertion from South Sask. Reg't (CAAF) effective 7-1-41.

Part II Order #7, d/7-1-41.

II.
1. STRENGTH INCREASE:

(c)

L.12185 Pte. Dubec, J.J.	T.O.S. returned from desertion on transfer from S. Sask. Reg't CAAF effective 6-1-41. Auth. D.A.P.M. M.D. 12 letter dated 21-1-41, R. 1-D-61.

III.
1(c) STRENGTH DECREASE:
The undermentioned are S.O.S. on transfer to Inf (R) Holding Unit, Serial 191 effective 31-1-41. S.O.R.S. 31-1-41. Auth. H.Q.S. 8251-BST (MC) 2-6-209, dated 24-1-41.

L.22804 Sgt. Smith, J.A.
L.22803 Sgt. Stinchcombe, W.A.
L.22805 Sgt. Williams, K.A.
L.12185 Pte. Dubec, J.J.

Part II Order #30, d/30-1-41.

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M.F.B. 355
1M-3-39
H.Q. 1772-39-620

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L-12185	Private	DUBEC, John Joesph	South Saskatchewan Regiment.

1. The following is a fair and true summary of the entries in the Field Service ~~and General~~ ~~Regimental and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	A.W.L. four	times	A.W.L. four	times
For		times		times
For		times		times
For		times		times

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

or,

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

NOTE—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 65 days in military custody, making a total of 65 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 25 years.
attestation paper is

6. The date of his commission specified in his record of service is N.A.
attestation attestation paper

7. The service which the accused is allowed to reckon towards discharge is one year, 5 months 13 days.

8. The accused is entitled to reckon one year service for the purpose of determining his pension, etc. 5 mons, 13 days.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward.
military military military N.A.

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

Cmil

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11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force, and in his regiment (or corps), the rank of unit

dated

dated N.A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— Date of promotion.

N. A.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank Army

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

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

Signed this 12 day of March, 1941.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

No. L. 12185 Name Pte Dubec J. Sqn., Battery, or Company H.Q. Corps S.S.R. Date of enlistment 27/9/39 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 50036—8-39 (1702) H.Q. 7772-45-19

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2. Signature O.C. Company, etc. [signature] Character

Place	Date of offence	Rank	Class of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Shilo	5-6-40	Pte		A.W.O.L. 2200 hrs, 5-6-40 to 2200 hrs, 10-6-40. Absent 5 days	Cpl Caserro Absentee Report.	L.P. 120 hrs detention. Forfeits 5 days pay.	12-6-40	J.E.Wright Lt-col	
"	3-7-40	Pte		A.W.O.L. 0530 hrs, 3-7-40 to 0500 hrs, 13-7-40.	Absentee Report.	28 days detention.	-16-8-40	W.E.Wright	10 days pay
				A.W.O.L. 0930 hrs, 14-7-40 to 2115 hrs, 19-7-40.	Absentee Report.	28 days detention.	-16-8-40		6 days pay
"	20-9-40	Pte		A.W.O.L. 0600 hrs, 20-9-40 to 1-10-40, 1830 hrs.	Cpl Legere	J.P. 28 days detention.	5-10-40	W.E.Wright O.C.	40 days pay

CMcL

Certified True Copy

[signature]

J.A.S. Rev. Cto

Sent

(F.T.O.)

OE - Pte Dubec J J.

O. H. M. S.

M. F. B. 270

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110E 1

Army Form A.3.

Correspondence to be PINNED here.

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

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this Fourth day of November, 19 41

Whereas it appears to me, the undersigned, an officer in Command of 6 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

* Omit if not applicable.

[redacted]

In my opinion military exigencies, namely the dispersion of Units and difficulties of communication and other difficulties render it inexpedient to observe the provisions of those rules inconsistent with Appendix 'A' to D.R.O. 772 on the trial of the person named in the annexed schedule.

Lieut. W.C. Newman, A.D.J.A. 2 Cdn Div is hereby appointed Judge Advocate.

President.

Rank.	Name.	Regiment.
Major	J. E. McRae	S Sask R

Members.

Rank.	Name.	Regiment.
Capt	To be appointed by O.C.	Camerons of C
Capt.	To be appointed by O.C.	Fus M R
Waiting Members		
Lieut.	To be appointed by O.C.	Fus M R
Lieut.	To be appointed by O.C.	Camerons of C
Lieut.	To be appointed by O.C.	S Sask R

The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be stated in the latter event, the name, rank, &c., of the members of the court, as constituted, will be recorded on the proceedings.

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

[redacted] Brigadier

Commanding 6 Cdn Inf Bde

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
L 12185 Pte. Dubec, S Sask R.	First Charge. A.A.Sec 18(2) See attached charge sheet.	not Guilty	Guilty	Sentenced to undergo Imprisonment for 18 months with Hard Labor. Confirmed, but I remit 6 months imprisonment with hard labour. J.L.K. J.L.Roberts Brig:
	Second Charge. (Alternative) A.A.Sec 40. See attached charge sheet.	not Guilty	Not Guilty	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— no Sir

(Signed) J.L.Roberts Brigadier, (Signed) Ernest Mayers
Commanding 6 Cdn Inf Bde Officer (*b*) President.

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

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

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

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

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

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

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B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 11/12 day of November 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

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

* Omit if not applicable.

were duly sworn.

Signed this 12th day of November 1941.

Ernest Lapointe Minister of Justice
President of the Court Martial.

C. Certificate in case of death sentences.

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

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

Signed this day of 19 J.L.K.

J.L.K.
President of the Court Martial.

D. Confirmation.

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

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

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

Signed this 15th day of Nov 1941.

J.L.Roberts Brig:
Confirming Officer.

Promulgated and extracts taken in the case of L.C.Jardine Pte. (Signed) [illegible] Capt.

(*a*) (Dated) 19/Nov/41 6 Cdn Inf Bde Sig Coy C.A. (M)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

Ser. No. 38091-113a Mar. 1/41 W. & Co., Ltd. Gp. 748-2

3

MEDICAL OFFICER'S CERTIFICATE.

I Certify that No. L-12185 Pte Dubec, J.J. S.Sask. Regiment
is fit
~~unfit~~ to undergo trial by Court-Martial.

11 Nov 1941

F. W. Hayter - Capt
Signature of Medical Officer

Exhibit F

5

MEDICAL CERTIFICATE

I CERTIFY that No. L-18185 Pte Dubec, J.J. S.Sask.Regiment

is fit to undergo trial by Court-Martial.

Seaford
12 Nov 41

F. W. Kayter
Signature of Medical Officer

7

C HARGE SHEET

The accused L 12185 Pte. Dubec, S Sask R, a soldier of the Canadian Army(Overseas) is charged with:-

FIRST CHARGE
A.A.Sec 18(2)

WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he at Morval Barracks on 29 Mar 41 while in confinement, by discharging his rifle, wilfully injured himself in the right foot with intent thereby to render himself unfit for service.

SECOND CHARGE
(Alternative)
A.A. Sec 40.

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he at Morval Barracks on 29 Mar 41 so negligently handled a rifle as to cause it to be discharged and thereby injured his right foot and rendered himself temporarily unfit for service.

(J. Ewart Wright) Lt.-Col.
O.C. S.Sask.R., C.A.(O).

Remanded for F.G.C.M.

(J.P.Mackenzie) Brigadier,
Comd. 6 Cdn. Inf. Bde.

I request Lt.Col. J.E. Wright to appoint one Officer to defend me at my trial by Field General Court Martial.

Dubec J.

L-12185 Pte Dubec, J.J.
S.Sask.R., C.A.(O).

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD AT DENTON, SUSSEX, ON 11/12 NOVEMBER 1941

TRIAL OF NO. L12185, Pte. J. J. Dubec, S Sask R

PRESIDENT: Major J. E. McRae, S Sask R

MEMBERS: Capt. J. M. Vezina, Fus M R

Capt. W. E. Osler, Camerons of C

JUDGE-ADVOCATE: Lieut. W. C. Newman, H.Q. 2 Cdn Div.

PROSECUTOR: Capt. J. R. Painchaud, Fus M R (Lawyer)

DEFENDING OFFICER: Capt. J. C. Smith, R.C.A.S.C. (Lawyer)

1. The Order Convening the Court is read to the accused and he is asked whether he objects to being tried by the President or by any of the Members of the Court, and his answer is "NO".

2. The President and Members of the Court are sworn.

3. The accused answers to his number, rank, name and unit, and is duly arraigned and pleads "NOT GUILTY" to both charges.

4. Rule of Procedure 39(A) is complied with, and the accused's answer "NO, SIR" is recorded by the President on page 2 of A.F.A. 3.

5. THE FOLLOWING PROSECUTION WITNESSES ARE CALLED:

First Witness, L12016, Sgt. R. H. Smith, S Sask R., having been duly sworn, states:

I know the accused. On 29 Mar 41 I was sergeant of the guard at Morval Barracks, Cove. On that date the accused was shot or injured in the right foot. He had been confined in the guard room. At 1315 hours I ordered the accused to get dressed for instructional training. He went to the washroom, and came out again to the guard room, and reached around the door for his rifle.

(The witness identifies a Sketch of the Guard Room, which is marked Exhibit P.1).

The accused occupied a cell marked "I". As he reached for his rifle I glanced again at the paper I was reading at the table in the centre of the guard room. I heard a shot fired behind me. I turned around and saw Pte. Dubec standing in front of the bed. He was holding his rifle by the small of the butt in his left hand and was holding his stomach with his right hand. The muzzle of his rifle was pointed towards his feet. I immediately sent a man for the M.O. and another man for the duty officer. Sgt. Ring and Sgt. Tracy came in at this time. Sgt. Ring administered first aid and Sgt. Tracy picked up the rifle that fired the shot and in my presence opened the breech. We discovered the empty casing in the chamber and one live round in the magazine. These were submitted to the orderly officer. The M.O. arrived and Dubec was put in an ambulance and sent to the hospital. I examined the arms of the guard and found that this rifle belonged to no member of the guard. I then searched the guard room for ammunition and found 135 rounds in the cupboard in the guard room. Pte Barabash, who was undergoing detention had 46 rounds in his kit in No. 3 cell. The rifles were in an ordinary rifle rack. It was usual for the accused to undergo instructional training. On that day the accused objected to undergo instructional training. Previously he had been on a Court Martial where the point of instructional training arose. The rifle that fired the shot belonged to

Pte. Dubec, his name was scratched on the rifle, near the butt plate. Lieut. Edmundson was Orderly Officer of that day.

(The defence admits spent and live round of ammunition as Exhibits P.2 and P.3, respectively, were rounds found in the rifle).

The accused used this rifle for instructional training at least twice a day.

CROSS-EXAMINED BY THE DEFENDING OFFICER:

"I saw the accused reach for the door with his right hand. At the time of the shot he was near the bed, and after the shot he was facing me, with his back toward the bed. The right hand might have been against the right groin. He staggered and fell and I tried to break his fall. He fell towards the stove, slightly left and forward. I do not remember what happened to the rifle since, nor do I remember on what side the name was scratched.

"I did not see anyone come through the door from the cell block to or from the guard room until Dubec got the rifle. The Regimental Police came in when I went into the cell, but left before the shooting. I do not know what year was stamped on Pte. Barabash's ammunition, nor on the ammunition in the cupboard, which was not locked. The accused's Court Martial took place the day before this incident happened. The men wore packs on instructional training. The rifle fell on the floor beside the accused. His hand was on the small of the butt, just above the trigger (indicates on rifle). He was slightly bent forward and started to stagger forward.

EXAMINED BY THE COURT:

"The shot came from the rifle in Dubec's hand. The rifle was smoking. There was a man lying on the bed by the rifle rack. He was on his right side, facing the wall. There was another man on a bed near the window. Pte Wilkinson was sitting across the table facing me. He was then Corporal of the guard. The accused had not handled the rifle previously that morning. The accused did not say anything at first, but later complained that his foot hurt. The bullet had entered above the ankle on the inner side of the right foot and left the outside edge of the instep. The rifle rack where the accused's rifle was was for the men in detention. There was an elapse of time of approximately 12 seconds between the time I saw the accused and the shot was fired. There was enough noise to hide the noise of the bolt if it had been slowly opened.

The Second Witness, L12131, Pte. Wilkinson, W.A., S Sask R, having been duly sworn, states:

On 29 Mar 41 I was Corporal of the Guard. I was sitting at a table in the guard room. I saw someone walking through the doorway and then he pulled the door back from the rifle rack behind it. He then came over near the bed with the rifle, and bent over as if to examine it. The shot was fired and the accused fell to the floor. I saw no one else come through the doorway. The rifle had been standing in the rifle rack on its butt.

CROSS-EXAMINED BY THE DEFENDING OFFICER:

The guards did not keep their rifles in the same rack as the accused, though it was possible for some of them to be there. The sun was shining that day, but the rifle rack was in a dark corner. When the accused picked up the rifle from the rack he faced the wall. When he was examining the rifle he faced me. Higher Sgt. Tracy or someone else was standing by the stove. This person was never near the accused at any time.

The third witness, L12143, Pte. K. G. Brown, S Sask R, having been duly sworn, states:

"I know the accused. I was lying on the bed in the guard room at the time and was about to roll over when Pte. Dubec shot himself. I was facing the wall, lying on my right side just opposite where it happened. I did not hear him complain about pain at all. The head of my bed is about half a foot from the rifle rack."

CROSS-EXAMINED BY THE DEFENDING OFFICER:

"I did not see the accused go to get his rifle. I heard no noise of a click of a bolt. I did not hear him take the rifle from the rack by my bed."

EXAMINED BY THE COURT:

"There was no noise in the room at the time, before the shot was fired. I did not hear anyone walking around my bed before the shot was fired. By noise, I mean loud noise."

The Fourth Witness, 112520, Sgt. F. W. Ring, S Sask R., having been duly sworn, states:

"I know the accused. I went on 29 Mar 41 to the guard room where Pte. Dubec lay on the floor. I asked him where the wound was. He first said his leg, then later his knee and later his foot. I removed his boot and sock and saw the wound. The bullet entered above the ankle on the inner side of the right foot and went diagonally to outer bottom edge of the foot. I am the medical sergeant, assigned to the regimental M.O.

THE DEFENCE DECLINED TO CROSS EXAMINE THE WITNESS

EXAMINED BY THE COURT:

"He seemed rational and quiet. I do not recall hinsaying any more."

The Fifth Witness, 112908, Pte. Barabash, P., S Sask R., having been duly sworn, states:

"On 29 Mar 41 I was in confinement in Morval Barracks at Cove. I know the accused, he was in confinement, too. I was in the cell when it happened and I came out and saw Pte. Dubec on the floor, with Sgt. Ring standing over him. I saw the accused three hours before, while we were outside working. We used to have instructional drill twice a day. Pte. Dubec was in the same cell with me before that."

CROSS-EXAMINED BY THE DEFENCE:

"On pack drill we had on full equipment. Previously Dubec and I were in No. 2 cell, together for four or five days. Dubec was changed to cell No. 1. Just when, I do not remember. On pack drill sometimes we examined arms. They did not examine arms the day before the accident. At times there were guards' rifles in the rank. After the shooting I reported that I had 46 rounds in my kit bag. This was issue ammunition. An M.P. came in to tell us to get ready for drill before the shooting. I heard no one else come into the cell block.

EXAMINED BY THE COURT:

"I was four rounds short of my original 50 rounds, but I do not know whether the four rounds were missing before or after I went into confinement. I had my own rifle."

15

The Sixth Witness, L12095, S/Sgt. Tracy, L. W., S Sask R, having been duly sworn, states:

"On 29 Mar 41 I was orderly sergeant. When I was talking to the R.S.M. I heard a sound which was like that of the discharge of a live round. I enetered the guard room and saw Dubec and the rifle on the floor. I picked up the rifle and asked whose it was and noted the number. Sgt. Ring came in and we both helped the accused. He said first it was his leg, then his knee and then his foot. I looked at his rifle. It had a live round and one spent round in it."

CROSS-EXAMINED BY THE DEFENCE

"Instrucional Drill was drill in full marching order"

EXAMINED BY THE COURT:

"The rifle had been fired. The barrel was fouled and the safety catch was forward. No other rifle was on the floor."

The Seventh Witness, Lieut. D. B. Johnson, S Sask R., having been duly sworn, states:

"I know the accused, Pte. Dubec. On 10 Mar 41 when I was orderly officer the accused asked to see me. He complained about being compelled to carry a rifle and bayonet, as he was awaiting trial. I said that was the orders and in any case he carried no ammunition and he replied that ammunition could be got. I told him it would not help his case any. I treated the matter lightly at the time as I thought he was only trying to get out of carrying the rifle and bayonet on drill."

CROSS-EXAMINED BY THE DEFENCE:

"Both Smith and Dubec had much to say about the rifle."

The Eighth Witness, L12493, Pte. Shymko, J., S Sask R, having been duly sworn, states:

"I know the accused, Pte. Dubec. On 29 Mar 41 I was a member of the R.C.M. Police. I warned Dubec for drill and stood looking out of the window. I heard a shot and looked around and saw Pte. Dubec dropping on the floor. He had full equipment on and his rifle was beside him. I took the accused on instructional drill every day."

CROSS-EXAMINED BY THE DEFENCE:

"I had no trouble with Dubec on drill, he was obedient. I did not see anyone enter the door while I was there."

THE PROSECUTION IS CLOSED.

D E F E N C E

The Accused is warned under R. P. 40 and elects to give evidence on oath.

The accused, L12185, Pte. Dubec, J., S. Sask R., having been duly sworn, states:

"On 10 Mar 41 I called on the duty officer to complain about pack drill, which they started on 8 Mar 41, which was the date I arrived. Spr. Smith was present when the Orderly Officer arrived. Spr Smith made an objection about me carrying a rifle for various reasons given. I confirmed his statement about ammunition being able to be got, I suppose, but what I reall meant was because I could break out of the guard room and get it.

"On this day it was pretty dark and I reached quite a ways for my rifle, between the bed and the wall. As I grabbed the rifle I had to stretch for it, as I picked the rifle up I turned around. I had the markings on the rifle on the butt plate. As I turned around, with the rifle in my hand, some one came through the door, and the door was pushed towards me and hit the rifle and me at the same time, and I lost balance, with the rifle, causing it to discharge. That is all. I picked the rifle up with my left hand. I am sure that I grabbed the rifle around the magazine. I bent back and made a right turn about. I was just about to make a step towards the table in the guard room, when some one opened the door leading to the cell block, when it hit me and the rifle at the same time. It hit me in the elbow. I had my name marked on the side of the butt and a mark on the heel of the butt. The shot hit my foot and I stood for a minute and could not hold myself any longer and fell down towards the left. When I feel a man passed between me and the stove. I saw his lower portion. He was passing from the detention room door to the outer door. I felt a pain in the groin when the shot was fired. There was no examination of arms at all when I was there from 8 to 29 Mar 41. I never pulled back the bolt nor touched the safety catch of the rifle. I never had any ammunition when I went into confinement, nor on the day of the shooting. I suggested at the Court of Inquiry that the rounds be tested for finger prints. I never cleaned the rifle. It was always in the rack. I changed my cell on 29 Mar 41. Prior to then I was in cell No. 2. I changed my cell at 1130 hours. I changed because the lock on No. 2 cell was not good enough. I never intended to shoot myself in the foot.

CROSS-EXAMINED BY THE PROSECUTOR

"I remember the facts pretty well before the shot. (Demonstrates to the accused his version of the affair). I am not quite sure if my hands slipped when the door hit me. I do not remember my finger touching the trigger, though that is how the rifle must have gone off. I remember very well that I took a step forward after being struck by the door and before the rifle went off.

I was together with Pte. Barabash in the same cell for four or five days. I had been doing instructional drill every time since 8 Mar 41, once a day. We did drill with full pack on. I did not mind the drill at all. I objected to Mr. Johnson on pure question of principle about rifle drill. I like military training and I like very much to be in the army and I have been in it a long time.

RE-EXAMINED BY THE DEFENCE:

"I made complaints about instructional drill to the R.S.M. about 10 Mar 41. The door struck the rifle first. It struck the rifle hard. The door was made of wood. I think it struck the rifle first. During 19 days I was on rifle drill every day. Every day there was a new N.C.O., not one of them ever gave the order "For inspection, port arms, examine arms".

The 2nd Witness for the defence, B25340, Spr. C. H. Smith, 2 Can Fd Regt., R.C.E., having been duly sworn, states:

"I was in confinement in Morval Barracks on 10 Mar 41. The accused sent for the orderly officer, because he was obliged to do pack drill while awaiting trial. Dubec asked the orderly officer to explain why he should go out with us, not being a sentenced man. The orderly officer explained that he would have to consult the rules of the army. I pointed out to the orderly officer about the ammunition being about and the rifles of the accused people being with the guards. My rifle was in the rack near the window. I do not remember if Dubec said anything about ammunition being in the cells. Pack drill was done with bayonets. A few days later the bayonets were taken away.

CROSS-EXAMINED BY THE PROSECUTOR:

"I did instructional drill with Pte. Dubec. I did not like it it was quite hard for us, an hour's steady going."

THE DEFENDING AND PROSECUTING OFFICERS ADDRESS THE COURT:

THE COURT IS CLOSED FOR FINDING

THE COURT IS RE-OPENED AND THE ACCUSED IS FOUND "NOT GUILTY" OF THE SECOND (ALTERNATIVE) CHARGE.

THE PROSECUTOR FILES M.F.M. 6 AND A.F.B. 296 IN CONNECTION WITH ACCUSED; AS AMENDED TO 55 DAYS IN CLOSE ARREST - THESE ARE FORMALLY ADMITTED BY THE DEFENCE.

THE ACCUSED DECLINES TO MAKE A STATEMENT IN MITIGATION OF PUNISHMENT.

THE DEFENDING OFFICER MAKES THE FOLLOWING STATEMENT:

When the accused had left Canada his wife was an expectant mother and in February he received a letter from the doctor, saying that his wife was due to have a hard time. He received no mail from then until July. This had a bearing on his conduct at the time in question. He stated that he wanted to transfer out of the S Sask R to another unit. He wants to soldier, not to get back to Canada.

He would like a re-board and a transfer to another unit. There is some suggestion that he is category "E", but not physically.

THE COURT IS CLOSED FOR SENTENCE.

CERTIFIED TRUE RECORD OF THIS TRIAL

W. C. Newman

(W.C. Newman), Lieut.
Judge-Advocate.

13 Nov 41 In the Field.

The summary of evidence in the case of L-12185 Pte Dubec, J.J. South Saskatchewan Regiment, Canadian Army (Active)

1st Witness

L-12015 Sgt. Smith, B.H. of South Saskatchewan Regiment, Canadian Army (Active) being duly sworn states:

On 29 Mar 41 at Morval Barracks, I was Sgt. of the Guard. At this time L-12185 Pte Dubec, J.J. was undergoing detention and as Sgt. of the Guard, was under my charge. At 1315 hrs I ordered Pte Dubec to get dressed for instructional training. At this time he had part of his equipment on. He came out of his cell and went into the washroom. He then returned to his cell and put on the remainder of his equipment. He came out of his cell andinto the guard room and reached around the door as if to pick up his rifle, at this time I glanced back at the paper I was reading. Suddenly I heard a shot fired behind me, I turned around around and saw Pte Dubec with his rifle in his left hand and holding his stomach with his right hand. The rifle was pointed at his feet. Pte Dubec was falling forward so I jumped and grabbed him to break his fall. I sent one man after the M.O. and one man after the Orderly Officer. I then began to administer first aid. At this time Sgt. King came in accompanied by Sgt. Tracy who was orderly Sgt. of the day. Sgt. King took over the duty of administering first aid. Sgt. Tracy and I then examined the rifle that had fired the shot. We found one live round in the magazine and one spent casing in the chamber. At this time the orderly officer came in and the rifle, the live round and spent casing was turned over to him. The M.O. then arrived and Pte Dubec was placed in an ambulance and sent to hospital at approximately 1405 hrs. I then examined the arms and ammunition of the guard. The rifle was found to belong to Pte Dubec. Pte Anderson had only 59 rounds of ammunition instead of 60. I also searched the guard room and discovered ammunition in the cupboard of the guard room. These were taken and all the ammunition was turned into the regimental stores.

(Signed) B.H. Smith

Q. During the time of the shooting did you see anyone at the guard room window inside of the building?

A. The only man I saw was the one who was sleeping under the window.

Q. Was that one of the Guard?

A. Yes.

Q. Did You see anyone by the door?

A. There was one a Regimental Police coming in at the time.

Q. Could you have been mistaken on the man?

A. Yes I could have been mistaken but he nearly walked in and out of the cell and on to the veranda.

Q. Did you hear any click of a bolt?

A. No.

Q. Was there much noise in the Guard Room?

A. There were men walking in and out of the Guard Room.

Q. You mean inside or outside of Guard Room?

(2)

A. There WERE men inside and outside making a noise.

Q. How many men would you say there were in the guard room at the time?

A. About 5.

Q. Does that include the Guard?

A. Yes.

Q. Did you see me with a rifle anytime that day before the shooting?

A. No.

Q. Are you sure?

A. Yes.

Second Witness

L-12131 Pte Wilkinson, W.A. of South Saskatchewan Regiment Canadian Army (Active) being duly sworn states:-

On 29 Mar 41 I was Cpl of the Guard and at 1315 hrs Sgt. Tracy who was orderly Sgt. of day came in to Guard Room to take out the detention men for instructional drill. Pte Barabash and Pte Dubec went into their cells to get their equipment on. Pte Dubec occupied the first cell on the left hand side. He came out fully dressed and the door of the detention barracks was partly open. As he came through he opened the door fully then partially closed it and reached in for his rifle in the rifle rack. Then turning inwards to the guard room he bent as if to examine the rifle. Then I heard the shot. It was then I saw someone fall to the floor. Sgt. Smith went over to see what had happened and called for the orderly Officer. In the mean time I went over and saw Pte Dubec on the floor and realized that something had happened.

(Signed) W.A. Wilkinson.

Questioned by the accused.

Q. Before the shot was fired why did you not know who it was?

A. I was not turned towards you.

Q. Did you see anyone in the doorway?

A. That I could not say.

Q. Was there anyone standing inside the building by the window?

A. No.

Q. Did you see any M.P's when the shot was fired?

A. I don't remember.

Q. Was it dark in the room especially the corner?

A. Darker than usual outside.

Q. Was it raining outside?

A. No.

The summary of evidence in the case of L-12185 Pte Dubec, J.J. South Saskatchewan Regiment, Canadian Army (Active)

1st Witness

L-12016 Sgt. Smith, B.H. of South Saskatchewan Regiment, Canadian Army (Active) being duly sworn states:

On 29 Mar 41 at Norval Barracks, I was Sgt. of the Guard. At this time L-12185 Pte Dubec, J.J. was undergoing detention and as Sgt. of the Guard, was under my charge. At 1315 hrs I ordered Pte Dubec to get dressed for instructional training. At this time he had part of his equipment on. He came out of his cell and went into the washroom. He then returned to his cell and put on the remainder of his equipment. He came out of his cell andinto the guard room and reached around the door as if to pick up his rifle, at this time I glanced back at the paper I was reading. Suddenly I heard a shot fired behind me. I turned around around and saw Pte Dubec with his rifle in his left hand and holding his stomach with his right hand. The rifle was pointed at his feet. Pte Dubec was falling forward so I jumped and grabbed him to break his fall. I sent one man after the M.O. and one man after the Orderly Officer. I then began to administer first aid. At this time Sgt. King came in accompanied by Sgt. Tracy who was orderly Sgt. of the day. Sgt. King took over the duty of administering first aid. Sgt. Tracy and I then examined the rifle that had fired the shot. We found one live round in the magazine and one spent casing in the chrmber. At this time the orderly officer came in and the rifle, the live round and spent casing was turned over to him. The M.O. then arrived and Pte Dubec was placed in an ambulance and sent to hospital at approximately 1405 hrs. I then examined the arms and ammunition of the guard. The rifle was found to belong to Pte Dubec. Pte Anderson had only 39 rounds of ammunition instead of 50. I also searched the guard room and discovered ammunition in the cupboard of the guard room. These were taken and all the ammunition was turned into the regimental stores.

(Signed) B.H. Smith

Q. During the time of the shooting did you see anyone at the guard room window inside of the building?

A. The only man I saw was the one who was sleeping under the window.

Q. Was that one of the Guard?

A. Yes.

Q. Did You see anyone by the door?

A. There was one a Regimental Police coming in at the time.

Q. Could you have been mistaken on the man?

A. Yes I could have been mistaken but he nearly walked in and out of the cell and on th the veranda.

Q. Did you hear any click of a bolt?

A. No.

Q. Was there much noise in the Guard Room?

A. There were men walking in and out of the Guard Room.

Q. You mean inside or outside of Guard Room?

(2)

A. There WERE men inside and outside making a noise.

Q. How many men would you say there were in the guard room at the time?

A. About 5.

Q. Does that include the Guard?

A. Yes.

Q. Did you see me with a rifle anytime that day before the shooting?

A. No.

Q. Are you sure?

A. Yes.

Second Witness

L-12131 Pte Wilkinson, W.A. of South Saskatchewan Regiment Canadian Army (Active) being duly sworn states:-

On 29 Mar 41 I was Cpl of the Guard and at 1315 Hrs Sgt. Tracy who was orderly Sgt. of day came in to Guard Room to take out the detention men for instructional drill. Pte Barabash and Pte Dubec went into their cells to get their equipment on. Pte Dubec occupied the first cell on the left hand side. He came out fully dressed and the door of the detention barracks was partly open. As he came through he opened the door fully then partially closed it and reached in for his rifle in the rifle rack. Then turning inwards to the guard room he bent as if to examine the rifle. Then I heard the shot. It was then I saw someone fell to the floor. Sgt. Smith went over to see what had happened and called for the orderly officer. In the mean time I went over and saw Pte Dubec on the floor and realized that something had happened.

(Signed) W.A. Wilkinson.

Questioned by the accused.

Q. Before the shot was fired why did you not know who it was?

A. I was not turned towards you.

Q. Did you see anyone in the doorway?

A. That I could not say.

Q. Was there anyone standing inside the building by the window?

A. No.

Q. Did you see any M.P's when the shot was fired?

A. I don't remember.

Q. Was it dark in the room especially the corner?

A. Darker than usual outside.

Q. Was it raining outside?

A. No.

Third Witness

L-12143 Pte Brown, K.G. of South Saskatchewan Regiment, Canadian Army (Active) being duly sworn states:-

On 29 Mar 41 at approximately 1315 hrs I was lying on the bed about 5 minutes before the shooting. Just as Pte Dubec came out of the cell I was about to turn over when a shot was fired. The next thing I seen him lying on the floor. I immediately went to the R.S.M's office and notified Sgt. Ring that Pte Dubec had shot himself.

(Signed) K.G. Brown.

Q. Did you see anyone standing in the doorway after the shot was fired?

A. No.

Q. Did you see anyone standing around the windows other than the guard?

A. Couldn't say for sure.

Q. Did or did you not see Pte Shymko in the room?

A. No.

Fourth Witness

L-12520 Sgt. Ring, F.W. of the South Saskatchewan Regiment, Canadian Army (Active) being duly sworn states:-

On 29 Mar 41 at approximately 1315 hrs I was in the R.S.M's office at Norval Barracks when Pte Brown, K.G. came in XXX. I immediately went to the guard room where Pte Dubec was and asked him where he had shot himself. At first he said in the knee, on seeing no mark I said where? He then stated in the leg and afterwards owned up that it was in his foot. I removed his boot and sock and applied first field dressing and in the meantime Capt. Wood the M.O. had been sent for who arrived shortly after the shooting. On removal of boot and sock the bullet had entered the inside of the right ankle and came out on the bottom of the right side of the heel.

(Signed) Sgt. F.W. Ring.

Questioned by the accused.

Q. Did you say to the man lying on the floor "get up and do your pack drill"?

A. No.

Q. You examined quite a while before finding the bullet wound?

A. The whole examination took less than a minute.

Q. Did anyone volunteer where the bullet had gone?

A. Pte Dubec said in his knee, afterwards his leg, then said his foot.

Q. Did anyone other than Pte Dubec give you any information?

A. No.

Fifth Witness

L-12515 Pte Barabash, P. of the South Saskatchewan Regiment, Canadian Army (Active) being duly sworn states:-

On 29 Mar 41 at approximately 1315 hrs I was serving detention in Norval Barracks. We had been given orders to get our equipment on to go out for our regular instructional drill. I was in my cell and had most of my equipment on.

(4)

As I was putting my large pack on I heard a shot and ran out of my cell to see what it was and there I saw Pte Dubec lying on the floor with Sgt. Ring looking at him and there were others there but I do not know their names at present. I was then sent back to my cell to finish putting on my equipment to go out on parade.

(Signed) P Barabash

The accused declines to cross examine.

Sixth Witness

L-12095 Sgt. Tracy, L.W. of the South Saskatchewan Regiment, Canadian Army (Active) being duly sworn states:-

On 10 Mar 41 at approximately 1320 hrs, I was the orderly sgt of the South Saskatchewan Regiment for the day. AT this time of the day I was in R.S.M's Strums office. I heard a shot and made the remark that it sounded like a live round. As we spoke about this shot I, think that it was a live round went out to investigate. I went to the guard roomand found a number of the guard around a soldier on the floor. On getting into the circle I found it to be Pte Dubes who appeared to be hurt and had a rifle lying beside him. I picked the rifle up and checked the number on the base plate, I asked who the owner was from the guard and found that it did not belong to the guard. I opened the bolt and found one spent round in the chamber and one live round in the magazine. I unloaded the rifle and left it on the table. I helped Sgt. Ring remove Pte Dubec's shoe and found blood on his sock on the inside of his foot. I then took the rifle and expended, and live round to R.S.M. Strum's office. Ithen went to drill defaulters.

Q. Did you find out who the owner of the rifle was?

A. I do not remember.

(Signed) L.W. Tracy.

Seventh Witness

Lieut. D.B. Johnson of the South Saskatchewan Regiment, Canadian Army, (Active) being duly sworn states:-

On 10 Mar 41 I was Sn. Orderly Officer of S.S.R. on this day and date. On this evening some individual brought a message that Pte Dubec who wasin custody at Morval Barracks at this time wished to speak with me. At the time I was unable to go but saw him at my normal tour of duty at 2200 hrs. I asked Pte Dubec what his complaint was and was informed by him that he did not think it was right for him to be carrying a rifle and bayonet on instructional drill. Another detention chap seemed also of the same opinion regarding Pte Dubec. I made the statement that they had no ammunition for the rifles and that it was orders that rifles and bayonet would be carried on instructional training. Both the detention men said that ammunition could be got. I treated the matter lightly at the time as it seemed rather frivilous at the time.

(Signed) D.B. Johnson, Lieut.

Eight Witness

L-12894 Pte Shymko, J. of the South Saskatchewan Regiment, Canadian Army (Active) being duly sworn states:-

On 29 Mar 41 I was a regimental military police of the S.S.R. At 1315 hrs I warned Pte Dubec and Pte Barabash for instructional drill. I walked from the cells out into the guard room and stood looking out the window. Pte Dubec followed me out into the guard room. He was at this time ready to go on instructional drill. While I was standing at the window I hearda shot. On looking around I saw Pte Dubec fall on the floor. The Sgt. of the Guard told me to go and get the orderly officer.

(Signed) Pte Shymko, J.

Q. What window were you standing by?

A. The one facing Bn orderly room.

Q. You were facing the clock?

A. Yes.

Q. Who gave you orders to take the detention men out on drill?

A. No one . That was part of my regimental duties.

Q. Were you talking to anyone in the building?

A. Just to you and Pte Barabash.

Q. In the guard room?

A. No.

The accused does not desire to make a statement or give evidence.

Rule of procedure 4(c)(d)(e)(f)(g) have been complied with.

Taken beforeme at Seafor this 29 day of October 1941.

(Signed) N.A. Adams, Capt.
South Saskatchewan Regiment.

Jan.

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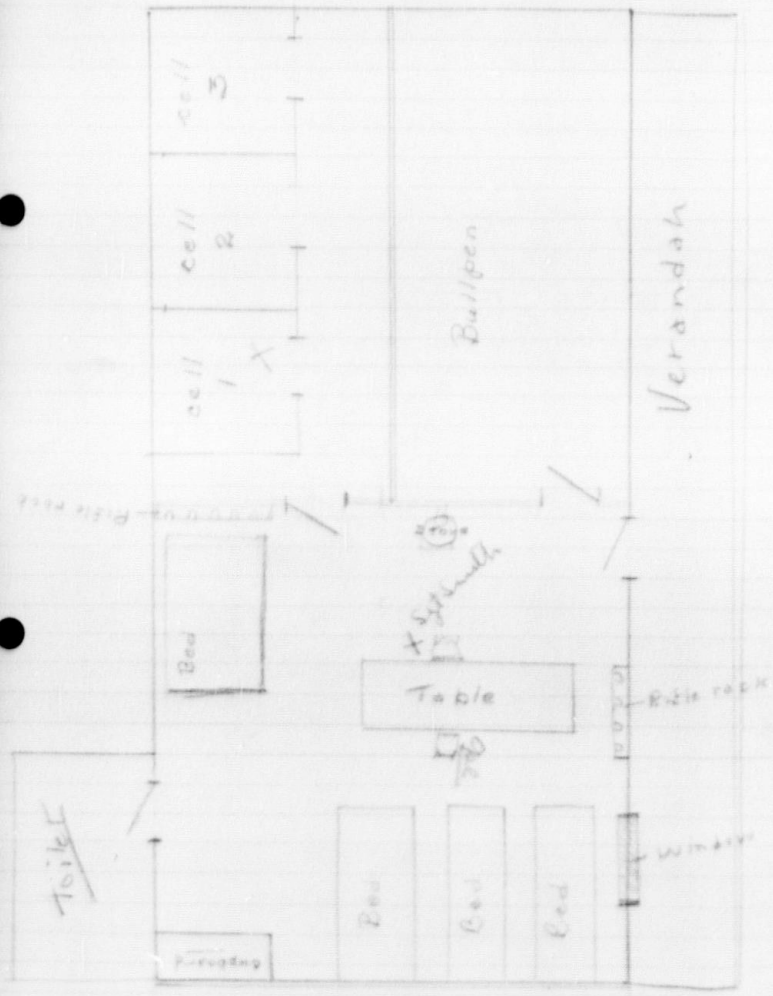
Rough Sketch showing layout of Guard Rooms at Morval Bks. about 29 Mar 41



No. 12185 Name Pte. Dubec. J. Sqn., Battery, or Company H. Q. Corps S. S. R. Date of enlistment 22/9/39 G.C. Badges Service or Proficiency Pay

M.F.M. 6 A.F.B. 122 50150—6-39 (1702) S.Q. 1772-43-18

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 4 2. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Shilo	5-6-40	Pte.		A.W.O.L. 2200 hrs 5-6-40 to 2200 hrs 10-6-40. Absent 6 days.	Cpl. Cadery J.P. Absentee Report.	120 hrs Detention Forfeits 5 days pay.	12-6-40.	J. E. Wright	
✓	3-7-40	✓		A.W.O.L. 2030 hrs 3-7-40 to 2100 hrs 12-7-40	Absentee Report	28 days detention	16-8-40	J. E. Wright	10 days pay
				A.W.O.L. 0930 hrs 14-7-40 to 2115 hrs 19-7-40	"	" "	" " "		6 " "
✓	20-9-40	✓		A.W.O.L. 0600 hrs 20-9-40 to 1-10-40 1800 hrs	Cpl. Legere J.P.	28 days detention	5-10-40.	J. E. Wright O.C.	40 days Pay
Morval Bks F.G.C.M.	31-10-40	Pte		A.W.L. from 0600 hrs 31 Oct 40 to 1600 hrs 6 Jan 41		96 Days Detention	26 Mar 41	F.G.C.M.	

Certified true copy.

[signature] Capt.

Adjutant S. S. R. C.A. (O)

Jem.

M.F.B. 353
22M—9-41 (372-3)
H.Q. 1772-39-620
A.F.B. 296

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STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L-12185	Pte.	Dubec, J.J.	S.Sask.R.

1. The following is a fair and true summary of the entries in the Field Service and Central Regimental and Squadron Battery Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For		times	A.W.L.	4 times
For	F.G.C.M.	one times	F.G.C.M.	one times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct

or,

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

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and ~~[illegible]~~ 53 days in Air Force military custody, making a total of ~~[illegible]~~ 53 days in custody, of which ~~[illegible]~~ nil days were spent in hospital.

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

6. The date of his ~~commission~~ attestation specified in his record of service is attestation paper 27 Sep 39

7. The service which the accused is allowed to reckon towards discharge is 2 Years 65 days

8. The accused is entitled to reckon 2 years 65 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force military decoration, or air force military reward (or is in possession of or entitled to). State any air force military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the Air Force regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit
.....dated....., and in his regiment (or corps), the rank of
.....dated.....

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

.....Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank .....
Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

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

Adjutant R. Sask. R., C.A. (O)

Signed this 11 day of Nov 41

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

93-0

O. H. M. S.

Rflm DUBNIEWICZ, MA

M. F. B. 270

93-0

"G"

McDawson Major

Correspondence to be PINNED here.

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this Fifteenth day of September, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 7 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

* Omit if not applicable.

~~*[Not available to appoint:~~

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

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

~~*(3) Three Officers having more than one year's service.~~

for the following reasons, namely :—]

PROCEEDINGS REVIEWED.

[signature] 24 Sep 42

Judge Advocate

Capt. R.A. Ritchie A.D.J.A. 3 Cdn Div

President.

Rank.	Name.	Regiment.
Major	N.C. Dawson	RM RANGERS see Regina Rif

Members.

Rank.	Name.	Regiment.
Capt.	F.E. Hodge	R Wpg Rif
Lieut	R.McD. Horsey	1 C Scot R
Waiting Member Lieut	P.D. Gower	R Wpg Rif

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

Signed [signature]

Commanding (H.D. GRAHAM) Brigadier, 7 Canadian Infantry Brigade

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
H41785 Rfn. DUBNIEWEZ, M.A. R Wpg Rif	A.A. SEC. 40 "Conduct to the prejudice of good order and military discipline in that he, in the field, on 3 Jul 42, did carelessly handle and thereby discharge a rifle."	NOT GUILTY	NOT GUILTY. Dated in the field this 17th day of Sept. 1942	

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

(Signed) H.D. Graham (H.D. GRAHAM) Brigadier, Commanding 7 Canadian Infantry Brigade Convening Officer (e)

(Signed) Nelle Dawson Major President.

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

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

B. Certificate of President as to proceedings.

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

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

* Omit if not applicable.

Signed this seventeenth day of September 1942

Nelle Dawson Major
President of the Court Martial.

C. Certificate in case of death sentences.

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

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

Signed this day of 19

President of the Court Martial.

D. Confirmation

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

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

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

Signed this day of 19

Confirming Officer.
(H.D. GRAHAM) Brigadier,
7 Canadian Infantry Brigade.

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

B2

Acdawson Major

CHARGE SHEET

The accused, H41785 Rifleman Myron Anthony Dubniewicz, 1st Battalion, The Royal Winnipeg Rifles, A.F., a soldier of the Canadian Army, placed on Active Service in England, is charged with:-

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

AA Sec 40. in the Field, on 3 July, 1942, did carelessly handle and thereby discharge a rifle.

In The Field

1 September 1942

W. J. Moogk

(W.J. MOOGK) Lt.-Col.,
O.C. 1st Bn R Wpg Rif A.F.

To be tried by Field-General Court Martial

Date:

H. D. Graham Brig.
Convening Officer
J.C.I.B.

D. | Squadron Battery Company Detachment | Royal Winnipeg Rifles Sept. 17th | Unit or Battalion 1942

MORNING SICK REPORT

Regt'l No.	RANK AND NAMES (Christian Name in full)		Age	Religion	Whether for duty a prisoner or defaulter	Married or Single	DISEASE	Medical Officer's Remarks and Initial
N-41785	RFN.	DUGNIEWICZ. M.A.	27.	R.C.	PRIS.	S.		H Chanson Major

The above mentioned O.R. has been physically examined and found fit to stand court martial.

R.M. Baldwin Capt. Medical Officer A Sabados L/Cpl Orderly N.C.O.

M. F. B. 292
1 Mil.—12-39 (2509-9)
H.Q. 1772-39-245

(OVER)

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

A

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

Proceedings of a Field General Court-Martial held ~~at~~ in the field on the 17 day of September 1942 by order of Brigadier H. D. Graham Commanding 7 Canadian Infantry Brigade dated the 15 day of September 1942.

President.

MAJOR. N. C. DAWSON.
ROCKY MOUNTAIN RANGERS

Members.

CAPT. F. E. HODGE.
ROYAL WINNIPEG RIFLES

LIEUT. R. McD. HORSEY.
I. C. SCOTTS.

R. A. ROSHIE R.C.A., Judge Advocate.

Trial of* H. 41785. RFN DUBNIEWICZ. M. A.

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

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

~~, waiting member takes his place as a member of the Court.~~

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

The accused is brought before the Court.

Prosecutor,† Lieut. I. T. REED.

Counsel‡ or defending officer† Capt. H. D. KNOX

At 1120 o'clock the Trial commences.

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

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

Question by the President to the accused.

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

Answer by accused.

NO

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

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

Mil. Form B. 271
10M—3-41 (9670)
H.Q. 1772-39-224

B

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

The following officers under instruction are duly sworn. N/A.

Charge-Sheet

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

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

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

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

NOT GUILTY *Answer.*

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

Answer.

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

Answer.

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

Answer.

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

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

C

*Instruction.
(See R. P. 39 (A))
Question.

Proceedings on Plea of Not Guilty

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer.

NO.

The prosecutor makes an opening address. ~~[hands in a written address, which is read, marked , signed by the President, and attached to the proceedings].~~

The prosecutor proceeds to call witnesses.

First witness for prosecution.

H. 17822 Rfn Zaste P.

being duly sworn, is examined by the prosecutor.

On the morning of 3 July 1942 at about 0600 hrs I was returning from having done Guard duty at East Bourne. The accused who had been a member of the same Guard was there with the other men and we were all about to mount the trucks to return to our quarters. The accused was in the ~~[illegible]~~ vehicle second from the end of the convoy. ~~[illegible]~~ I was talking to Rfn Drader who was standing by this truck. I heard a shot and saw the accused coming down from the truck with his rifle in his hand. Rfn Drader fell down on the ground. No one else except myself and the accused & Rfn Drader were near the truck. When the accused got off the truck he dropped his rifle and went away. I picked up the rifle and removed the ammunition. There was one round in the barrel which had been discharged and nine

rounds in his magazine.

NO CROSS. EXAMINATION.

RULE OF PROCEDURE 83(B) COMPLIED WITH.

SECOND WITNESS FOR THE PROSECUTION.

H. 40338 Sgt McQUEEN. L.T. having been duly Sworn States:

On the morning of the 3rd of July at aproximately 0600 hrs "D" Coy R.W.R's of which I was acting C.S.M. was engaged in turbussing to leave an area at East bourne which it had been occupying during the night as a relief party for the R.C.R's.

I was engaged in rounding up members of No:17 Platoon and was about 75 yards from the trucks when I heard a shot coming from the direction of the trucks. I ran back to the trucks and found the Driver on the road.

CROSS-EXAMINATION.

Q. Was the Company in this area in an Operational role.

A. Yes.

BY THE COURT.

Q. Did you take his accused to a hospital.

A. Yes, his hand was injured.

Q. Did you have any conversation with him.

A. Yes I asked his general question as to whose rifle it was that went off and his accused said it was his.

Q. Is it customary in an operational role that the rifles should be loaded?

A. Yes it is customary

Q. Should there be a round in the chamber?

A. Not in my opinion.

Q. Were any instructions given regarding how rifles should be loaded?

A. Not through the Company H.Q. It was a platoon matter. There is nothing laid down as far as I know.

RULE OF PROCEDURE 83(B) COMPLIED WITH.

LIEUT. J.G. W. SAVAGE. Having been duly sworn states:

~~Q. What~~ I have had four months experience in a Basic Training Centre in Canada and 2½ months with my unit.

The accepted method of loading with the maximum of safety is to "change magazines". That is to put ten rounds in the magazine and then apply the safety catch.

It is true that in some cases, due to wear and tear, the safety catch may work loose and go in the forward position.

I have done operational duty and have posted sentries for such duty. ~~I have~~ have been issued with 50 rounds with instructions not to load unless some offensive act is committed against them.

RULE OF PROCEDURE 83(B) COMPLIED WITH.

The statement made by the accused at the taking of the Summary was read in to the record.

In view of the fact that the Officer who took the Summary was not available nor readily procurable, the Defending Officer agreed to waive formal proof and accept the evidence contained in the Summary as to the voluntary nature of the statement.

CLOSE OF PROSECUTIONS CASE.

DEFENDING OFFICER.

There is no evidence of carelessness. The existence of the round in the chamber was due to ignorance rather than to carelessness. The accused in his Statement on the Summary tells us he was following in the actions received in the training centres.

PROSECUTOR IN REPLY.

It is immaterial as to whether the accused had orders to load his rifle or not.

He did not unload his rifle. This was carelessness and sufficient to constitute a conviction on the charge.

Proceedings on Plea of Guilty

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

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

The accused

is found guilty of

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

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

Answer. The accused in mitigation of punishment says:—

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

Instruction.

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

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

D

The prosecution is closed.

Defence

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. NO

Question. Do you intend to call any other witness in your defence?

Answer. NO

Question. Is he a witness as to character only? *Answer.* N/A.

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[Hands in a written address which is read, marked signed by the President and attached to the proceedings.]

---

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

E

Finding*

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

The Court is closed for the consideration of the finding.

The Court find that the accused RFN DUBIENWACZ M.A. is NOT GUILTY of the charge as laid.

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

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

Evidence of character, &c.

is duly sworn.

Question by the President.

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

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

Question by the President.

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

Question.

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

Question.

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

(Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Cross-examined by the accused.

Question to the accused.

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

The Court is closed for the consideration of the sentence.

came up and took charge. On his instructionsI had the blanket truck backed up to the spot and Rfn Drader was loaded on to it to be taken to the hospital. While this was going on I noticed that Rfn Drader had been shot in the hand. As soon as the blanket truck left I went to the rear of the truck where the accident had taken place and questioned the Riflemen who had been on the spot. I picked up 10 live rounds and one empty casing at the side of the trail which Rfn Zaste had unloaded from the rifle causing the accident. I still have them in my possession."

Q. "Were you performing any duty at the time?"

A. "No"

Q. "Did Rfn Drader make any statement or say anything to you after he was injured?"

A. "Nothing except that "I am shot". Shortly afterwards he lost consciousness."

Q. "Had any order been given for the men to embuss on the truck?"

A. "It was not necessary for such an order to be given as the men understood to get aboard when the trucks arrived. The men had boarded the trucks in this way on two previous mornings."

The accused declines to cross-examine the witness.

SEE APPENDIX 'A' →

The accused H41785 Rfn Dubniewicz M.A., 1st Bn R Wpg Rif A.F., after being duly sworn made the following statement.

"Sir, it is needless for me to say that I am very sorry for the accident. I felt prior to the accident that I was acting in accordance with instructions given to me by instructors and N.C.O.'s at both the basic and advanced training centres. They said that a guard was permitted for his personal protection to have his rifle loaded at any time when he felt the circumstances warranted it. You may ask why didn't I remove the rounds when my guard duty was over. Well, I had my rifle fixed so that to all intents and purposes it could not be fired. At any rate it could not be fired by pressing the trigger even with the safety catch off. I now find there is only one possible way for a round to be discharged from a rifle when fixed in this way and unfortunately on this occasion it happened. It can only occur when laid down on a rough floor with ridges on it and in a certain position. I would like to demonstrate exactly what happened if I can be given the privilege."

4th Witness for the Prosecution

H41149 Rfn Peel R., 1st Bn R Wpg Rif A.F., having been duly sworn states:

"Sir, at approximately 0600 hrs on 3 July 1942 I was standing on the drivers side of my lorry when I hear a shot appearing to come from the back of the convoy. Walking around the front of my truck which was #3 in the convoy I noticed Rfn Drader coming down the road holding his chest and saying he was shot. I ran to him and gave what assistance I could it laying him on the side of the road. We opened his tunic while waiting for the truck to be backed down to take Rfn Drader to the hospital. Then I helped him on the truck.

Q. "Did Rfn Drader make any statement or say anything to you after he was injured?"

A. "The only thing I heardhim say was when he was coming down the road saying he was shot."

The accused declined to cross-examine the witness.

Certified that Rule of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

Taken down by me in the presence and hearing of the accused the 27th day of August 1942 at In the Field.

J.L.G. Hay

(J.L.G. HAY) Lieut.,
Officer taking Summary.

APPENDIX "A"

After the evidence against the accused was taken he was asked the following question

" Do you wish to make any statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

Certified by me, [illegible] Adjt. Royal Winnipeg Rifles A.F., as a true copy

of AN INQUISITION taken for our Sovereign Lord the King, at .....St..Marys.Hospitel.....in the Parish of ....EASTBOURNE.....in the County of Sussex, on the.7thday of .....July.....A.D. 1942 (and by adjournment on the .....day of.....A.D. 19), by me, EDWARD FITZWILLIAM HOARE, Esquire, one of the Coroners for our Lord the King, for the said County of Sussex, on view by me of the body of.....JOHN.PAUL.DEADER..... ..... as to his death; and I, the said EDWARD FITZWILLIAM HOARE, do say;-

SUSSEX TO WIT

That the said...JOHN.PAUL.DEADER.....on the...3rd.... day of .....July.....at.....Eatton.Park..... in the Parish aforesaid..... .....DIED..... ..... And that the Cause of Death was: .due.to the unintentional .discharge.of.a.rifle.by.another.soldier..... .....So.dying.by.accident.and.do.add.rider.on.back..... .....hereof..... ..... And so do further say that death was due to.Gun.Shot.Wound.. through.Chest and I, the said EDWARD FITZWILLIAM HOARE, do further say that the said.Paul.John.DEADER at the time of his death was a male person of the age of.23.years..... and a Rancher and lived.at.Vernon,.British.Columbia, Canada and also.Rifleman.B.92193,.Royal Winnipeg.Rifles,.3rd.Div..... Canadian Army O.S.

IN WITNESS whereof I, the said EDWARD FITZWILLIAM HOARE have hereunto subscribed my Hand and seal the day and year first above written.

E. F. HOARE

I think there was considerable carelessness in the handling of what was known to be a loaded rifle.

Summary of Evidence in the case of H41785 Rfn Dubniewicz, Myron Anthony.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st Witness for the Prosecution

H17822 Rfn Zaste P., 1st Bn. R Wpg Rif A.F. having been duly sworn, states:

"Sir, I am H17822 Rfn Zaste P. of "D" Coy of the Royal Winnipeg Rifles in the field. At approximately 0615 hrs on 3 July 1942 I was standing at the back of the truck which was driven by K92103 Rfn Drader talking to Rfn Drader. I asked him where we were going that morning. He answered "I don't know." The truck was empty at the time as no personnel had been loaded on to it. Men were standing on the trail at the back of the truck. A few moments later I heard a shot. I looked at the back of the truck and saw Rfn Dubniewicz jump back off the truck his rifle falling to the ground. I looked to my right and saw Rfn Drader lying on his back on the ground. He got upto his feet, he had his hands grasping his chest. I asked him "What is the matter?" He said "Never mind, I'm shot". He then walked about 10 paces to Lieut. Savage. I did not hear what he said to Lieut. Savage. Somebody said "Put the rifle on the truck". I picked up the rifle and noticed that it was loaded. I unloaded it and found 9 rounds of live ammunition and one empty casing. I then put the rifle in the truck."

Q. "Were you on the same detail of guard as Rfn Dubniewicz?"

A. "I was on guard the same night but not on the same hour."

Q. "You know Rfn Dubniewicz by sight?"

A. "Yes sir."

Q. "Is he in this room?"

A. "Yes" pointing to the accused.

Q. "When you went on guard duty did you receive any orders to either load or charge magazines?"

A. "No, I never received such an order."

Q. "Prior to the discharge of the rifle was any order given formen to board the truck?"

A. "I didn't hear such an order."

Rfn Dubniewicz was informed of his right to cross-examine the witness. He asked the following questions and received the answers as below:

Q. "You mention that you saw me jump back off the truck. Is it possible that you mistook my motion of my getting on the truck for the one of getting off?"

A. "I only saw you part way from the floor of the truck and coming to the ground."

Q. "Are you sure you didn't hear any order to load rifles and have bayonets fixed?"

A. "No, I never heard any - none was given to me."

2nd Witness for the Prosecution

H40538 Sgt McQueen L.J., 1st Bn R Wpg Rif having been duly sworn states:

"Sir, early morning at approximately 0615 hrs on 3 Jul 1942 while acting as CSM, I was falling in the Company to move off for Brigade battle innoculation. I was falling in #17 Platoon and I heard the report of what seemed to be the discharge of a rifle in the vicinity of the trucks about 75 yards away. I ran back to investigate and found Capt. Eadie bending over Rfn Drader who was lying on the ground. Capt. Eadie ordered me to find out who fired the shot. I questioned the men around but nobody seemed to know. We then put Rfn Drader in the A.1 Echelon truck and Rfn Dubniewicz who was wounded,in the hand also, as well as two Riflemen to assist. While in the truck on the way to the hospital I applied field dressing to Rfn Dubniewicz' hand. During this operation he explained that it was his rifle that gone off. I then attempted to apply field dressing to Rfn Drader but I only succeeded in opening his tunic, tearing his sweater open, and unbuttoning his shirt when we arrived at the hospital. Rfn Drader was pronounced dead on the truck. Rfn Dubniewicz was admitted to hospital for treatment. We then carried Rfn Drader's body to the morgue.

Q. "Where did this occur?"

A. "On a trail in Ratton Park."

Q. "Did you have anything to do with the mounting or dismounting of the guard which came off duty that morning?"

A. "No"

Q. "Did Rfn Drader make any statement or say anything to you after he was injured?"

A. "No"

Q. "You know Rfn Dubniewicz by sight?"

A. "Is he in this room?"

A. "Yes" pointing out the accused.

The accused declines to cross-examine the witness.

3rd Witness for the Prosecution

Lieut. J.G. W. Savage, 1st Bn R Wpg Rif A.F., having been duly sworn, states:

"The 8 C.I.B. was doing field firing and "D" Coy of the R Wpg Rif was substituting for the Q.C.R. in its operational role. "D" Coy was in position in Ratton Park. On 3rd July 1942 at approximately 0600 hrs we were preparing to move off. All trucks were loaded except the second last truck in the convoy. The last being G1098 stores. I was standing opposite the left door of the second last truck. There were a group of men at the rear of the truck engaged in embussing. The driver of the rear truck was Rfn Drader and he was standing opposite the left front fender of his own truck. There was a shot and Rfn Drader collapsed on the ground. He immediately got up again and came in my direction, saying "I am shot". I noticed there was a good deal of blood down the front of his trousers just below his tunic. With the aid of a Rifleman I eased him down to the side of the trail and then Capt Eadie

ROYAL WINNIPEG RIFLES A.F.

No. H41785 Name DUBNIEWICZ. M. Sqn., Batty., or Company D Corps Date of enlistment 12/6/41 G.C. Badges Service or Proficiency Pay Character

Date of last entry in Company Conduct Sheet NIL No. and date of last drunk NIL Period not reckoning towards freedom from extra fine, Sheet No. 1 Signature O.C. Company, etc.

Place	Date of offence	Rank	Cause of Unsolicitness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
CROOKHAM HANTS.	9/2/42	Rfn.		NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE; Improperly dressed on parade. Sec, 40 A.A.	Cpl.Holiday Cpl.Unrow.E.N.	5 days C.B.	10/2/42	Maj.P.B. BROOKS	

Army Form B. 122

CERTIFIED TRUE COPY OF ORIGINAL SHEET

D.T.O.

M.F.B. 356
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H41785	Rfn	Dubniewicz M.A.	1st Bn R Wpg Rif A.F.

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	A.A. Sec 40	1 times	A.A. Sec 40	1 times
For		times		times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct

or,

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

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act / Section 47 of the Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

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

5. The present age of the accused according to his record of service is / attestation paper is 27 yrs.

6. The date of his [redacted] specified in his attestation / record of service / attestation paper is 12 Jun 41

7. The service which the accused is allowed to reckon towards discharge is 26 months

8. The accused is entitled to reckon 26 mos service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force / military decoration, or air force / military reward (or is in possession of or entitled to). State any air force / military decoration or reward.

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

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated, and in his regiment (or corps), the rank of dated.

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

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank Name of Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		------NIL------		

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

Signed this 1 day of September 42

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

APPLICATION FOR FIELD COURT MARTIAL

I, H41785 Rfn Dubniewicz M.A., 1st Bn., Royal Winnipeg Rifles A.F., request an officer to conduct my defence at Field Court Martial in connection with charges set out in Charge Sheet, dated 1 September 1942.

If possible, I should like this Officer to be Lieut. H.O. Knox.

SIGNED: M.A. Dubniewicz

WITNESSED: [illegible] Capt

Witnesses for the Prosecution:-

H17822 Rfn Zaste P., 1st Bn Royal Winnipeg Rifles A.F.
H40536 Sgt McQueen L.J. 1st Bn Royal Winnipeg Rifles A.F.
Lieut. J.G.W. Savage, 1st Bn Royal Winnipeg Rifles A.F.
H41149 Rfn Peel R., 1st Bn Royal Winnipeg Rifles A.F.

Witnesses for the Defence:-

The accused declines to summon witnesses in his defence.

EE-141

RFN DUBNIEWICZ M.A.

EE-141

Correspondence to be PINNED here.

Army Form A.3.

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

PROCEEDINGS.

v Kennedy major

A.

Order convening the Court

On Active Service, this Twentieth day of May, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 7 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

* Omit if not applicable.

~~I am unable to appoint~~

~~Three Officers to form the Court~~

~~A Field Officer as President~~

~~Three Officers having not less than one year's service~~

~~for the following reasons, namely~~

Proceedings Reviewed

for Revision 1 Jun 43

President.

Rank.	Name.	Regiment.
Major	W. Kennedy	Regina Rif

Members.

Rank.	Name.	Regiment.
Capt.	W.J. Saul	R Wpg Rif
Lieut.	A.C. Lundie	1 C Scot R
Waiting Member Lieut.	J.E. Orr	Regina Rif

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

*Signed (H.W. FOSTER) Brigadier,
Commanding 7 Canadian Infantry Brigade.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
H41785 Rfn. DUBNIEWICZ, Myron Anthony. R Wpg Rif	A.A. Sec. 15 (1) See charge sheet attached	Guilty	Guilty 45 days detention & cost of apprehension & stoppage 1 day of 20-13-8 W. Kennedy major 21 may 43	Finding and sentence confirmed H.F.

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

(Signed) H.F. (H.W. FOSTER) Brigadier, Commanding 7 Canadian Infantry Brigade — Convening Officer (e)

(Signed) W. Kennedy (W. KENNEDY) Major, Regina Rif — President.

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

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

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 21st day of May 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

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

* Omit if not applicable.

Signed this 21st day of May 1943

W. Kennedy major
President of the Court Martial.

C. Certificate in case of death sentences.

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

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

Signed this day of 19

President of the Court Martial.

D. Confirmation.

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

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

~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ H.F.

Signed this 22 day of May 1943

H.F. Foster
Confirming Officer.
(H.W. FOSTER) Brigadier,
7 Canadian Infantry Brigade.

Promulgated and extracts taken in the case of H41785 Rfn DUBNIEWICZ M.A.

(a) (Dated) 24 May 43 (Signed) [signature] (JOHN MELDRAM) Lt.-Col. O.C. THE ROYAL WINNIPEG RIFLES A.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

B 2
W Kennedy
major

CHARGE SHEET

The accused, H41785 Rifleman Myron Anthony Dubniewicz, 1st Battalion, The Royal Winnipeg Rifles A.F., a soldier of the Canadian Army, placed on Active Service in England, is charged with:-

First Charge
Sec 15 (1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 1400 hrs 9 April 1943 until apprehended 1815 hrs 12 May 1943 (Total of 33 days, 4 hrs, 15 mins), thus incurring cost of apprehension £0-13-8.

In the Field

16 May 43

(JOHN MELDRAM) Lt.-Col.,
O.C. THE ROYAL WINNIPEG RIFLES A.F.

To be tried by Field General Court Martial

Date: 20 May 43

.....
Convening Officer
7 CDN. INF. BDE.

MEDICAL OFFICER'S CERTIFICATE

21 May 43

I certify that No. H41785 Rfn DUBNIEWICZ M.A., The Royal Winnipeg Rifles is fit to undergo trial by Court Martial.

W. Kennedy Major

R. M. Coleman Capt

.....
Signature of Medical Officer

A

Army Form A 9.

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

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

Proceedings of a Field General Court-Martial held at In the field on the 21st day of may 1943 by order of Brigadier H. W. Foster

Commanding 7 Canadian Infantry Brigade

dated the 20th day of may 1943

President.

Major W. Kennedy 1 Regina Rif

Members.

Capt W. J. Saul R. Wpg. Rif

Lieut J. E. Orr 1 Regina Rif.

~~Judge Advocate.~~

Trial of* H41785 Rfn Dubniewicz Myron Anthony Royal Winnipeg Rifles

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

The Court satisfy themselves that Lieut A. C. Lundin is not available to serve owing to not receiving time of court martial.

Lieut J. E. Orr, waiting member takes his place as a member of the Court.

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

The accused is brought before the Court.

Prosecutor,† Lieut W. G. Speechly R. Wpg Rif

w/ ~~Counsel,† or~~ defending officer† Lieut P. E. Gower R. Wpg Rif

At 1115 o'clock the Trial commences.

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

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

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* no.

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

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

X I have satisfied myself that none of the officers detailed as members of this Court have previously served on any Court of Inquiry respecting the matters forming the subject of the charge before this Court Martial.

W. Kennedy
major

B

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

The following officers under instruction are duly sworn.

Major A. McCallum
16/22 Sask Horse
20 army tank Bn
Major G. C. Fritchley
Winnipeg Light Infantry

Charge-Sheet.

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

Instruction. If the accused has elected to be tried under Army Act, sec. 16 (3) the fact should be here recorded.

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

Are you guilty or not guilty of the ~~first~~ 5th charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

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

N/A *Answer.*

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

N/A *Answer.*

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

N/A *Answer.*

The accused having pleaded Guilty to ~~first~~ 5th charge, the provisions of Rule of Procedure 35 (B) are here complied with.

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

CC

Proceedings on Plea of Guilty.

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

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

W.K.

The accused H 41785 Pte Dubniewicz, Eugene Anthony
is found guilty of the charge.

W.K.

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

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

yes, I request that Lieut. P. E. Gower make a statement on my behalf.

Answer. The accused in mitigation of punishment says:—

statement by Lieut P. E. Gower marked C 2 attached

or hands in a written statement, which is read, marked C 2, signed by the President, and attached to the proceedings.]

Instruction.

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

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

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

Question to the accused.

no

Answer.

Evidence as to character.

E

Finding.*

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

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

~~The Court find that the accused~~

Proceedings on Conviction *before Sentence.*

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

~~*The Court being re-opened, the accused is again brought before it is duly sworn.~~ W.K.

Question by the President.

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

prosecutor hereof W.G. speechly presents a statement

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

Question by the President.

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

Question.

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

Question.

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

Answer. yes

Cross-examined by the accused.

n/a

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps or otherwise, the finding of the Court requires some liable to any exceptional procedure in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the matter and amount of that additional procedure.]

Question to the accused.

Do you wish to address the Court? *Answer.* no

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused H41785 Rfn Sentence.
Dubniewicz Myron Anthony
Royal Winnipeg Rifles

to 45 days detention and cost of apprehension and stoppage of pay of £0-13-8.

W Kennedy
Major

21 May 43

C 2
W. Kennedy
major

Statement in mitigation of punishment by Lieut P. E. Gower.
~~Statement of~~ Counsel.

In mitigation of sentence I wish to present the following observations:

First, during his service the accused has only one minor charge on his conduct sheet.

Second, this is his first case of absence without leave since enlistment so he is not a confirmed offender and must have had what he thought was a good reason

Third. The accused was employed as a night fireman at 7 C.I.B. continuously for three and a half months, during which time he had only one twenty-four hour pass.

Fourth When the accused's leave came due in March it was not granted, and when he applied for 48 hrs leave, it was not granted. I think it is customary, when possible, that men are allowed seven days leave once in three months and when the accused went absent without leave he still had not been granted any leave. This was nearly a month after it was due

The accused has had unpleasant relations with other ranks, both in the Unit and at Bde, possibly because his quietness and an inferiority complex, which coupled with three and a half months of working alone at night should be taken into consideration, when sentencing the accused.

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the fourth day of May 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. NX1765 Rfn. DUBNIEWICZ, N. A.

D E C L A R A T I O N

The Court declare that No. NX1765 Rfn DUBNIEWICZ, N.A. illegally absented himself without leave at H.Q., 7 Cbn Inf Bde on the 9th day of April 1943; and that on the 4 May 1943 he was still so absent and he was deficient, and that he is still deficient of the following articles:-

ARTICLES		VALUE
UNDERMENTIONED VALUE	Quantity	£. s.d.
Trousers, Battle Dress	1 pr	0-10-0
Blouser, Battle Dress	1	0-10-0
Boots, ankle	1 pr	1-10-0
Drawers, cotton short	1 pr	0- 1-0
Drawers, woollen	1 pr	0- 2-0
Gloves, woollen	1 pr	0- 1-0
Braces	1 pr	0- 1-0
Brushes, shaving	1	0- 0-6
Brushes, shoe polishing	1	0- 0-7
Brushes, shoe blackening	1	0- 0-6
Discs, identity, set	1	0- 0-1
Dressing, first field	1	0- 1-0
Holdall	1	0- 1-0
Knives, table	1	0- 0-7
Vests, cotton gymn	1	0- 0-6
Towel, hand	1	0- 0-6
Boys, mess	1	0- 0-5
Belts, web or K.pipe	1	0- 0-1
Braces, W.E. 1937	1	0- 1-0
Housewife	1	0- 0-6
Overcoat	1	0- 6-0
Helmets, steel	1	0- 2-6
Tins, mess, Dest.	1	0- 1-6
Bullhumper, single LK 37	1	0- 1-1
		0- 0-2
		£- 0-6

L. K. CASE, Lieut. President
B. M. LANGHAM, Lieut. Member

Signed In the Field
This 4th day of May 1943.

Signature of Commanding Officer: JOHN MELDRUM Lt.-Col.

Certified true copy of original:
Date 18-5-43.....
(S. J. Hale) Capt.
A/D.A.A. H.Qrs A.I.F.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. 441785 Rank Rfm Name Dubniewicz M Unit 1 C I B H O

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
13 May 43	Escorts return fare from LONDON To Seaford		9	1
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Seaford		4	7
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		13	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

W. Kennedy
6 Mayor

C.M.H.Q. 1000:55
40/P & S/483

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42.

I CERTIFY that No. H-41785 . Rank Rfmn. . . Name . Dubniewicz, M. . . . .

Unit 4th. C. I. B. R. W. R. . . . . was arrested at London. . . . . (Place)

at 1815hrs. . (hour) on 12/May/43. (date) and that at the time of his arrest he was wearing (Military Uniform) or (xxxxxxxxxxxxxxxxxxxx. Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

[signature] . . . . . Capt.
(W. Fern) D. A. P. M.,
London Area

W. Kennedy
major
"b"

Summary of Evidence in the case of H41785 Rfn Dubniewicz, M.A., The Royal Winnipeg Rifles A.F.

Evidence attached as Appendix "A" being the declaration from the Findings of a Court of Inquiry that H41785 Rfn. Dubniewicz, M.A. did illegally absent himself without leave on 9 Apr 43. Declaration is a certified true copy of the original signed by the Officer having custody of the Document.

1st Witness for the Prosecution

H40637 CQMS Gregory, D., H.Q. 7 Cdn Inf Bde, having been duly sworn states:-

"I am H40637 CQMS Gregory, D. I am the CQMS at H.Q. 7 Cdn Inf Bde. It is my duty at this H.Q. to check the presence on parade of all personnel of this H.Q. Rfn. Dubniewicz was the night fireman at this H.Q. At 1900 hrs each night I made a practice of checking to see if the night fireman was on duty. Ichecked at 1800 hrs on the night of 9 Apr 43 and found that Rfn. Dubniewicz had not reported for duty. I knew that he was on a pass which was good until 1400 hrs, 9 Apr 43, so Rfn. Dubniewicz was then absent without leave and I reported him as such.
During the period between 1400 hrs, 9 Apr 43 and 1815 hrs 12 May 43, at no time did I see Rfn. Dubniewicz whom I recognize around H.Q. 7 Cdn Inf Bde.

The accused declines to cross-examine this witness.

D. Gregory
Signature of Witness

2nd Witness for the Prosecution

Capt. W. Fern, D.A.P.M. London Area.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence as Exhibit "A".

Having regard to the expense and loss of time involved the attendance of this witness cannot in my opinion be readily procured.

W G Speechly, Lt
Officer Taking Summary

The accused does not demand the attention of this witness for cross-examination.

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

Certified that Rule of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

Taken down by me in the presence and hearing of the accused this 15 day of May 1943 In the Field.

W G Speechly, Lt
Officer Taking Summary

No. H41785 Name Dubniewicz M. Sqn., Battery, or Company D Corps Infantry Date of enlistment 12 Jun 41 G.C. Badges Service or Proficiency Pay

E W Kennedy Major

M.F.M. 6 (A.F.B. 122) 17551—7-41 (1219-20) H.Q. 1772-39-1052

Date of last entry in Company Conduct Sheet No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Crookham	9-2-42	Rfn		Neglect to the prej. etc. (Improperly dressed on parade	Cp. Holiday Cp. Unrow E.	5 days C.B.	10-2-42	Maj. P.B.A.	Brooks

CERTIFIED TRUE COPY OF ORIGINAL

S J Hale

(S. J. HALE) Capt.,
Officer having Custody of Documents

(P.T.O.)

M.F.R./955
40/F & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
R41785	Rfn	DUBNIEWICZ M.A.	R WPG RIF A.F.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron, Battery Field Conduct sheets ~~Company~~ Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment
For A.A. Sec 40	1 times	A.A. Sec 40	1 times
For	times		times
For	times		times
For	times		times

Number of instances of gallantry or distinguished conduct

or,

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

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ A.F.A. 73 Section 47 of the ~~Army Act~~ and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges, for NO days in civil custody, and 4 days in military custody, making a total of 4 days in custody, of which NO days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 27 yrs

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 12 Jun 41

7. The service which the accused is allowed to reckon towards discharge is 1 yr 11 mos

8. The accused is entitled to reckon 23 mos service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (~~or is in possession of or entitled to~~). ~~State any air force decoration or reward.~~ ~~military~~

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

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

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

.....dated.....

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

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number R58178 Rank AIR

Name DUBNIEWICZ M.A. of ROYAL WINNIPEG RIFLES A.F. Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		---N I L---		

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

Signed this 17 day of May 43 S/Ldr Capt + Adjt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

4 Q-134

Rfn Dubois H.W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-61796 Rfn Henry Napoleon DUBOIS, R Wpg Rif, 10 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	not guilty	Guilty	
2nd	not guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF BJ55 or AF B296.)

Time in confinement awaiting present trial—a total of 30 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF BJ55 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: to undergo detention for ninety (90) days.
1st charge 90 days Field Punishment No 1
2nd " 30 days Field Punishment No 1
Concurrently

28 Dec 44 (Sgd) [illegible] Maedonall Maj
(Sgd) Judge-Advocate, if any. Date awarded. (Sgd) President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be entered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 577. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders~~ (1) SP
(1. AA 57A. Delete if not used.)

Date 30 Dec 44 (Sgd) [illegible] Commanding 2 CBRG Brig Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
D-61796 Rfn Henry Napoleon DuBois R Wpg Rifles 10 CBR Bn	1745 hrs 3 Jan 45	[illegible] Capt Asst Adjt 10 CBR Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 44-134

FIELD GENERAL COURT-MARTIAL

CP486 (To lieu of AFAM 40/P & B/1698 (H44) 4/38B

Convened by Order of Brig G Prendergast Comd 2 CBRG dated 22 Dec 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-61796	Rfn	Henry Napoleon	DUBOIS	R Wpg Rif, 10 CBR Bn

PROCEEDINGS REVIEWED
1st Feb 45 [illegible] Capt
REVIEWING OFFICER

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium. on (date(s)) 27 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 1864

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

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

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

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

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

A5. President to accused: Do you object to ~~as interpreter~~ ? Ans No.

The Interpreter is sworn.(1) Has you object to as shorthand writer ? Ans

~~The shorthand writer is sworn.~~(1)

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

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

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(E). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

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

President	Major	G. Macdonall	CAC 9 CBRBn.
Member	Capt.	RM Lavigne	CAC. 11 CBRBn.
Member	Lieut	W.E. Price	CIC. 10 CBRBn.
Judge-Advocate			
Prosecutor	Lieut.	J.W. Varty.	10 CBRBn.
Defending Offr	Capt	H.H. Hewis	10 CBRBn.

Questions by President: Is the Prosecutor a lawyer ? Ans No. Is the Defending Offr a lawyer ? Ans No.(2)

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

A8. The accused D-61796 Rfn DUBOIS R H before arraignment makes(s) (no) (a) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cond. Insert in A8 rank and name of the accused making the plea.)

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

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, advise and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 1.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 C.B.R.G. Vol II - p.111.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The ~~Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the~~ charge(s).(2) The Court ~~is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the~~ charge(s), ~~and allowed on the~~ charge(s), and that, accordingly, the trial ~~will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(*1. Delete rem. under of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. Yes. will do it in his turn. Do you intend to call witnesses on your behalf ?
Ans. Yes. Are they witnesses as to character only ? Ans. No.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1 2 3 4 5 charge(s), being subject to confirmation, will be promulgated later.(1)
~~(2) The President announces that the finding of Guilty on all charges and is to be promulgated forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is (later) amended.~~(3)
(*1. AA 54(3) (a); RP 43, 120(A). 2. AA 54(3); RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) ~~a~~ soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex P1 and Ex P2 respectively.(3)
(*1. MFB 255 or MFB 279. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. No.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2123, MML p 80, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(7), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused D.61796 Rfn Henry Napoleon DUBOIS, R.W.R. on the strength of 41 Coy 10 C.B.R. Bn a soldier of the Canadian Army Overseas

is charged with

FIRST CHARGE
A.A. Sec 9 (1)

WHEN ON ACTIVE SERVICE DISOBEYING IN SUCH A MANNER AS TO SHOW WILFUL DEFIANCE OF AUTHORITY A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER IN THE EXECUTION OF HIS OFFICE

in that he

in the field, at approx 0930 hrs 27 Nov 44 when personally ordered by CSM GARDNER O, 42 Coy 10 C.B.R. Bn to join a working party did not do so saying "No I want to see the Captain", and when ordered again by CSM GARDNER to join the working party did not do so, again saying "No I want to see the Captain".

SECOND CHARGE
A.A. Sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, at approx 0930 hrs 27 Nov 44 whilst on a parade in 42 Coy 10 C.B.R. Bn guard room used obscene language saying "Oh, for Christ sake cut out the Bullshit." or words to that effect.

(F.M. MITCHELL) Lt Col
C.O., 10 C.B.R. Bn

In the Field
8 Dec 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G Francoeur) Brig
Comd
2 Cdn Base Rft Gp

In the Field
22 Dec 44

FIELD GENERAL COURT-MARTIAL

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

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

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-61796	Rfn		Henry Napoleon	DUBOIS	R Wpg Rif, 10 CBRBn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 Dec 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

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

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete (a), (b) or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate Almerat the Differentiated Intervention~~

(RP 106(E). Details, if none appointed.)

PRESIDENT.

Major G I DUCHCAKE 260, 9 CBR Bn
(Rank.) (Must be named. RP 106.) (Unit.)

MEMBERS.

Captain To be detailed by OC 11 CBR Bn 11 CBR Bn
(Rank.) (Named or detailed. RP 106.) (Unit.)

Lieut To be detailed by OC 10 CBR Bn 10 CBR Bn
(Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

Captain To be detailed by OC 11 CBR Bn 11 CBR Bn
(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

~~JUDGE-ADVOCATE~~

(Must be named, if any. RP 106.)

(Rank.) (Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 22 DEC 44

G Francoeur Brigadier
(Signed personally. RP 105 fn 2.) (Rank.)

(G Francoeur)
Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

4/38A (CFAAS 110 Dets of AFAS) W.D. F.A.O. 1697 (4611)

10 CANADIAN BASE REINFORCEMENT BATTALION

I HEREBY CERTIFY THAT I HAVE THIS MORNING EXAMINED

D.61796 (number) Pte (rank) Dubois H.N. (name) 10 Can Base Reinf Bn (unit)

AND IN MY OPINION HE IS FIT/~~UNFIT~~ TO UNDERGO TRIAL BY COURT MARTIAL.

DATE 27 Dec 44

STATION Field

(MEDICAL OFFICER)

10 CANADIAN BASE REINFORCEMENT BATTALION

I HEREBY CERTIFY THAT I HAVE THIS MORNING EXAMINED

D61796 (Number) Rfn. (Rank) Dubois H.N. (Name) 10 C.B.R. Bn. (Unit)

AND IN MY OPINION HE IS FIT/~~UNFIT~~ TO UNDERGO TRIAL BY COURT MARTIAL.

J.W. Macneill Capt. (MEDICAL OFFICER)

DATE 28 Dec 44.

STATION Field

Opening Address by Prosecution

not made

D.3

First Witness for the Prosecution (under oath)

P20663 CSM Gardner O. 42 Coy 10 Bn

I am CSM of 42 Coy. On 27 Nov 44 at about 0930 hrs I held a parade in Guard room of 42 Coy. On that parade I saw the accused soldier whom I recognize Pte Dubois. On that parade I ordered the accused to join a working party. He refused and said "No, I want to see the Capt." I cautioned Pte Dubois that he was on active service and I again personally ordered him to join a working party. He again refused and said "No I want to see the Capt." The accused Pte Dubois refused to join the working party and he did not join the working party. During this parade Pte Dubois remarked "Oh for Christ's Sake, Cut out the Bullshit" (Sir)

Q. During this parade, what was the accused's duty

A. He was in Guard detion of 42 Coy awaiting trial. He came there from hospital I believe.

Q. Did the accused have ample opportunity to comply with your order.

A. yes, I personally, warned him, cautioned him and told him again.

Cross Examine

Q. Did this offence take place here

A. No outside of Duppe

Q. Under what conditions was the accused living

A. Guard room not large and held nine.

Q. Was the accused under sentence or awaiting trial

A. As far as I remember was awaiting trial?

D.3

(2)

Q. Nature of working party
A. Carrying & Splitting Wood.
Q. Were these quarters damp, were beds provided.
A. No beds were provided for soldiers awaiting trial or under punishment unless homemade
Q. Were beds allowed in G.R.
A. No.
Q. Were there any homemade beds in G.R.
A. At some time previous days, soldiers from G.R. had brought in Tables G.S. and put them on the floor for beds. When I found this out I reported it to the Coy Condr and the tables were removed.
Q. Were they sleeping using on the tables as tables or using them as beds
A. They were using them as beds.
Q. Was this working party the accused was ordered to join to remove these tables
A. No Sir, to split and carry wood
Q. When the accused refused the order, did you explain to him that the job was necessary.
A. He was given the order slowly. After he refused I gave him time to consider it and warned him. Then I ordered him to join the party.
Q. Did you have previous trouble with the accused
A. Not personally.
Q. Was the accused allowed to explain why he wanted to see the Capt.
A. Yes.
Q. What were his reasons for seeing the Capt.
A. The removal of the tables. If the tables ~~were~~ taken out and he would not work

D.3

(3)

Q. The accused made the statement "Oh for Christs sake cut out the Bullshit." Is that all he said?
A. That is all I heard.
Q. Did he join the working party later on? That Day?
A. He was brought before Coy Comd. at 1600 hrs. He was ordered to work and sent out with an escort.

Rule 83(b) Complied with

~~Re Examine~~

Second Witness for the Prosecution (under oath)

I am F40950 Sgt Ducette, B.R. 42 Coy 10 CBR Bn.
I am at approx 0930 hrs 27 Nov. 44 I was present in the Guard Detention Room when CSM Gardner of 42 Coy ordered the accused whom I now recognize to join a work party. He refused saying "No, I want to see the Capt." CSM Gardner cautioned him that he was on active service and after a pause again repeated the order. The accused again refused saying "No I want to see the Capt." During the above parade I heard the accused say "For Christs Sake, cut out the Bullshit."

Q. Did the accused have ample opportunity to comply with the order?
A. Yes.
Q. Did the accused joine the Work Party and him that morning
A. Not during the Parade I was on.

Cross Examine

Q. What were you doing at this Parade
A. I was ordered there by the CSM.
Q. Did the accused say more than "For Christs Sake cut out the B.S."
A. not that I know of
Q. Had you any previous trouble with the accused
A. Not I, sir.

Rule 83(b) Complied with

Third Witness for the Prosecution (under oath)

Jan B 75558 Sgt Maywood, J.R. 42 Coy 10 CBRBn
On 27 Nov 44 I was Coy O.S. of 42 Coy 10 CBRBn at approx 0930 hrs I accompanied C.S.M. Gardner of 42 Coy to the Guard Detention Room where C.S.M. held a parade C.S.M. Gardner ordered the accused Pte Duhois, whom I recognize to join a work party. He refused saying "No I want to see the Capt." The C.S.M. then cautioned him and warned him that he was on active service and after a pause again ordered him to join the Work Party. The accused refused again say "No, I want to see the Capt." He refused to join the work party and did not join it. During this parade the accused said "Oh for Christs sake cut out the bullshit and let's get on," or words to that effect. Sir.

Cross Examine

Q. How far were you from the accused when he said these words
A. approx eight feet
Q. Was the C.S.M. and other NCOs present as close as you
A. The C.S.M. closer, the other Sgt at my side
Q. If he ended the accused join the work party.
A. ~~Not that day~~ I'm not certain
Q. Have you ever had previous trouble with the accused
A. Not personally, no.
Q. Did the C.S.M. order you to attend this parade
A. Yes Sir
Q. Was that normal
A. to Regulations as far as I know
~~Q. Why would the C.S.M. order you to other NCOs to be on that parade~~

Court Question: In regards to the words the accused used ~~Can you tell us in what matter they were said~~
Did they appear to be addressed to anyone in particular or was it general grumbling

A. Just a general remark to all concerned.

Q. Have you at any time heard others on parade make similar remarks?

A. Not on a CSMs parade.

Q. ~~After~~ Did you personally conduct the accused back to Guard Detention Room after he had seen the Capt. and ask if he would go to work.

A. ~~No~~ I'm not sure.

Q. Did the accused see the Capt before or after lunch.

A. I think it was after lunch.

[Prosecution rests]

Rule 83(B) Complied with

D.6.

FOURTH WITNESS (for defense) THE ACCUSED STATEMENT (under oath)

I am D61796 Rfm DUBOIS, H.N., R.W.R. on strength of 41 Coy. 10 CBR Bn. On 27 Nov 44 there were eleven men in Guard Detention Room. Ten of us were using tables as beds to prevent the dampness of the floor coming up to us. Cpl. Wilk ordered us to take the tables out saying that it was the CSMs orders. To my knowledge the CSM did not know anything about it. We asked to see the CSM and he came into the Guard Room to see what was wrong and Cpl Wilk told him about the tables. The CSM then ordered the tables out and I tried to explain why I wanted a table to sleep on. The CSM would hear nothing so I took the table back to its original place and came back to the Guard room, intending to make a complaint to the Capt. The CSM came with all the witnesses and ordered me to go to work. I did not exactly refuse the order to work. I just wanted to see the Capt. I did not see the Capt until I was brought on charge. I was then remanded to the CO. After being brought up to office at approx 1200 hrs Sgt. Maywood escorted me back to the Guard Detention Room and then asked me if I would join the work party. I said yes and I went to work in the afternoon at approx 1330 hrs. As to the obscene language I addressed it generally to the other defaulters saying perhaps "Oh for Christ's sake, lets cut out the B.S. and get back to

* When Sgt Maywood took me back to Guard Detention room there were two other soldiers ~~[illegible]~~ by ~~C.S.M.~~ Sgt Maywood if the three of us would work and we said "Yes".

work. That is my statement Sir.

D6 p2.

Cross Examine

Q. You have said "No, I want to see the Capt" in your own statement. Is it your habit to question the C.S.Ms orders?

A. No Sir

Q. In other words, you believed your complaint entitled you to refuse to go to work

A. I had a complaint to make but it did not prevent me going to work.

Q. Did the C.S.M. give you ample opportunity to go back to work.

A. I had an opportunity to go back to work.

Rule 83-B Complied with

Fifth Witness (for defense) under oath

L 27206 Rfn Chambers G.B. of 42 Coy of 10 CBR Bn

On 27 No 44 we came back from breakfast at about 0800 hrs and was ordered by Cpl Wilk to remove our tables which we used as beds. We were given the tables on C.S.Ms authority. Asked the Cpl if we could see the C.S.M. and the C.S.M. came down and ordered us to remove the tables which we did. We were ordered to join a work party and asked to see the Capt. The C.S.M. paraded the witnesses in the guard room and ordered us to join the work party. We were then placed on charge by him and left in the guard room for O.C.s orders. We went upon O.C.s orders about 1100 hrs and the C.S.M. turned us over to Sgt Maywood and we were taken back to the guard room. We got our messtins to go for dinner and Sgt Maywood asked us where we were going. So he then asked each one of us if we were going to join the work party in the afternoon. We said yes so he took us for dinner. We worked that afternoon until 1630 hrs when we were called out for draft parade ~~[illegible]~~ ~~for draft to leave the following~~ ~~[illegible] and separated from the balance of the [illegible]~~

Q. Part of the conversation was I want to see the Capt under what circumstances did you see the Capt?

A. The C.S.M. wouldn't listen to us and ordered us to join the work party. I didn't see the Capt until O.C. orders

Cross Examine →

Q. Why were you originally placed in the guard room
(Objected to but overruled)

A. On an AWL charge

Q. You are on charge same as the accused

A. Yes

Q. ~~Did you break out of Guard room ten days ago objected to~~

~~A~~ Q. Some ten days ago, did some personell break out of Guard room

A. Yes

Q. Were you with this personell

A. Yes.

Rule 83 B Complied with

Defense Closes

10.6 p4

Summary of Defence re Pte Dubois 8th

The accused has made a statement under oath, corroborated by another witness for the defense as to the circumstances surrounding the alleged offence. These statements differ considerably in details from those statements made by witnesses for the prosecution. The words "for Christs sake cut out the bullshit" are not considered obscene inasmuch as they are used by nearly everyone in the army. The accused did show his willingness to do the work required by asking to see the Captain and did later go to work. The witnesses differ as to the time of his returning to work. The accused feels he had a grievance re the question of removal of tables and took the only course open at the time for adjustment. It is not a coincidence that the C S M ordered his N C O s to attend the parade in order to have witnesses to the subsequent order to work. The C S M must have expected trouble or else had previous trouble with those in guard detention. A little tact on the part of the C S M could have avoided ~~it~~ this ~~trouble~~. I leave it to the military knowledge

D.6.p.6

The Prosecution summing up as follows.

The essential ingredients of a charge under A A Sec 9(1) are referred to in page 17 Para 10 to which I wish to draw the courts attention. Namely

1 That ~~the~~ a lawfull command was given by his superior officer. This has been established by witnesses C S M Gardner, Sgt Doucette & Sgt Maywood.

2 That it was given personally by his superior officer has been established by C S M Gardner Sgt Doucette & Sgt Maywood.

3 That the superior officer was in the execution of his office was clearly brought out by the fact that he was ordered by his coy commander to detail a working party and in addition was C S M of 42 coy 10 C B R M.

4 That the man disobeyed the order has been established by witnesses C S M Gardner Sgt Doucette & Sgt Maywood and also the fact that it was wilfull disobedience and he had ample opportunity to comply with the order given but did not. The accused himself admits to this effect.

Might I refer the court to Page 434. Footnote 3. of M.M.L. which reads -

5 That the accused used obscene language on a C S M's parade has been brought out three witnesses & admitted by himself & therefore has and I think the court will agree with me been guilty of conduct to the prejudice of good order and military discipline

Therefore in summing up I believe the court will agree with me that the accused is guilty on both charges.

The accused statement regarding tables in the guard room is immaterial, irrelevant and has no bearing on the charge.

The accused admits refusing to obey the C S M's order by saying No I want to see the Capt, and refusing to join the work party.

The witness for the defence Rfm Chambers has admitted that he was in detention room for being A W L. He also admits that he is charged with the same offence as the accused. He also admits that he was amongst several soldiers who were in 10 C B R Bar guard room & escaped some 10 days ago and therefore due to the character of this witness his statements cannot be considered as reliable. His statement regarding removal of tables from guard room is immaterial to the charges laid. His statement regarding Sgt Maywood escorting him back to the guard room has no bearing on the case and it could have been any Sgt to do this.

Jas M Varty Lt
Some Scots
10 C B R Bar

E3

Plea in mitigation of sentence for
on behalf of Mr Hamilton L.C.

The accused joined the Cdn Army Active in Jan. of 1940 coming overseas the same year. He landed in France on D plus 1 and served in the front line four months before being evacuated for Battle exhaustion. He had refused twice previously to agree to this.
I point out that he has a clean record up until present and would ask the court to consider this with his fine battle record in mitigation of punishment.

H H House Capt

Exhibit "A"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D.61796	Rfn	DUBOIS Henry Napoleon	10 Cdn Base Rft Bn.

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

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

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

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

	* Within last 12 months.		*Since Enlistment.	
For	A.A. S$_{ec}$ 15 (1) on Temp sheet	times	one(1)	times.
For	Original M&W 6 Not available.	times		times.
For		times		times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct,

or

The ~~XXX no entries in~~ the conduct sheets of the accused

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

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

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

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

5. The present age of the accused according to his record of service is 24 yrs 6 mths 16 dys

6. The date of his ~~XXXXXXXX~~ attestation specified in his record of service ~~XXXXXXXX~~ is 30 January 1940

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4yrs 10mths 10dys

8. The accused is entitled to deferred pay or gratuity in respect of 4yrs 10 mths 10dys service.

9. The accused is entitled to reckon 4yrs 10mths 10dys service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

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

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

(*51,000) W1.13956/179a 50,000 10/41 A.& E.W.Ltd. Gp.698
(250,000) W1.13956/1499 14,000 5/44 " "

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

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

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

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

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

Signed this ~~eleventh~~ 27th day of December 1944

Capt

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

Date of Promotion

In the rank of ..... years, ... months

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

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

(INSTRUCTION—If any entry in any of the above five paragraphs cannot be made from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph inserted accordingly.)

No D61796 Name DUBOIS H N | Sqn, Battery, or Company R&R | Corps CIC | Exhibit "B" | Date of enlistment 3-11-40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 Temp | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of order dispensing with trial	By whom awarded	Remarks
				Temporary MFM 6 issued wef 10 Nov 44	Cpl WILK, M Sgt GINN, A.	10 dys pay 10 days FP	22 Nov 44	Capt CS LYNCH(Det. Comd)	4 days ~~MFM~~ Pay FR & R 149 (1) (a)
Field	12 Nov 44			AWL from 2300 hrs 12 Nov 44 until 1000 hrs 16 Nov 44 (Absent 3 days 11 hrs) A.A. 15 (1)					

CERTIFIED TRUE COPY.

(C.M.C. Arthurs)Capt
Officer with custody of Regimental Books

(PTO)

SUMMARY OF EVIDENCE

In the case of D.61796 Rfn DUBOIS, Henry Napoleon (R.W.R.) on strength 41 Coy, 10 C.B.R. Bn. A soldier of the Canadian Army Overseas.

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

FIRST WITNESS PROSECUTION

K.48468 Cpl ADRAIN, F. (R.W.R.) of 48 Coy on strength 10 Cdn Base Rft Bn having been duly sworn states:

I am K.48468 Cpl ADRAIN, F. (RWR) 48 Coy 10 CBR Bn. At 0930 hrs on the 27 Nov 44 I was present at the Guard detention room of 10 C.B.R. Bn. when the CSM ordered the accused whom I now recognize to join a working party. The accused refused to do so saying "No, I want to see the Captain". CSM GARDNER cautioned the accused that he was on Active Service and he again repeated the order. The accused again refused to do so saying, "No, I want to see the Captain", The accused refused to join the work party and did not join the work party. During the above parade the accused used obscene language as follows: "For Christ sake cut out the bullshit".

R.P.83(b) complied with.

F. Adrain
(F. ADRAIN) Cpl K.48468

The accused declines to cross examine the witness.

SECOND WITNESS PROSECUTION

P.20663 CSM GARDNER, C. (P.P.C.L.I.) of 42 Coy on strength of 10 Cdn Base Rft Bn having been duly sworn states:

I am P.20663 CSM GARDNER, C. (PPCLI) 42 Coy 10 CBR Bn. On the 27 Nov 44 at about 0930 hrs. I held a parade in 42 Coy 10 CBR Bn guard room. On that parade I ordered the accused whom I now recognize as Pte DUBOIS, H.N. to join a working party. He refused to do so saying "No I want to see the Captain", I warned the accused that he was on Active Service. I again ordered him to join the working party. He again refused to do so saying "No I want to see the Captain". The accused refused to obey the order which I personally gave to him. That order being to join the working party and he did not join the working party. During the above mentioned parade the accused said "Oh for Christ sake cut out the bullshit".

R.P. 83(b) complied with.

G Gardner
(C. GARDNER) CSM P.20663

The accused declines to cross examine the witness.

THIRD WITNESS PROSECUTION

F.40950 Sgt DOUCETTE, B.R. (P.E.I.L.H.) of 42 Coy on strength 10 C.B.R. Bn. having been duly sworn states:

I am F.40950 Sgt DOUCETTE, B.R. (PEILH) of 42 Coy 10 CBR Bn. At approx 0930 hrs 27 Nov 44 I was present in the Guard Detention Room 10 C.B.R.Bn when CSM GARDNER of 42 Coy 10 CBR Bn ordered the accused whom I now recognize to join a working party. The accused refused to do so saying "No, I want to see the Captain", CSM GARDNER cautioned the accused that he was on Active Service and he again repeated the order. The accused again refused to do so saying, "No I want to see the Captain", The accused refused to join the work party and did not join the work party. During the above parade the accused used obscene language as follows: "For Christ sake cut out the bullshit."

R.P. 83 (b) Complied with

B.R. Doucette
(B.R. DOUCETTE) Sgt F.40950

The accused declines to cross examine the witness.

FOURTH WITNESS PROSECUTION

B.75558 Sgt MAYWOOD, J.R. (T.S.R.) 42 Coy on strength 10 C.B.R. Bn. having been duly sworn states:

I am B.75558 Sgt MAYWOOD, JR (TSR) 42 Coy 10 C.B.R. Bn. On the 27 Nov 44 I was Coy Orderly Sgt for 42 Coy 10 C.B.R. Bn. I accompanied the CSM of 42 Coy 10 C.B.R. Bn to the Guard Detention Room at 0930 hrs where I heard the CSM give the accused whom I now recognize an order to join a work party. The accused refused to do so saying, "No, I want to see the Capt". The CSM then cautioned him that he was on Active Service and after a pause he again ordered him to join the work party. The accused again refused to do so saying "No I want to see the Captain". He refused to join the work party and did not join the work party. During this parade the accused made an utterance on parade. The accused said "For Christ sake lets cut out the Bullshit" and lets get going", or words to that effect.

R.P. 83 (b) Complied with.

(J.R. MAYWOOD) Sgt B.75558

The accused declines to cross examine the witness

FIFTH WITNESS PROSECUTION

L.26465 Cpl WILK, M. (Regina Rif R) 42 Coy on strength 10 C.B.R.Bn. having been duly sworn states:

I am L.26465 Cpl WILK, M. (REGINA RIF R) 42 Coy 10 C.B.R. Bn. On 27 Nov 44 I was Coy Orderly Cpl for 42 Coy 10 CBR Bn. I accompanied the CSM of 42 Coy 10 CBR Bn to the Guard Detention Room at 0930 hrs. where I heard the accused whom I now recognize say "For Christs sake lets stop the bullshit" while on the parade held by the CSM. The CSM gave an order to the accused to join a working party. The accused refused to do so saying "No, I want to see the Captain" The CSM then paused and repeated the order. The accused again refused to do so saying "No I want to see the Captain".

R.P. 83(b) Complied with

(M WILK) Cpl L.26465

The accused declines to cross examine the witness.

The accused having been cautioned as follows, "Do you wish to make a statement or give any evidence on oath? You are not oblidged to say anything or to give any evidence unless you wish to do so, but whatsoever you may say or any evidence you may give will be taken down in writing and may be used in evidence. "Declines to give any evidence and reserves his defence.

I certify that the foregoing summary of evidence consisting of two(2) pages was taken down by me in writing in the presence and hearing of the accused.

I certify that Rules of Procedure 4(C)(D)(E) and (F) have been complied with.

(M.H. CRATE) Lieut
C.R. of O. 10 C.B.R. Bn.
Officer Detailed to Take
Summary of Evidence

LIST OF WITNESSES

PROSECUTION

P.20663	GSM	GARDNER,	O.	42 Coy	10 C.B.R. Bn.
K.48468	Cpl	ADRAIN,	F.	42 Coy	10 C.B.R. Bn.
F.40950	Sgt	DOUCETTE,	B.R.	42 Coy	10 C.B.R. Bn.
B.75538	Sgt	MAYWOOD	J.R.	42 Coy	10 C.B.R. Bn.
L.26465	Cpl	WILK	M.	42 Coy	10 C.B.R. Bn.

DEFENCE

N I L

LIST OF EXHIBITS

N I L

I CERTIFY THAT I HAVE RECEIVED FREE OF CHARGE A COPY OF THE SUMMARY OF EVIDENCE, THE CHARGE SHEET, THE LIST OF WITNESSES AND A LIST OF EXHIBITS.

I DO DESIRE THE SERVICES OF AN OFFICER TO REPRESENT ME AT MY TRIAL BY COURT MARTIAL.

Pte H.N. Dubois D.61796

(H.N. DUBOIS) Pte D.61796

63 H Pte. DUBOIS, JL (2nd case) **O. H. M. S.**

See 308 C for 1st case

M. F. B. 270

63 H

Correspondence to be PINNED here.

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court

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

Whereas it appears to me, the undersigned, an officer in Command of 5 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

* Omit if not applicable

~~*I am unable to appoint:~~

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

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

~~*(3. Three Officers having more than one year's service.)~~

~~[illegible]~~

In my opinion, military exigencies, namely, the dispersion of units, and difficulties of communication and other difficulties render it inexpedient to observe the provisions of those rules inconsistant with Appendix "A" to D.R.O.772 on the trial of the person named in the annexed schedule.

Proceedings Reviewed
[illegible]
Forwarding Officer (Cdn) [illegible]
13 May 42

President.

Rank.	Name.	Regiment.
Major	T.B.Donald	Calg. Highrs.

Members.

Rank.	Name.	Regiment.
Capt.	B.R. Ritchie	1-R.H.C.
Lieut.	J.F. Bisaillon	R. de Mais.
Lieut.	~~F.W. McAlister~~ MAITING MEMBER	Calg. Highrs.

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

*Signed G V Whitehead
(G.V.Whitehead) Brigadier
Commanding 5 Cdn Inf Bde
Convening Officer.

2

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-57097 Private DUBOIS Jean Louis, R. de Mais., a soldier of the Canadian Army, Overseas.	FIRST CHARGE A.A.Sec.15 (4) (See attached charge sheet)	Guilty	Guilty	I confirm GW.
	SECOND CHARGE (alternative) A.A.Sec.18 (4) (See attached charge sheet)	Charge withdrawn	charge withdrawn	
	THIRD CHARGE (further alternative) A.A. Sec.40 (See attached charge sheet)	Charge withdrawn	charge withdrawn	
	To undergo detention for one year aforesaid 27/4/1942.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 35 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) (G. Whitehead) Brigadier
5th Cdn. Inf. Bde
Confirming Officer (*d*)

(Signed) Thos. B. Donald Major. President.

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

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

21

3

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 27th day of April 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

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

* Omit if not applicable.

were duly sworn.

Signed this 27th day of April 1942.

Thos B Donald major
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (b) on page 762 M.M.L. 1939

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

Signed this 27th day of April 1942. GW

Thos B Donald major
President of the Court Martial.

D. Confirmation

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

[redacted]

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

Signed this 28th day of April 1942

G Whitehead
Confirming Officer
Brig
COMD. 5 CDN. INF. BDE.

Promulgated and extracts taken in the case of D-57097 Private Dubois J.L.

(*a*) (Dated) 30 April 42 (Signed) W.R. Johnston, Capt. a/Adj

Promulgated and extracts taken in the case of D-57097 Pte Dubois J.L. de Mais

(Dated) 30 April 42 (Signed) W.A. Brook Capt. a/S.C. 5 Cdn Inf Bde.

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

3 p.1

MEDICAL OFFICER'S REPORT

I certify that No. D57097 Pte Hudson J.L.

of Rdle Wfcrs is in a good state of health,

and fit to undergo Trial by Court-martial.

A. G. Rickson

Medical Officer.

Station In the Field

Date 27/4/42

MEDICAL OFFICER
H.A.P.
27 APR 1942
24T
LE REGIMENT DE MAISONNEUVE C.A. (M.P.)



M.F.W.246.
25m-3-18.(M)
H.Q.1772-39-450.

5 8/20

CHARGE SHEET

The Accused, D-57097 Pte. J. L. Dubois, "C" Coy. Le Regiment de Maisonneuve, Canadian Army, (Active) is charged with:-

FIRST CHARGE
A.A. Sec. 19(a)

"WHEN ON ACTIVE SERVICE, STEALING GOODS, THE PROPERTY OF A PERSON SUBJECT TO MILITARY LAW, in that he, at Pevensey, on March 14th 1942, stole a wireless set, the property of D-57632 Pte. St. Martin, R. of Le Regiment de Maisonneuve, a person subject to military law.

SECOND CHARGE
(alternative)
A.A. Sec. 19(b)

"WHEN ON ACTIVE SERVICE, RECEIVING KNOWING IT TO HAVE BEEN STOLEN PROPERTY BELONGING TO APERSON SUBJECT TO MILITARY LAW, in that he, at Pevensey, on March 14th 1942, did receive knowing it to have been stolen the said wireless set belonging to said Pte. St. Martin a person subject to military law

THIRD CHARGE
(further al-)
native)
A.A. Sec. 20

"WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, in that he, at Pevensey, on March 14th 1942, was in improper possession of said wireless set the property of a person subject to military law

Request of the Accused for a Defending Officer endorsed hereon; P.T.O.

J. Roche
(J. A. Roche) Lt-Col.
O.C. R. de Mais., CA(O)

To be tried by F. G. C. M.

[signature] Brig.
COMD. 5 CDN. INF BDE.

Records of Proceedings of a F.G.C.M. 7 5

1- Trial of No 57097 Pte Dubois J.L. Regiment de Maisonneuve, held Pevensey on the 27th day of April 1942

2. Actual Court

President. Major T.B. Donald. Calgary Highs.

Members. Captain. B.R. Ritchie R.H.C.

" Lieut J.F. Bisaillon R. de Mais.

3- Prosecutor. Lieut P.E. Mantha R. de Mais

Defending Officer. The accused declined to have a defending officer.

4- The accused is arraigned and pleaded guilty to the charge.

5- Rule of Procedure 35 (B) was complied with.

6- The abstract of evidence was read.

The court called D 57044 Pte Boulai G. and was examined by the Court after being duly sworn.

Question - Is this the wireless set sold to you by Pte Dubois.

Answer - Yes.

The Court called D57632 Pte St M/artin P. who was duly sworn.

Question - Can you identify the wireless set as being the one which was stolen from you.

Answer - Yes.

The witness then produced Bill of sale, showing the Serial number and model number of the set which was on Exhibit by the Court. This document was examined by the Court & was returned to the witness as it was the only proof of his ownership.

7. The Prosecutor after being duly sworn filed AFB. 246 and a certified copy of M.F.M. 6.

8. The accused makes the following statement in mitigation of sentence.

"I stole the wireless set with the intention of selling it and using the money to go on leave, as I was only able to draw 10/- from the Unit Paymaster, which was not enough to go on leave. My wife is very ill, dying with cancer in a hospital in Canada."

Certified a true copy Record of this Court
27th day of April 1942

Signed ..... Thos Ward major
President.

13 9 1/2D

Abstract of Evidence

In the case of D-56097, Pte. Jean Louis Dubois, "C" Coy. Le Regiment de Maisonneuve, Canadian Army (Active)

For the Prosecution
First Witness: D-57632 Pte. St. Martin, R. "C" Coy.
states

That on March 14th 1942, he went on a scheme in the morning, and when he returned at noon he noticed that his wireless receiving set had disappeared. He immediately informed his platoon commander of the fact. He then went to the Memorial Hall, Pevensey, in the afternoon where he was attending a course and in conversation with other soldiers of the unit, he stated that his radio had been stolen and gave a description of it. In consequence of information from Cpl. Langlois he saw Lieut. Valliere and passed on the information and the latter said he would take the matter in hand.

For the Prosecution
Second Witness: D-57044 Pte. Boulai, G. "D" Coy.
states

That during the first day of the month of March 1942, he happened to meet Pte. Dubois of "C" Coy. in Aero Cafe at Pevensey Bay, and that in the course of the conversation he asked Dubois if the latter knew of anyone who wanted to sell a radio. Dubois said he had one himself and would sell it for about £2.0.0 or £2.10.0 Dubois then said he would bring the wireless set in 2 or 3 days so it could be examined and tried. A few days later Dubois was met on the street by Boulai and the former said that his wireless set had been stolen but that he expected to be able to show him another one soon.
On March 14th 1942, sometime around noon, Dubois came along with a radio set which was given trial and as it was not in good working condition a price of £2.0.0 was agreed upon. At this very moment Dubois said he was selling the set for a friend. Boulai asked Dubois for a receipt for the money he was paying for the wireless set but Dubois said he could not write sufficiently well enough for that. Sgt. Boucher of "D" Coy. who happened to be there wrote the receipt which was signed by Dubois. Cpl. Langois was also present during the time that the transaction lasted.

For the Prosecution
Third Witness: D-56996 Cpl. Langlois, N. "D" Coy.
states

That on March 14th 1942, sometime around noon he saw and heard Pte. Dubois of "C" Coy. talking about the sale of a wireless set with Pte. Boulai of "D" Coy, and he saw the wireless set in question. That in the afternoon of the same day he went to Memorial Hall, Pevensey and there heard Pte. St. Martin giving a description of his wireless set to some other soldiers. He then informed Pte. St. Martin of what he had seen and heard in his billet at noon, as the radio set being described by St. Martin fitted with the set he had seen at noon.

For the Prosecution
Fourth Witness: D-56049, Sgt. Boucher, W. "D" Coy.
states

That on March 14th, 1942, sometime around noon he was in the men's billets when Pte. Dubois of "C" Coy sold a wireless set to Pte. Boulai and that Dubois said that he was selling said set for a friend. When Boulai gave Dubois the sum of £2.0.0 he asked for a receipt and Dubois said he could not write sufficiently well for that. He Boucher then offered to write the receipt if Dubois wanted to sign it and everyone agreed on that, and it was done. Dubois signed the receipt.

Taken down by me, at Pevensey, this 7th day of April 1942, in presence of the accused. Rules of Procedure complied with.

(J. A. Ranthaw) Lieut
D.A.J.A.G. R. de Mais CA(O)

15 P2

Substitute for A.F.B. 296 or M.F.B. 355

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED

NO: D-57097 NAME: J. L. Dubois UNIT: R. de Mais., CA(O)

AGE: 28 MARRIED OR SINGLE: Married NO. OF DEPENDENTS: one

DATE OF ATTESTATION: 6 April 1940

NO. OF DAYS SPENT IN CLOSE ARREST (to date of trial)

CIVIL: — MILITARY: 28 [illegible] HOSPITAL: - TOTAL: 28 [illegible]

DATES OF PROMOTION, APPOINTMENTS AND CONFIRMATION OF RANK (if any)

A certified true copy of M F M 6 must accompany this Form.

[illegible] Capt

(G. A. Rheaume) Capt-Adj
Officer i-c Records, R de Mais, CA(O)

Dated at: Pevensey,
This 27th day of April 1942.
(to be dated and signed as of date of trial)

No. D-57007 Name Dubois J.L. Sqn., Battery, or Company C Corps R.A.M.C. Date of enlistment G.C. Badges Service or Proficiency Pay

M.F.M. 6 A.F.B. 122

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Valcartier	22-6-40	Pte.		A.A. sec. 15 (1) 4 days A.W.L.	Cpl.Petit	5 days pay	26-6-40	Lt-Col. Brosseau	5 days pay
do	1-7-40	Pte.		A.A. sec. 15 (1) 8 days A.W.L.	Cpl.Arbour	20 days pay	2-7-40	do	20 days pay
do	5-8-40	Pte.		A.A. sec. 15 (1) 2 days A.W.L.	Sgt. Thibault	15 days pay	14-8-40	do	15 do
do	16-8-40	Pte.		A.A. sec. 15 (1) 2 days A.W.L.	Cpl.Arbour	10 do	19-8-40	do	10 do
On 6 oct. 40 this soldier completed 6 months services in accordance with R.C. 71 C.A.S.F. (overseas The above centries were transfered from previous sheet which was then destroyed (7-10-40)									
Aldershot	2-11-40	Pte.		Sec. 40 Neglect to the prejudice A.A.40	C.S.M.Rapin	7 days C.B.	3-11-40	Lt.Brosseau	
Aldershot	5-12-40	Pte.		Sec. A.A.40 Neglect to the prejudice	C.S.M. Rapin	7 days C.B.	6-12-40	do	

(P.T.O.)

90

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	17-3-41	Pte		M.C.A.S. A.W.L. 9 hrs. A.A. 15 (1)	Sgt.Desrochers Cpl.page	3 days pay	18-3-41	1-Col Bros seau.	3 days pay
Aldershot	5-6-41	pte.		M.C.A.S. Conduct to the prejudice A.A. 40	Sgt.Dejarlais	7 days F.P.	9-6-41	do	7 days pay
Pevensey	5-7-41	pte.		W.C.A.S. sec. 41 'stealing) civilian property confirmed by G.C.S. 2 Can div.	Major Levine Capt. Masson	150 days imprisonment	6-8-41		150 do
Hasting	7-3-42	pte.		M.C.A.S. neglect to obey standing Orders A.A. Sec 11 no respirator	1-cpl.Arsenault 1-Cpl.Thirlwell	14 days C.B.	10-3-42	Major Brossseau	

19

M.F.M. 6
A.F.B. 122
500M—S.T. 1923
H.Q. 1771—[illegible]

4

No. B-57097 Name J.L.Dubois Sqn., Battery, or Company C Corps R. de M. Date of enlistment G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 7-3-42 No. and date of last drunk 2 sheet Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Pevensey	9-3-42	Pte.		W.O.A.S. Conduct to the prejudice of good order A.A. 40	C.S.M.BERUBE PTE. Paquin	see entry 7-3-42	10-3-42	Major Brosseau	
Pevensey	17-3-42	Pte.		W.O.A.S. a.w.l. from 2359 hrs. on the 17-3-42 to his return at 1025 23-3-42 (he surrender to Provost Corps) 5 days 10 hrs. 25 min)	1-Sgt.Simard C.S.M.Berube	12 days F.P.	1-4-42	L.Cpl.Roche	18 days pay

certified true copy [illegible]

Certified True Copy
[illegible] Captain

(P.T.O.)

308 b. Ste. Dubois, J. L. - (1st case)

See 631 H. for 2nd case

14

Correspondence to be PINNED here.

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Fourth day of August, 19 41

Whereas it appears to me, the undersigned, an officer in Command of 5th Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

* Omit if not applicable.

*[~~I am unable to appoint~~:—

*[~~1. Three Officers to form the Court.~~]

*[~~2. A Field Officer as President.~~]

~~[In the following reasons, namely:—~~]

PROCEEDINGS REVIEWED

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

Waiting Member

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

President.

Rank.	Name.	Regiment.
Major	H.M. Jaquays	R.H.C.

Members.

Rank.	Name.	Regiment.
Lieut	G. Bieler	R. de Mais
"	J. Ellis	R. de Mais.
"	P. Hurtibise	R. de Mais.

*Signed G. Whitehead Brig.

Commanding 5th Cdn Inf. Bde

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D.57097 Pte J.L. Dubois R. de Mais a soldier of the canadian Army)Overseas)	FIRST CHARGE A.A. Sec 41 While on active service, is charged with "Committing a civil offence,(see charge Sheet) SECOND CHARGE ~~Alternative Charge~~ A.A. Sec 41 While on active service, is charged with"Committing a civil offence, that is to say receiving stolen goods"(see charge sheet)	Guilty Guilty	Guilty. 150 days Imprisonment Charge withdrawn	Confirmed H.C.W.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (*to be recorded on separate sheet if necessary*):— No.

(Signed) H.D. Whitehead Brig.
Commanding 5th Cdn Inf Bde.
Convening Officer (*c*)

(Signed) Hugh Maguay Maj
President.

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

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

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

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

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

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

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the sixth day of August, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

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

were duly sworn.

* Omit if not applicable.

Signed this sixth day of August 1941.

H.D. Whitehead Brig.
President of the Court Martial.

C. Certificate in case of death sentences.

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

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

Signed this day of 19

President of the Court Martial.

D. Confirmation.

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

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

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

Signed this 20 day of Aug 1941.

H.C.W. Odlum
Confirming Officer.

Promulgated and extracts taken in the case of D 57097 Pte. Dubois J.L.

(*a*) (Dated) 23 Sept. 41 (Signed) Lt. Cheasley Lt. adjt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

(84) 50, 3000, 1/41. Thos. L.A.C. W. & Co., Ltd. Gp. 745-2

3

MEDICAL OFFICER'S REPORT.

I certify that No. D57097 pte Dubois, J L

of R. de Mais is in a good state of health,

and fit to undergo Trial by Court-martial.

A J Brandreth
Medical Officer.

Station Westham,

Date 6-8-21

M.F. 246.
m-3-18.(M)
772-39-430.

5

CHARGE SHEET

FIRST CHARGE

The accused, No. D-57097, Private Jean Louis DUBOIS, 1 Bn. Le Régiment de Maisonneuve, Canadian Army (Overseas), a soldier, while on active service, is charged with:-

A.A. Sec 41 "Committing a civil offence, that is to say, stealing,"

in that he, at PEVENSEY BAY, on 5 July, 1941, stole a watch, value thirty shillings, the property of Mrs. Edith Dudley.

SECOND CHARGE
(Alternative)

The accused, No. D-57097, Private Jean Louis DUBOIS, 1 Bn. Le Régiment de Maisonneuve, Canadian Army (Overseas), a soldier, while on active service, is charged with:-

A.A. Sec 41 "Committing a civil offence, that is to say, receiving stolen goods."

in that he, at PEVENSEY BAY, on 5 July, 1941, did receive a watch, value thirty shillings, the property of the said Mrs. Edith Dudley, knowing the same to have been stolen.

Signed at PEVENSEY BAY, England, this 14th day of July, 1941.

Paul Brossard, E.D. Lieut-Col.,
C.O. Le Régiment de Maisonneuve, C.A.(O.)

TO BE TRY BY F.G.C.M.

Signed.....
Brig.
Commanding 5th Canadian Infantry Bde.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL, HELD IN THE FIELD, ON WEDNESDAY 6th AUGUST 1941

TRIAL OF NO: D57097, Pte. J. L. Dubois, R. de Mais.

PROSECUTOR:

DEFENDING OFFICER:

---

1. The Order Convening the Court is read to the accused.

2. The accused is asked the following questions:

   Q 1 Do you object to being tried by me as President of the Court?
   A 1 No, sir.
   Q 2 Do you object to being tried by any of the Members of the Court whose names you have heard read over?
   A 2 No, sir.

3. The President and Members of the Court are duly sworn.

4. The accused answers to his name and number and is duly arraigned.

   The accused pleads "Guilty" to the first charge.

5. Rule of Procedure 35(B) is complied with, and the accused maintains his plea.

6. The summary of evidence is read.

7. The Prosecutor files M.F.M.6 and M.F.B.355 in connection with the accused.

THE COURT IS CLOSED FOR CONSIDERATION OF SENTENCE.

Signed at Pavensey

this 6thday of August, 1941

H. M. Jacques, Major
H. M. Jacques, President.

SUMMARY OF EVIDENCE
In the case of:-

D.57097, Pte. Dubois J.L., "A" Coy., Le Regiment de Maisonneuve, Canadian Army (Overseas).

1st Witness:

I, Mrs. Edith Dudley of Pevensey Bay, having been duly sworn, declare and state:

On Saturday, the 5 Jul. 41, I left my watch in my room on the dressing table and went down to the garden where I did some gardening. When I came back to my room I found that my watch had disappeared. I reported the fact to Capt. Masson.

Question: At what time did you leave your room and when did your return to it?

Answer I left my room at about 0915 hrs, and went back to it at 1200 hrs.

Edith Dudley
Mrs. Edith Dodley.

The accused declines to cross-examine the witness.

2nd Witness:

I, Capt. J. Masson, Pay-master, Le Regiment de Maisonneuve, C.A. (O), having been duly sworn, declare and state:

On Saturday th 5 Jul. 41, Mrs. Dudley came to me and reported ~~that her watch, Silver with leather bracelet, had disappeared from her room; she asked me to make an inquiry to which I promised immediately attention.~~ I reported the fact to the 2 i/c ~~with the understanding that he would see the Commanding Officer.~~ I told him that the disappearance of the watch could not be attributed to our orderlies ~~but~~ two men of "A" Coy. Pte. Tremblay L. and Pte. Dubois J.L. who at the time, were working in the mess on the second floor near Miss Dodley's room.

J. Masson
J. Masson, Captain,

The accused declines to cross-examine the witness.

3rd Witness:

I, Major W. Lavigne, O.C. "A" Coy., Le Regiment de Maisonneuve, C.A. (O), having been duly sworn, declare and state:

As Coy. Comdr. of "A" Coy, I was called around 2230 hrs., by Lieut.-Colonel Brosseau who told me ~~that a watch belonging to a Miss Dudley, living in the hotel which is used as billets for the officers' Mess, had disappeared from her room during the time when two of my men, No. D.57097, Pte. Dubois J.L. and No. D.57458, Pte. Tremblay A. were on fatigue duty in the Mess, around 2300 hrs.~~ I went to the En Orderly Room with Lieut. R.R. Bibeau and sent for Pte. Dubois to question him. I asked Pte. Dubois if he had the watch to which he replied in the negative. Then I ordered him to empty his pockets. From one of his pockets Pte. Dubois took out a watch and gave it to me. I handed in the watch to Lieut.-Col. Brosseau who had it identified by Miss Dudley. ~~I was then given the order to put Pte. Dubois under arrest.~~

W. Lavigne
W. Lavigne, Major.

The accused declines to cross-examine the witness.

4th Witness:

I, Lieut. R.R. Bibeau, O.C. #9 Pl. "A" Coy, Le Regiment de Maisonneuve, C.A. (O), having been duly sworn, declare and states:

As O.C. of #9 Pl., I know Pte Dubois to be a good soldier with a good conduct.

On the 5 Jul. 41, around 2300 hrs, I was asked by Major Lavigne ~~to come in Orderly Room with him to question Pte. Dubois, suspected of having taken a watch belonging to Miss Dudley of Pevensey Bay~~. On Major Lavigne's order I sent Sgt. Beaulieu to get Pte. Dubois.

Major Lavigne asked Pte. Dubois if he had the watch to which he denied having it. He was then ordered by Major Lavigne to empty his pockets. When emptying the right pocket of his blouse, Pte. Dubois took out a watch that he ~~handed~~ to Major Lavigne.

Some time after Pte. Dubois admitted to me ~~that he had taken the watch.~~

(R. R. Bibeau), Lieutenant,

The accused edlines to cross-examine the witness.

Questions to the accused:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer of the accused:

"I have nothing to say".

Rules of procedure 4 (c-d-e) have been complied with.

This summary of Evidence was taken by me, in the presence of the accused, at Pevensey, England, this 9th day of July, 1941.

PPick/ZL

P. de Martigny Lieut

(P.P. de Martigny), Lieutenant,
Le Regiment de Maisonneuve, C.A.(O).

No. B37097 Name Ste Dubois JL Regt., Battery, or Company 1 Rentfort Corps R de Mais cat Date of enlistment 6/4/40 G.C. Badges Service or Depository RE 15-7-41 Character Good

Date of last entry in Company Conduct Sheet: Nil No. and date of last drunk: Nil Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc.

M.F.M. 6 A.F.B. 122 (Revised—1939) 31-9. 1779-45-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial with trial	By whom awarded	Remarks
Valcartier	23/6/40	Pte		A.A. Sec. 15(1) Absent from 0700 hrs 23/6/40 to 1830 hrs 26/6/40 (4 days)	Cpl. Polet L.	5 days pay	26/6/40	Lt Col Bourassa	forf 4 days pay F.R.+I. 149 R.D.
"	1/7/40	"		A.A. Sec. 15(1) Absent from 0700 hrs 1/7/40 to 0700 9/7/40 (8 days)	L/Cpl Arbour	22 days pay	9/7/40	Lt Col Bourassa	forf 8 days pay F.R.+I. 149 R.D.
"	5/8/40	"		A.A. Sec. 15(1) Absent from 0700 hrs 5/8/40 to 1630 hrs 13/8/40 (9 days)	Cpl. Arbour	15 days pay	14/7/40	Major P. Bourassa	forf 9 days pay F.R.+I. 149 R.D.
"	16/8/40	"		A.A. Sec 15 (1) Absent from 0700 16/8/40 to 19/8/40 (2 days)	Sgt. Thibault	10 days pay	19/8/40	Major P. Bourassa	forf 2 days pay F.R.+I. 149 R.D.

On 6 Oct 40 this soldier completed 6 months service, in accordance with R.O. 71 CASF (Overseas) the above entries were transferred from previous sheet which was then destroyed (7-10-40)

Aldershot	2-11-40	Pte		AA Sec 40 neglect to the prejudice of.... failing to appear on parade	CSM Rapin	7 days CB	3-11-40	Lt QA Bourassa	RD

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	5-12-40	Pte		AA Sec 40 neglect to the prejudice - failing to appear on parade	CSM Rapin	7 days CB	6-12-40	Lt H A Rheaume	RD
Aldershot	17-3-41	"		WOAS AA Sec 15(1) AWL from 1200 hrs 17-3-41 to 2100 17-3-41 9 hrs	Sgt Desrochers Cpl M Page	3 days pay	18-3-41	Lt-Col P Brosseau	WL Wilfrid Laurier
Aldershot	5-6-41	Pte		WOAS AA 40 Conduct to the prejudice neglected to take medicine	Sgt Desjarlais - Pa Anctel	7 days field punishment	9-6-41	Lt-Col P Brosseau	WL

Certified conformable to original

H M Rheaume Lt. a/adm.

M.F.S. 355
H.Q. 1772-39-620
10M-8-40 (M19)

15

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D57097	Pte	Jean Louis DUBOIS	R. de Mais CA (O)

1. The following is a fair and true summary of the entries in the ~~Service and General Regimental and Squadron, Battery~~ ~~Conduct sheets~~ ~~or~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For A.A. Sec 15(1) AWL	3	times	A.A. Sec 15(1) AWL	5 times
For A.A. Sec 40 Neglect to the pre	2	times	A.A. Sec 40 Neglect to the pre	2 times
For A.A. Sec 40 Conduct to	1	times	A.A. Sec 40 Conduct	1 times
For		times		times

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

~~or,~~

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

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or,~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or,~~

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for ~~37~~ 0 days in civil custody, and 32 days in military custody, making a total of 32 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his record of service is ~~attestation paper is~~ 28 years

6. The date of his ~~commission~~ attestation specified in his record of service is ~~attestation paper~~ 6 April 1940

~~7. The service which the accused is allowed to reckon towards discharge is~~

~~8. The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~(or is in possession of or entitled to)~~. ~~State any air force decoration or reward.~~

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

11. ~~(In the case of an officer.)~~ The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit ..... dated N.A., ~~and in his regiment (or corps), the rank of~~ ..... dated .....

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

..... Date of promotion.

In the rank of ..... years. N.A.

In the rank of ..... years.

In the rank of ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number L 5097 Rank Pte

Name Jean Louis Dubois of Le Régiment de Maisonneuve Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

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

Signed this ~~Fourteenth~~ Sixth day of ~~May~~ August 41

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

5J-79
#6 Dubois R.R.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H-37328 Pte Rene Rochon DUBOIS RCAMC att 1 cdn Disciplinary Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15 (1)	Guilty	Guilty	
2nd	AA 15 (1)	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present~~ under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 55 days, of which N/A days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for a period of two years.

(Sgd) ..... 28 Mar 45 (Sgd) George B. Pte Ingram

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Approved

~~I direct that the accused be not recommitted to prison or detention barracks until further order.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date 29 Mar 45 (G S N Gostling) Brigadier, Commanding 2 Cdn Base Ftt Gp

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused. Date. Signature of Offr.

H 37328 PTE RENE ROCHON DUBOIS 10 MAY 45 J.M. Calhurst Lt-Col.

Comdg, 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

G.R. #326 1-Dec-4 4/10/45

RECORDED AT CMHQ IN AB 160 5-I-79

RECEIVED 21 MAY 1945 JAG BRANCH C.M.H.Q.

CPA66 (In lieu of AFA51) 40/P & S/1898 4/388

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier G S N Gostling, ED Comd 2 CBRG dated 26 Mar 45

ACCUSED.

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

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-37328	Pte	Rene Rochon	DUBOIS	RCAMC att 1 Cdn Disciplinary Centre

PROCEEDINGS REVIEWED 2 Aug 45 E. Ingram Lt

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 28 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 30/150.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fmo RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding form number herein. See back of Convening Order, CF 885, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 1205 hours trial commences.

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

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

A5. President to accused: Do you object to ..... as interpreter? Ans ....

~~The Interpreter is sworn.~~(1) Do you object to ..... as shorthand writer? Ans ....

~~The shorthand writer is sworn.~~(1)

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans N.O.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, 96(b), p 742.)

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

President	Major	G B H COI	CAC att 1 Cdn Disciplinary Centre
Member	Major	A. E. Lefroy - Lieut-Col Hqtrs	att 1 Cdn Dis Centre
Member	Captain	J. D. Pollock - Can Fus	att 1 Cdn Dis Centre
Judge-Advocate			
Prosecutor	Lt	W. E. Lewis - L.S.H.	11 CBR Bde
Defending Offr	Captain	J. N. Lebris - R de Mais	att 1 Cdn Dis Centre

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

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

A8. The accused H-37328 Pte Rene Rochon DUBOIS before arraignment make(s) (no) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 154(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB note and name of the accused making the plea.)

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

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 885 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 5. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

2 CBRG. Vol 5 P 120

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

President to accused: Do you wish to make a statement? Ans ..... (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

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

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

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

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

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

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

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

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

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans ..... Do you intend to call witnesses on your behalf?

Ans ..... Are they witnesses as to character only? Ans .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 695. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 34(2) (a), RP 45, 120(A).* 2. *AA 34(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans ..... No .....

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to [a] soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MFB 253 or AFB 294.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes, in mitigation if punishment, but as exhibit D (2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 34(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. *Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 326, 343-344, Overseas 40, 209, 1323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 4 (1)(b), MML p 136. Where accused already under sentence of imprisonment or detention see AA 44(1)(c), 68(1), KR Con 364.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 367. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Exhibit C

No. H37328 Name DUBOIS R.R. Sqn, Battery, or Company — Corps RCAMC. Date of enlistment 27 JAN 41 — GC Badges — Service or Proficiency Pay — 3/17 MFM 6 (AFB 122) 40/PAS/1350 (5413)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD.				AA 15 (1). AWL 45 mins.		7 days forfeit of pay.	16 Sep 42	Pte II Order 42 d/28 Sep 42.	Total forf. 7 days pay.
FIELD.				AA 15 (1). AWL 6 days 13 hours.		28 days forf of pay.	8 Oct 43	Pte II Order 41 d/29 Oct 43.	Total forf. 35 days pay
FIELD				AA 15 (1). (AWL NOT SHOWN)		NOT SHOWN.	23 DEC 43	Pte II Order 91 d/31 DEC 43.	Total forf. 12 days pay
FIELD.	17 MAR 44.			AA 15 (1). (AWL from 1330 hours 17 MAR 44 to 0030 hrs. 6 APR 44.		21 days detn.	17 Apr 44.	Pte II Order 34 19 44	Total forf. 21 days pay
FIELD.			2	AA 19 DRUNKENNESS (1st offence) AA 8 (2).		28 days forf of pay	22 Feb 44	Pte II Order 33 1944	Total forf. 28 days pay.
FIELD.			1	AA 19 DRUNKENNESS (3rd Offence)		Fined $5.00	2 Sep 44	Pte II Order 40 1944.	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD			2	AA 15(1) AWL 3 days 11 hrs		28 days FP and 28 days forf of pay.	24 Oct 44	Pt II Order 47 1944	Trial forf 32 days pay

Duplicate created from MFM 4 - 24 Feb 44. Record of Conduct in Canada not available.

B. T. Saunders Capt
Officer IC Records "X"
Cdn Sec 2 Ech. HQ. 21 A. Group.

24 Feb 45

WBe

CHARGE SHEET

The accused, H-37328 Pte Rene Rochon DUBOIS, RCAMC, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 2200 hrs 28 Oct 44 until apprehended at 1300 hrs 1 Dec 44.

(Total absence: 33 days 15 hrs)

SECOND CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 0700 hrs 11 Jan 45 until apprehended at DOULLENS, France at 2300 hrs 30 Jan 45.

(Total absence: 19 days 16 hours)

In the Field
24 Mar 45

A O Hood
(A O Hood) Lt col
Commanding
1 Cdn Disc Centre

To be tried by Field General Court-Martial

In the Field
26 Mar 45

(G S W Postling) Brig
Comd
2 Cdn Base Rft Gp

FIELD GENERAL COURT-MARTIAL

CFA46 (In lieu of AFA8)
46/FA8/1997 (20052)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
H-37328	Pte		Rene Rochon	DUBOIS	RCAMC att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 26 Mar 45 endorsed by me (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial~~; (and that it is not practicable to delay the trial for reference to a superior quained offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

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

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~6. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	G B H COX		CAC att 1 Cdn Disciplinary Centre

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Major	A E LEFROY		Seaforth Highrs att 1 Cdn Disciplinary Centre
Capt	J D POLLOCK		Can Pus att 1 Cdn Disciplinary Centre

WAITING MEMBER.

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

~~JUDGE-ADVOCATE.~~

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 26 Mar 45

(Signed personally. RP 105 fn 2.)
(G S B Gostling)
Brigadier (Rank.)
Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

Exhibit "F"

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined H37328 (No.)
Pte (Rank) DUBOIS R (Name) and in my opinion he is
fit ~~unfit~~ to undergo trial by Court-Martial.

Station 1 Cdn Disciplinary Centre

Date 28 Mar 45

(Sgd) (Medical Officer)

Unit 1 Cdn Disciplinary Centre

Exhibit "D" Case

PLEA OF MITIGATION

in the Case of.

H-37328 Pte René Rochon DuBois (RCAMC)

Gentlemen of the Court:-

Pte Dubois is a soldier of 26 years old "A" Category, remustered from RCASC to RCAMC.

He enlisted Jan 41, arrived U.K. March 42 and landed in France July 44.

In action he is with his section as stretcher bearer att to an inf. regt. He likes his work but as usual because he likes it, he is posted at the H.Q. of his unit (18th Fd Ambulance) Here he asked going with forward troops but no attention to him, he felt unhappy and went AWL. I recommend his case to this Court, considering his conduct, his long service and he will be glad serving his country again!

Henri Labrie
Capt

Def. Off.
27 March 45

Note:- 55 days close arrest awaiting trial.

(1) Exhibit "A" CAC.

Summary of Evidence in the case of H-37328 Pte Rene Rochon DUBOIS, RCASC, attached to 1 Can Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charges - Absence without leave (two charges)

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 49 dated 17 Nov 44 and Pt II Order No 54 dated 21 Dec 44.

Exhibit "B" - Certified true copy of Extract from Pt II Order No 12 dated 25 Jan 45.

Exhibit "C" - Certificate of apprehension dated 30 Jan 45.

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that pp 4 (C) (D) (E) (F) and (G) have been complied with.

Maurice Rousseau Capt
(Maurice Rousseau) Capt
Officer detailed to take Summary of Evidence.

Dated in the Field
24 Mar 45

Exhibit 'A'
W. Rousseau Capt

PART II ORDER EXTRACT FORM

TO: D & P.

99/20 18 Cdn Fd Amb/1 (A 5e)

20 MAR 19 45

EXTRACTS FROM: UNIT 18 Cdn Fd Amb., RCAMC.

Part II Order No. 49 dated 17 NOV 44

ABSENT WITHOUT LEAVE
AWL from 2200 hrs 28 OCT 44 Still absent 2200 hrs 5 NOV 44 (8th day)
H37328 Pte DUBOIS R R

Part II Order No 54 dated 21 DEC 44

STRENGTH INCREASE
TOS on app from des wef 1300 hrs 1 DEC 44
H37328 Pte DUBOIS R R

The following documents are { attached. Please acknowledge receipt on attached duplicate. MAR 20 1945
required. Please forward same.

Info

Certified to be a true extract from the regimental books and documents in my custody.

G. E. Marin Lt
Officer IC Records
Cdn. Sec. 2 Ech. HQ 21 A Gp.

Originating Clerk's Initials WSC

(G E MARIN) Lt. for
Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70 ECH—6 10 P & S 1276 (6704)

TO:

PART II ORDER EXTRACT FORM

Exhibit M. Rousseau & Co

99/20

MAR 20 1945 19

EXTRACTS FROM: Unit X-4 List (12 Bn) RCAMC

Part II Order No. 18 para 7(a) dated 25 JAN 45

ABSENT WITHOUT LEAVE

AWL from 0700 hrs,11 JAN 45 Still absent 0700 hrs 19 JAN 45 (8th day)

H37328 PTE DUBOIS R R X-4 (12 Bn)

Certified to be a true extract from the regimental books and documents in my custody.

Officer IC Records

The following documents are attached. Please acknowledge receipt of attached duplicate.
required. Please forward same.

Originating Clerk's Initials

EOH—6
40/P & S/1276 (5737)

Officer in Charge for
Canadian Section, GHQ, 2nd Echelon

Exhibit 5

M. Rousseau Capt

PART II ORDER EXTRACT FORM

TO:

99/20/

MAR 20 1945 19

EXTRACTS FROM: Unit X-4 List (12 B") RCAMC

Part II Order No. 18 para 7(a) dated 25 JAN 45

ABSENT WITHOUT LEAVE

AWL from 0700 hrs, 11 JAN 45 Still absent 0700 hrs 19 JAN 45 (8th day)

H37328 PTE DUBOIS R R X-4 (12 Bn)

Certified to be a true extract from the regimental books and documents in my custody.

G. E. Marin Lt

Officer IC Records

Cdn. Sec. 7 Ech. HQ 21 A Gp.

The following documents are attached. Please acknowledge receipt on attached duplicate.
required. Please forward same.

Originating Clerk's Initials

for

Officer in Charge
Canadian Section, GHQ, 2nd Echelon

ECH—6
40/P & S/1276 (5757)

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT, SECTION 163 (1)(4) Exhibit 'C'

I certify that No. 434328 Rank Pte Name DUBOIS R. W. Parrasseau Cap

of 18th Field Ambulance R.C.A.M.C. (unit) was arrested at

DOULLENS (SOMME) (place) at 23.00 hrs on 30.2.45.

(date)..... Signature of Provost Marshal, AMS., or other Officer into whose custody the a/n person was taken on arrest.

Signature and rank Emmanford Lieut.

Unit or appointment 82 J.S.I.S. C.M. Police.

NOTES

1. This certificate must be signed personally by the officer concerned.
2. In no circumstances may it be signed by one officer 'for' another, or by anyone not holding commissioned rank.
3. In no circumstances should the place of apprehension be described as 'In the Field' The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

Certified true copy of Extract from Pt II Order No 49 dated 17 Nov 44 and Pt II Order No 54 dated 21 Dec 44 "A"

Certified true copy of Extract from Pt II Order No 18 dated 25 Jan 45 "B"

Certificate of apprehension dated 30 Jan 45 "C"

I, H-37198 Pte DUBOIS R P, hereby certify that I have received one copy of Charge Sheet and one copy of Summary of Evidence free of charge on 24 Mar 45

R Dubois

Exhibit "B" [illegible]

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H-37328	Pte	DUBOIS RR	RCAMC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For 15 (1) AWL	2	5	times.
For 19 Drunkenness	2	2	times.
For 8 (2)	1	1	times.
For			times.

Date of first entry in Field Conduct Sheet 16 Sep 42

Date of last entry in Field Conduct Sheet 24 Oct 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for NIL beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 55 days in military custody, *i.e.*, NIL days in open arrest, 55 days in close arrest; of which No days were spent in hospital.

5. The present age of the accused is 26 years 2 months old

6. The date of his attestation ~~[illegible]~~ is 27 Jan 41

7. The service which the accused is allowed to reckon is

8. The accused is in possession of‡ CVSM & Clasp

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of ////////	
In the war substantive rank of ////////	
In the acting rank of ////////	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27835) Wt.24939-3404 24,000 7/44 A.& E.W.Ltd. Op.699 Forms/B.296(War)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		No record of conviction by Court-Martial on MFM 6		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the [illegible] books in my custody, are correct to the best of my knowledge and belief.

[illegible] Offr.
I Cdn Dis[illegible] Centre

Signed this 27th day of March 45

40-131

Pte Dubois T.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: J 123132 Pte T. DuBois 85 Coy Buffs Coy RCASC

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	18(4) AA	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

JWB

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 192 ~~210~~ days, of which 40 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for one hundred & three days (112 days)

J. A. G. Black

(Sgd) ..... 13 Dec 1944 (Sgd) ..... President. (RP 42, 50.) AFJIM

Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and dispose of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

(Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51–56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be witnessed before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally: AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirm

I direct that the accused be not committed to ~~prison~~ a detention barracks until further ordered. (1) DAB

(1. AA 57A. Delete if not used.)

(Sgd) E. L. Burrows Maj Gen

Date 8 Jan 45 Commanding Officer in Command Troops

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
J-123132 Pte DUBOIS T.	11 Jan 45	Capt BNF

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

I certify that these are the proceedings of the trial of the accused named in Part I and that the sentence is in accordance with the confirmation of the said trial.

DAB Maj Gen Comdg 21 A Gp

RECORDED AT CMHQ IN AB 160 118-131

FIELD GENERAL COURT-MARTIAL

CFA56 (To take place of AFA3) 40/P & S/1868 (4050) 4/38B

Convened by Order of Brig R.A.S. Browne Comd Second Army Tk dated 11 Dec 1944

ACCUSED.

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

Number	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
J 123132	Pte	KIL	THEOPHILE	DUBOIS	85 Coy Buffalo RCASC

PROCEEDINGS REVIEWED

REVIEWING OFFICER

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 13th Dec 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 18/147-

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

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

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 1? hours trial commences.

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

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

A5. President to accused: Do you object to ..... as interpreter? Ans ..... JWB

~~The Interpreter is sworn.~~ Do you object to ..... as shorthand writer? Ans .....

~~The shorthand writer is sworn.~~ (1)

(1. RP 72. Delete, if now employed.)

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

Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

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

President	Major	J. A. G. Black	AFJIM
Member	Capt	R. G. Osborn	RA 101 Regt SP
Member	Capt	E. J. M. Hughes	85 Coy Buffs RCASC
Judge-Advocate	~~Trial Judge~~	~~R. Metcalfe Judge~~	~~Gen List Judge~~
Prosecutor	Lieut	R. Metcalfe	Gen List
Defending Offr	Capt	D. S. Stephens	85 Coy Buffs RCASC

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

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

A8. The accused J 123132 Pte T. DuBois before arraignment makes(s) (no) ~~a~~ plea (3)

(3. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

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

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A96a to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

JWB A10. The Court ~~dissolved~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

3. *As to responsibility of President to accused see RP 59, 60*(*C*)*; powers and duties of JA see RP 103; duty of Prosecutor see RP 68*(*A*) (*B*)*; duty and privileges of accused and Defending Offr see RP 60*(*C*), *87*(*C*), *91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87*(*C*), *92*(*B*), *and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17*(*E*) *fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

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

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

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

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

President to accused: Do you wish to make a statement? Ans. No (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his ~~(their)~~ plea(s) of Guilty ~~to Not Guilty to~~ charge(s). The accused is (are) so informed, and he (they) ~~(his) (their)~~ change(s) his (their) plea(s) (it) ~~(them)~~ charge(s). Part 1 of the Schedule is amended accordingly(2). JJP JJP

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

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

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex X, initialled and read aloud by the President.(1)

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

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

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

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

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and masking on appropriate record thereof on a separate sheet.*)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ~~No~~ (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60*(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans. ..... Do you intend to call witnesses on your behalf?

Ans. ..... Are they witnesses as to character only? Ans. .....

(1. *RP 115.* 2. *RP 40*(*A*), *see 80*(*D*). 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 3.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF para E. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46*(*A*) *fn 1, 84*(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103*(*b*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117*(*A*). *See Notes in Part I of Schedule.* 2. *RP 44*(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54*(*3*) (*a*), *RP 45, 120*(*A*). 2. *AA 54*(*7*), *RP 45, 117. This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. Yes (marked 'B' att)

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37*(*C*) *fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Services(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and ~~D~~ respectively.(3)

(1. *MFB 353 or AFB 294.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes (marked 'Y' att) (2)

(1. *RP 37*(*C*), *46*(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27*(*F*) *fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54*(*6*), *RP 120*(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71* (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119*(*A*), *KR Can 808, 1281, 360-366, Overseas AO 308, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 44*(*2*), *MML p 130. When accused already under sentence of imprisonment or detention see AA 44*(*1*) (*b*), (*d*)(*i*), *KR Can 564.* 2. *RP 50. As to release from arrest for Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

J. M. G. Blais
Major

CHARGE SHEET.

The accused, No. D-123132 Private DUBOIS, T., of 85 Canadian Bridge Company, R.C.A.S.C., attached to 21 Army Group Court Martial Centre, a soldier of the Canadian Army Overseas, is charged with :-

Army Act, Section 18(4).

WHEN ON ACTIVE SERVICE STEALING PUBLIC PROPERTY

in that he

in the field on or about 6 Nov 1944 stole 2 gallons of petrol public property.

Capt, RWF.
Cond 21 Army Group Court Martial Centre.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

Brigadier.
Commander, Second Army Troops

J.H.G. Black
Major

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-123132	Pte	Nil	THEOPHILE	DUBOIS	85 Cdn Bridge Coy RCASC.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) Dec 44 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~) Dark

(Delete part in brackets when not required for compliance with RP 105(C).)

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

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.) Dark

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	J.H.G. BLACK	A. & S.H.
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Captain to be detailed by Comd 101 Rft Gp.

Captain	E.J.M. HUGHES	85 Cdn Br Coy RCASC
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

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

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium (Country.) — Dal Simone (Signed personally. RP 105 fn 2.) — Brigadier. (Rank.)

Dat 12 December 1944. Commanding Second Army Troops.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 96 (In lieu of AFA 2) 40/P & S/1697 (8142) *(See overleaf for oaths and notes for use on trial.)*

MEDICAL OFFICER'S CERTIFICATE

I certify that No D-123132 Rank Pte Name DUBOIS T

Regiment 85 Cdn Bridge Coy, RCASC. is +

to undergo trial by Court-Martial.

Dated 13 DEC 44 Signature of the Medical Officer

+ Insert "fit" or "unfit"

SUMMARY OF EVIDENCE IN THE CASE OF D-123132 PTE. DUBOIS T
85 CDN BRIDGE COY R.C.A.S.C. A SOLDIER OF THE CDN ARMY OVERSEAS

The Officer Commanding directs that all evidence be taken under oath.

FIRST WITNESS Capt. J.R. Godfrey Elliott 146336 REME att to 143 Fd Pk Sqn RE having been duly sworn states:

"I am Capt. J.R. Godfrey Elliott of REME. On 6 Nov 44 at approximately 1230 hrs, I saw outside of my area a private motor car standing between two army vehicles and at the back of the motor car was a civilian and a soldier talking. I waited a few minutes and the soldier saw me, he then started to walk around the car and I approached him. I then asked him whose car it was, he replied "it is mine". I asked him what he meant by saying it was his motor car and he replied to this question "I stole the car when I was up forward and as I cannot use it I am selling it to this gentleman". I then asked him for his name and unit. I approached the civilianx and asked him his name and address. I then took the car registration number, make and engine n mber. Having done this I started to walk away and just as I was about to leave both of them the driver Dubois remarked "an American officer gave it to me". I then reported this to Major Bloomer O.C. 143 Fd Pk Sqn RE.

The accused proceeded to cross examine the witness.

Q. Did you see me sell petrol?

A. No.

The accused declined to further cross examine this witness.

Signature of witness
J.R. Godfrey Elliott. Capt. R.E.M.E

SECOND WITNESS Mr. Johannes Gerardessy ERAS of Bosscherueg 7, Tilburg having been duly sworn states:

"I am the owner of Piquor Saloon Car Registration No. N-47678 and on Monday 6 Nov 44 I lent it to a soldier who I had met on previous days outside my fathers house, No. 84 Oefairkestroat. I lent him the car at about 9.30 AM to drive where he wanted. At abo t 1215 hrs I returned to my fathers house when I saw my car and the soldier who had borrowed it. He thanked me for the use of it and gave me three litres of petrol from a can which he took from the side of an army vehicle. I think the can contained about 20 litres.
The soldier who borrowed the car from me was short with dark hair, but I do not know his name.
Being in front of me now, I do recognize the soldier as being the man to whom I lent my car.

Signature of witness
Eras

The accused decline to cross examine this witness

Question to the accused.

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

Answer by the accused:

I wish to make the following statement:

"On 6 Nov 44 I borrowed Mr. Eras private car to go for a ride at 0930 hrs and I came back at 1030 hrs. Having used his car for one hour I put two gallons of petrol in his tank and returned the car to him".

Signed
Theophile Dubois

I certify that the foregoing Summary of Evidence was taken down in large hand in the presence and hearing of the accused and that Rules of Procedure 4(c)(d)(e) and (f) have been complied with.

W. Fortier, Lieut.
Officer detailed to take the summary of evidence

Summary of Evidence in the Case of D123132 Pte Dubois T., 85 Edn Bridge Coy R.C.A.S.C., a soldier of the Canadian Army Overseas.

J. H. G. Stoll
Major

The officer Commanding directs that all evidence be taken upon oath.

First Witness: Capt. J. R. Godfrey Elliott. 146336 REME.

Att. to 143 Sd PK Sqn R.E.
I am Capt. J. R. Godfrey Elliott of R.E.C.E.
On Nov. 6th at appox. 12 30 hrs. I saw at the outside side of my leag area a private Motor Car standing between two army Vehicles at the back of the Motor Car was a civilian & soldier talking, I waited a few minutes and the soldier saw me, he then started to walk around the car and I approached him, I then asked him whose car it was, he replied: "It is mine" I asked him what he meant by saying his motor car and he replied to this question, I stole the car when I was up forward and as I cannot use it I am selling it to this gentleman. I then asked him for his name and Unit. I approached the civilian and asked him his name and address. I then took the car registration number, make and engine number. Having done this I started to walk away and just as I was about to leave both of them, the driver Dubois remarked "an american officer gave it to me" I then reported this to Major Bloomer O.C 143 Sd PK Sqn RE

The accused proceeds to cross-examined the witness.

Q - Did you see me sell petrol
A - No.

The accused declined to further cross examine this witness.

Signature of Witness.

J. R. Cooper-Elliott
Capt.
E.M.E.

Second Witness:

Theophile Dubois.

Mr. Johannes Gerardissy Eras.
of Bosscherweg 7
Tilburg.

I Johannes Gerardissy Eras. of Tilburg having been duly sworn states that:

I am the owner of Peugeot Saloon Car Registration No. N. 47678, and on Monday the 6th November I lent it to a soldier who I had met on previous days outside my father's house. No 84 Cfoirkestraat. I lent him the car at about 9.30 A.M. to drive where he wanted. At about 12.15 P.M. I returned to my father's house when I saw my car and the soldier who had borrowed it. He thanked me for the use of it and gave me three litres of petrol from a can which he took from the side of an army vehicle. I think the can contained about 20 litres.

The soldier who borrowed the car from me was bent with dark hair, but I do not know his name.

Being in front of me now, I do recognize the soldier as being the man to whom I lent my car.

Theophile Dubois

Signed:
Eras.

Question to the accused:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence?

Answer by accused:

I wish to make the following statement:

On November 6, I borrowed Mr. Eras private car to go for a ride at 0930 hrs and I came back at 1030 hrs. Having used his car for one hour I put two gallons of petrol in his tank and returned the car to him.

Signed:

Theophile Eudeois

I certify that the foregoing Summary of Evidence was taken down by me in long hand in the presence and hearing of the accused, and that rules of procedure 4(C)(D)(E) and (F) had been complied with.

Whitaker Lieut.

Officer detailed to take the Summary of Evidence

11/11/44

Evidence as to character

B
J.H.G. Black
Major

No D 123132 Pte T. DUBOIS
85 Cdn Br Coy RCASC

Lieut G. E. MATHIEU 85 Br Coy RCASC sworn states:-

I have known the accused for about a year. He is in my platoon. He has conducted himself correctly and has always been reliable. I should be glad to have him back in my pl.

Statement of Mitigation by Defending Officer

I feel that though the accused has technically committed the offence the amount stolen and circumstances surrounding incident form strong motives for mitigation. Accused had got to Ruda Estate a young lady. He borrowed the car with the owners consent to take his lady friend for a ride and gave the petrol out of gratitude. The accused committed the offence more in a social mood than a criminal. He obtained no money or gain himself. I request the Court to be lenient as it was foolishness rather than Criminal.

ARMY FORM B.296 (WAR). C

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-123132	Pte	DUBOIS, T	85 Cdn Bridge Coy RCASC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 40. three times.

For AA Sec 15 (1) one times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 3-2-42

Date of last entry in Field Conduct Sheet 24-11-43

2. ~~[illegible]~~

*3. ~~[illegible]~~ day of .....

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 36 days in military custody, *i.e.*, 22 ~~26~~ days in open arrest, 14 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 26 yrs 9 mo 8 days

6. The date of his attestation ~~[illegible]~~ is 5 May 41

7. The service which the accused is allowed to reckon is 3 yrs 6 mos 15 days

8. ~~[illegible]~~†

†State the military decorations (if any) held by accused.

9. ~~[illegible]~~

Date of Promotion.

In the substantive rank of .....

In the war substantive rank of .....

In the acting rank of .....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W: 55900/1602 20,000 3/54 51-4781. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N/A		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 30th day of November 44

[signature] Lieut & Adjt
55 Old Bridge Coy R.C.A.S.C.

4T-89

Pte. Dubois W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D-16523 Pte Wilfred DUBOIS - GIC - 2 CITR

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd	AA Sec 24(2) Alternative	GUILTY	GUILTY	
3rd	AA Sec 24	WITHDRAWN		
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo 2 Admonitions per a period of 90 days and to forfeit One (1) Year and to be put under Stoppages of Pay until he has made good $20-1-10 the exact sum of which he defrauded the Canadian Government and to return to his unit 16 Feb 45" (Sgd) [illegible] President. (RP 45, 50)

Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 780.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567 577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : I confirm the findings & the sentence but remit three months detention from the sentence

I direct that the accused be not committed to prison or detention barracks until further order.(1)

(1. AA 57A. Delete if not used.)

(Sgd) B.B. Evans Col

Date 16 Feb 45 Commanding 2 Can Inf. Trng. Bde.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 577.)

Accused D 16523 Pte Dubois W

Signature of Offr.

ENTERED ORDER BOOK No. 48
DATE 26 Feb 45
BY [illegible]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 47-89

RECEIVED 5 MAR 1945 S.J.A. BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA66 (To lieu of AFA3) 40/P & B/1608 (6/44) 4/38B

Convened by Order of Brigadier K G Blackader Comd 13 CITB dated 14 Feb 45
DSO, MC, ED

ACCUSED.

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

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D 16523	Pte	Wilfred	DUBOIS	GIC 2 CITR

PROCEEDINGS REVIEWED

[signature] Capt. 7 Mar 45 & FDS

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date) 16 FEB 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which matters are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2)
The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4)

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

A3. The Court is opened. The accused is (are) brought before the Court. At 1245 hours trial commences.

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

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

~~A5. President to accused : Do you object to ..... as interpreter ? Ans .....~~

~~The Interpreter is sworn.~~(1) Do you object to [illegible] as shorthand writer ? Ans NIL
The shorthand writer is sworn.(2)

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

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

Ans NIL(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

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

President	Lt Col	D L KELLMAN	HQ CRU
Member	CAPT	J H MEDHURST	2 CIR
Member	LT	A CONTENT	4 CIR
~~Judge Advocate~~			
Prosecutor	LT	P. SAPERIA	2 CIR
Defending Offr	LT	R.A. STERN	2 CIR

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

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

A8. The accused ..... before arraignment make(s) (no) (~~if~~) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), (G)), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the submission made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

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

(1. RP 20, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)
President to accused : Do you wish to make a statement ? Ans ~~I am sorry I did it~~ (5)
(*1. RP 37(E). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(1) (a), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans ~~I've been punished NOTE-BOOK~~
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ~~B~~ and Ex ~~C~~ respectively.(3)
(*1. MFB 335 or MFB 294. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans ~~Very Sorry Offr~~ NOTE-BOOK (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any.~~(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3), 68(1), KR Can 564. 2. RP 50. As to release from arrest for Confirming Offr see KR Can 567. As to custody and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Old Sheet destroyed 17-3-41

No. D16523 Name DUBOIS W. Sqn, Battery, or Company Corps CIC Date of enlistment 17-9-40 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/P&S/136 (7910)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10-12-41	Pte		AA Sec 40 Conduct to the prej. Wearing a tie	L/C Peterson L/C Miller	7 days C.B.	19-12-41	Major Stirritt	
Field	3-10-42	Pte		AA Sec 15 (1) AWL from 0745 hrs 1 Oct 42 to 1200 hrs 2 Oct 42. Absent 1 day, 4 hrs, 15 min.	L/C Allen A/Cpl Murray	10 days pay FR&I 149-2	3-10-42	Major McClintock	2 days pay FRI 149-1-s
Field	12-12-42	Pte		AA Sec 15 (1) AWL 1600 hrs 12 Dec 42 till 0700 hrs 14 Dec 42. Absent 1 day 15 hours. (Absent from Guard Duty)	L/C Wickens	14 days C.B.	14-12-42	Maj. G.A. McClintock	2 days pay

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18-12-42	Pte	✓	AA Sec 9(2) Disobeying a lawful command given by a superior officer.	Cpl Sinclair A/Cpl Aiken	14 days F.P.	19-12-42	Maj. C.A. McClintock	14 days pay
Field	21Aug44	Pte	✓	AA Sec 15 (1) AWL from 2230 hrs 21 Aug 44 till 1800 hrs 7 Sep44 (16 days, 19 hrs, 30 min)	Documentary	14 days detn.	9 Sep 44	Col. G.H. Whyte	17 days pay FRI 2 days pay FRI
Field	2Nov44	Pte	✓	AA Sec 15 (1) AWL from 0745 hrs 13 Oct 44 till 2305 hrs 31Oct44 (18 days 15 hrs, 20 min)	Documentary	28 days pay	2Nov44	Major M. Martin	19 day s pay 28 days F.P. Cost of app.£2/10/8½

CERTIFIED TRUE COPY CONSISTING OF 1 PAGES
DATE....8 Feb 45.

[signature]
(W.H.J. Dearness) Lieut
Officer Having Custody of Regimental Books

CHARGE SHEET

The accused, No. D-16523 Private Wilfrid DUBOIS, C.I.C., on strength of 2 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15(1) Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

In the Field, at 0745 hours, 3 Nov 44, illegally absented himself without leave until he was apprehended by the R.C.A.F. at Slough at 1245 hours, 1 Feb 45, thereby incurring cost of apprehension and return in the amount of £0-1-10.

(Total Absence: 90 days, 5 hours)

SECOND CHARGE
Sec 9(a) Army Act

WHEN ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

In that he

At Henrietta Street Detention Room at about 1930 hours, 2 Feb 45, when ordered to scrub the area of floor allotted to him, did not do so.

THIRD ALTERNATIVE CHARGE
Sec 40 Army Act

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

At Henrietta Street Detention Room at about 1930 hours, 2 Feb 45, when ordered to scrub the area of floor allotted to him, neglected to do so.

Laurentide Camp

9 Feb 45.

(J A Wilson) Col
Comd
2 C I T R

To be tried by Field General Court Martial.

(H W Blackader) Brig
Comd
13 Cdn Inf Brg Bde

In the Field
12 Feb 45

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D16523	Pte		Wilfrid	DUBOIS	CIC 2 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 Feb 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

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

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

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

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	D L MCNAB, VD	MG CON

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by Commanding Officer	2 CITR
Lieutenant	to be detailed by Commanding Officer	4 CITR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	to be detailed by Commanding Officer	2 CITR

JUDGE ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

Date 14 Feb 45

K Blackader
(Signed personally. RP 105 fn 2.)

Brigadier
(Rank.)

Commanding 10 Cdn Inf Bde
(K G Blackader)
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

4/38A (Page 1 to Secn of AFA2)
60-9 & 6/1607 (4603)

MED OFFRS CERTIFICATE 2 CITR/A1

K.R.Can Para 557

I certify that I have this morning examined No. D.165.23.....

...PTE...DUBOIS.....W..... and in my opinion he

is FIT to undergo trial by Court-Martial.

Station: Laurentide Camp .....[signature].....Capt.

(RCAMC) Attached to 2 CITR

Date: 16 FEB 45

CASE OF

D-16523 Pte DUBOIS, W. 2 CITR

E-1. STATEMENT BY ACCUSED
(UNDER OATH)

At the time mentioned in Henrietta Street one of the Provost asked me to take a pail and brush and put some water into it and took me upstairs to the Provosts quarters and asked me to scrub the floor. I said I don't think I Have to do that. They took me down stairs xxxxxx to another cell then the Sergeant of the Provost corps came down and asked me "Do you refuse to wash the floor upstairs?" and I said I still think that I dont have to do it. The Sergeant then said "Do you refuse to wash the cell floor" I said no. He said "I will put you on charge for refu sing to obey an order," so there was nothing else I could do about it. The next day I was still in there, and they asked me to scrub the floor again where I was in the cell so I did wash the cell and the floor. I did not say I would not wash the floor I merely said I did not think it was my duty to do it. I did not wash the floor upstairs. There was a pail and brush there. I had a chance to start washing the floor but instead I xxxxxx asked a question.

E-1 AM

Plea in Mitigation

Pte. Dubois

i. This man joined the army on 17 Sep. 40
He came over in July 41. and was
ready to see action with the engineers

ii On 25 Sep 44 he was transferred to infantry
& sent to Can. Fus.
He immed. put in to go on draft.

iii But this man was trained for the engineers
~~and~~ he was told he'd have to undergo
inf. training.

iv Soon after this he was put on the kitchen
& at this time he went AWL.

v. He's a single man with a good army
record — this is his first court-
martial.

vi He hasn't seen action yet and it
is still his desire to be on a
draft.

vii

E-3
MM

A. Stern Jr.

(P.T.O.)

SUMMARY OF EVIDENCE

In the case of D-16523 Pte Wilfrid DUBOIS, C.I.C., on strength of 2 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

Lieut. H.J. Boake, Regimental Headquarters 2 CITR, having been duly sworn, states as follows:-

"I am Lieut. H.J. Boake, Regt HQ 2 CITR, and I Produce as exhibits for the prosecution:

Exhibit "A":- Certified True Copy of the Record of Declaration of Court of Inquiry, assembled in Laurentide Camp, on 8 Dec 44, declaring that D-16523 Pte. DUBOIS, W., illegally absented himself without leave at 0745 hrs, 3 Nov 44, and that at the date of the Court he was still so absent.

Exhibit "B":- Certificate of expenses incurred in the apprehending and returning of D-16523 Pte DUBOIS, W. to London from Slough, which certificate is dated 2 Feb 45, and shows an amount of £0-1-10.

Which above exhibits pertain to the accused herein."

The accused declines to cross-examine this witness.

H.J. Boake

(H.J. Boake) Lieut.

SECOND WITNESS FOR THE PROSECUTION

R.60882 P/Sgt RAISTRICK, J., RCAF, 2 CTD, Slough, Bucks.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence and marked Appendix "A".

Having regard to the expense and loss of time involved, attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

P. Saperia

(P. Saperia) Lieut.
Officer detailed to take the Summary of Evidence.

THIRD WITNESS FOR THE PROSECUTION

F.97014 L/Cpl LYNK, M.F. No.6 (Area) Coy Cdn Prov Coy.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence and marked Appendix "B".

Having regard to the expense and loss of time involved, attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

P. Saperia

(P. Saperia) Lieut.
Officer detailed to take the Summary of Evidence.

SUMMARY OF EVIDENCE

FOURTH WITNESS FOR THE PROSECUTION

A.56131 L/Cpl SWIGART, V.A. of No. 6 (Area) Coy, Cdn Provost Corps.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence and marked Appendix "B".

Having regard to the expense and loss of time involved, attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

.....
(P. Saperia) Lieut.
Officer detailed to take the Summary of Evidence.

The accused was cautioned as follows:

"Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of TWO pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

Laurentide Camp

7 Feb 45.

.....
(P. Saperia) Lieut.
Officer detailed to take the Summary of Evidence.

EXA

Plea in Mitigation

Pte. Dubois

i. This man joined the army on 17 Sep. 40
He came over in July 41. and was
ready to see action with the engineers

ii On 25 Sep 44 he was transferred to infantry
& sent to Can. Fus.
He immed. put in to go on draft.

iii But this man was trained for the engineers
~~and~~ he was told he'd have to undergo
inf. training

iv Soon after this he was put on the kitchen
& at this time he went AWL.

v. He's a single man with a good army
record - this is his first court-
martial.

vi He hasn't seen action yet and it
is still his desire to be on a
draft.

vii

E-3 [illegible]

[illegible]

(P.T.O.)

ADDITION BY DEF OFFR

respecting the 2nd charge I would like to bring out that the accused did not make a statement to the effect that he would not carry out the order but merely expressed the opinion that he did not think it was his duty to carry out this command. The NCO made no attempt to explain to him that it was his duty and give him a 2nd chance with the knowledge that the NCO would have given him so therefore he should not receive a heavy sentence for this offence.

E-3

M

SUMMARY OF EVIDENCE

In the case of D-16523 Pte Wilfrid DUBOIS, C.I.C., on strength of 2 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

Lieut. H.J. Boake, Regimental Headquarters 2 CITR, having been duly sworn, states as follows:-

"I am Lieut. H.J. Boake, Regt HQ 2 CITR, and I Produce as exhibits for the prosecution:

Exhibit "A":- Certified True Copy of the Record of Declaration of Court of Inquiry, assembled in Laurentide Camp, on 8 Dec 44, declaring that D-16523 Pus. DUBOIS, W., illegally absented himself without leave at 0745 hrs, 3 Nov 44, and that at the date of the Court he was still so absent.

Exhibit "B":- Certificate of expenses incurred in the apprehending and returning of D-16523 Pte DUBOIS, W. to London from Slough, which certificate is dated 2 Feb 45, and shows an amount of £0-1-10.

Which above exhibits pertain to the accused herein."

The accused declines to cross-examine this witness.

H.J. Boake

(H.J. Boake) Lieut.

SECOND WITNESS FOR THE PROSECUTION

R.60882 F/Sgt RAISTRICK, J., RCAF, 2 CTD, Slough, Bucks.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence and marked Appendix "A".

Having regard to the expense and loss of time involved, attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

P. Saperia

.....

(P. Saperia) Lieut.
Officer detailed to take the Summary of Evidence.

THIRD WITNESS FOR THE PROSECUTION

F.97014 L/Cpl LYNK, M.P. No.6 (Area) Coy Cdn Prov Coy.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence and marked Appendix "B".

Having regard to the expense and loss of time involved, attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

P. Saperia

.....

(P. Saperia) Lieut.
Officer detailed to take the Summary of Evidence.

SUMMARY OF EVIDENCE

FOURTH WITNESS FOR THE PROSECUTION

A.56131 L/Cpl SWIGART, V.A. of No. 6 (Area) Coy, Cdn Provost Corps.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence and marked Appendix "B".

Having regard to the expense and loss of time involved, attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

.....
(P. Saperia) Lieut.
Officer detailed to take the Summary of Evidence.

The accused was cautioned as follows:

"Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of TWO pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

Laurentide Camp

7 Feb 45.

.....
(P. Saperia) Lieut.
Officer detailed to take the Summary of Evidence.

E+A

Exhibit A

RECORD of the Declaration of a Court of Inquiry assembled at Laurentide Camp on the 8th day of December 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D 16523, Fus. Dubois, W.

DECLARATION

The Court declare that No. D 16523, Fus. Dubois, W.
1 Bn Canadian Fusiliers, CA
illegally absented himself without leave
at 0745 hrs on the 3rd day of November, 1944,
that he is still so absent, and that on the 3rd November, 1944 he was deficient, and
that he is still deficient of the following articles :—

ARTICLES		£	s	d	£	VALUE s	d
Anklets, web	pr 1		4	5		3	4
Blouses, B.D.	1	1	3	6	1	7	7½
Boots, ankle	pr 1	1	4	5		18	4
Cap, F.S.	1		2			1	10½
Drawers, cell.	1		1	11		1	5
Greatcoat, drab	1	2	11	8	1	18	9
Shirts, angola	1		9	1		6	9½
Shoes, canvas	pr 1		2	11		2	3
Socks, prs	3		5	0		3	9
Trousers, B.D.	1	1	4	1½		18	1½
Badges, cap	1			4½			3½
Braces.	1		1	4		1	0
Brasses, button	1			2			1½
Brushes, shoe.	1		1	3			11½
Brushes, tooth	1			6			4½
Combs, hair.	1			2			1½
Forks, table.	1			4			3

ARTICLES		£	s	d	£	VALUE s	d
Knife, table	1			8			8
Razor, safety	1			3			2½
Spoon, dessert	1			4			3
Towels, hand	2		2	10		2	1½
Braces, WE.	1		1	4		1	1
Haversack	1		6	0		6	0
Straps, Shldr	2		2	10		2	2
Tins, Mess TP	1		1	7		1	1½
Mugs, drink.	1			7			5½
Brushes, Clothes	1		2	2		1	7½
Totals....		£	8	14	4	£ 6	10 11

Certified Correct.
W. C. Toombs, Capt.
Quartermaster.

Lt. L.W. Hamilton, (CIC) President
Lt. F.B. Maddox, (LAMR) Member
Member

Signed at Laurentide Camp.
this 8th day of Dec 1944

Signature of Commanding Officer J. A. Wilson, Colonel, Comd. 2 CITB

Certified true copy
Signature of Officer having custody of original record

3/60B MFB 375-AFB 115 60/PAS/392 (6610)

Expense Voucher Re—

Ref: KR & O (Can) 539 Exhibit B

Reg No. D-16573 Rank Pte Name Dubois, W Unit 2 C I T R

The following expenses were incurred in apprehending and returning the M/N Soldier to his ~~Unit from~~ London from Slough

Date	Particulars (1 person)	Amount		
2 Feb 45	Escorts return fare from LONDON To Slough			11
	Prisoners single fare to LONDON From Slough			11
	Prisoners fare from to			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		1	10

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

J. A. Thomson LIEUT.
J. A. THOMSON,
ADMIN. OFFICER—D.P.M's BR.
C.M.H.Q.

Officer Issuing Railway Warrant and Expense monies Capt
No. 6 Area Provost Company, Canadian Provost Corps, London

/35 CMHQ 100 55
40 P & S 483 (6762)

Appendix A

Statement of evidence in the case of :-

SPR. DUBOIS W. D16523.

Sir

Acting on information received Det. Sgt HARMAN of the Burnham Police & myself, F/Sgt Rawlinson J R60882 RCAF 2 CTD. went to the British Technical Cork Products Ltd factory at Slough Bucks. There we saw & questioned SPR. DUBOIS. W. She was working under the assumed name of Wilfred Woods.

Dubois admitted to being a Canadian & absent from his unit Canadian Fusiliers since November 1944.

I placed Dubois in close arrest at 1245 hrs. 1. 2. 45.

J Rawlinson F/Sgt.
R60882 RCAF
2 CTD
SLOUGH
BUCKS.

1. 2. 45

Appendix B

CHARGE

Army Form B 252
(See King's Regulations)

#.2.C.I.T.R. (CRU) Regiment

Battery
Squadron
Troop or
Company

CHARGE against No. D-16523 Rank Pte.

Name Dubois W.

Place London Date of Offence 2-Feb-45

OFFENCE W.O.A.S. failed to comply with an order given by an N.C.O. of the Cdn. Pro. Corps whilst in the execution of his duties.

R E Birch CAPT.
R. E. BIRCH, D.A.P.M.
C.M.M.D.

Names of Witnesses :—

L/Cpl Lynk No.6.(Area) Coy.Cdn.Pro.Corps

L/Cpl Swigart No.6.(Area) Coy.Cdn.Pro.Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

3 3-44 GROPP 2WM

Statement of EVIDENCE in the case of
D-16523 pte. Dubuis W.
#.2.C.I.T.R. (CMU)

SIR:

At London at about 1930 hrs. the 2-Feb-45 I was on duty at Henriette Str. Detention Room in company with L/Cpl Swigart V. when I had occasion to order the a/m soldier to scrub the area of floor allotted to him. He said(I do not have to scrub floors).He would not do so.

I again ordered him to scrub the floors but he failed to comply with the order.

And I informed him that a charge of failto comply with an order would be laid against him

London
2-Feb-45

.....L/Cpl
F-97014 Lynk M.F.
No.6.(Area) Coy.
Cdn. Pro. Corps.

Sir:

I have read over and corroborate the a/m statement.

London
2-Feb-45

.....L/Cpl
A-56131 Swigart V.A.
No.6.(Area) Coy.
Cdn. Pro. Corps.

REMARKS

2 CITR/13

LIST OF WITNESSES

In the case of D-16523 Pte Wilfrid DUBOIS
(No.) (Rank) (Surname & Initials)

CIC, on strength of 2 Cdn. Infantry Training Regiment, a soldier of the Cdn. Army Overseas.

(For the Prosecution)

1. Lt H.J. Boake, Regt HQ 2 CITR
2. R.60882 P/Sgt RAISTRICK, J.CAF, 2 CTD, Slough, Bucks.
3. F.97014 L/Cpl LYNK, M.F. No. 6 (Area) Coy Cdn Prov Coy
4. A.56131 L/Cpl SWIGART, V.A. No. 6 (Area) Coy Cdn Prov Corps.

(For the Defence)

N I L

LIST OF EXHIBITS

In the case of D-16523 Pte Wilfrid DUBOIS
(No.) (Rank) (Surname & Initials)

CIC, on strength of 2 Cdn. Infantry Training Regt., a soldier of the Cdn. Army Overseas.

(For the Prosecution)

Exhibit "A": - Cert. True Copy of Rec. of Decl. of C.of I. held on 8 Dec 44 showing that accused illegally absented himself without leave at 0745 hrs, 8 Nov 44.

Exhibit "B": - Cert. of expenses relating to the accused showing the amount of £0-1-10.

~~Exhibits for~~
Appendix "A". Statement by R.60882 P/Sgt RAISTRICK J.
Appendix "B". Statement by F.97014 L/Cpl LYNK, M.F.
and b A.56131 L/Cpl SWIGART, V.A.

(For the Defence)

REQUEST FOR DEFENDING OFFICER

I, D-16523 Pte Wilfrid DUBOIS

hereby request that the Convening Officer appoint any suitable officer to represent me at my forthcoming trial by Court-Martial, should he be available.

Laurentide Camp,
7 Feb 45

D-16523 Pte DUBOIS, W.

RECEIPT FOR DOCUMENTS.

I, D-16523 Pte Wilfrid DUBOIS

hereby acknowledge that I have received a true copy of the Summary of Evidence taken in England preliminary to my Court-Martial, and I further acknowledge receipt of a true copy of the Charge Sheet under which I am being brought to Court-Martial.

Laurentide Camp.
7 Feb 45.

D-16523 Pte DUBOIS, W.

M.F.B. 358
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment ~~(or unit)~~
D-16523	Pte	Wilfrid DUBOIS	2 C I T

1. The following is a fair and true summary of the entries in the ~~Service and General Conduct sheets~~ ~~Regimental and Squadron, Battery or~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment ~~or appointment~~	
For	A.A. Sec 15(1)	2 times	A.A. Sec 15(1)	4 times
For	A.A. Sec 40	0 times	A.A. Sec 40	1 times
For	A.A. Sec. 9(2)	0 times	A.A. Sec 9(2)	1 times
~~For~~		~~times~~		~~times~~

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

~~or~~

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

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted.

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and 15 days in ~~Air Force~~ military custody, making a total of 15 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 24 years, 3 months.

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 17 Sep 40

~~7. The service which the accused is allowed to reckon towards discharge is~~

~~8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to ~~no air force~~ military decoration, or ~~air force~~ military reward (~~or is in possession of or entitled to~~). State any ~~air force~~ military decoration or reward. C.V.S.M. & Clasp.

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~ ~~Air Force~~

E x B

Mr

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

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

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank ..... Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

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

Signed this 16th day of Feb 45 Draperie Lieut Asst Stn Offr

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

TTT-22.
Pte Dubrow. J.

RECORDED AT CMHQ IN AD 160 777 22

FIELD GENERAL COURT-MARTIAL

CFAAR (To lieu of AFMS) 40/P & R/1608 (1/43)

4/38B

KAF Convening Order of Lt Col W. J. Stewart Comd 13 C B R Bn dated 25 July 44.

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
KAF D86247	C.I.C. Pte	Jack	Dubrow	13 C.B.R. Bn

PROCEEDINGS REVIEWED Aug 5/1944

R Corr R.

JAC

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS REVIEWED

Cdn. Sec. G.H.Q. 21 Army Gp

PROCEEDINGS OF TRIAL.

KAF Held in the Fd in (country) England on (date(s)) 25 July 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 9/79

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

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

KAF A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1)

KAF The Court is satisfied that it is properly convened and constituted;(2) accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

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

KAF A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1000 hours trial commences.

KAF A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1)

~~KAF The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~

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

KAF A5. ~~President to accused: Do you object to be tried by me as President? Ans~~

KAF ~~The Interpreter is sworn(1). Do you object to the Shorthand writer? Ans~~

KAF ~~The shorthand writer is sworn(2).~~

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

KAF Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

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

KAF President	Major	W. D. Shoveld	3 C.T.M.
KAF Member	Capt.	J. J. Stewart	C.I.C. 13 C.B.R. Bn
KAF Member	Capt.	D. F. Morris	C.I.C. 13 C.B.R. Bn
KAF ~~Judge-Advocate~~			
KAF Prosecutor	Lieut	M. A. Chicoine	C.I.C.
KAF Defending Offr	Lieut	J. G. McPhie	C.I.C.

KAF Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)

(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

KAF A8. The accused D86247 Pte Dubrow J before arraignment make(s) (no) (~~a~~) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 27), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

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

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

KAF A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 13

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
KAF 1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

KAF At present under sentence for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of (30) thirty days.

(Sgd) ..... 25 July 44. (Sgd) W. D. Shoveld Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and dispersal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 56(3), RP 120(F), MML p 760.)

(Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) P. Montague (P. J. Montague) Major
Date ..... Commanding ..... i/c Administration
Canadian Military Head Quarters, Confirming Officer.
28 JUL 1944

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D-86247 Pte DUBROW J	31 Jul 44	Extracted Copies Rec'd 1 Cdn Corps

D.O. 183 A
31 July 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

HAF President to accused : Do you wish to make a statement ? Ans No. (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para. If submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D5.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fn 14, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf AA 8. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2), (5), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
HAF Ans No
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) matter(s) having the same number, rank, name and corps as the accused. Admitted in evidence and HAF marked Ex A and Ex B respectively.(3)
(1. *MFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in HAF mitigation of punishment ?(1) Ans I do not wish to address the Court. (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(5), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and 70 for/etc, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 103B, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366. Overseas RO 309, 1323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MLWL p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(f), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

No. D86247 Name LUBROW, Jack | Sqn., Battery, or Company | Corps CIC | Date of enlistment 27 May42 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /8134 (2068)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		AA Sec 15(1) AWL 2 days 14 hrs 15 min		7 days CB	25 May 44		Forf 3 days pay FR&I 147(1)(a)

[illegible] Lt 13 Bn. 2 CBRG. 24 July 44

CERTIFIED TRUE COPY OF ORIGINAL IN MY POSSESSION

Exhibit 'B'

[illegible]

(P.T.O.)

CHARGE SHEET

FIRST CHARGE
AA SEC. 15(1)

The accused D.86247, Pte Jack DUBROW, CIC,
13 Bn, 2 CBRG, a soldier of the Canadian Army Overseas,
is charged with, WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE
in that he
in the field absented himself without leave from 0800
hrs 30 Jun 44 until 1800 hrs 11 Jul 44, when he surrendered
himself to his unit.
Total time absent (11 days 10 hrs).

(W.J. Stewart) Lt.Col.
Commanding, 13 Bn 2 CBRG

In the field
24 Jul 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(W.J. Stewart) Lt.Col.
13 Bn 2 CBRG

In the field
25 Jul 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 11011	Pte		John Frederick	ROBINSON	13 CBRBN
D 86247	Pte		Jack	DUBROW	13 CBRBN
B 59162	Pte		John Paul	GAGNON	13 CBRBN

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 Jul 44 endorsed by me, [illegible], "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible]
(Delete part in brackets when not required for compliance with RP 105(C).)

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

4. [illegible]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	N.D. Theobald		3 Cdn Town Major Unit

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
A Capt	To be detailed by OC		13 CBRBN
A Capt	To be detailed by OC		13 CBRBN

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
A Lieut	To be detailed by OC		13 CBRBN

[illegible]

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) W.J. Stewart Lt-Col (Rank.)

Date 25 Jul 44

(W.J. Stewart)
Commanding 13 Bn 2 CBRG
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (See overleaf for oaths and notes for use on trial.)

N.D. Theobald

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CM.Q CL 173)

I certify that I have this day examined D. 86247
(No.)

PTE DUBROW. J and in my opinion he is
(Rank) (Name)

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

Station Field

Date 25 July 44

R. Laing Capt (Sgd),
Medical Officer

(Unit) 13 Bn #20 B R G

W. D. Threbald major

Pte. J. Dubrow
D 86247

Sir:

The accused Pte J. Dubrow D 86247 has been charged by the prosecutor of absenting himself without leave for eleven days, ten hours, however before the court passes sentence, there are a few facts I should like to bring before you.

The reason for the accused going absent without leave was to get his wife, who is going to have a baby, out of London, where she was staying, to some safer place, doing this on the advice of the doctor in charge of the case. As soon as it was possible to get a place out of the danger zone, he returned, on his own, to camp.

In looking over the M.F.M.'s of the accused, as there is only one small crime marked against him, in over two years service, it's easy to see that this man wants to soldier, but the fact that his wife was in danger and in the condition she is in, it's only natural that he would want to do something about it.

I don't mean to imply that the accused was justified in taking the matter into his own hands and going absent, but considering the position he was placed in and the fact that he has a comparatively clean record, I would ask the court to give this due consideration before passing sentence.

L. A. McPhee Lt.

H. D. Theobald Major

SUMMARY OF EVIDENCE IN THE CASE OF

D.86247, Pte. Jack DUBROW, CIC, 13 Bn, 2 CBRG, a soldier of the Canadian Army Overseas.

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

FIRST WITNESS FOR THE PROSECUTION

Lt. W.A. Murray, Records Officer, 13 Bn, 2 CBRG, having been duly sworn, states:

"I am Lt. W.A. Murray, Records Officer, 13 Bn, 2 CBRG, and present the following document pertaining to the accused D.86247, Pte. Dubrow, J."

Exh."A". Part II Orders X-List Inf. Gen. Unallocated No. 11C dated 19 Jul 44 issued by Cdn. Sec. GHQ, 2nd Echelon, 21 Army Group, showing D.86247 Pte Dubrow, J, as AWL from 0800 hrs 30 Jun 44 until 1800 hrs 11 Jul 44.

W.A. Murray

(W.A. Murray) Lt.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

The accused was cautioned in accordance with Rules of Procedure 4 (e) of the Army Act.

THE ACCUSED MADE THE FOLLOWING STATEMENT:

"The reason why I went AWL was because I was worried about my wife as she is living in London and is seven months pregnant, A soldier friend of mine had told me that his wife had a miscarriage due to shock caused by the recent buzz-bombs raids, and, in addition, while I was in London a doctor at the clinic my wife was attending told me the miscarriages were very prevalent these days.

I endeavoured to have my wife evacuated from London but there was considerable delay and finally on 10 Jul 44 arrangements had been completed so on 11 Jul 44 I returned to camp."

J. Dubrow

(D.86247, Pte. Dubrow, J)

"I certify that the foregoing summary of evidence consisting of one page was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (c) (d) and (e) have been complied with."

J. Miller Lt

(J.E. Miller) Lt.
Officer taking summary of evidence
13 Bn 2 CBRG.

Exhibit X
N. D. Theobald Mgr

EXHIBIT (A)

X LIST
INF GEN UNALLOCATED

PART II ORDERS
Issued by

LAST ORDER
No 11B
17 JUL 44

No 11C
19 JUL 44

CANADIAN SECTION G H Q 2nd ECHELON 21 ARMY GP

"A" OFFICERS

NIL

"B" OTHER RANKS

1. ABSENT WITHOUT LEAVE
(a) AWL from 0800 hrs 30 JUN 44. Returned from AWL 1800 hrs 11 JUL 44
D86247 Pte DUBROW J.
D86247

(B.T. SAUNDERS) Captain
for Officer i/c
CDN SEC GHQ 2ND ECHELON - 21 ARMY GP

H.D.C.

REQUEST FOR A DEFENDING OFFICER

"I, D.86247, Pte. Dubrow, J, wish the convening authorities to appoint an officer to defend me at my forthcoming trial by Court Martial."

J. Dubrow.

(D.86247, Pte. Dubrow, J.)

LIST OF WITNESSES

FOR PROSECUTION: Lt. W.A. Murray, 13 Bn, 2 CBRG, Records Officer.

FOR DEFENCE: Nil.

LIST OF EXHIBITS

Exh. "A". Copy of Part II Orders X-List inf, Gen. Unallocated No. 110 dated 19 Jul 44 issued by Cdn. Sec. GHQ, 2nd Echelon, 21 Army Group, showing D.86247, Pte. Dubrow, J., as AWL from 0800 hrs 30 Jun 44 until 1800 hrs 11 Jul 44.

H.D.J.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
D.86247	PTE	DUBROW, Jack	13 Bn. 2 CBRG

* 1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:-

For AA SEC. 15(1) ____ 1 ____ times

For ____ ____ times

For ____ ____ times

For ____ ____ times

Date of first entry in Field Conduct Sheet 25 May 44

Date of last entry in Field Conduct Sheet 25 May 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

† 3. The accused at the present time is under sentence for NA beginning on the NA day of NA

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 14 days in military custody, i.e., NIL days in open arrest, 14 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 28

6. The date of his ~~calling up for military service~~ attestation is 27 May 42

7. The service which the accused is allowed to reckon is 2 yrs 2 mos

8. The accused is in possession of‡ NA

9. (If the accused is a warrant officer or N.C.O.) The accused has served continuously, without reduction, to the present date:

	Date of promotion
In the substantive rank of ____	NA
In the war substantive rank of ____	NA
In the acting rank of ____	NA

INSTRUCTION: If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

NOTE* The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

†Strike out if not applicable.

‡State the military decorations (if any) held by accused.

Exhibit 'A' D. Theobald major

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental book in my custody, are correct to the best of my knowledge and belief.

Signed this 26 day of July 44

Jack E Miller Lt
13 Bn 2 CBRG

HT-30

Pte. Dubuque J.-T.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L-39129 Pte John Thomas DUBUQUE - CIC - 1 CITN

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	NOT GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lass of kit see RP 44 fn 6.)

N At present ~~under sentence~~ for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To undergo detention for a period of One Hundred and Twenty (120) Days

(Sgd) ..... 14 Feb 45 (Sgd) W. Wm Lt-Col
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 57, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

60 days.

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the Court but remit 60 days detention of the sentence.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) N/A
(1. AA 53A. Delete if not used.)

(Sgd) C B Ware
Date 15 Feb 45 (C B Ware) Col
Temporary Comd, 13 Cdn Inf Trg Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
L39129 Pte Dubuque, JT	19 Feb 45	Lt-Col (J. D. Forin) A/Commander 1 Cdn Inf Trg Regt

Promulgated in Part II DO 40, d/19 Feb 45.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 168 47-30

FIELD GENERAL COURT-MARTIAL

CFAMS (To Hdq of AFAS) 40/P & R/1698 (B1) 4/388

Convened by Order of Brigadier K G Blackadder Comd 13 CITB dated 10 Feb 45

28 FEB 1945 DSO, MC, ED

ACCUSED.

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

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
L-39129			John Thomas	DUBUQUE	CIC 1 CITN

PROCEEDINGS REVIEWED
Lieutenant, Capt.
2 Mar 45
REVIEWING OFFICER JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

N Held in the Fd in (country) England on (date(s)) 14 FEB 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

N A1. The President, Members, ~~writing Member, J.A. if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms RDs. For guidance on procedure when a variation in this form arises, see Storm. Par. GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, ... 94, 103, 119, (32).)

N A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1)
N The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 92, RP 105-107. 3. RP 11-13, 23, 24.)

N A3. The Court is opened. The accused is (are) brought before the Court. At 1500 hours trial commences.

N A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)
N ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

N A5. ~~President to accused:~~ Do you object to ..... as interpreter? Ans .....
N The ~~interpreter is sworn~~.(1) Do you object to Lt Col Gilchrist as shorthand writer? Ans NO
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO
(1. RP 110. 2. If no objection, voting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

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

President	Lt-Col	D. L. REDMAN	HQ CRU
Member	Capt	P. A. BURNETT	1 C I T B
Member	Lt	E. A. WELCH	2 C I T B
N Judge-Advocate			
Prosecutor	Lt	J. W. JACKSON	1 C I T B
Defending Offr	Lt	J. G. DUNCAN	1 C I T B

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Qu p 3.)

N A8. The accused ..... before arraignment make(s) (no) plea(s) (2)
(1. If a special plea is made for separate trial on one or more charges (RP 62(D), 108), or as to the jurisdiction of the Court (RP 34, 25(A), 113), or in bar of trial (RP 38), or as to accused's mental fitness to stand trial (AA 13C, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

N A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 37(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

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

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 5.

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

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

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

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 5.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO SIR.(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) (his) opening address.(1) NO
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE - ATT
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. I will make a statement. Do you intend to call witnesses on your behalf ?
Ans. Yes Sir. Are they witnesses as to character only ? Ans. NO SIR.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTE
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*) ATT

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (d), RP 43, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO - SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 3 and Ex 6 respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Nothing to say Sir. (NOTE ATT)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 52. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, L39129 Private John Thomas Dubuque, Canadian Infantry Corps, on the strength of 1 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SECTION 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE;

in that he,

in the field, absented himself without leave from 2359 hours on the 21st day of November 1944 until apprehended by the Canadian Provost Corps at 0950 hours on the 30th day of January 1945.

TOTAL ABSENCE: 69 days 9 hours 51 minutes.

J D Prins Lt-col.
(J D Forin) A/Comd
1 Cdn Inf Trg Regt.

In the Field
5th day of February 1945.

To be tried by Field General Court Martial.

W Blackader
(W J Blackader) Brig
Comd
12 Cdn Inf Trg Bde

In the Field
10 Feb 45

MM

FIELD GENERAL COURT-MARTIAL

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

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-39129		Pte	John Thomas	DUBUQUE,	CIC - 1 CITR

CONVENING ORDER.

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

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

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

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

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

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt Col	D L Bentley, VD		HQ CIC

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by Commanding Officer		1 CITR
Lieutenant	to be detailed by Commanding Officer		2 CITR

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Captain	to be detailed by Commanding Officer		1 CITR

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

Date 10 Feb 45

(Signed personally. RP 105 fn 2.)
(N G Blackader)
Commanding 10 Cdn Inf Bde
Convening Officer.

Brigadier
(Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (For Army Use) (To Deny of AFAI 40-7 & 8/1944 Amdt)

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

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined No. 439129 Pte Dubuque G.T. of 1 C.I.T.R. and in my opinion he is fit ~~unfit~~ to undergo Trial by Court Martial.

Station Field

Date 14 Feb 45

[signature]
Medical Officer

[signature]

Case of. (1)

L. 39129 Pte. DUBUQUE S.T., 16 ITR.

Prosecution

The Pros. produced

(1) A certified true extract from a PT 11 Order of 16 ITR No 20 A/25 NOV 44

MARKED EX 1

(2) A Certificate of Apprehension P.C. 2797 signed by Capt Birch of The Cdn Pro Corps.

MARKED EX 2.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT WAS UNNECESSARY TO COMPLY WITH R.P. 83(B)

THE PROSECUTION IS CLOSED

DEFENCE

(SEE PAGE 2)

MM

(2)

- DEFENCE -

Opening address by the Defence - given immediately after the witnesses for the prosecution have been heard.

The Defence does not intend to dispute the technicalities of the accused's illegal absence, but will, through the evidence of the accused and subsequent witnesses, prove that extenuating circumstances have a direct bearing on the offence with which the accused is charged. In doing so, we will endeavour to show this Court that accused was not responsible for his actions.

1st witness for defence

Accused called to give evidence under oath.

Questions:

Q 1. When did you enlist for active service with the Cdn.Army?
A 23 June 41

Q 2. Are you married?
A Yes

Q 3. When did you marry?
A 21 Dec 41

Q 4. When did you arrive in the United Kingdom?
A 11 Sept 43

Q 5. Have you been receiving mail regularly from your wife since then?
A No.

Q 6. How many letters have you received from your wife since then?
A Three. Six

Q 7. Have you ever received any parcels or cigarettes from your wife?
A No

Q 8. Have you ever received any money from your wife?
A No

Questions:

Q 9. Where is your wife staying?
A On the farm

Q 10. Is it your own?
A It is rented Sir 6 yrs.

Q 11. Is she managing it herself? A No Sir
Q IIA WHO IS HELPING HER? A Her bro. Bro-in-law & wife

Q 12. Have you ever received anything from them?
A Three letters.

Q 13. How many leaves have you had since you have been in the United Kingdom?
A One Sir

Q 14. Were you on that leave at the time that you became an absentee?
A Yes, Sir
Q 14A. HOW WAS IT THAT YOU ONLY HAD THE ONE LEAVE?
A I didn't have the money to take leave Sir
Q 15. How was it that you had money at this particular time?
A I was in the hosp. Sir

Q 16. Why were you in the hospital?
A I was wounded in France.

Q 17. How long were you in France?
A 40 days, Sir

Q 18. What were the dates of your leave?
A 7 Nov to 21 Nov 44

Q The Defence wishes to introduce certified true extracts from the accused's MFM.4.
DOCUMENT MARKED Ex 3.
We wish to show, while the accused's evidence is still fresh in the Court's Mind, that:

(1) the accused was with a Field Unit in France, was wounded and sebsequently hospitalized, that:
(2) the accused proceeded on leave immediately upon his discharge from No.4 C.C.D., that:
(3) the accused's leave was from the 7th. to the 21st. of November 1944, and that:
(4) the accused became an absentee as a result of overstaying his leave.

Questions:

Q 19. Has everything been all right at home?
A NO, SIR

C The Defence, at this point, presents a signed statement of the accused - which I will now read. (Statement read)
(STATEMENT ATT + INITIALLED FOR IDENTIFICATION)

Q 20. Do you swear that the statement which I have just read is a true and accurate one? — A - YES, SIR
Q 20A Is THAT your signature? A - YES, SIR.

Q 21. When did you last see your wife?
A ~~23 OCT~~ A - 3 AUG 43, SIR.

Q 22. Did you receive any letters from your wife before you left Canada?
A NO, SIR

Q 23. When did you next believe something was wrong at home?
A I RECD a letter from my brother encl a newspaper clipping

Q 24. What was in that clipping?
A That my wife had a child.

Q 25. What was wrong with that?
A I believed the child was ~~n~~ T mine Sir

Q 24. When was the child born?
A 1 June 44

Q 25. How do you know?
A From the clipping

Q 26. Has your wife since then given you any information as to the child?
A No Sir

Q 27. Have you that clipping with you?
A Yes Sir.

28. (~~[illegible]~~ CLIPPING MARKED EX. 4)

Q 29. Did your brother ~~[illegible]~~ comment on the child when he wrote you?
A YES

Q 29A WHAT DID HE SAY?
A He didn't know what to think

Q 30. Has this been worrying you very much?
A Yes.

Questions:

Q 31. Had you any special reason to overstay your leave?
A No Sir

Q 32. Then why did you overstay your leave?
A Just Lost Time

Q 33. Were you on your way back to barracks when you were apprehended?
A Yes,

Q 34. Did you tell the M.P. that?
A Yes,

Q 35. Where were you picked up?
A at Nathan St.

(~~Questions of the Court of Prosecution.~~)

(NO CROSS EXAMINATION)
UNNECESSARY TO COMPLY WITH RR 53(B)

The Defence wishes to introduce three sworn statements; as evidence on behalf of the accused:

(a) Evidence as to domestic relations. (Ex 3)
(b) Evidence as to character and service record.
-by Major J.S. Edmondson (Ex 4)
(c) Evidence as to service record. (Ex 7)
-A.W.L.-MFM.6.

PRES → WHILE NOT EVIDENCE THE COURT WILL MARK THESE AS EXHIBITS

TO DEF OFFR

Defence calls Capt. Endicott-
2nd witness for the Defence

Q 36. What is your name sir?
A CAPT WD ENDICOTT

Q 37. What is your profession?
A MED OFFR IN THE ARMY

Q 38. How are you employed at present?
A MO I/C I.H.

Questions:

Q 39. The accused has given evidence to the fact that the last time he saw his wife was on the 2nd. or 3rd. day of August 1943 - also that his wife gave birth to a child on the first of June 1944. Now that is an interval of approximately 10 months or to be exact 9 months and 28 days.

In your opinion, is the accused justified in being concerned as to the legitimacy of that child?

A YES IN MY OPINION HE IS

Q 40. Is it an accepted fact that certain individuals re-act abnormally under severe emotional strain or worry?

A YES

NO CROSS EXAMINATION
IN THE OPINION OF COURT UNNECESSARY TO COMPLY WITH AP 83(13)

Closing address of the Defence:-

DEF OFFER ON THE FINDING

It would seem unreasonable that a man with as good a record as that of the accused should suddenly - for no apparent reason - overstay his leave. Accordingly the Defence has produced conclusive proof that the domestic relations of the accused are far from satisfactory, and further that these conditions have existed for the past seven months. In all this time and even while under the duress of actual battle, the accused has constantly had this in the back of his mind.

The Court has heard the evidence of a competant medical authority: that the accused has reason to doubt the parentage of the child, and that under severe emotional strain or worry, certain individuals may re-act abnormally. -- And certainly, we are hearing everyday of similar cases -- in which the resultant crimes have been even more serious than the one for which the accused has been arraigned before this Court.

The Defence contends, therefore, that due to the unsatisfactory domestic relations, the fact that he was only just free

of hospitalization and battle conditions, and the sudden advent of complete freedom accorded him in leave, the accused was-for a time - mentally unstable -- and being so -- was not responsible for his actions.

PROS ON THE FINDING

The Pros. submits on the evidence brought before the Court by the Prosecution.

The Court is closed to consider the Finding
The Court is Reopened.

PLEA IN MITIGATION

attached

MM

MM

E-3

The Defence In Plea Of Mitigation Of Sentence

The Court has just heard verification of the excellent service record of the accused and it is hardly necessary to re-iterate the extenuating circumstances of this case, for everything that can be used in mitigation of sentence has already been thoroughly explored in the Defence of the accused.

If it is witnin the jurisdiction of this Court, the Defence suggests that It direct that an investigation be commenced concerning the domestic relations of the accused, for it is certainly not right that a man be asked to serve his country under such conditions, and the sooner everything is straightened out, the better for all concerned.

LAST ORDER
No. 19
24 Nov.44.

1 CANADIAN INFANTRY TRAINING REGIMENT
PART II ORDERS
SHEET FOUR

THIS ORDER
No. 20
25 Nov 44.

---

10. ABSENTEES

(a) AWL w e f times and dates shown:

L39129 Pte DUBUQUE J. 2359 hrs 21 Nov 44

(Signed) S.J. Fowler, Capt.
for Comd 1 C.I.T.R.

Certified true extract from the original now in my possession.

Capt.
(J.H. Galloway) Record Officer
1 Cdn Inf Trg Regt. 1 Feb 45.

EXHIBIT A.

CERTIFICATE IN ACCORDANCE WITH A.C.I. 2737 of 10 Apr 45

I certify that No. L-39129 Rank Cpl. Name Dubuque J.T.

Unit No.1 C.I.T.R. (CRU) was arrested at London Place

at 0950 (Hour) on 30-Jan-45. (date) and that at the time of his arrest he was wearing (Military Uniform) XXXXXXXXXXXXXXXXXX Signature of

Provost-Marshal, Assistant Provost-Marshal, or other Officer or the Commanding Officer of the portion of His Majesty's Forces or the Officer, Non-Commissioned Officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

EXHIBIT 8

(R.E.Birch), Capt.
D.A.P.M. CMHQ.

London
31-Jan-45.

MFM 4 (Part I)
AFB 103 (Part I)
60/P&L/148 (4334)

SERVICE AND CASUALTY FORM

PART I (For all ranks)

Regimental Number L 39129

Unit

1. Surname DUBUQUE
2. Christian Names JOHN THOMAS
3. •Substantive Rank and Appointment Pte
   •Acting Temporary or Local Rank
   giving date
   •To be entered in pencil to facilitate alterations
4. Place of birth MONT NEBO, SASK. CANADA
5. Date of birth as declared on attestation 22.12.15
   (A)
6. Date of enlistment 23 6 41
7. Place of enlistment SASKATOON
8. Residence at time of enlistment MONT NEBO, SASK., CAN
9. (B) Special conditions (if any) of enlistment or rate of pay 1.50
10. (C) Any subsequent variations of conditions of service
11. Religion ROMAN CATHOLIC
12. If married, state date 21.12.41
13. Trade on enlistment LABOURER
14. Corps, trade and grade
15. (D) Qualifications
16. (E) Miscellaneous entries

(17) Regiment or Corps

Unit (Battn, etc)

N.B. RANGERS

(18) Medical 15/111121

Category	Date	Authority
"A"	23.6.41	M.F.M.2

(19) Next of kin (entries to be made in pencil)

MRS. LENA DUBUQUE (WIFE)
CARLETON, SASKATCHEWAN

(20) E
(21) E
(22) E

EX 3

NOTES—

(A) Here enter particulars of any subsequent claim as to actual age after verification of birth certificate.
(B) Whether for home service only, enlisted at special rates of pay, etc.
(C) If to be retained on home service, period if specified to be stated; also authority and on what grounds: see (A) above.
(D) Signaller, Farrier, etc.
(E) Instructions regarding allotment of these sub-heads will be made as may be necessary after mobilization.

(a) Report: Date	(a) Report: From whom received	(b) Unit	(c) Record of all casualties regarding promotions (acting, temporary, local or substantive), appointments, transfers, postings, attachments, &c., forfeiture of pay, wounds, accidents, admission to and discharge from Hospital, Casualty Clearing Stations, &c. Date of disembarkation and embarkation from a theatre of war (including furlough, &c.) in accordance with para 2 of Note to Table I of Appendix III of Field Service Regulations, Volume I.	(d) Place of Casualty	(e) Date of Casualty	(f) Army rank as at (d)	(g) Army Form or other authority for entry to be shown
6-10-43	NBR →		T.O.S. CA (O/S)	UK	11-9-43	Pte	D.O. # 1
	T.O.S	2 CIRU	T.O.S. FROM 1st Bn. N.B. RANGERS - F.U.	✓	19-11-43	✓	249. 19 NOV 43
	CC	SSR	T.O.S. FROM 2 C I R U	✓	3 MAR 44	✓	14 d/ MAR 44
			DISEMB. FRANCE 8 Jul 1944			✓	29 July 1944
			D.O.S. TO X-3 LIST SSR	Fd.	24 Sept 44	✓	65 d/ Oct 44
14 Oct 44	X-3	SSR	T.O.S. FROM SSR	✓	25 Sept 44	✓	49/44
2-11-44	X-3	—	S.O.S. to Y-3 : CIRU	—	20 Sept 44	✓	37/44
	TOS	Y-3	FROM SSR X-3 on ADM to 24 CGH	UK	1 Oct 44	✓	41/44
		1 CITR	TOS FROM Y-3 LIST ON DISCH FROM 4 CCD	✓	8 NOV 44	✓	21/44
		1 CIRU	GRANTED 14 DAYS SPL WITH RA IN LIEU RATIONS 7 NOV TO 21 NOV 44	✓	7 NOV 44	✓	C.I.T.R 20/44
	SOS Y-3	1 CITR	ON DISCH FROM 4 CCD TO 1 C.I.T.R	✓	7 NOV 44	✓	C.I.T.R 10A/44

I CERTIFY, UNDER OATH, THAT THE ENTRIES AS SHOWN ABOVE ARE TRUE AND ACCURATE EXTRACTS FROM THE ORIGINAL SERVICE AND CASUALTY FORM (MFM-4 PART I) of L-39129 PTE DUBUQUE, JOHN THOMAS. 14 FEBRUARY 1945

J. Rochester to dt
asst Records officer
1 C I T R

M.F.M.4 (a) (Part II)
40(P.&R.)(12.43)(1000)

SERVICE AND CASUALTY FORM

(PART II)

Regiment or Corps S S R Regimental Number L 39129

Substantive Rank Surname DUBUQUE Christian Names J

Acting Temporary or Local Rank

(To be entered in pencil to facilitate alteration)

(a) Report		(b)	(c)	(d)	(e)	(f)	(g)
Date	From whom received	Unit	Record of all casualties regarding wounding (acting, temporary, final or substantive), appointments, transfers, postings, admissions, &c., fortitude of part, wounds, accidents, admission to and discharge from Hospital, Casualty Clearing Station, &c. Date of Examination and substitution, from a theatre of war (including furlough, &c.) in accordance with para. 2 of Note to Table 1 of Appendix III of Field Service Regulations, Volume I	Place of Casualty	Date of Casualty	Army rank as at (e)	Army Form, or other authority for entry shown
			WOUNDED Exact date	Fd.	24 Sept 44	L/Cpl. Pte	Unit 129
28 Sept 44	304/126		Admn 10 Cdn Fd Amb	"	24 Sept 44	"	111/6 Oct 44
28 Sept 44	" 126		Admn 4 Cdn F D S	"	25 Sept 44	"	111/6 Oct 44
29 Sept 44	" 127		Admn 3 C C C S	"	25 Sept 44	"	115/10 Oct 44
2 Oct 44	- (129 X3		Admn 26 Cdn Gen	"	26 Sept 44	"	115/10 Oct 44
2 Oct 44	- (129 X3		Admn 7 Cdn Gen	"	30 Sept 44	"	115/10 Oct 44
7 Oct 44	- (131 X3		Trans out of 7 Cdn Gen (EXACT TO HIS	"	25 Sept 44	"	119/14 Oct 44
7 Oct 44	- (131 X3		Admn 9 C F D S				
12 Oct 44	- (136 X3						

I CERTIFY, UNDER OATH, THAT THE ENTRIES AS SHOWN ABOVE ARE TRUE AND ACCURATE EXTRACTS FROM THE ORIGINAL SERVICE AND CASUALTY FORM (MFM-4 (a) PART II) OF L-39129 PTE DUBUQUE, JOHN THOMAS. 17 FEBRUARY 1945

J. Strachan Lt
Officer
A/Records
1 C.I.T.D.

Under oath

STATEMENT by L-39129 Pte. DUBUQUE, John Thomas.

"On the 27 July 1943, I left Sussex, New Brunswick on furlough and embarkation leave. I arrived home on the 30th of July 1943. On the 2nd or 3rd of August 1943, I left to visit my mother. However, before I left, my wife and I had a quarrel over my going. I returned home on the 4th or 5th of August 1943 to find that my wife had gone but had left a note - stating that if I wanted to run around the country I was free to do so. I remained around home awaiting the return of my wife - even to the extent of overstaying my leave three days - but she failed to do so. I turned myself in to the Provost at Saskatoon and when I explained the circumstances, they fixed things up. I arrived back in Sussex on or around the 1st of Sept 1943."

"The above evidence was given by me, under oath, on the 14th day of February 1945."

.....

(J.T. Dubuque) Private.

Evidence as to the domestic relations of L-39129 Pte. DUBUQUE, John Thomas given by Major J.S. Edmondson, who is not available for the trial.

"I, Major J.S. Edmondson, during the period June and [illegible] of the year 1944, was a Company Commander of the South Saskatchewan Regiment. Whilst so employed, I had under my command - L-39129 Pte. DUBUQUE, John Thomas.

In June of 1944, it was drawn to my attention that, although Pte. DUBUQUE was writing home, he was not receiving any mail. Also, in the due process of censorship, it was quite apparent that all was not right at home. Accordingly I called him before me and learnt of his feelings, doubts, and misgivings. It would appear that a child had been born to his wife - some ten months after his departure from her. The question arose in his mind as to whether this child was legitimately his son. I instructed him to write his wife to the effect that unless the question of the legitimacy of the child was satisfactorily straightened out in his mind, an investigation would be begun. However, before an answer could be received the Regiment, early in July 1944, embarked for France. Before departure to the thestre of operations Pte. DUBUQUE was instructed to report this matter to his Company Commander (whoever that might be) sometime around the 21st of July 1944. However due to the rapid changes of command and existing conditions he may not have been able to do so. To the best of my knowledge, no reply was ever received and due to the exigencies of the service no further action was taken, whilst I was in command."

"The above evidence was given by me, under oath, on the 9th day of February 1945."

EX 5

Major,
(J.S. Edmondson)

Births

...TFORD — To Mr. and Mrs. ...seph Whitford, General Deliv... Prince Albert, at the Holy ...amily hospital, a son, June 1.

...YLE—To Mr. and Mrs. William ...oyle, General Delivery, Prince ...lbert, at the Holy Family hos... a son, June 1.

...UQUE—To Mr. and Mrs. John ...buque, Royal, at the Holy ...amily hospital, a son, June 1.

...RNIER—To Mr. and Mrs. ...seph Fournier, 1020 First Av... West, at the Holy Family ...spital, a daughter, June 2.

Evidence as to the character and service record of L-39129 Pte. DUBUQUE, John Thomas given by Major J.S. Edmondson, who is not available for the trial.

"I, Major J.S. Edmondson, during the period June and ~~August~~ of the year 1944, was a Company Commander of the South Saskatchewan Regiment. Whilst so employed, I had under my command - L-39129 Pte. DUBUQUE, John Thomas. During this period, I found him to be of irreproachable character - further he was an excellent soldier, possessing a good degree of discipline and responsibility."

"The above evidence was given by me, under oath, on the 9th day of February 1945."

Major,
(J.S. Edmondson)

Evidence as to the service record of L-39129 Pte. DUBUQUE, John Thomas given by Lieut. R.B. Allan.

"I, Lieut. R.B. Allan, am at present the Legal Officer of No.1 C.I.T.R.. I have examined the Conduct Sheet (MFM.6) pertaining to L-39129 Pte. DUBUQUE, John Thomas. I find that it shows no record of a previous charge or conviction of 'Absent Without Leave'."

" The above evidence was given by me, under oath, on the 14th. day of February 1945."

R.B. Allan Lieut.,
(R.B. Allan)
A/ Adjt Dep R

Off. Having Custody of MFM 6

Ex 7

M.F.B. 355
40/F & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
139129	Private	LUBUNUE, J.T.	1 CITR

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

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

~~Note.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~

2. The accused has not been previously convicted

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act Section 47 of the Army Act and dispensations with trial under A.F.A. 73 are set out in the Schedule annexed to this statement.~~ A.F.A. 73

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for N/L days in civil custody, and 15 days in military custody, making a total of 15 days in custody, of which ~~nil~~ N/L days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 29 yrs 1 mo.

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 23 Jun 41.

7. The service which the accused is allowed to reckon towards discharge is 3 yrs 257 days.

8. The accused is entitled to reckon above service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to an air force decoration, or air force reward (or is in possession of or entitled to).~~ State any ~~air force~~ military decoration or reward. Cdn Vol Ser Medal &Clasp

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer was held the regimental rank of.~~

EXB
RMy

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

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

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number L39129 Rank Pte

Name DUBUQUE, J.T. of 1 Cdn InfTrg Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

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

Signed this 14 day of February 1945 (C.H.Calloway) Capt. Record Officer 1 CITR.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

No. L39129 Name DUBUQUE, J.T. | Sqn, Battery, or Company | Corps Cdn Inf | Date of enlistment 23 Jun 41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 60/F&R/150 (5413)

Date of last entry in Company Conduct Sheet: N/A | No. and date of last drunk: Nil | Period not reckoning towards freedom from extra fine: N/A | Sheet No One | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed	23 Dec 41			Last entry 3 Sep 41. Cases of drunkenness NIL CERTIFIED TRUE COPY CONSISTING OF ONE SHEET. [signature] Capt. (J.H.Galloway) Officer having custody of regimental documents and books. 5 Feb 45.					EXC MM

(PTO)

SUMMARY OF EVIDENCE

In the case of L39129 Private John Thomas Dubuque, Canadian Infantry Corps, on the strength of 1 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

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

FIRST WITNESS FOR THE PROSECUTION — Lt F.L. Dunbar, having been duly sworn, states:

I am Lt F.L. Dunbar, on the strength of 1 CITR. I produce certified true extract from 1 CITR Part I Daily Order No.20 dated 26 Nov 44, which relates to the accused, and is marked exhibit "A" and initialled by me for purposes of identification. I also produce certificate in accordance with P.C.2797 of 10 Apr 42 purporting to be signed by Capt R.E. Birch, DAPM, CMHQ. This document relates to the accused and is marked exhibit "B" and initialled by me for purposes of identification.

The accused declines to cross-examine this witness.

F.L. Dunbar, Lt.
(F.L. Dunbar)

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing summary of evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

R.B. Allen, Lt.
(R.B.Allen) Officer detailed to take the Summary of Evidence.

In the Field
1st day of February 1945.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at 1 CITR, In the Field, preliminary to my trial by Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

Signed at 1 CITR
In the Field
this 5 day
of Feb 1945

J T Dubuque.

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

~~I desire the services of~~ _____ ~~if he is available.~~

LIST OF EXHIBITS IN THE CASE
OF
L39129 Pte John Thomas DUBUQUE, Canadian Infantry Corps.

EXHIBIT "A" - Certified true extract from 1 CITR Pt II D.O. 20 dated 28 Nov 44.

EXHIBIT "B" - Certificate of apprehension in accordance with P.C.2787 of 10 Apr 42.

LIST OF WITNESSES IN THE CASE
OF
L39129 Pte John Thomas DUBUQUE, Canadian Infantry Corps.

FIRST WITNESS FOR THE PROSECUTION	Lt F.L. Dunbar	1 CITR

VVV-56

Cpl. Dubreuil, of

RECEIVED 10 OCT 1944

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA32) 40/P & R/1608 (2864)

Convened by Order of Brig A.B. Connelly Comd "B" Gp CRU dated 25 Sep 44

ACCUSED.

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

Number	(a) Prmnt R. (b) Apptmt, A/rank or A/Apptmt.	Full Christian Names	Surname	Unit
D-106785	(a) Cpl (b) ~~Cpl~~ Capt	Charles Joseph	DUBREUIL	1 CASCRU

~~PROCEEDINGS AT A GENERAL~~

JAG'S REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 27 SEP 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(N) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(2)

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

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1230 hours trial commences.

A4. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(1)

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

A5. President to accused: ~~Do you object to~~ as interpreter. Ans ~~as shorthand writer. Ans~~

~~The Interpreter is sworn.~~(1) ~~Do you object to~~ ~~The shorthand writer is sworn.~~(1)

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

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

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

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

President	Lt-col	D.L. Redman V.D.	HQ CRU
Member	CAPT	T.A.C. TYRREL	1 CERU
Member	LT	E.F. McMANUS	1 CERU
~~Judge-Advocate~~			
Prosecutor	LT	W.V. FAULHAFER	1 CASCRU
Defending Offr	CAPT	W.A. FELLOWES	1 CASCRU

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

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

A8. The accused ~~before arraignment make(s) (not)~~ No plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references on fns to RoP cited. Insert in AB name and name of the accused making the plea.)

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-106785 Cpl Charles Joseph DUBREUIL 1 CASCRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

(1)

~~At present~~ under sentence of ~~beginning on (date)~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 16 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be Reduced to the Rank and to undergo 16 Detention per a period of Ninety (90) days

27 Sep 44 (Sgd) W.W. Mumford President (RP 33, 35.)

(Sgd) Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 40(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 28 Sep 44 (Sgd) C.B. Connelly Brigadier, Commanding. D.S.O. Commander, "B" Group. Cdn. Rft. Units. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of CO.
D106785 Cpl DUBREUIL C.J.	30 Sep 44	(R.J. Dufresne) Lt-col A/Comd No 1 Hold Wing 1 Cdn A S C Rft Unit Cdn Army England

Part II Order 232 of 1944 Court Proceedings Records

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

J Cdn. A.S.C. Reinf. Unit.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

President to accused : Do you wish to make a statement ? Ans. NO SIR (5)
(*I. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E, on p* 5.
5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (4). The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly~~
(*I. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*I. RP* 25(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

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

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

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

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

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

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 5.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*I. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*I. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*I. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*I. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ! Ans.....
(*I. RP* 105. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*I. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42. 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*I. RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*I. AA* 54(3) (*c*), *RP* 43, 120(*A*). 2. *AA* 54(3), *RP* 45, 107. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. YES SIR NOTE-ATT
(*I. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Services(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A A 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*I. MFB* 355 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. BY MY DEF OFFR NOTE ATT
(*I. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*I. AA* 54(*c*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and then J A, if any~~.(2)
(*I. When several accused tried separately see RP* 106. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 363-366, *Overseas RO* 309, 1323, *MML p* 60, 737-739. *As to sentences assigned for civil offences to the use of Legions see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), (*d*)(*i*), *KR Can* 364. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 367. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ CDN RFT UNITS

27 Sep 44

Comd "B" Gp,
C.R.U.

F.G.C.M. - 27 Sep 44
D 106785 Cpl DUBREUIL, C.J.
1 CASCRU

1 I would respectfully ask you to read the Plea in Mitigation. The Court has no reason to believe that the facts therein stated are not true.

2 This man appeared to be in a very nervous condition and the Court respectfully, but strongly urge that he be re-boarded at the earliest possible date.

(D.L. Redman) Lt Col
President.

COPY TO:

Col IC Adm

C H A R G E S H E E T

The accused, D-106785 Corporal Charles Joseph DUBREUIL, RCASC, on strength of 1 Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas, is charged with, When On Active Service:-

Sec 15 (1) Army Act — ABSENTING HIMSELF WITHOUT LEAVE

in that he

IN THE FIELD, absented himself without leave from 1200 hours 24 May 1944 until 2010 hours 11 September 1944 when he surrendered to the Canadian Provost Corps at the Piccadilly Tube Station, LONDON.

TOTAL TIME ABSENT :- 110 days, 8 hours and 10 minutes.

(H.P. Bennick) Colonel
Commanding
1 Cdn ASC Rft Unit

IN THE FIELD.
16 SEPTEMBER 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

18 Sep 44

(A.B. Connelly) Brig
Comd "B" Gp
Cdn Rft Units

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-106785		Cpl	Charles Joseph	DUBREUIL	1 CASCRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 18 Sep 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

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

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Must be named. RP 106.	Unit.
Lt-col	D.L. Redman, V.D.	HQ CRU

MEMBERS.

Rank.	Named or detailed. RP 106.	Unit.
Captain	to be detailed by	1 CERU
Lieutenant	to be detailed by	1 CERU

WAITING MEMBER.

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

JUDGE-ADVOCATE.

Rank.	Must be named, if any. RP 106.	Unit.

On Active Service in the Fd

in England (Country) — A.B. Connelly (Signed personally. RP 105 fn 2.) (Rank.)

Date 25 Sep 44

Commanding
(A.B. Connelly) Brig Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

Medical Officers' Certif.
K.R. (Can) para 557

I certify that I have this morning examined No: D 106785

Cpl. Dubreuil. C. and in my opinion he is fit to
(rank) (name) unfit

undergo trial by Court Martial.

Station:

Date: 27 Sept. 1944.

(Medical Officer)
1 Cdn A.S.C. Rft Unit

F-3

PLEA IN MITIGATION OF PUNISHMENT OF

D.106735 Cpl Dubreuil,G.

1. While we pleaded guilty to the charge of A.W.L. as the accused cannot deny that charge, had he been allowed to tell his story, he feels sure the Court would have understood, at least partially, the reason for him temporarily loosing his head and going A.W.L.

2. He has had a lot of family trouble since he left Canada in 1940. He has eight children and due to his wife's neglect, has been terribly worried about them.

3. First in 1941 he was advised that his wife had given birth to a child, the father being an English Air Force Officer, secondly that the Government in their investigation found his children living under conditions that were deplorable. He returned to Canada in 1942 on A.P.C.'s. Escort and rectified this situation to the best of his ability and with the help of his former employer placed his children in an Orphanage, also obtaining a seperation from his wife, then returned to this country to rejoin his Unit.

4. Subsequently he went to Sicily with the 1st Division was torpedoed on the way out and spent about four hours in the water and was injured in the chest. He eventually had to be returned to this country. While over there in action he managed to earn first one stripe and then his second so his record as a soldier in the field must have been good.

5. While in Italy he also received word from his Mother that the children had been taken from the Orphanage by his wife, and was therefore considerably worried about their welfare. He went to see his C.O. about this and also about getting a divorce and was told the circumstances would be investigated, that he would not have much difficulty in getting a divorce and could obtain one for about $125.00. After he had returned to this country, while he was in the 11th General Hospital at Taplow he received a wire from C.M.H.Q. asking him to call on them to discuss his proposed divorce. He applied for a 48 hour pass and got it, which shows that his intentions were good and that his going A.W.L. later was not premeditated, however on his arrival at C.M.H.Q. he was advised that the cost of his divorce would be around $650.00 and knowing that it would be impossible for him to pay this amount and worried sick about the health and fate of his children, he lost his head and decided to try to get back to Canada.

6. It shouldnot be hard to realize the state of this mans mind, tormented about the fate of his children, disappointed at the result of his interview at C.M.H.Q. and in ill health, he lost temporary control of himself, deciding to try and get a boat to take him back to Canada where he could trace and look after his children himself. All this time from the time he got the letter from his mother in Italy he had no word of his children or their whereabouts.

7. This was impossible to do however and on September 11th he surrendered himself to the Military Police in London. A point I would like to emphasize and one I hope, will be taken into consideration. He has seen service both in Sicily and Italy, was promoted to a Corporal there and if affairs at home had been alright it is reasonable to assume that this would never have occurred.

8. May I therefore request consideration be given by the Court to all these facts and taken into account when awarding sentence.

9. May I also recommend or suggest that this man who went A.W.L. while in Hospital be given a reboard to ascertain his exact physical fitness at the present time as according to opinions given to him, he says, by M.O's of the various Hospitals he was in, he was supposed to be suffering from some form of heart trouble and physically unfit.

(J.A. Fellowes) Capt
Defending Officer.

F.G.C.M. IN THE CASE OF

D 106785 Cpl DUBREUIL, C.J., 1 CASCRU

27 Sep 44

STATEMENT BY THE ACCUSED (IN MITIGATION) NOTE E-1

Sir,

First I heard of my children was when I was brought to 1 CSRU, yesterday I was informed by the pay office that I had seven, I have eight, they didn't want to tell me that my eldest girl has died, she was my eldest daughter and I knew that she has had spinalmeningitis. I have worried so much of my family that I really don't quite know what I'm doing half the time, I have told it all to my Defending Officer which he has read to you. I would like the Court to recommend me for a medical board and send me home so that I could get my family together again.

CJD

SUMMARY OF EVIDENCE

IN THE CASE OF D-106785 Corporal Charles Joseph DUBREUIL, RCASC, on strength of 1 Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st WITNESS (For the Prosecution) Capt J.M. Stewart, RCASC, on strength of 1 Cdn ASC Rft Unit, having been duly sworn states:-

I am Capt J.M. Stewart, RCASC, on strength of 1 Cdn ASC Rft Unit and produce the following documents relating to the accused, whom I now recognize:-

(a) Certified True Copy of an Extract from 1 Cdn ASC Rft Unit Part 11 Orders Daily Order No 207 dated 2 September 1944 certifying that D-106785 Cpl Dubreuil, C.J. SOS as a deserter having been declared illegally absent from 1200 hours 24 May 1944 by a Court of Inquiry held at 11 Cdn Gen Hosp on 17 Jun 44.
Marked Exhibit "A"

(b) Certificate in Accordance with the Army Act Section 163 (i) (j), certifying that D-106785 Cpl Dubreuil, C.J., 1 Cdn ASC Rft Unit surrendered himself to M-105892 L/Cpl Bietz, J. of the Cdn Provost Corps No 6 (Ares) Coy at 2010 hours on 11 September 1944.
Marked Exhibit "B"

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS

J.M. Stewart Capt
(J.M. Stewart) Capt

2nd WITNESS (For the Prosecution) M-105892 L/Cpl Bietz, J., No 6 (Ares) Coy, Cdn Provost Corps. (Documentary).

Statement of evidence on reverse of AFB 252.

3rd WITNESS (For the Prosecution) A-56124 L/Cpl Obermeyer, L.P., No 6 (Ares) Coy, Cdn Provost Corps. (Documentary).

Corroborates evidence on reverse of AFB 252.

I hereby certify that in my opinion the attendance of the 2nd and 3rd witnesses for the prosecution, owing to the expense and loss of time involved, are not readily procurable and a statement of evidence purporting to be signed by them has been read to the accused and is attached hereto marked Exhibit "C" (Reverse side).

A. Ballantyne
(A. Ballantyne) Lieut RCASC
Offr detailed to take
Summary of Evidence

I do not require the attendance of the 2nd and 3rd witnesses for the prosecution for the purposes of cross-examination.

Charles Dubreuil
(D-106785 Cpl Dubreuil, C.J.)

The accused was cautioned as follows, "Do you wish to make any statement or give evidence on oath ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

THE ACCUSED DECLINED TO MAKE A STATEMENT AT THIS TIME

I hereby certify that the foregoing Summary of Evidence consisting of two (2) pages was taken down by me in writing at 1 Cdn ASC Rft Unit on this 14th day of September 1944 in the presence and hearing of the accused and that R.P. 4 (c) (d) (e) (f) and (g) have been complied with.

(A. Ballantyne) Lieut RCASC
Offr detailed to take
Summary of Evidence.

EXA

IN THE FIELD.
14 SEPTEMBER 1944

EXHIBIT "A"

PAGE 5
D.O. 207

1 CDN. A.S.C. REINFORCEMENT UNIT.
CANADIAN ARMY OVERSEAS.
DAILY ORDERS PART II
BY
COLONEL H.P. BONNICK, COMMANDING.

THIS D.O.
NO. 207
2 Sep 44

---

18. STRENGTH DECREASE.

(1) D-106785
Cpl. Dubreuil, C.

SOS as a Deserter having been declared illegally absent from 1200 hrs. 24 May 44 by a Court of Enquiry held at 11 Cdn General Hosp. on 17 Jun 44.

(Certified True Copy)

(B.H. Tobin) Captain
Records Officer.

(J.M. Gibbons) Lt.

For (H.P. Bonnick) Colonel,
Commanding,
1 Cdn. A.S.C. Rft. Unit
Canadian Army Overseas.

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1) (j) EXHIBIT "B"

I, ... certify that

Regt. no. D-106785 . Rank. Cpl. . . Name. . Dubreuil, C. . . . . .

Regiment. . . . . .

Unit . No. 1 C.A.S.C.R.U. . . . . .

Stationed at. . . . . .

Surrendered himself to No. M-105892 . Rank L/Cpl. Name. Pistz, J. . . .

of the Canadian Provost Corps. No. 6 (Area) Coy. . . . . .

on the 11 . .day of. Sept. . .1944 , at . 20.10. . . .hours. . . .

. . . . . .AS AN ABSENTEE WITHOUT LEAVE. . . . . .

At the time of surrendering he was wearing (Military uniform) ~~xxx~~
~~(Civilian xxxxxxx)~~.

Signature of Provost-Marshall, Assistant Provost-Marshall, or other officer or the Commanding Officer of the portion of His Majesty's forces or the officer, warrant-officer, or the non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on surrendering.
(Strike out part inapplicable).

London
12-Sept-44

EXHIBIT "B"

R. F. Stinson
(R.F. Stinson), Capt.,
D.A.P.M. C.M.H.Q.

Statement of **EVIDENCE** in the case of
D-106785 Cpl.Dubreuil.C.

Sir:

At London, at about 2010 hrs. 11 Sept. 44 I was on duty in Piccadilly Tube Stn, accompanied by L/Cpl.Obermeyer when the s/m N.C.O. came up and surrendered to me as an absentee.

I placed him under arrest and conducted him to No.6 Provost Co y. Detention Room where he was handed over to the N.C.O.i/c Cells to be detained.

London
11 Sept.44

L/Cpl.
A-1058[illegible]Dietz.J.

Sir:

I have read over and corroborate thensabove statement.

London
11 Sept.44

L/Cpl.
A-56124 Obermeyer.L.P

REMARKS

CHARGE

EXHIBIT "C"

Army Form B 252
(See King's Regulations)

Regiment

Battery / Squadron / Troop or / Company

CHARGE against No. D-106785 Rank Cpl.

Name Dubreuil.C.

Place London Date of Offence 11 Sept.44

OFFENCE A.O.A.S. was A.W.L.

F. J. Stinson
CAPT.
F. J. STINSON, D.A.P.M.
C.M.H.Q.

Names of Witnesses:—

L/Cpl.Bietz.J. Cdn.Provost Corps

L/Cpl.Obermeyer.L.P. Cdn.Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

No. L 106785 Name DUBREUIL, C.J. Sqn, Battery, or Company — Corps R.C.A.S.C. — Date of enlistment 5 Jul 40 — GC Badges — Service or Proficiency Pay — MFM 6 (AFB 122)

Date of last entry in Company Conduct Sheet: n-a — No and date of last drunk: n-a — Period not reckoning towards freedom from extra fine: n-a — Sheet No 1 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of order dispensing with trial	By whom awarded	Remarks
Field	18Mar41	Pte		AWL from 0600 hrs 18 Mar 41 to 1140 hrs 18 Mar 41 (absent 5 hrs 40 mins) A.A. Sec 15 (1)	Cpl Simpson	Admonished	19 Mar 41	Major Norrington	
Field	6 Dec40	Pte		A.A. Sec 15 (1) AWL from 0600 hrs 6 Dec 40 to 1000 hrs 7 Dec 40 (absent 1 day 4 hrs)	S/Sgt Cheshire	7 days C.B.	10 Dec 40	Capt Robinson	Forf 2 days pay FR&I 149 (1) (a)
Field	4 Nov41	A/Cpl		AA Sec 40 Cond to the prej etc did drive carelessly a WD vehicle CC74569 at the intersection of London Road & Station Road	Documentary	Dismissed	4 Nov 41	WG McLean Lieut	
Field	4Apr42	Pte		AA Sec 15(1) AWL from 1300 hrs 4 Apr 42 till 1600 hrs 5 Apr 42 Absent 1 day 3 hrs)	Cpl Dagnieux	10 days pay	6 Apr 42	Major RJ Williams	2 days pay FR&I 149(1)(a) 10 days pay FR&I 149(2)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30Sep42	Pte		WOAS failing to obey camp order No 43 d/27 Sep 42 in that he failed to appear on P.T. parade	CSM Cheshire	5 days C.B.	3 Oct 42	HD Hay Capt	
Field	24 Oct42	Pte		AWL from 1400 24 Oct 42 to 0800 hrs 26 Oct 42 (absent 1 day 18 hrs) A.A. Sec 15 (1)	Cpl Annis	8 days pay	27 Oct 42	HD Hay Capt	2 days pay FR&I 149 (1)(a) 8 days pay FR&I 149(2)
Field	19 Nov 42	Pte		AA Sec 15(1) AWL from 0800 hrs 19 Nov 42 to 0745 hrs 20 Nov 42 (absent 23 hrs 45 mins)	Cpl Goldsmith	7 days C.B.	21 Nov 42	G Hayes Capt	Forf 1 days pay FR&I 149 (1) (a)
Field	22 Jan 43	Pte		AA Sec 15 (1) AWL from 2300 hrs 22 Jan 43 till 2230 hrs 24 Jan 43 (absent 1 day 23 hrs 30 mins)	Cpl Goldsmith	14 days pay	27 Jan 43	HD Hay Capt	2 days pay FR&I 149 (1) (a) 14 days pay FR&I 149 (2)

No D-106785 Name DUBREUIL, C.J. Sqn, Battery, or Company — Corps R.C.A.S.C. — Date of enlistment 5 Jul 40 — GC Badges — Service or Proficiency Pay — MFM 6 (AFB 122) 40/PAM/130 (3429)

Date of last entry in Company Conduct Sheet — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of circumstances	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Jan 43	Pte		AA Sec 40 Neglect in that he had not cleaned his equipment contrary to Unit Order No 46 d/11 Oct 42	L/Cpl Bowles	1 days pay	28 Jan 43	HD Hay Capt	1 days pay FR&I 149(1)(a)

CERTIFIED TRUE COPY COMPILED FROM THE ORIGINAL MFM 6 IN MY POSSESSION

(Officer i/c Records)
1 Cdn A S C Rft Unit
Canadian Army Overseas

(PTO)

Description of Court by which tried, or status of Officer disposing of the charge in dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
		NIL		

Officer having custody of Regimental Books

(Officer i/c Regtl Books)
1 Cdn ASC Rft Unit
September 1944

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

Signed this 27 day of Sept. 1944

Army Form B'296.

Statement as to Character and Particulars of Service of Accused.

D-106785 Cpl Dubreuil C.J. the 1 Cdn A.S.C. Rft Unit

1. The following is a fair and true summary of the entries in the Regimental ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ Conduct sheets[1] of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

		*Within last 12 months.		*Since Enlistment.	
For	Sec 15(1)	NIL	times	~~five~~ SIX	times.
For	Sec 40	NIL	times	~~two~~ ONE	times.
For	Sec 11	NIL	times	one	times.
For			times		times.

~~XXXXXXXXXXXXXXXXXXXX

3. The accused is not under sentence at the present time,

XX,

XXXX

I, the accused, desire the services of Major E.A. Lynch to defend me at my forthcoming Trial by Field General Court Martial.

Charles Dubreuil
(D-106785 Cpl Dubreuil, C.J.)

LIST OF EXHIBITS

(a) Certified True Copy of an Extract from 1 Cdn ASC Rft Unit Part 11 Orders Daily Order No 207 d/2 Sep 44 declaring D-106785 Cpl Dubreuil, C.J. sos as a deserter wef 1200 hrs 24 May 44 by a Court of Inquiry held on 17 Jun 44.

(b) Certificate in accordance with Army Act Section 163 (1) (j) certifying that D-106785 Cpl Dubreuil, C.J. surrendered himself to the Cdn Provost Corps in London at 2010 hrs 11 Sep 44

(c) AFB 252 certifying that D-106785 Cpl Dubreuil, C.J. surrendered himself to M-105892 L/Cpl Bietz, J. of the Cdn Provost Corps in London at 2010 hrs 11 Sep 44.

OFFICERS UNDER INSTRUCTION

Lt	K.L.F.	Coupland,	1 CSRU
Lt	L.F.	Pepino	4 CCD

PROMULGATION

D106735 Corporal Charles Joseph DUBEUIL

Having been tried by Field General Court Martial in the Field on 27 Sep 1944.

CHARGE: A.A.Sec 15(1) WOAB ABSENTING HIMSELF WITHOUT LEAVE in that he in the Field absented himself without leave from 1200 hours 24 May 1944 until 2010 hours 11 September 1944 when he surrendered to the Canadian Provost Corps at the Piccadilly Tube Station, LONDON.

TOTAL TIME ABSENT:- 110 days, 8 hours and 10minutes.

FINDING: 1st Charge - GUILTY

SENTENCE: To be reduced to the Ranks and to undergo detention for a period of ninety (90) days.

CONFIRMATION: Findings and sentence confirmed by Brig A.B. Connolly, Cond "B" Gp, CRU. on 28 Sep 44.

IN CUSTODY: Under close arrest from 2010 hours 11 Sep 44 until 1030 hrs 27 Sep 44 (Date of Trial).

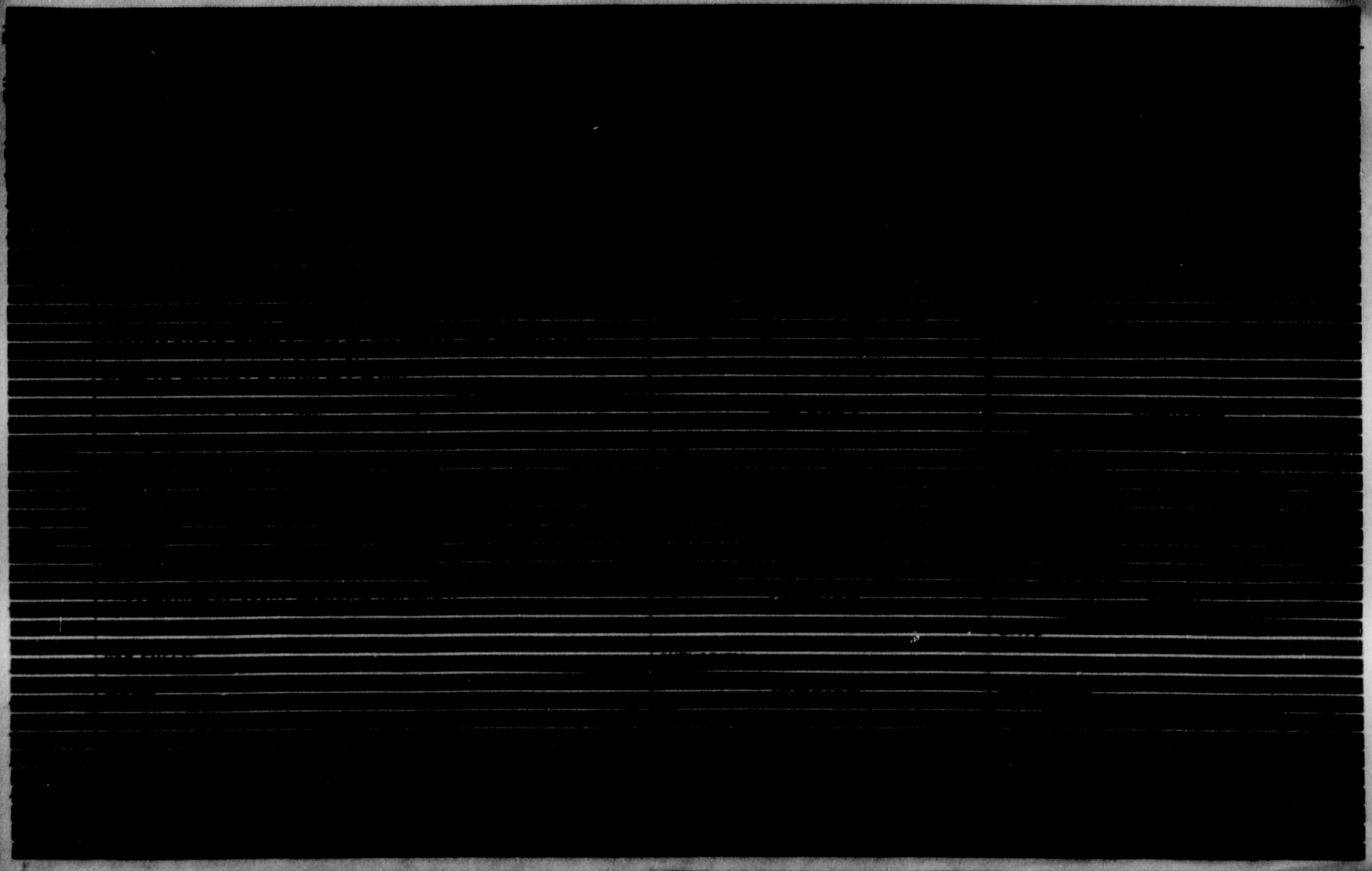
FORFEITURES: Forfeits 111 days pay PRAI 149(1)(a)
90 days pay PRAI 149(1)(b)
15 days pay PRAI 149(1)(c)(i)

TOTAL FORFEITURES 216 days pay

PROMULGATED: In the Field on 30 Sep 44

DO 233 G/2 Oct 44

5Z-32 Pte. Ducos R.



SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D641268 Pte DUCAS ROMEO 1 Con DEMOB DEPOT

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 24 days, of which N/K days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for seven (7) months.

4 MAR 46 (Sgd) H Baillargeon Major
Date awarded. President. (RP 45, 53)

Judge Advocate, if any

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I mitigate the sentence to read to undergo detention for a period of sixty days and to forfeit all ordinary pay for a period of ninety days and I confirm the finding and ~~the sentence as so mitigated~~ as mitigated.

~~[ ] remitted [ ] suspended [ ] commuted to ..... detention, or detention barracks until further order.~~ (1. AA 57A. Delete if not used.)

(Sgd) Jeffrey Rutherford Brig

Date 13 March 46 Commanding Depot and C.T.C. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D641268 Pte Ducas R 1 Con Demob Depot	15 Mar 1946	W/S Fraser Major Officer Commanding 1 Con Demob Depot

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AF [illegible]

5Z-32

CPA66 (to [illegible] of AFA81) 40-1-[illegible] (6000)

RECEIVED MAR 3 1946 JAG BRANCH G.H.Q.

FIELD GENERAL COURT-MARTIAL

4/388

Convened By Order of BRIG E.N. MONTGOMERY, CBE, Comd 5 Lof C Sub Area dated 26 FEB 46

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D641268	Pte	ROMEO	DUCAS	1 Con Demob Depot

PROCEEDINGS REVIEWED

25 Mar 46 C.H. Lt-Col, Maj

[illegible] OFFICER, JAG BRANCH, G.H.Q.

PROCEEDINGS OF TRIAL.

Held in [illegible] Fd in (Country) HOLLAND on (date(s)) 4 MAR 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn KOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 32, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4)

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

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(5) ~~The Prosecutor informs the Court that accused elected to be tried by court martial instead of being dealt with summarily by the CO.~~

(1. KR Con 537. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans .....~~
~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~
~~The shorthand writer is sworn.(1)~~

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NP. Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(5). If objection, see procedure AA 51, RP 25, 71, (& MML p 742).)

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

President	Major	H.L. Baillargeon	CE(Retd)	3 Con Trans Camp
Member	Capt	H.N. McLeod MC	CIC	3 Con Trans Camp
Member	Lieut	D.R. Saunderson	CIC	3 Con Trans Camp
~~Judge Advocate~~				
Prosecutor	Capt	J.M.R. Ethier	CIC	1 Con Demob Depot
Defending Offr	Lieut	~~Lt~~ D. Aquino	RCOC	1 Con Demob Depot

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

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 33.)

A8. The accused D641268 PTE DUCAS R before arraignment make(s) (no) ~~no~~ plea. (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

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

(1. RP 20, 112. See para 1 of leaves p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

3 Con Trans Camp CFA Vol I Page 44

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

President to accused: Do you wish to make a statement? Ans. N.C. S.I.R.(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

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

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

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

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 17(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

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

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

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

(1. *RP* 37(*B*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence need as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial proceeds as directed by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

~~D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules~~ relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 90(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. .....

Do you intend to call witnesses on your behalf? Ans. .....

Are they witnesses as to character only? Ans. .....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116; *for procedure see Notes on back of Convening Order; CF* A95. *Evidence for accused as to his character should, if on his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(2) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using ~~Record Form E below~~.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. N.C. S.I.R.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(1) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)

(1. *MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes, I wish to make a statement on oath.(2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its generals, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 128, 182, *RP* 46-50, 89, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 309, 1323, *MML p* 60, 722-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1b), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

4 Feb 1946

This will hereby certify that D-641268
Pte. DUCAS Romeo is fit/~~unfit~~ to undergo
trila by a Field General Court Matial.

.....Capt
Medical Officer
1 Cdn Demob Depot

In the Field
4 March 1946

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-641268	Pte.		Romeo	DUCAS,	1 Cdn Demob Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Feb 46 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

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

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	F.A. BAILLARGEON	Gen List 3 Cdn Transit Camp

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Cap t.	H.N. McLEOD, MC	CIC 3 Cdn Transit Camp
Lieut.	D.R. SAUNDERSON	CIC 3 Cdn Transit Camp

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut.	R.G. HILL	MCA 3 Cdn Transit Camp

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Field (Country.)

Dat 26 February 1946

(Signed personally. RP 105 fn 2.)

(E.J. Montgomery, OBE,) Brig. Brig. (Rank.)

Commanding 5 L.of C. Sub Area

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1097 (6143)

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

CHARGE SHEET

The accused, D-641268 Pte Romeo DUCAS, of 1 Cdn Demob Depot, a soldier of the Cdn Army Overseas is charged with:-

FIRST CHARGE
Sec 15(1)
Army Act

WHILST ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

In the Field absented himself without leave from 0800 hrs 22 Oct 1945 until apprehended by the Cdn Provost Corps at Brussels, Belgium at 1000 hrs 8 Feb 1946.

Total time absent 110 days 2 hours.

H.F. Baker

(H.F. Baker) Lt-Col
Officer Commanding
1 Cdn Demob Depot

In the Field
20 Feb 1946

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

B.J. Montgomery

(B.J. Montgomery, OBE) Brig.
Commander
5 L.of C. Sub-Area.

In the Field
26 Feb. 1946

E 3

1 Mar 46

Plea of Mitigation of Sentence

In the case of D 641268 Pte Ducas Romeo.

The accused has chosen not to present any defence, but to thrust himself ~~on~~ the lineancy of the Court. Pte Ducas wishes however to stress the fact that although he has been in the Army for three years and three months, it is only the second time he is on charge. As to the reasons that urged him to go away for the period of time for which he is charged, he would like the Court to realize that he has gone through five years of unhappy married life and whereas he does not wish to divulge all his matrimonial problems to the Court, he would like the Court to believe that he absented himself from the Army, to try to forget his troubles.

The Accused trusts the Court will consider those points before passing sentence and will be lineant in doing so.

Requiring Officer

Defending Officer

SUMMARY OF EVIDENCE Ex "A"

In the case of Number D-641268 Private Romeo DUCAS, Royal Canadian Ordnance Corps on strength 1 Cdn Demob Depot, a soldier of the Canadian Army Overseas, on Active Service.

By direction of the Commanding Officer, this Summary of Evidence is taken under oath.

FIRST WITNESS FOR THE PROSECUTION

Capt. G.W. Rahm, Canadian Infantry Corps, on strength 1 Cdn Demob Depot having been duly sworn states:-

"I am Capt G W Rahm, Canadian Infantry Corps, Adjutant of No 1 Cdn Demob Depot. I herewith produce Record of the Declaration of a Court of Inquiry pertaining to the accused, attached as Exhibit "A".

The accused declines to cross-examine the witness.

.....Capt
(G W Rahm)

SECOND WITNESS FOR THE PROSECUTION

G-6029 Sgt. Van De Walle R.J. - Att to 2/11 Cdn Provost Coy

THIRD WITNESS FOR THE PROSECUTION

D-34033 Cpl. Gass e R. - 11 Cdn Provost Coy

I certify that in my opinion the attendance of G-6029 Sgt. Van De Walle R.J. and D-34033 Cpl. Gasse R. is, owing to exigencies of the service, expense and loss of time involved, not readily procurable; a written statement of evidence signed by G-6029 Sgt. Van De Walle R.J. and corroborated by D-34033 Cpl. Gasse R has been read to the accused and is attached hereto as Exhibit "B".

The accused declines to cross-examine the witness.

.....Capt
(RJM Ethier)

Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Desirez-vous faire une declaration ou bien rendre temoignage sous serment? Vous n'etes pas oblige de faire declaration ou de rendre temoignage a moins que vous ne de sirlez le faire. Mais tout le que vous direz ou le temoignage que vous donnerez seront pris parecrit et pourront servir comme evidence.

The accused declines to make any statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of ONE PAGE was taken down by me in the presence and hearing of the accused and that Rule of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

.....Capt
(RJM Ethier)
Officer Taking Summary

In the Field

19 Feb 1946

Appendix "A"

RECORD of the Declaration of a Court of Inquiry assembled at Field on the 16th day of November 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION

The Court declare that No. D641268 Pte Lucas R 1 Cdn Ord Female Dep RCOC illegally absented himself without leave 0800 hours at In the Field on the 22nd day of Oct 1945; and that on the 16th Nov 1945 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE
		As per attached List	

Lt Browne Capt. President

Signed at Field

Lt Parkinson Capt Member

this 20 day of Nov 1945

Member

Signature of Commanding Officer [signature] Lt-Col 1 Cdn Ord Female Dep RCOC

Mil. Bk. 43
5500 Hks.—8-41 (240)
H.Q. 1773-41-40

RECORD of the Declaration of a Court of Inquiry assembled at

on the day of 19 , for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION

The Court declare that No. _____

_____

illegally absented himself without leave _____

at _____ on the _____ day of _____;

and that on the _____ he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE		ARTICLES	VALUE	

_____ President

_____ Member

Signed at _____

_____ Member

this _____ day of _____ 19__

Signature of Commanding Officer _____

Mil. Bk. 48
5500 Bks.—6-41 (940)
M.Q. 1773-61-48

EXHIBIT "A"

6/8- Quartermaster Stores
1 Cdn. Ord. Demob. Depot, R.C.O.C.
21st, Nov. 1945.

Deficiencies in kit of D-64,268 Pte. Ducas R.

1. Herewith list of clothing necessaries and accoutrements found deficient on checking the kit of the a/m other rank 21st, November 1945. Deficient articles are priced according to Part 1 Price Scale of Issue 1945.

Article	Qty.	Price.
Blouse Battledress	1	6.50
Boots, Ankle	1 pr.	5.82
Caps, Comforter	1	.34
Holdalls	1	.19
Housewives W.E. Pat. 37.	1	1.79
		14.64
	Less 25 % Depreciation	3.66
	Net Charge	10.98

M.E. Gale
.....Capt.
M.E. Gale.
Quartermaster.

CHARGE

Army Form B 252
See King's Regulations

Appendix B

ROYAL CANADIAN ORDNANCE CORPS. Regiment
Battery
Squadron
Troop or
Company

CHARGE against No. D.641268 Rank Pvte.

Name DUCAS.R.

Place BRUSSELS Date of Offence 8 Feb.46.

OFFENCE W.O.A.S.

(1) AWL from ? until apprehended by members of the Canadian Provost Corps at approx. 10.00 hrs 8 Feb.1946 at Brussels (Belg.)

L A Magee Capt.
OC.2/11 Cdn.Provost.Coy.

Names of Witnesses :—

G.6029 Sgt.VAN DE WALLE. R.J.
D.34033 Cpl.GASSE.R,

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

[illegible] WLW29941 4002. 1,000,000 11/44. K. & H., Ltd. G657/47

STATEMENT OF **EVIDENCE** IN THE CASE OF

D.641268
Pvte.DUCAS.R.
R.C.O.C.

Sir,

At approx 1000 8th Feb.1946 acting on information received I proceeded to Brussels, district Saint Josse Ten Noode,#3,rue Rotaere and there I accosted a soldier how known to me as the a/m.
He could produce no authority allowing him to be absent from his Unit.He was AWL.He was placed under close arrest and escorted to the Company Guard room in Brussels awaiting escort to his Unit.

G.6029 Sgt.VAN DE WALLE.R.J.
att'd to 11 Cdn Pro.Coy.

REMARKS

I have read over and corrborate the above evidence.

D.38063 Cpl.GASSE.R.

- 1 -

LIST OF WITNESSES

PROSECUTION

1. Capt. G.W. Rahm, Cdn Infantry Corps, 1 Cdn Demob Depot
2. G-6029 Sgt. Van De Walle R.J. - Att 2/11 Cdn Provost Coy Brussels, Belgium.
3. D-34033 Cpl. Gasse R. - 2/11 Cdn Provost Coy Brussels, Belgium.

DEFENCE

Nil

List of Exhibits

Appendix "A" - Record of the Declaration of a Court of Inquiry.

Appendix "B" - Statement of G-6029 Sgt. Van De Walle R.J. corroborated by D-34033 Cpl. Gasse R.

1 Cdn Demob Depot

19 Feb 1946

This is to certify that I desire to have the services of Lieut. A. CHARBONNEAU, 1 Cdn Army Equipment Selection Unit, Arnhem, Holland to defend me at my forthcoming Field General Court Martial.

Romeo Ducas.

(D-641268 Pte. Ducas Romeo)

I herewith acknowledged, free of charge, one copy of the Summary of Evidence and charge sheet.

Ronnie Ducas

(D-641268 Pte. DUCAS R)

Ex "B" Authority Con. Pte.

ARMY FORM B.196.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-641268	Pte.	Romeo DUCAS	1 Cdn Demob Depot

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

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

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

† See para. 477, K.R., 1940.

* The question herein stated should be inserted with the number of entries in the conduct sheets, previously to the giving to the most serious offence in each entry, and to any recognized special mode of punishment for distinguished conduct.

Instruction.—If the charge to be broken, note the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	A.A. Section 15(1)	One times	One	times.
For		times		times.
For		times		times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct, None

or

~~XXXX

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

No. D-641268 Rank Private Name Romeo DUGAS of 1 Cdn Demob Depot Regiment (or as the case may be).

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

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

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

Signed this ~~19th~~ 4 day of ~~February~~ MAR 46

H. H. Baker Lt-Col

Officer Commanding

1 Cdn [illegible]

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

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

(Inconvenience.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that on the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

No D641268 Name DUCAS Romeo | Sqn, Battery, or Company | Corps 5 Ord Dep RCOC (CA) | Date of enlistment 19-11-42 | QC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (5438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc E.Findlay Lt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet No 1 destroyed in acc with R.O. 393 on 11-2-44					
Field	16 Sep 45	Pte.		WOAS AWL in that he did absent himself from 0800 hrs 16 Sep 45 until 2300 hrs 22 Sep 45. (Total absence 6 days 15 hrs). AA Sec 15(1)	Cpl. McGillis RL	21 days FP Forf 21 days pay FR&I 149 (2).	28 Sep 45	Maj AS Findlater	Forf 7 days pay FR&I 149(1)(a)

Certified True Copy - 19 Feb 46

(G.W. Rahm) Capt
Officer i/c Records
1 Cdn Demob Depot

(PTO)

40-33

Pte. Ducasse a.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-58111 Pte Andre DUCASSE, Regt De Chaud

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st charge 8(1)	Guilty	Guilty	
2nd charge 19	Guilty	Gilty	
3rd charge 10(3)	Guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 482 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit s.e. RP 44 fn 6.)

~~In present custody for~~ ~~beginning on (date)~~ (1) RMM

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 2 days, of which 1 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for 9 months.

(Sgd) ..... 9 Nov 44 (Sgd) "R. M. Medland" Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP (20(F), MML p 746.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
I confirm the finding and sentence.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) JAR

(1. AA 57A. Delete if not used.)

(Sgd) "J.A.Roberts" Lt Col

Date 16 Nov 44

Commanding T/Coond 8 Cdn Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D-58111 Pte Ducasse A	17 Nov 44	"R.L. Boulanger" Capt & Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

44-33

FIELD GENERAL COURT-MARTIAL

CPA95 (To face of AFA81) 40/P & R/1608 (40/01) 4/38B

Convened by Order of Lt Col J A Roberts A/ Comd 8 Inf Bde dated 6 Nov 44

ACCUSED.

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

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-58111		Pte	Andre DUCASSE	Regt de Chaud	

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 9 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 13/122

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

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

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

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

A3. The Court is opened. The accused is ~~duly~~ brought before the Court. At 1500 hours trial commences. RMM

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

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

A5. ~~Prosecutor to proceed. Do you object to~~ ~~as interpreter?~~ (1) RMM

~~The interpreter is sworn.(1) To you object to~~ ~~as shorthand writer?~~ ~~As shorthand writer is sworn.(1)~~ RMM

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

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

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 23, 71, 110, MML p 742.)

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

President	Major	R. M. Medland	RCR of C
Member	Capt	N. R. Edwards	Regina Rifles
Member	Capt	P. H. S. Paterson	S D & G H
Judge-Advocate			
Prosecutor	Capt	L. N. Begin	R de Chaud
Defending Offr	Capt	C. R. Lamaueux	HQ 8 Cdn Inf Bde

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

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

A8. The accused D-58111 Pte Andre DUCASSE before arraignment make(s) (no) ~~plea~~ plea RMM

(2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 156(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

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

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is advised and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The pro- RMM
ceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

K P/I M/I

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. ..... Do you intend to call witnesses on your behalf?
Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(1).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (a), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. Yes both
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 255 or AFB 296.* 2. *MFW 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes through Def Offr (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to inform on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas Act 209, 232(2), MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(E), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

In the case of D-58111 Pte Andre DUCASSE, Le Regiment de la Chaudiere, a soldier of the Canadian Army, placed on Active Service, charged with

FIRST CHARGE
A.A.Sec 8(1) WHILE ON ACTIVE SERVICE STRIKING HIS SUPERIOR OFFICER BEING IN THE EXECUTION OF HIS OFFICE

in that he

In about 1710 hrs 5 Oct 1944, in the field in Belgium, struck with his fist Lieut PO Trempe, who was at the time duty Officer for R de Chaud.

SECOND CHARGE
A.A.Sec 19 WHILE ON ACTIVE SERVICE: DRUNKENNESS

in that he

at about 1710 hrs, on 5 Oct 1944, in the field, in Belgium was drunk.

THIRD CHARGE
A.A.Sec 10(3) WHILE ON ACTIVE SERVICE RESISTING AN ESCORT WHOSE DUTY IT WAS TO HAVE HIM IN CHARGE.

in that he

at about 1730 hrs on the 5 Oct 1944 in the Field in Belgium resisted L/Cpl Leblanc, A, whose duty it was to apprehend him, by kicking and struggling.

Signed in the Field
this 11 day of Oct 44. "Paul Mathieu"

(Paul Mathieu) Lt Col
Commanding
Le Regiment de la Chaudiere

TO BE TRIED BY F.G.C.M.

Signed in the Field
this 6 day of Nov 1944 "Jas A Roberts" Lt Col

Commanding
8 Cdn Inf Bde.

R DE CHAUD 9 NOV 44.

I CERTIFY THAT, I have this morning examined, D-58111 Pte DUCASSE A., and in my opinion he is fit to undergo trial by a Court Martial.

"P. Gauthier"
M.O.

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
D-58111	Pte		Andre	DUCASSE	R de Chaud

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 6 Nov 44 endorsed by me, ~~for try an offr of my staff for that,~~" To be tried by Field General Court-Martial ". J AR

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~) J AR

(Delete part in brackets when not required for compliance with RP 105(C).)

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

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ J AR

(AA 49, RP 105(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	R. M. Medland	QOR of C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	N. R. Edwards	Regina Rifles
Capt	P. H. S. Paterson	S D & G H

WAITING MEMBER.

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

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium (*Country.*) "Jas A Roberts" (*Signed personally. RP 105 fn 2.*) Lt Col (*Rank.*)

Date 6 Nov 44 T/ Commanding 8 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FABS 176 (1941) OF AFAI) 40-7 & 8-1941 (4811)

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

SUMMARY OF EVIDENCE: in the case of D-58111 Pte Ducasse, A., Le Regiment de la Chaudiere, a soldier of the Canadian Army, placed on Active Service.

The CO directs that the evidence be taken on oath.

FIRSTWITNESS Capt M.A. Cardinal, Le Regiment de la chaudiere, having been duly sworn, states:

I am Capt M.A. Cardinal, Adjt of Le Regiment de la Chaudiere. At about 1700 hrs the 5th Oct 1944, I was in the Ops Room De Chaud where Lieut Trempe was on duty. I was writing on a table, when I was pushed by a soldier. I turned around and I saw Pte Ducasse, whom I recognize now as being the accused, going towards Lieut trempe who was sitting. I heard Pte Ducasse say to Lieut Trempe, "C'est toi, mon Christ, qui m'a xx fait transferrer de Cie." (It is you, Christ, who had me transferred in a Coy. When saying that, he struck Lieut Trempe in the face with his fist. I jumped on him and held his arms behind his back to stop him hitting. He freed himself and went on striking Lieut Trempe with his open hand. xx Then I ordered L/Cpl Blais to hold him tight, and I said to Lieut Trempe to walk out room. I walked out myself, and ordered L/Cpl Leblanc to put Pte Ducasse under close arrest, I noticed that Pte Ducasse was in an advanced state of drunkenness, in that he was mumbling, he could not walk straight and he could not listen to common sense. Pte Ducasse was not then fit to do his duty.

The accused declines to cross examine this witness.

"M.A.Cardinal"

(M.A. Cardinal) Capt
Le Regiment de la Chaudiere

SECOND WITNESS Lieut P.O. Trempe, Le Regiment de la Chaudiere, having been duly sworn, states:

I am Lieut P.O. Trempe, Le Regiment de la Chaudiere, on the 5th Oct 1944, I was duty officer from 1400 hrs to 1800 hrs at the Ops Room R de Chaud. At about 1710 hrs on the 5th Oct 1944, Cpl Amyot came in to tell me that Pte Ducasse insisted on see me. He hardly finished telling me so, that Pte Ducasse walked in, worked his way through the room, and coming towards me, said something I did not understand. Then, facing me, he struck me in the face with his fist. The Adjt. Capt Cardinal ordered L/Cpl Blais to hold him and told me to go outside. I went out and approximat ly one minute later, Pte Ducasse came out and started following me. He, then, tried to strike me again, but fell down. When Pte Ducasse came in the Ops Room, at about 1710 hrs, he was in advance state of drunkenness. He was not steady on his feet, and he could not walk straight, and was mumbling unintelligible words. He was not in a state to do any kind of military duty.

The accused declines to cross examine this witness.

"P.O. Trempe" Lieut.

(P.O. Trempe) Lieut.
Le Regiment de la Chaudiere.

THIRD WITNESS E-11066 L/Cpl Blais, H., of Le Regiment de la Chaudiere, having been duly sworn, states:

I am E-11066 L/Cpl Blais H of Le Regiment de la Chaudiere. At about 1710 hrs, on 5th Oct 1944, I was on duty in the Ops Room, I saw Pte Ducasse coming in and walk towards Lieut Trempe. He told him: "Can you tell why you had me transferred to a Coy." Lieut Trempe answered him: "It is not your business and your place is not here". Pte Ducasse then told him: "mon Christ je m'en vais te montrer a qui t'a affaire." (you, Christ, I am going to show you whom you are dealing with). Right after, he struck Lieut Trempe with his right fist. Lieut Trempe ordered me to take Pte Ducasse outside and to hold him until the Provost had arrived. I took hold of Pte Ducasse then Lieut Trempe walked out. In the meantime Pte Ducasse walked out alone and I did not see him afterwards.

The accused declines to cross examine this witness.

"H. Blais"

E-11066 L/Cpl Blais H.

FOURTH WITNESS E-109086 A/Cpl Amyot R of Le Regiment de la Chaudiere, having been duly sworn, states:

I am E-109086 A/Cpl Amyot R of Le Regiment de la Chaudiere. At about 1730 hrs on 5th of Oct 1944, I was ordered to apprehend Pte Ducasse who was drunk. He was lying down asleep in a field along the road. I woke him up, he got up on his feet and walked with me to the Ops Room. He was not walking straight. He was smelling of liquor, he was mumbling and hard to understand. I know Pte Ducasse very weal and I can tell that he was not normal and not fit to do any military duty.

The accused declines to cross examine this witness.

"R. Amyot"

E-109086 A/Cpl Amyot R
Le Regiment de la Chaudiere

FIFTH WITNESS E-9362 L/Cpl Leblanc A of Le Regiment de la Chaudiere, having been duly sworn, states:

I am E-9362 L/Cpl Leblanc A of Le Regiment de la Chaudiere. At about 1730 hrs on 5th of Oct 1944, I was ordered to apprehend Pte Ducasse whom I was told was drunk. I tried to catch him up on the road, but he was trying to escape by running away when I was getting close to him. I would have caught him immediately, but I had a sore leg. I saw him trying to hide himself in a little bush in the field. When I got near him, I asked him to come along with me. He answered that he would come if I was able to force him to. I got closer to hold him. He then kick me on the leg and hit me in the face with his open hand. I, then, forced him to lay down, and after he got xx asleep I went away to get a Jeep in order to take him down and put him close arrest.

The accused declines to cross examine this witness.

"A. Leblanc"

(E-9362 L/Cpl Leblanc A.)
Le Regiment de la Chaudiere

QUESTION TO THE ACCUSED
Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence.

ANSWER BY THE ACCUSED
No sir, I reserve my defence.

This summary of evidence consisting of two pages has been taken down by me in the presence and hearing of the accused this 7th day of Octer 1944. I certify that Rules of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

Signed in the Field
This 7th day of October 1944.

"R. L. Boulanger" Capt.

R.L. Boulanger, Capt.
Le Regiment de la Chaudiere
Officer detailed to take this Summary.

FIRST WITNESS FOR THE DEFENCE I am D-58111 Pte Andre DUCASSE, Regt de Chaud, sworn, state:

On 5 Oct 1944 while we were in Belgium before the campagn in Holland I had an opportunity of buying a bottle of cognac. I drank all of it and then I did not remember what happened afterwards. The following morning I was told what I had done the previous day while under the influence of liquor.

SECOND WITNESS FOR DEFENCE I am Lieut D.A.J. Pare, Regt de la Chaud, sworn.

I have known the accused Pte Duncasse, for about one week. He is a very reliable man in action and all the time he has worked with me I must praise his work. Twice I granted him 48 hrs leave and it was cancelled because he was under close arrest but after considering his case he was granted leave. He did a wonderful job during the last operation and his pl comd begged me to come to his trial as a character witness.

THIRD WITNESS FOR DEFENCE I am E-109086 Sgt R Amyot, Regt de la Chaud.

I have known the accused Pte Ducasse since Feb 1943. I have worked with Pte Ducasse in the same pl and he has always been a very good soldier. He fought alongside me in the different operations in France and in Holland, and I have absolutely nothing to say against him. He always follod me wherever I went.

While in Holland though Pte Ducasse had been transferred to another Coy, when I asked him to assist me in building a bridge he gave me every assistance.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-58111	Pte	Andre DUCASSE	Le Regiment de la Chaudiere

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15(1) 1 day 3 hrs 15 min ___1___ times.

For AA Sec 19 Drunkenness ___1___ times.

For NIL _____ times.

For _____ times.

Date of first entry in Field Conduct Sheet 25 Aug 44

Date of last entry in Field Conduct Sheet 20 Sep 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for N/A

beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for N/A

days in civil custody; and for 2 days in military custody, i.e., XXXXX 1 days in open arrest, 1 days in close arrest; of which 1 days were spent in hospital.

5. The present age of the accused is 28 yrs 10 mos

6. The date of his attestation is 30 July 40

~~XXXXXXXXXXXXXXXXX~~

7. The service which the accused is allowed to reckon is N/A

8. The accused is in possession of CVSM & Clasp

†9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date— N/A

Date of Promotion.

In the substantive rank of N/A

In the war substantive rank of _____

In the acting rank of _____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

*Strike out if not applicable.

†State the military character of the accused as entered in his conduct sheet.

(72072) W1.30722/0701 M.600 9/43 A.& E.W.Ltd. Gp.A/S

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 7th day of Oct 44

"R.L. Boulanger " Capt
(R.L.Boulanger) Capt

PLEA IN MITIGATION OF PUNISHMENT IN THE CASE OF

D-58111 Pte DUCASSE A., R de Chaud

Gentlemen of the Court:

The one charge standing out among the others, is that the accused struck an officer of the Cdn Army, who was on duty at the time. This give one a wrong impression of the facts, for I believe that this is not quite correct. If one looks more closely and studies the facts we will clearly see that the reason why an officer and an NCO were struck is, because the accused was in a state of drunkenness to such an extent that he did not know what he was doing. I know that this cannot be taken as an excuse, for drunkenness is never an excuse for one to do things one should not do, but the state of blind drunkenness makes one loose his head, unfortunately, I am sure that ~~xxxxxx~~ had the accused been sober, none of this would have happened. The accused quite understands that he did wrong, this has been proved by his pleading guilty, and admitting his crimes, though he did not know about it until he was told later on by someone else. The accused has been in the Army four years and half, during which time, he only had 2 charges, in 4½ years of service, charges are not against a mans all round behaviour. Lt Pare & Sgt Amyot have stated that the accused was a very valuable man in action, and this is the things which counts, most. I beg of the court to take into consideration the few points I very briefly put into light and to be as kindhearted as possible, so that the accused can be brought back to his unit quickly and prove once more his extremely good capacities as a fighting man, wishing for nothing else but for the estruction of all the German Army.

9 Nov 44. "C.R. Lamaueux" Capt.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D/58111 Pte Andre DUCASSE, Regt de Chaud

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge 1(b)(i)	Guilty	Guilty	
2nd	Charge 1(a)	Guilty	Guilty	
3rd	Charge 2(b)(i)	Guilty	Guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for ... beginning on (date) ...~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 2 days, of which 1 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for 9 months dismissal, RN

(Sgd) J/A — Judge-Advocate, if any. 9 Nov 44 — Date awarded. (Sgd) [illegible] Major — President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence.

~~I direct that the accused be released from arrest and further proceedings be stayed.~~ (1) (1. AA 57A. Delete if not used.)

(Sgd) Jas A Roberts, B/Gal

Date 16 Nov 44. Commanding T/Comd 8 Cdn Inf Bde. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
D58111 Pte Ducasse A	17/Nov/44	R L Bourlanger Capt RCR Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 47-33

FIELD GENERAL COURT-MARTIAL (CFA96 (In lieu of AFA3) (D.P.&S. 1698 (2004))

Convened by Lt-Col J A S Roberts s/ Comd 8 Inf Bde dated 6 Nov 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D/58111	- Pte	Andre	DUCASSE	Regt de Chaud

PROCEEDINGS REVIEWED

J W Kirby Capt 12 Nov 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 9 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 13/122

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

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

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 1500 hours trial commences.

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

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

A5. ~~President to accused: Do you object to ... as interpreter? Ans ...~~

~~The interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans ...~~

~~The shorthand writer is sworn.(1)~~

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 168, MML p 742.)

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

President	Major	R M Medland	COR of C
Member	Capt	N B Edwards	Regina Rifles
Member	Capt	P M S Paterson	S D & G H
Judge-Advocate			
Prosecutor	Capt	L N Bergin	Regt de Chaud
Defending Offr	Capt	C R Lonsdale	14 Fd Regt RCA

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

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

A8. The accused D/58111 Pte Andre DUCASSE before arraignment make(s) (no) ~~plea~~ plea.

No (1)

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

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

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

A10. The Court ~~re-assembles and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Barnett page 130

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

President to accused : Do you wish to make a statement ? Ans NO (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)*
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes, later.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 353 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes Sir, I was in Def. Offr (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to answer on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas RO 309, 2323, MML p 90, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Exhibit 3.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number [redacted] *Rank.* [redacted] *Name.* *Regiment* (*or as the case may be*).

D-58111 Pte. Ducasse Andre — Le Regiment de la Chaudiere

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A.Sec. 15 (1),1 day,3 hrs,15mins ... 1 ... times.

For A.A.Sec. 19 Drunkeness ... 1 ... times.

For NIL ... NIL ... times.

For NIL ... NIL ... times.

Date of first entry in Field Conduct Sheet 25 Aug. 44

Date of last entry in Field Conduct Sheet 20 Sep. 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N/A

beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for N/A

days in civil custody; and for 2 days in military custody, *i.e.*, 1 days in open arrest, 1 days in close arrest; of which 1 days were spent in hospital.

5. The present age of the accused is 28 yrs 10 months

6. The date of his attestation / calling up for military service is 30 July 40

7. The service which the accused is allowed to reckon is N/A

†State the military decorations (if any) held by accused.

8. The accused is in possession of† C/V/S/M with clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date— N/A

Date of Promotion.

In the substantive rank of N/A

In the war substantive rank of N/A

In the acting rank of N/A

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(81114) W1,547(C)/665 100,000 4/42 A.& E.W.Ltd. Gp.699
(32459) W1,29250/1673 80,000 9/42 " " Forms/B.296(War)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		RAB		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 7th day of Oct. 44

R. L. Boulanger Capt.

(R. L. Boulanger) Capt.

FIRST WITNESS FOR DEFENCE

I am D58111 Pte André DUCASSE, Regt de Chaud. Sworn
On 5 Oct 1944 while we were in Belgium
before the campaign in Holland I had an
opportunity of buying a bottle of Cognac. I
drank all of it and then I did not remember what
happened afterwards. The following morning I was
told what I had done the previous day while
under the influence of liquor.

SECOND WITNESS FOR DEFENCE

I am Lieut D.A.S. Parr, Regt de la Chaud sworn
I have known the accused Pte Ducasse, for about
one week. He is a very reliable man in action
and all the time he has worked with me I
must praise his work. Since I granted him
48 hrs leave and it was cancelled because
he was under close arrest but after reconsidering
his case he was granted leave. He did a
wonderful job during the last operation and
his pl Comd begged me to come to his trial as
a character witness.

THIRD WITNESS
FOR DEFENCE

I am E 109056 Sgt R. Arnyot, Regt de la Chaud.
I have known the accused, Pte Ducasse since Feb 1943. I have worked with Pte Ducasse in the same pl and he has always been a very good soldier. He fought alongside me in the different operations in France and in Holland, and I have absolutely nothing to say against him. He always followed me wherever I went.
While in Holland though Pte Ducasse had been transferred to another Coy when I asked him to assist me in building a bridge he gave me every assistance.

4th WITNESS: E-109086 A/Cpl Amyot R. of Le Regiment de la Chaudiere, having been duly sworn states:

I am E-109086 A/Cpl Amyot R. of Le Regiment de la Chaudiere. At about 1700 hrs, the 5th Oct 1944, I saw pte Ducasse who was drunk. He was lying down asleep in a field along the road. I woke him up, he got up on his feet and walked with me to the Ops, Room. He was not walking straigth, he was smelling liquor, he was mumbling and hard to understand. I know Pte Ducasse very well and I can tell that he was not normal and not fit to do any military duty.

The accused declines to cross-examine this witness.

R. Amyot
E-109086 A/Cpl Amyot R.
Le Regiment de la Chaudiere.

5th WITNESS: E-9362 L/Cpl Leblanc A. of Le Regiment de la Chaudiere, having been duly sworn states:

I am E-9362 L/Cpl Leblanc A. of Le Regiment de la Chaudiere. At about 1730 hrs, on 5th of Oct 1944, I was ordered to apprehend Pte Ducasse whom I was told was drunk. I tried to catch him up on the road, but he was trying to escape by running away when I was getting close to him. I would have caught him immediately, but I had a sore leg. I saw him trying to hide himself in a little bush in the field. When I got near him, I asked him to come along with me. He answered that he would come if I was able to force him to. I got closer to hold him. He, then, kick me on the leg and hit me in the face with his open hand. I, then, forced him to lay down, and after he got asleep, I went away to get a Jeep in order to take him down and put him close arrest.

The accused declines to cross-examine this witness.

A. Leblanc
E-9362 L/Cpl Leblanc A.
Le Regiment de la Chaudiere.

QUESTION: to the accused:
Do you wish to make any statement or to give evidence upon oath?
You are not obliged to say anything or to give evidence unless you wish to do so, but, whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence.

ANSWER by the accused:

No, Sir, I reserve my defence.

This summary of evidence consisting of two pages has been taken down by me in the presence and hearing of the accused this 7th day of October 1944. I certify that Rules of Procedure 4 (C), (D), (E), (F), (and (G), have been complied with.

Signed in the Field
This 7th day of October 1944

R.L. Boulanger 7 Oct 1944
(R.L. Boulanger) Capt
Le Regiment de la Chaudiere.
Officer detailed to take this Summary.

Exhibit "A"

SUMMARY OF EVIDENCE, in the case of D-58111 Pte Ducasse A., Le Regiment de la Chaudiere, a soldier of the Canadian Army, placed on Active ~~ex~~ Service.

The C.O. directs that the evidence be taken on oath.

1st WITNESS: Capt M.A. Cardinal, Le Regiment de la Chaudiere, having been duly sworn states:

I am Capt M.A. Cardinal, Adjt. Of Le Regiment de la Chaudiere, At About 1700 hrs, the 5th Oct 1944, I was in the Ops. Room R.de.Chaud where Lieut. Trempe was on duty. I was writing on a table, when I was pushed by a soldier. I turned around and I saw Pte Ducasse, whom I recognize now as beeing the accused, going towards Lieut Trempe who was sitting. I heard Pte Ducasse say to Lieut Trempe: " C'est toi, mon Christ, qui m'a fait transferrer de Cie."(It is you, Christ, who had me transferred in a Coy.) When saying that, he struck Lieut Trempe in the face whith his fist. I jumped on him and haid his arms behind his back to stopps him hitting. He freed himself and went on striking Lieut Trempe with his open hand. Then, I ordered L/Cpl Blais to hold him tight, and I said to Lieut Trempe to walk out the room. I walked out myself, and ordered L/Cpl Leblanc to put Pte Ducasse under close arrest. I noticed that Pte Ducasse was in ~~and~~ an advanced state of drunkenness, in that he was sumbling, he could not walk ~~straigth~~ straigth and he could not listen to common sense. Pte Ducasse was not then fit to do his duty.

The accused declines to cross-examine this witness.

M.A. Cardinal
(M.A. Cardinal)Capt
Le Regiment de la Chaudiere.

2nd WITNESS: Lieut P.O. Trempe, Le Regiment de la Chaudiere, having been duly sworn states:

I am Lieut P.O. Trempe, Le Regiment de la Chaudiere, On the ~~5th~~ 5th Oct 1944, I was duty Officer from 1400 hrs to 1800 hrs, at the Ops, Room R.de Chaud. At about 1710 hrs, on the 5th Oct 1944, Cpl Amyot came in to tell me that Pte Ducasse insisted to see me. He hardly finished telling ~~to~~ me, that Pte Ducasse walked in, worked his way through the room, and, coming towards me, said something I did not understand. Then, facing me, he struck me in the face with his fist. The Adjt, Capt Cardinal, ordered L/Cpl Blais to hold him and told me to go outside. I went out, and approximately, one minute later, Pte Ducasse came out and started following me. He, then, tried to strike me again, but fell down. When Pte Ducasse came in the Ops, Room, at about 1710 hrs, he was in an advanced state of drunkenness. He was not steady on his feet, he could not walk straigth, and was sumbling unintelligible words. He was not in a state to do any kind of military duty.

The accused declines to cross-examine this witness.

P.O. Trempe
(P.O. Trempe) Lieut
Le Regiment de la Chaudiere.

3rd WITNESS: E-11066 L/Cpl Blais H. of Le Regiment de la Chaudiere, having been duly sworn states:

I am E-11066 L/Cpl Blais H. of Le Regiment de la Chaudiere. At about 1710 hrs, on 5th of Oct 1944, I was on duty in the Ops, Room, I saw Pte Ducasse coming in and walk towards Lieut Trempe. He told him:" can you tell why you had me transferred to a Coy." Lieut Trempe answered him:" it is not your business and your place is not here." Pte Ducasse then told him:" mon Christ je m'en vais te montrer a qui t'a affaire," (you, Christ, I am going to show you whom you are dealing with) Right after, he struck Lieut Trempe with his right fist. Lieut Trempe ordered me to take Pte Ducasse outside and to hold him until the Provost had arrived. I took hold of Pte Ducasse and then Lieut Trempe walked out. In the meantime, Pte Ducasse walked out alone and I did not see him afterwards.

The accused declines to cross-examine this witness.

H. Blais
E-11066 L/Cpl Blais H.
Le Regiment de la Chaudiere.

Plea of mitigation of punishment in the case of H. S. Hill, Pte Hucasse, A. Rde Chand.

Gentlemen of the Court.

The one charge standing out among the others, is that the accused struck an Officer of the Cdn Army, who was on duty at the time. This gives one a wrong impression of the facts for I believe that this is not quite correct. If one looks more closely & studies the facts one will clearly see that the reason why an O, Pics & an N.C.O. were struck, is because the accused was in a state of drunkness to such an extent that he did not know what he was doing. I know that this cannot be taken as an excuse, for drunkness is never an excuse for one to do things one should not do, but the state of blind drunkness makes one loose his head, unfortunately I am sure that had the accused been sober, none of this would have happened. The accused quite understands that he did wrong this has been proved by his pleading guilty, and admitting his crimes, though he did not know about it until he was told later on by someone else. The accused has been in the Army four years and half, during which time, he only had 2 charges; in 4 1/2 years of service, ~~this~~ 2 charges are not against a man & all around behaviour. St Pare & Sgt Guriot have stated that the accused was a very valuable man in action, and this is the things which counts most. I beg of the Court to take into consideration the few points I very briefly put into light, and to be as kindhearted as possible, so that the accused can be brought back to his unit quickly, and prove once more his extremely good ~~capabilities~~ capacities as a fighting man, wanting wishing for nothing else but for the destruction of all the German army.

[illegible] Capt [illegible]

7 nov 44.

R. de. Chaud. 9 NOV 44.

I certify that, I have, this morning examined:

D-58111 Pte. DUCASSE A.

and, in my opinion, he is fit physically to undergo trial by a court-martial.

P Gauthier
M.O

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-58111	Pte		Andre	DUCASSE	R de Chaud

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has ~~have~~ committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (date) 6 Nov 44 endorsed by me, ~~(or by an offr of my staff for me)~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~

(Delete part in brackets when not required for compliance with RP 105(C).)

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

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	R M Medland	QOR of C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	N R Edwards	Regina Rifles
Capt	P H S Paterson	S D & G H

WAITING MEMBER.

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

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium (Country.) — [signature] (Signed personally. RP 105 fn 2.) — Lt-Col (Rank.)

Dat 6 Nov 44 — T/ Commanding 8 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (6143)

CHARGE SHEET

In the case of D-58111 Pte Andre DUCASSE, Le Regiment de la Chaudiere, a soldier of the Canadian Army, placed on Active Service, charged with:

1st Charge
A.A. Sec 8(1)

WHILE ON ACTIVE SERVICE: STRIKING HIS SUPERIOR OFFICER BEEING IN THE EXECUTION OF HIS OFFICE,

in that he,

at about 1710hrs 5 Oct 1944, in the Field in Belgium struck with his fist Lieut. P.O. Trempe, who was at the time duty Officer for R de Chaud.

2nd Charge
AA Sec 19

WHILE ON ACTIVE SERVICE: DRUNKENESS

in that he,

at about 1710hrs, on the 5 Oct 1944, in the Field in Belgium was drunk.

3rd Charge
AA Sec 10(3)

WHILE ON ACTIVE SERVICE: RESISTING AN ESCORT WHOSE DUTY IT WAS TO HAVE HIM IN CHARGE.

in that he,

at about 1730hrs on the 5 Oct 1944, in the Field in Belgium resisted L/Cpl Leblanc, A, whose duty it was to apprhend him, by kicking and struggling.

(Paul Mathieu) Lt. Col.,
Commanding
Le Regiment de la Chaudiere

Signed in the Field
this 11 day of Oct 44.

TO BE TRIED BY F.G.C.M.

J.A. Roberts Brig

Signed in the Field
this 6 day of ~~Oct~~ Nov 1944

Commanding
8 Cdn Inf Bde

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-58111 Pte Andre DUCASSE, Regt De'Chaud

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	charge 8(1)	Guilty	Guilty	
2nd	charge 19	Guilty	Guilty	
3rd	charge 10(3)	Guilty	Guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1) RMM

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 2 days, of which 1 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under EJ.)

Sentence Awarded by the Court:

To undergo detention for 9 months.

(Sgd) ..... 9 Nov 44 (Sgd) "R. M. Medland" Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and dispersal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation must be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

~~I withhold my confirmation of the~~ I confirm the finding and sentence.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) JAR

(1. AA 57A. Delete if not used.)

(Sgd) "J.A.Roberts" Lt Col

Date 16 Nov 44 Commanding T/Comd 8 Cdn Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D-58111 Pte Ducasse A	17 Nov 44	"R.L. Boulanger" Capt & Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

44-33

FIELD GENERAL COURT-MARTIAL

(PAGE 1 TO 3rd OF ARMY 40 P R S 1/38B) 4/38B

Convened by Order of Lt Col J A Roberts A/ Comd 8 Inf Bde dated 6 Nov 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-58111	Pte	Andre	DUCASSE	Regt de Chaud

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 9 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 15/122

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

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RGs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 102, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ✓ attached thereto.(1) RMM
The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and RMM
each charge discloses an offence.(3)

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

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1500 hours trial commences. RMM

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) RMM
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by his CO(1).~~ RMM

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

A5. ~~President to ascertain if accused has objection to~~ ~~an interpreter.~~ Ans ~~.....~~ RMM
~~The Interpreter is sworn.(1) Is any objection to~~ ~~an shorthand writer.~~ Ans ~~.....~~ RMM
~~The shorthand writer is sworn.(1)~~ RMM

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 31, RP 23, 71, 78, MML p 742.)

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

President	Major	R. M. Medland	QOR of C
Member	Capt	N. R. Edwards	Regina Rifles
Member	Capt	P. H. S. Paterson	S D & G H
Judge-Advocate			
Prosecutor	Capt	L. N. Begin	R de Chaud
Defending Offr	Capt	C. R. Lamoureux	HQ 8 Cdn Inf Bde

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

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

A8. The accused D-58111 Pte Andre DUCASSE before arraignment make(s) (no) plea RMM
.....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references on fns to RoP cited. Insert in A8 note, and name of the accused making the plea.)

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

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62. 2. When several accused to be tried separately see RP 71(C), and use separate copies of CF A84 to record proceedings. 3. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

President to accused: Do you wish to make a statement? Ans NO (5)
(*I. RP* 37(*E*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court will hear the accused's statement (4). The Court decides (not) to adv e accused to change his~~ K M M
~~plea(s) of Guilty to Not Guilty on~~ ~~charge(s). The accused is (are) so informed, and he (they)~~ K M M
~~charge(s) has (have) (been) ch~~ ~~changed). Part I of the Schedule is amended accordingly.~~ K M M
(*I. Court may be closed to consider the statement. Delete whole or part not used.*)

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(*I. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*I. RP* 29(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*I. RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(1) The Court is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)
(*I. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
N.B: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither. K M M

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? .....
Do you intend to call witnesses on your behalf?
Ans .....
Ans ..... Are they witnesses as to character only? Ans .....
(*I. RP* 115. 2. *RP* 40(*B*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 8.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*I. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*I. RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*I. AA* 54(2) (*c*), *RP* 42, 120(*A*). 2. *AA* 54(2), *RP* 42, 117. *His sentence commencement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans Yes both
(*I. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 27(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*I. MFR* 155 *or AFB* 284. 2. *MFM* 6. 3. *RP* 46, *KR Con* 158. *If above documents not produced, see RP* 46 *fn* 1 *para* (*c*).)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes I have a statement to make
(*I. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or rebut anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*I. AA* 54(*E*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*I. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con RDR*, 330, 563-566, *Clemency RO* 829, 2223, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 544. 2. *RP* 50. *As to release from arrest before Confirming Offr see KR Can* 367. *As to assembly and dispersal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

In the case of D-58111 Pte Andre DUCASSE, Le Regiment de la Chaudiere, a soldier of the Canadian Army, placed on Active Service, charged with

FIRST CHARGE
A.A.Sec 8(1) WHILE ON ACTIVE SERVICE STRIKING HIS SUPERIOR OFFICER BEING IN THE EXECUTION OF HIS OFFICE

in that he

In about 1710 hrs 5 Oct 1944, in the field in Belgium, struck with his fist Lieut PO Trempe, who was at the time duty Officer for R de Chaud.

SECOND CHARGE
A.A.Sec 19 WHILE ON ACTIVE SERVICE: DRUNKENNESS

in that he

at about 1710 hrs, on 5 Oct 1944, in the field, in Belgium was drunk.

THIRD CHARGE
A.A.Sec 10(3) WHILE ON ACTIVE SERVICE RESISTING AN ESCORT WHOSE DUTY IT WAS TO HAVE HIM IN CHARGE.

in that he

at about 1730 hrs on the 5 Oct 1944 in the Field in Belgium resisted L/Cpl Leblanc, A, whose duty it was to apprehend him, by kicking and struggling.

Signed in the Field
this 11 day of Oct 44. "Paul Mathieu"
(Paul Mathieu) Lt Col
Commanding
Le Regiment de la Chaudiere

TO BE TRIED BY F.G.C.M.

Signed in the Field
this 6 day of Nov 1944 "Jas A Roberts" Lt Col
Commanding
8 Cdn Inf Bde.

R DE CHAUD 9 NOV 44.

I CERTIFY THAT, I have this morning examined, D-58111 Pte DUCASSE A., and in my opinion he is fit to undergo trial by a Court Martial.

"P. Gauthier"
M.C.

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-58111	Pte		Andre	DUCASSE	R de Chaud

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 6 Nov 44 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ". JAR

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

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

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

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

PRESIDENT.

Major	R. M. Medland	QOR of C
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	N. R. Edwards	Regina Rifles
Capt	P. H. S. Paterson	S D & G H
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

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

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium	"Jas A Roberts"	Lt Col
(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)

Date 6 Nov 44 T/ Commanding 8 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A OFARS (In lieu of AFAS) 40 P & S/1697 (4931)

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

SUMMARY OF EVIDENCE: in the case of D-58111 Pte Ducasse, A., Le Regiment de la Chaudiere, a soldier of the Canadian Army, placed on Active Service.

The CO directs that the evidence be taken on oath.

FIRST WITNESS Capt M.A. Cardinal, Le Regiment de la Chaudiere, having been duly sworn, states:

I am Capt M.A. Cardinal, Adjt of Le Regiment de la Chaudiere. At about 1700 hrs the 5th Oct 1944, I was in the Ops Room De Chaud where Lieut Trompe was on duty. I was writing on a table, when I was pushed by a soldier. I turned around and I saw Pte Ducasse, whom I recognize now as being the accused, going towards Lieut trempe who was sitting. I heard Pte Ducasse say to Lieut Trempe, "C'est toi, mon Christ, qui m'a fait transferrer de Cie." (It is you, Christ, who had me transferred in a Coy. When saying that, he struck Lieut Trempe in the face with his fist I jumped on him and held his arms behind his back to stop him hitting. He freed himself and went on striking Lieut Trempe with his open hand. Then I ordered L/Cpl Blais to hold him tight, and I said to Lieut Trempe to walk out room. I walked out myself, and ordered L/Cpl Leblanc to put Pte Ducasse under close arrest, I noticed that Pte Ducasse was in an advanced state of drunkenness, in that he was mumbling, he could not walk straight and he could not listen to common sense. Pte Ducasse was not then fit to do his duty.

The accused declines to cross examine this witness.

"M.A.Cardinal"
(M.A. Cardinal) Capt
Le Regiment de la Chaudiere

SECOND WITNESS Lieut P.O. Trempe, Le Regiment de la Chaudiere, having been duly sworn, states:

I am Lieut P.O. Trempe, Le Regiment de la Chaudiere, on the 5th Oct 1944, I was duty officer from 1400 hrs to 1800 hrs at the Ops Room R de Chaud. At about 1710 hrs on the 5th Oct 1944, Cpl Amyot came in to tell me that Pte Ducasse insisted on see me. He hardly finished telling me so, that Pte Ducasse walked in, worked his way through the room, and coming towards me, said something I did not understand. Then, facing me, he struck me in the face with his fist. The Adjt, Capt Cardinal ordered L/Cpl Blais to hold him and told me to go outside. I went out and approximat ly one minute later, Pte Ducasse came out and started following me. He, then, tried to strike me again, but fell down. When Pte Ducasse came in the Ops Room, at about 1710 hrs, he was in advance state of drunkenness. He was not steady on his feet, and he could not walk straight, and was mumbling unintelligible words. He was not in a state to do any kind of military duty.

The accused declines to cross examine this witness.

"P.O. Trempe" Lieut.
(P.O. Trempe) Lieut.
Le Regiment de la Chaudiere.

THIRD WITNESS E-11066 L/Cpl Blais, H., of Le Regiment de la Chaudiere, having been duly sworn, states:

I am E-11066 L/Cpl Blais H of Le Regiment de la Chaudiere. At about 1710 hrs, on 5th Oct 1944, I was on duty in the Ops Room, I saw Pte Ducasse coming in and walk towards Lieut Trempe. He told him: "Can you tell why you had me transferred to a Coy." Lieut Trempe answered him: "It is not your business and your place is not here". Pte Ducasse then told him: "mon Christ je m'en vais te montrer a qui t'a affaire." (you, Christ, I am going to show you whom you are dealing with). Right after, he struck Lieut Trempe with his right fist. Lieut Trempe ordered me to take Pte Ducasse outside and to hold him until the Provost had arrived. I took hold of Pte Ducasse then Lieut Trempe walked out. In the meantime Pte Ducasse walked out alone and I did not see him afterwards.

The accused declines to cross examine this witness.

"H. Blais"
E-11066 L/Cpl Blais H.

FOURTH WITNESS E-109086 A/Cpl Amyot R of Le Regiment de la Chaudiere, having been duly sworn, states:

I am E-109086 A/Cpl Amyot R of Le Regiment de la Chaudiere. At about 1730 hrs on 5th of Oct 1944, I was ordered to apprehend Pte Ducasse who was drunk. He was lying down asleep in a field along the road. I woke him up, he got up on his feet and walked with me to the Ops Room. He was not walking straight. He was smelling of liquor, he was mumbling and hard to understand. I know Pte Ducasse very well and I can tell that he was not normal and not fit to do any military duty.

The accused declines to cross examine this witness.

"R. Amyot"

E-109086 A/Cpl Amyot R
Le Regiment de la Chaudiere

FIFTH WITNESS E-9362 L/Cpl Leblanc A of Le Regiment de la Chaudiere, having been duly sworn, states:

I am E-9362 L/Cpl Leblanc A of Le Regiment de la Chaudiere. At about 1730 hrs on 5th of Oct 1944, I was ordered to apprehend Pte Ducasse whom I was told was drunk. I tried to catch him up on the road, but he was trying to escape by running away when I was getting close to him. I would have caught him immediately, but I had a sore leg. I saw him trying to hide himself in a little bush in the field. When I got near him, I asked him to come along with me. He answered that he would come if I was able to force him to. I got closer to hold him. He then kick me on the leg and hit me in the face with his open hand. I, then, forced him to lay down, and after he got xx asleep I went away to get a Jeep in order to take him down and put him close arrest.

The accused declines to cross examine this witness.

"A. Leblanc"

(E-9362 L/Cpl Leblanc A.)
Le Regiment de la Chaudiere

QUESTION TO THE ACCUSED
Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence.

ANSWER BY THE ACCUSED
No sir, I reserve my defence.

This summary of evidence consisting of two pages has been taken down by me in the presence and hearing of the accused this 7th day of Octer 1944. I certify that Rules of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

Signed in the Field
This 7th day of October 1944.

"R. L. Boulanger" Capt.

R.L. Boulanger, Capt.
Le Regiment de la Chaudiere
Officer detailed to take this Summary.

FIRST WITNESS FOR THE DEFENCE I am D-58111 Pte Andre DUCASSE, Regt de Chaud, sworn, state:

On 5 Oct 1944 while we were in Belgium before the campaign in Holland I had an opportunity of buying a bottle of cognac. I drank all of it and then I did not remember what happened afterwards. The following morning I was told what I had done the previous day while under the influence of liquor.

SECOND WITNESS FOR DEFENCE I am Lieut D.A.J. Pare, Regt de la Chaud, sworn.

I have known the accused Pte Ducasse, for about one week. He is a very reliable man in action and all the time he has worked with me I must praise his work. Twice I granted him 48 hrs leave and it was cancelled because he was under close arrest but after considering his case he was granted leave. He did a wonderful job during the last operation and his pl comd begged me to come to his trial as a character witness.

THIRD WITNESS FOR DEFENCE I am R-109086 Sgt R Amyot, Regt de la Chaud.

I have known the accused Pte Ducasse since Feb 1943. I have worked with Pte Ducasse in the same pl and he has always been a very good soldier. He fought alongside me in the different operations in France and in Holland, and I have absolutely nothing to say against him. He always follwed me wherever I went.

While in Holland though Pte Ducasse had been transferred to another Coy, when I asked him to assist me in building a bridge he gave me every assistance.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-58111	Pte	Andre DUCASSE	Le Regiment de la Chaudiere

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is one of drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15(1) 1 day 3 hrs 15 min ... 1 ... times.

For AA Sec 19 Drunkenness ... 1 ... times.

For ... NIL ... times.

For ... times.

Date of first entry in Field Conduct Sheet ... 25 Aug 44

Date of last entry in Field Conduct Sheet ... 20 Sep 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for ... N/A ... beginning on the ... N/A ... day of ... N/A

4. The accused has been awaiting trial on the present charges for ... N/A ... days in civil custody; and for ... 2 ... days in military custody, *i.e.*, XXXXX 1 ... days in open arrest, ... 1 ... days in close arrest; of which ... 1 ... days were spent in hospital.

5. The present age of the accused is ... 28 yrs 10 mos

6. The date of his ... attestation ... is ... 30 July 40

7. The service which the accused is allowed to reckon is ... N/A

8. The accused is in possession of: ... CVSM _A Clasp

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date— ... N/A

Date of Promotion.

In the substantive rank of ... N/A

In the war substantive rank of ...

In the acting rank of ...

*Strike out if not applicable.

†State the military operations (if any) laid to account.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*Signed*) ... (*Rank*) ...

(*Unit*) ... (*Date*) ...

W1.30721/3761 30,000 5-44 A.& E.W.Ltd. Gp.A/99

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 7th day of Oct 44

"R.L. Boulanger " Capt
(R.L.Boulanger) Capt

PLEA IN MITIGATION OF PUNISHMENT IN THE CASE OF

D-58111 Pte DUCASSE A., R de Chaud

Gentlemen of the Court:

The one charge standing out among the others, is that the accused struck an officer of the Cdn Army, who was on duty at the time. This give one a wrong impression of the facts, for I believe that this is not quite correct. If one looks more closely and studies the facts we will clearly see that the reason why an officer and an NCO were struck is, because the accused was in a state of drunkenness to such an extent that he did not know what he was doing. I know that this cannot be taken as an excuse, for drunkenness is never an excuse for one to do things one should not do, but the state of blind drunkenness makes one loose his head, unfortunately, I am sure that ~~xxxxix~~ had the accused been sober, none of this would have happened The accused quite understands that he did wrong, this has been proved by his pleading guilty, and admitting his crimes, though he did not know about it until he was told later on by someone else. The accused has been in the Army four years and half, during which time, he only had 2 charges, in 4½ years of service, charges are not against a mans all round behaviour. Lt Par & Sgt Amyot have stated that the accused was a very valuable man in action, and this is the things which counts, most. I beg of the court to take into consideration the few points I very briefly put into light and to be as kindhearted as possible, so that the accused can be brought back to his unit quickly and prove once more his extremely good capacities as a fighting man, wishing for nothing else but for the estruction of all the German Army.

9 Nov 44. "C.R. Lamaueux" Capt.

HHH-41

PTE DUCHAINE A

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E 15089 Pte Antonio Duchaine 1 Can Inf Amb C.A.M.C.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 1	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for 1 [illegible] beginning on (date) [illegible] (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of 9 days, of which 7-0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo 90 days detention.

~~Forfeits 6 days Pay under [illegible]~~ (1)

(Sgd) ..... 3 April 44 (Sgd) J. H. Baker Maj
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm

[redacted] (1)

(1. AA 57A. Delete if not used.)

Date 3 Apl 44 (Sgd) [illegible]
Commanding [illegible] Confirming Officer.

COMD. 5 CDN INF BDE

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
E089 Pte Duchaine A	5 April 44	[illegible] Capt Fisher

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ERRO IN RECORDS OF C.M. HHH-44

FIELD GENERAL COURT-MARTIAL

CFABS (1st Sch of AFA37) 40/P & S/1698 (2804)

Convened by Order of Brig W J Megill Comd 5 Can Inf Bde dated 3 April 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) ~~Apptmt, A/R or A/Apptmt.~~	Full Christian Names.	Surname.	Unit.
E15089	Pte	Antonio	Duchaine	1 Can Inf Amb C.A.M.C.

PROCEEDINGS REVIEWED
Lt. Desmarais.
18 Apr 44. Capt.
REVIEWING OFFICER, JAG

PROCEEDINGS REVIEWED
Date 19 Apr 44
JAG
FIELD FORCE HQ CDN ARMY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 3 April 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

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

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

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

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1442 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

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

A5. President to accused: Do you object to ..... as interpreter? Ans .....
The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....
The shorthand writer is sworn.(1)

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

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

President	Maj	J. H. Baker	Cdg R Regt
Member	Capt	J. Brodeur	5 Cdn Armd Regt
Member	Lieut	D.M. Gordon	Cdg R Regt
~~Judge-Advocate~~			
Prosecutor	Lieut	R. Dallain	RCAMC
Defending Offr	Capt	R. D. Landry	RCAMC

Questions by President: Is the Prosecutor a lawyer? Ans Nil Is the Defending Offr a lawyer? Ans Nil (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused E 15089 Pte Antonio Duchaine (~~did~~) (did not) before arraignment make(s) (no) plea (1)

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (4) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 90(A)* (*B*); *duty and privileges of accused and Defending Offr see RP 90(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes. (Character attached)
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s) purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(2)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(4), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried separately see RP 120. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas RO 309, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

28 March 1944

CHARGE SHEET

The accused, No. E-15087 Pte Antonic Duchaine, 18th Cdn. Field Ambulance, R.C.A.M.C., a soldier of the Cdn. Army Overseas, is charged with:

1st Charge
Section 15(1)
Army Act

W.O.A.S., Absenting himself without leave, in that he in the field, on 21 March 1944 absented himself without leave from 1330 hrs 21 March 1944 until 2359 hrs 26 March 1944.
Total absence: ~~130 hours and 29 minutes~~ 5 days 10 hrs - 29 min

(A.A.Sec 15(1)

In the field
28 March 1944

(C. U. Letourneau) Lt. Col.
O.C. 18th Cdn. Fd. Amb.,
R.C.A.M.C. - C. A. O.

To be tried by F.G.C.M

31 March 44

COMD. 5 CDN INF BDE.

J H B. President

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/F&S/1697 (2863)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E15087	Pte		Antonio	Duchaine	18th Cdn Fd Amb

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Apr 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)

(Delete part in brackets when not required for compliance with RP 105(C).)

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

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	J H Baker	Calg Highrs
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	G. Brosseau	R de Mais
Lieut	E A. Michon	Calg Highrs
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Lieut	J G Besbrias	18th Cdn Fd Amb
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in A F (Country.) [signature] (Signed personally. RP 105 fn 2.) Brig (Rank.)

Date 1 Apr 44 Commanding 5th Cdn Inf Bde.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Con) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, EWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the page in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 89(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn* 3, *46 fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused while has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 565(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits on opening the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under *RP* 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (8).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 55(2), RP 114(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", unless otherwise directed.

3 Apr. 44

Witness for Defence

1. Witness as to character:

Major R. Blair; having been duly sworn, states:—

Pte Duchaine was with me in my Coy for ~~approx~~ imately two years. I can say that he was a good man and a good worker as far as I know he never refused or neglected to obey any orders.

[signature]

JHB President

JHB President

MEDICALE OFFICER'S CERTIFICATE
K.R. (Can) Para 557

I certified that I have this morning examined No E-15087

Pte Duchaine, A. of 18 Cdn Fd Amb RCAMC and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station Field

Date 3 April 44

[signature] Capt [illegible]
Medical Officer

F.H.P.
Presided

3 Apr. 44

Plea of Mitigation by Capt R. D. Landry (R.C.A.Mc)

The accused does not deny his guilt, however I feel it my duty to stress the following points. The accused is 38 years of age, he is married has a wife and five kiddies in Canada, the eldest of which is a girl of 14. He joined the army on the 6 Sept 39, and has been in England since Dec 1940. He has very little education in that he can barely read or write. His going A.W.L. does not constitute an act of malice. I wish to point out that he returned on his own, because he thought the unit was going on a scheme the day following his return, thereby not wanting to take the chance of being stranded, or taking the chance of eventually being declared a deserter. He has already been nine (9) days in close arrest. Due to his age and Marital status he deserves more sympathy than severity. He is not 19 or 21 any more, and realises fully the predicament he is in to-day, and is worried less his wife and kiddies suffer from his mistake, and has resolved to be a good soldier henceforth. Maj Blais has stated under oath that he was always a willing worker and as such a good influence on his fellow soldiers.

R. D. Landry capt.

J.H.B. President. E & A

Summary of Evidence in the case of
No. E 15087 Pte Antonio Duchaine, 18th Cdn Field Ambulance R.C.A.M.C.

A.W.L. - 130 hrs and 29 mins.
J.H.B. President.
A.A. Sec (15) 1.

The Commanding Officer directs that the evidence be taken on oath.

Fund witness for Prosecution.

~~D~~ E 29419 Sgt Lebel G. 18th Cdn. Fd. Amb. RCAMC having been duly sworn states:

On the 21st March 1944 I took charge of Bloy parade at 1330 hrs, I made the roll call and Pte Duchaine A was absent from the parade and roll call. I did not see him until the 28th of March 44.

The accused declines to cross-examine this witness

Sgt Lebel. G.

Second witness for Prosecution

D 109830 A/Cpl Perrard A.E. 18th Cdn Fd Amb RCAMC having been duly sworn states:

Pte Duchaine A reported to me at the guard room at 2359 hrs 26 March 1944 and I placed him under close arrest.

The accused does not wish to cross-examine this witness.

A/Cpl Perrard A.E.

The accused was cautioned as follows: Do you wish to make any ~~statement~~ or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.
After the above caution the accused does not wish to give evidence.
The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that the rules of Procedure 4(C), (D), (E) and (F) have been complied with.

L Dallain Lt.
18th Cdn. Fd. Amb. RCAMC.

No E-15087 Name Duchaine, A. Sqn, Battery, or Company — Corps R.C.A.M.C. — Date of enlistment 6-9-39 — GC Badges — Service or Proficiency Pay — MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet N.A. — No and date of last drunk N.A. — Period not reckoning towards freedom from extra tine N.A. — Sheet No 2 — Signature OC Company, etc J.B. Bundock Major. — Character

Place	Date of Offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of order (taken along with trial	By whom awarded	Remarks
Sheet destroyed 6-?-40; last entry 25-2-40; no cases of drunkenness (JBB)									
Quebec	1 Apr 40	Pte		AA Sec 15(1) A.W.L. 145 hrs 30 mins	RSM Jobin	A 7 days CB	8-4-40	Capt Morin E	Forf 7 days pay.
Quebec	16-4-40	Pte		AA Sec 15(1) A.W.L. 10 days 5 hrs	Cpl Trudeau	10 days detn.	27-4-40	Lt-col Petit-clerc	Forf 11 days pay.
Quebec	23- 5-40	Pte		AA Sec 15(1) A.W.L. 171 hrs.	S/Sgt Duellette J	168 hrs detention	21-5-40	Lt-Col Petit-clerc	Forf 8 days' pay.
Valcartier	25-6-40	Pte		AA Sec 15 (1) A.W.L. 188 hrs.	S/Sgt Duellette, J	168 hrs detention	25-6-40	Lt-Col Petit clerc	Forf 8 days' pay
Valcartier	16-7-40	Pte		AA Sec 15(1) A.W.L. 12 hrs 30 mins.	RSM Jobin, A.	Severe reprimand	17-7-40	Capt Morin E.	Forf 1 day's pay.
Valcartier	1-10-40	Pte		AA Sec 15(1) A.W.L. 12 days 10 hrs, 30 minutes. AA Sec 22 When in lawful custody, escaped.	L/Cpl Gingras, J.	28 days detention	14-10-40	Lt-Col Petit-Clerc	Forf 13 days pay for absence

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if under suspending with final	By whom awarded	Remarks
Valcartier	11-11-40	Pte		AA Sec 15(1) A.W.L. 10 days, 13 hrs, 45 mins.	Sgt Gagnon J	14 days CB	22-11-40	Lt-Col Petitclerc	Forfeits 11 days' pay.
Aldershot	24-4-41	Pte		AA Sec 15(2) Failing to appear at the place of Parade	S/Sgt Ouellette,J	4 days C.B.	24-4-41	Capt Blais R.	
Poynters	13-9-41	Pte		AA Sec 15(1) A.W.L. from 2359 13-9-41 to 2200 hrs 14-9-41 Total 22 hrs.	S/Sgt Ouellette, J	14 days C B	14-9-41	Capt Bundock JB	
London	6-1-42	Pte		AA Sec 15(1) A.W.L. from 1400 hrs 2-1-42 until 1525 hrs 6-1-42. Total 94 hrs 25 mins.	CPL Speakman CPL Stanley (Cdn Pro Corps)	14 days F.P.	8-1-42	Lt-Cpl Plante	Forfeits 4 days' pay for absence.
Field	15-2-42	Pte		AA Sec 15(1) A.W.L. from 2300 hrs 15-2-42 until 2230 hrs 17-2-42 Total 47 hrs 30 mins.	L/Cpl Arteau,J.P.	7 days C B	24-2-42	Capt Morin E.	Forf 2 days' pay for absence.
Field	16-5-42	Pte		AA Sec 15(1) A.W.L. from 0900 hrs 16-5-42 until 2300 hrs 17-5-42 Total 38 hrs.	S/Sgt Gagnon Sgt Martin,M	7 days' pay	18-5-42	Lt-Col Plante	Forfeits 4 days' pay.

M.F.M. 6
(A.F. B.122)
40/P & /8136 (2065)

No. | Name | Sqn., Battery, or Company | Corps | Date of enlistment | G.C. Badges | Service or Proficiency Pay | Character

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25-6-42	Pte		AA Sec 15(1) AWL from 1330 hrs until 1500 hrs 25-6-42. Total 1 hr 30 mins.	Sgt Martin, M.		29-6-42		
Field	26-6-42	Pte		AA Sec 15(1) AWL from 1300 hrs until 1530 hrs 26-6-42, Total of 2 hrs 30 mins.	Sgt Martin M.	7 days' pay.	29-6-42	Lt-Col Plante A.P.	
Field	27-6-42	Pte		AA Sec 15(1) AWL from 0900 hrs until 1200 hrs 27-6-42. Total of 3 hours.	Sgt Martin M.		29-6-42		
Field	11-8-42	Pte		AA Sec 15(1) AWL 6 hrs, 45 mins.	Cpl Cote, L.P.	7 days' Pay 7 days' C.B.	12-8-42	Lt-Col Plante	Forfeits 1 days pay for absence.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2-6-43	Pte		AA Sec 15(1) A.W.L. from 2300 hrs 2-6-43 until 2100 hrs 3-6-43. Total 22 hours.	Capt Gagnon,R Cpl Arteau,JP Cpl Keen,LH	14 days pay 14 days C.B.	7-6-43	Lt-Col CU Letourneau	Forfeits 1 day's pay for absence.
Field	6 Aug 43	Pte		AA Sec 15(1) A.W.L. on 6 Aug 43, Total of 4 hrs 30 minutes.	Cpl Langlais, C.	7 days' C.B.	7 Aug 43	Lt-Col CU Letourneau	
Field	23 Aug 43	Pte		AA Sec 15(1) A.W.L. 15 minutes on 23 Aug 43	Sgt Juneau,M. L/Cpl Comeau,L.	1 days' pay 7 days' C B	24 Aug 43	Lt-Col CU Letourneau	
Field	12 Sep 43	Pte		AA Sec 15(1) AWL on 12 Sep 43, 40 minutes	Sgt Latulippe L/Cpl Chiasson,JC	7 days' C.B.	14 Sep 43	Lt-Col CU Letourneau	
Field	30 Jan 44	Pte		AA Sec 15(1) AWL from 2259 hrs 30 Jan 44 until 2300 hrs 6 Feb 44. Absent 168 hours.	S/Sgt Paquet,M. Cpl Frechette,A	28 days' F.P.	7 Feb 44	Major JB Bundock (A/OC)	Forf 7 days' pay for absence

Certified True Copy... L Dallaire Lt

"B"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
E-15087	Pte	Duchaine, A.	18 Cdn Fd Amb, RCAMC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.W.L. 20 times.

For Escaping custody 1 times.

For Failing to appear on Parade 1 times.

For _____ _____ times.

Date of first entry in Field Conduct Sheet 1 Apr 40

Date of last entry in Field Conduct Sheet 30 Jan 44

~~2. [illegible]~~

~~[illegible]~~

~~[illegible]~~

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for ~~2~~ nil days in civil custody; and for ~~8~~ 7 days in military custody, *i.e.*, _____ days in open arrest, 7 ~~8~~ days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 38

6. The date of his attestation is 6 Sep 39

~~[illegible]~~

7. The service which the accused is allowed to reckon is from 6 Sep 39

8. The accused is in possession of: C.V.S.M.

‡State the military decorations (if any) held by accused.

~~[illegible]~~

~~[illegible]~~

Date of Promotion.

In the substantive rank of _____

In the war substantive rank of _____

In the acting rank of _____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

[21114] Wt.8670/868 100,000 4/42 A.& E.W.Ltd. Gp.688
[22459] Wt.29205/1872 60,000 2/42 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 28th day of March 1944

L Dullain Lt
18th Cdn Fd. Amb. R.C.A.M.C.

O. H. M. S.

47 Q

Pte DUCHARME, A

M. F. B. 270

Correspondence to be PINNED here.

470

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this Fifth day of October, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 5 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

* Omit if not applicable.

~~*I am unable to appoint:~~

~~*(1) Three Officers to form the Court;~~

~~*(2) A Field Officer as President;~~ GVW

~~*(3) Three Officers having more than one year's service;~~

~~for the following reasons, namely:~~

In my opinion, military exigencies, namely, the dispersion of units, and difficulties of communication and other difficulties render it inexpedient to observe the provisions of those rules inconsistent with Appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

50

PROCEEDINGS REVIEWED

Gen Graham Capt
Reviewing Officer (G.R.) 5 Cdn Inf Bde
30 Oct 42

President.

Rank.	Name.	Regiment.
Major	D.F.Robertson	Calg Highrs

Members.

Rank.	Name.	Regiment.
Capt	G.V.Archambault	R de Mais
Lieut	J.P.Cowans	R H C
	WAITING MEMBER	
Lieut	H.L.Carstairs	HQ 5 Cdn Inf Bde.

*Signed G.V.Whitehead
(G.V.Whitehead) Brigadier
Commanding 5 Cdn Inf Bde.
Convening Officer.

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

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-56954 PRIVATE DUCHARME, A. R. de Mais, a soldier of the Canadian Army, Overseas.	FIRST CHARGE A.A. Sec. 15 (1) (See charge sheet attached)	"Guilty"	Found "Guilty" sentenced to 12 months detention D K Robertson Brig President 7 Oct 42	I Confirm GHW

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

(Signed) G. H. Whitehead Brigadier
5 Can Inf Bde
Commanding
Confirming Officer (d)

(Signed) D K Robertson Brig
President.

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

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

21

B. Certificate of President as to proceedings.

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

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. ~~The Officer Detailed (Interpreter)~~) DKR

were duly sworn.

Signed this 7 day of October 1942.

D K Robertson Brig
President of the Court Martial.

* Omit if not applicable.

C. Certificate in case of death sentence.

* See footnote (b) on page 764 M.M.L. 1929.

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

Signed this ~~7~~ day of ~~Oct~~ 19~~42~~.

~~D K Robertson Brig~~
President of the Court Martial.

D. Confirmation.

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

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

~~I direct that the sentence named in the margin be not executed to prison until (date)~~ GHW

Signed this 9th day of OCT 19 42

G H Whitehead B.G.
COMD. 5 CDN. INF. BDE.
Confirming Officer.

Promulgated and extracts taken in the case of D 56954 Pte Ducharme, A
(a) (Dated) 12 Oct 42 (Signed) for Lt-Col
Commanding Depot Regt

Promulgated and extracts taken in the case of D56954 Pte Ducharme A R
(Dated) 13 Oct 42 (Signed) RG Glazier Lieut.

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

Exhibit "H"
D.K. Robertson Maj.

CHARGE SHEET

The accused D-56954 Pte. Ducharme, ALEXANDER, a soldier of Le Regiment de Maisonneuve, Canadian Army Active Force, is charged with:

FIRST CHARGE

WHEN ON ACTIVE SERVICE, ABSENT~~ING~~ ~~HIMSELF~~ WITHOUT LEAVE, in that he ~~at Goodwood Park~~, on 18 Aug 42, absented himself without leave until apprehended by the military police, in military dress, on the 17 Sep 42.

A A 15(1)

Total time of absence: ~~30 days~~ 29 days, 22 hrs.

To be tried by FGCM

H. L. York Bisaillon Major
~~(M. L. deRoos) Lt-Col.~~
A/C.O. R. de Mais. CA(O)

G.W. Whitehead
COND. & CON. INF. BDE

Request of the Accused for a Defending Officer endorsed hereon, P.T.O.

6

REQUEST OF THE ACCUSED FOR A DEFENDING OFFICER

I hereby request the Commanding Officer to appoint

Capt. Granda C. W.

as my Defending Officer at my forthcoming trial by F.G.C.M. or

Capt M. Bluteau

if he is not available for the same service.

Sgd. A Lanham

3

S R Robertson Maj.
President

MEDICAL OFFICER'S REPORT

I certify that No. D56957 Pte Hucharme Ce
of Pale Mais is in a fitted state of health,
and fit to undergo Trial by Court Martial.

L. Carlle Capt.
Medical Officer

Station In The Field

Date 7/10/42

M. F. B. 246
25M—6-41 (792)
H.Q. 1772-99 480

EXHIBIT 'I'

D.K. Robertson maj.

7

RECORD OF PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL

1. Trial of No. D.56954 Rank Pte. Name Ducharme, A.

Unit R. de Mais

Held at Bognor Regis on 7th day of October 1942

2. ACTUAL COURT

Rank Major Name D.K. Robertson Unit The Calgary Highlanders, C.A.(O)

" Capt. " G.V. Archambault " R. de Mais

" Lieut. " J.P. Cowans " R.H.C.

3. PROSECUTOR: Rank Lieut Name Brosseau, G. Unit R. de Mais

DEF.OFFICER: Capt. " M. Mutesa " R. de Mais

4. Court read R.P. 22 and 23. Satisfied itself in accordance with these rules.

5. Convening order was read by the President and the accused answered his name.

6. Accused was asked if he had any objection to being tried by the President or any member of the Court. Answer, "No, Sir".

7. President swore members.

8. Senior Member swore the President.

9. Accused asked if he had any objection to Lieut. P.M. Prevast acting as interpreter.

10. President swore the interpreter.

11. Medical certificate was presented to the Court.

12. Accused description was read and he was asked if he was the person named. Answer, "Yes, Sir".

13. The accused is arraigned and pleads 'Guilty' to the following charge:-

FIRST CHARGE WHEN ON ACTIVE SERVICE, ABSENT WITHOUT LEAVE, in that he in The Field at 1000 hrs on 18 Aug 42, absented himself without leave until apprehended by the military police, in military dress, at 0800 hrs 17 Sep 42.

Total time of absence: 29 days, 22 hrs.

A.A. Sec. 15(1).

14. Rule of Procedure 35(B) is complied with.

15. Abstract of Evidence was read.

16. The Prosecutor files AFB 296 and certified copy of M.F.M. 6.

17. Accused was asked if he wanted to make any statement on the charge. Answer, "No, Sir".

18. Accused was asked if he wanted to call any character evidence and was warned that if he gives evidence of good character he may be cross-examined as to bad character. Answer, "No, Sir".

19. Accused was asked if he had anything to say in mitigation of punishment. Answer, "My defending officer will speak for me".

20. Capt. M. Bluteau defending officer, on behalf of the accused stated:-

"The accused is 42 years old and should not be in the army, he has a wife, seven children and a mother to support in Canada. He spent forty days in Goodwood Park and due to dampness and old age suffered from rheumatism. He is too old to belong to a rifle coy. He went to Brighton and got drunk and remained there till picked up by the police. In passing sentence will the Court take these facts into consideration."

21. Accused was informed he is remanded in Close Arrest to await promulgation of sentence and his attendance not further required.

22. Court closed to consider sentence.

Certified a True Record of this Trial, 7th day of October 1942.

Signed ..... Lt.-Col. President.

11 Exhibit "F"

J.R. Robertson

ABSTRACT OF EVIDENCE.

in the case of D.56954, Pte. A. Ducharme, a soldier of Le Regiment de Maisonneuve, Canadian Army Active Force.

For the Prosecution

FIRST WITNESS: D.56042, C.S.M. Marcotte, R., H.Q. Coy, Regiment de Maisonneuve, STATES:

1- that on 18 Aug., 42, at 1000 hrs, he went to get Pte. Ducharme in his quarters.
2- that he could not find him.
3- that he immediately searched himself for Pte. Ducharme.
4- that when he saw he could not find him in Camp he put his name on the Absentee Report on 18 Aug., 42, and every day thereafter, until his return to the Unit on 17 Sep., 42.

For the Prosecution

SECOND WITNESS: D.56785, Pte. Proulx R., H.Q. Coy, Regiment de Maisonneuve, STATES:

1- that he is in charge of the H.Q. Coy Kitchen.
2- that he had Pte. Ducharme under his supervision.
3- that he, on the morning of the 18 Aug., 42, saw Pte. Ducharme at breakfast as usual.
4- that Pte. Ducharme asked him (Proulx) if he could go for a couple of hours rest.
5- that he gave him the permission.
6- that Pte. Ducharme was no more on duty for the day.
7- that at 1000 hrs, he was asked by C.S.M. Marcotte R., where was Pte. Ducharme.
8- that he told the C.S.M. Marcotte R., that Pte. Ducharme was gone to his tent for a rest.

For the Prosecution

THIRD WITNESS: D.56948, L/S. Cote A., R.H.L.I., Regiment de Maisonneuve, STATES:

1- that he on 17 Sep., 42, was ordered to pick up Pte. Ducharme A. at Brighton Civil Police.
2- that he as ordered did, and returned Pte. Ducharme A. to unit detention.

THIS ABOVE ABSTRACT OF EVIDENCE WAS TAKEN DOWN AND WRITTEN AT GOODWOOD PARK CAMP, near Chichester, Sussex, on the 25th and 26th of September, 1942, by order of my COMMANDING OFFICER and complying with the provisions of D.R.O. #772.

.....J. Brosseau Lieut.....
(J. Brosseau) Lieut.,
Regt. de Maisonneuve, C.A.(A.F.)

13 Exhibit "K"

(substitute for A.F.B. 296)
or M.F.B. 355

D R Robertson Mj.

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED.

No. D-56954 NAME Rk. Duchesne A UNIT Reg. de Maisonneuve

AGE 41 MARRIED OR SINGLE married No. OF DEPENDENTS 8

DATE OF ATTESTATION 26-12-39

No. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL 1 MILITARY 19 HOSPITAL nil TOTAL 20

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

nil

A CERTIFIED COPY OF M.F.M. 6 MUST ACCOMPANY THIS FORM.

(Officer i-c Records)

[signature] Capt adjt
R de Maisonneuve

DATED AT Bognor Regis, Sussex

This 29 day of Oct 1942.

(To be dated and signed as date of trial)

No. D56954 Name Duchaume H Sqn. Battery Company H.Q. Corps R. de. MAIS Date of enlistment 26-12-39 G.C. Badges N.A. Service or Proficiency Pay 15 D56954

M.F.M. 6 (A.F.B. 122) 500M—8-39 (1763) H.Q. 1772-41-18

* Date of last entry in Company Conduct Sheet | No. and date of last drunk N.A. | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. Reid Bely Q. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Montreal	17-3-40	pte		A.W.L. from 10.35 hrs till 3/3/40 10.35 hrs. 26-3-40 Total 10 days A.A.S. 15 (1)	Sgt Demers	14 days C.B	26-3-40	Maj P. Brosser	Forfeit 14 days Pay
Montreal	11-4-40	pte		A.W.L. from 20.00 hrs till 11/4/40 21.30 hrs 18-4-40 Total 8 days A.A. Sec. 15 (1)	C.S.M. Charette	14 days C.B	19-4-40	Lt Col. Comeau	Forfeit 8 days pay
Valcartier	8/6/40	pte	1	Drunkness A.A. Sec. 19	Cpl. Tarneau	7 days C.B	9-6-40	Major Mompetit	
Valcartier	17-6-40	pte	2	Drunkness A.A. Sec. 19	C.S.M. Charette	Fine 3.00	18-6-40	Major Mompetit	

On the 26th June 1940 this soldier completed 6 months service and in accordance with R.O. 71 C.M.S.F. (Overseas the above entries were transfered from previous sheet which was then displayed

(P.T.O.)

16

	Date of offence	Rank	Date of discharge	Offence	Names of Witnesses	Punishment awarded	Date of award of order dispensing with trial	By whom awarded	Remarks
Valcartier	1-7-40	pte		A.W.L. from 0700 hrs 1-7-40 till 0700 hrs 3-7-40 Total 2 days Pay A.A. Sec 15(1)	Cpl Boulin	Forfeit 10 days Pay	5-7-40	Lt Col Bonneau	Total forfeit 12 days Pay
Valcartier	3-7-40	pte		A.W.L. from 0.700 hrs 3-8-40 till 22/30 hrs 6-8-40 total 4 days A.A. Sect. 15(1)	Cpl Senecal	Forfeit 15 days Pay	7-8-40	Lt Col Bonneau	Total forfeit 19 days Pay
Valcartier	16-8-40	pte		A.W.L. from 0.700 16-8-40 till 0.700 hrs. 18-8-40, total 2 days A.A. Sect 15(1)	Cpl Boulin	Forfeit 6 days Pay	19-8-40	Major Brosseau	Total forfeit 8 days Pay
Aldershot	30-11-40	pte	3	Drunkness A.A. Sect 19	pte Tremel	Fined $10.00	4-12-40	Lt Col Brosseau	
Aldershot	30-3-41	pte		A.W.L. from 23.59 hrs. 30-3-41 till 22/00 hrs 1-4-4 Total 1 day 22 hrs A.A. Sect 15(1)	L/c Labelipps	Reprimended	3-4-41	Cpt Tremblay	Forfeit 3 days Pay

No. 56954 Name DUCHARME, A ~~Sign. Battery or Company~~ H.Q. Corps R. de Mais Date of enlistment 26/12/39 G.C. Badges O.K. Robertson Maj. Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 50000 - 8-39 (1793) H.Q. 1775-41-14

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 (Cont'd) | Signature O.C. Company, etc. Reid Bely Maj. | Character

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	1-5-41	pte		W.O.A.S.A.W.L from 0.800 hrs 1-5-41 till 1200 hrs 1-5-41 Total 4 hrs A.A. Sect 15(1)	Lyc Saturlyn	4 days C.B	3-5-41	Maj Salomé	
Pevensey	10-7-41	pte		W.O.A.S.A.W.L from 2245 hrs 10-7-41 till 3.00 hrs 11-7-41 Total 4 hrs 15 Min A.A. Sect 15(1)	Cpl Beaudoin	7 days C.B	11-7-41	Maj Salomé	
Pevensey	31-7-41	pte	4	Drunkness W.O.A.S.A.A Sect 19	Sgt Duncher	14 days F.P.	4-8-41	Maj Salomé	
Pevensey	10/12/41	pte		W.O.A.S.A.W.L from 2245 hrs 10-12-41 till 1700 hrs 11-12-41 Total 18 hrs 15 Min A.A. Sect 15(1)	CSM Marcotte	7 days C.B	13-12-41	Maj Belanger	Forfeit one day pay F.R. 21 Sect 0949

No. 56954 Name DUCHARME, A Sqn., Battery or Company H.Q. Corps R. de Mais Date of enlistment 26/12/39 G.C. Badges [illegible] Service or Proficiency Pay [illegible] M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk NA | Period not reckoning towards freedom from extra fine NA | Sheet No. 2 (Cont'd) | Signature O.C. Company, etc. Reid Bely Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	1-5-41	pte		W.O.A.S.A.W.L from 0.800 hrs 1-5-41 till 1200 hrs 12-5-41 Total 4 hrs A.A. Sect 15(1)	Lt Latulippe	4 days C.B	3-5-41	Maj Salonde	
Pevensey	10-7-41	pte		W.O.A.S.A.W.L from 2245 hrs 10-7-41 till 3.00 hrs 11-7-41 Total 4 hrs 15 Min A.A. Sect 15(1)	Cpl Beaudoin	7 days C.B	11-7-41	Maj Salonde	
Pevensey	31-7-41	pte	4	Drunkness W.O.A.S.A.A Sect 19	Sgt Duncher	14 days F.P.	4-8-41	Maj Salonde	
Pevensey	10/12/41	pte		W.O.A.S.A.W.L from 2245 hrs 10-12-41 till 1700 hrs 11-12-41 Total 18 hrs 15 Min A.A. Sect 15(1)	C.S.M Marcotte	7 days C.B	13-12-41	Maj Belanger	Forfeit one day pay F.R. 21 Sect

949

18

	Date of offence	Rank	Quest. of [illegible]	Offence	Names of witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Pevensey	24-12-41	pte		W.O.H.S.H.W.L from 10.00 hrs 24-12-41 till 0.900 hrs 25-12-41 total 23 hrs. A.A. Sect 15 (1)	C.S.M Marcotte				Forfeit 11 days pay under F.R.A.1 149
Pevensey	25-12-41	pte		W.O.H.S.A.W.L from 1000 hrs 25-12-41 till 2200 hrs 25-12-41 total 12 hrs A.A. Sect 15 (1)	C.S.M Marcotte	9 days F.P for both charges	29/12/41	Maj Ad Belanger	
Pevensey	31-12-41	pte		W.O.H.S Being a soldier when in the field fund in a place prohibited (New INN) by order regulation conditions of F.P in [illegible] he was at the time at 24 45 hrs A.A. Sect 15 (3	Sgt Beauler L/C Cote	14 days F.P.	2/1/42	Maj Belanger	Forfeit 14 days pay under F.R.-1 Sent 149
Pevensey	4-1-41	pte		W.O.H.S.A.W.L from 2300 hrs 4-1-42 being in F.P. until he returned of his own at 1925 hrs 4-1-42 in Military Dress Total 1 day 20 hrs 25 min A.A. Sect 15 (1)	C.S.M. Marcotte	14 days F.P.	12-1-42	Lt Col Roche	Total forfeit 19 days pay under F.R.1 Sent 149

No. D56954 Name DUCHARME A ~~Sqn., Battery, or~~ Company } H.Q. Corps R DE MAIS Date of enlistment } 26-12-39 G.C. Badges } N.A. Service or Proficiency Pay } B.Q. Solution mf. 19

M.F.M. 6 (A.F.B. 1779) 175M—7-41 (3209-20) H.Q. 1772 20-3655

Date of last entry in Company Conduct Sheet } No. and date of last drunk } N.A. Period not reckoning towards freedom from extra fine } N.A. Sheet No. 2 (cont'd) Signature O.C. Company, etc. } Paul Beley Mr Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Stone Cross	31/3/42	pte	5	W.O.A.S. Drunkness in that he was at 1230 hrs was drunk A.A. Sect 19	C.S.M. Arsenault pte Beaudoin	fined $5.00	2-4-42	Maj Belanger	
Stone Cross	20/4/42	pte		W.O.A.S. A.W.L. from 0700 hrs 20.4.42 till 2015 hrs 23-4-42 Total 3 days 1 15 hrs 15 min A.A. Sect P5 6	C.S.M. Arsenault CSM Marcotte	30 days F.P.	28/4/42	Hal Roche	Total forfeit 24 days Pay under F.R. 1 sent 149
Stone Cross	2/7/42	pte		W.O.A.S. A.W.L. from 2300 hrs 2/7/42 till 1500 hrs 15/7/42 total 12 days 16 hrs A.A. Sect 1 5 6	CSM Marcotte Pte Dubois	27 days F.P.	21/7/42	~~Hal~~ D. Rome	Total forfeit 40 days Pay under F.R. 1 sent 149

True Certified Copy

[signature] Capt. Maj

ORDERLY ROOM No. ..... IN OUT 29 SEP 1942 File No. ..... REGIMENT DE MAISONNEUVE C.A.S.F.

TTT-76 Case #2

Pte Ducharme, H

See HHH-8 for 1st Case

RECORDED AT CMHQ IN AB 160

FIELD GENERAL COURT-MARTIAL

CPA86 (1) (in lieu of AFA31) 40/P.A86/1(1) (2000)

4388

RECEIVED 1 AUG JAG BRANCH

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 6 JUL 44

PROCEEDINGS REVIEWED 21 Army Gp

ACCUSED.

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

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-56489	Pte		Houndas	DUCHARME	RCASC, No.3 Can Reallocation Centre

PROCEEDINGS REVIEWED

REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) ENGLAND on (*date(s)*) 8 JUL 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. (9/8)

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

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED, IF NOT USED OR APPLICABLE, AND IN ITALICS BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 185, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 11.07 hours trial commences.

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

(1. KR Can 557. 2. AA 46(B), RP 10 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

The shorthand writer is sworn.(1)

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

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

Ans .....(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, (E, MML p 742.))

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

President	Major	R J BRUCE	ROOC,	13 CBR Bn
Member	Capt.	J W H. La Vigne.	R E A.	12 C B R Bn.
Member	Capt.	R C. Hammerton	R E A.	12 C B R Bn.
Judge-Advocate				
Prosecutor	Capt	C B Wootton	Essex Lt. Yeo & Colo Regt.	
Defending Offr	Capt	C.B. Haynes	Essex Lt Yeo & Colo Regt.	

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No(2)

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

A8. The accused C 56489 Pte H Houndas before arraignment make(s) (no) (a) plea ..... (2)

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

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

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 88s to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2CBRG V.L.I.P./44

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

President to accused : Do you wish to make a statement ? Ans [illegible] (5)

(*1. RP 37(B). 2. RP 37(D) fn 5. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

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

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

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

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

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

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

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

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

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No. D 56489 Pte Houndas DUCHARME, of the Royal Cdn Army Service Corps, on strength of No 3 Cdn Reallocation Centre, Cdn Army Overseas, is charged with:

First Charge
A A 15 (1)

While on Active Service, Absenting himself without leave,

In that he, in the Field, at 2200 hrs, on the 26th day of May 1944, absented himself without leave, until he surrendered to the Civil Police at Guildford, Surrey, at 1120 hours on the 4th day of July 1944.
(Total time absent 38 days, 12 hours, 35 minutes)

In the Field
5 July 44

(N.M. Swaffield) Major
Officer Commanding
3 Cdn Reallocation Centre
Cdn Army Overseas

To be tried by Field General Court Martial

In the Field
6 JUL 44

(G. Francoeur) Brigadier
Comd 2 CBR Gp

FIELD GENERAL COURT-MARTIAL

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

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-56489	Pte		Houndas	DUCHARME	RCASC, No.3 Cdn Reallocation Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has ~~(known)~~ committed the offence set forth in the Charge Sheet attached and on (date) 5 JUL 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

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

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

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

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

PRESIDENT.

Major (Rank.) R J BRUCE (Must be named. RP 106.) ROOC, 13 CBR Bn (Unit.)

MEMBERS.

Capt (Rank.) to be detailed by OC 12 CBR Bn (Named or detailed. RP 106.) 12 CBR Bn (Unit.)

Lieut (Rank.) to be detailed by OC 13 CBR Bn (Named or detailed. RP 106.) 13 CBR Bn (Unit.)

WAITING MEMBER.

Capt (Rank.) to be detailed by OC 13 CBR Bn (Named or detailed, if any. RP 106.) 13 CBR Bn (Unit.)

~~JUDGE ADVOCATE.~~

(Must be named, if any. RP 106.) (Unit.)

(Rank.)

On Active Service in the Fd

in ENGLAND (Country.)

Date 6 JUL 44

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(G Francoeur)

Commanding 2 Cdn Base Rft Gp Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

4/38A (Page 1 to Para 10 of AFB's 40, 7 & 8/1941 and 40/1)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him *verbatim*. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken *verbatim*, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 45 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 986. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 709.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

This is to certify that No 056489 Rank Pte. Name Ducharme H.
has been medically examined by me this morning and I find him fit/~~unfit~~
to undergo trial by Field General Court Martial.

Date 8 July 44

Medical Officer L Kokhane capt
3 Can Reallocation Centre.

D56489 Pte Houndas Ducharme

The Defending Officer submits the following in his plea for mitigation:

Ducharme is an older married man who left his home and family at the out break of war. He completed about six months regular infantry training but was finally placed as a cook due to civil experience and physical inability to withstand training. When his unit proceeded overseas in 40 he expected to go with them; however due to shortage of cooks at the T.C., he was held back. Finally in 42 he was sent overseas and on arrival at R.U. tried once again to withstand Inf. duty (mind you he could have told them of previous inability. About about 3 mos. his age began to tell so he was placed once again as a cook. He continued in that capacity rom that time on. Ducharme admittedly went a.w.l. without real reason but claims he would have returned within a couple of days had he not heard that unit had proceeded overseas and was much afraid of desertion charge. Time drifted on and he met several friends who supplied him with money. After the first few days he visited Godalming and Guildford which were in close proximity to units location at the time he went a.w.l. He expected to be picked up much sooner but was content to drift along rather than face desertion charge obviously an inadequate type of person. One one point, as he particularly out spoken and that is his wish to go overseas. He wishes to make it quite clear that he did not go a.w.l. to avoid overseas service

said would like to proceed forward as soon as possible. Duchaine's reason for leaving the unit was nothing more than the usual which and is not excusable, however, there seems little to be gained in keeping a qualified Cook from duty for any great period, particularly when there is an urgent need for such personnel. Duchaine is eligible for overseas being A1 category, he is willing and has almost 5 years service to his credit. While he has given a number of minor crimes, these are spread over a long period and in the main are of a petty nature. I say, ~~that~~ taking everything into consideration, that it is in the interests of the service that leniency be exercised in sentencing this man. A sentence which could be committed in a very short time if behaviour is good, would certainly seem reasonable common sense justice. This man now 40 years of age has tried on two occasions to get himself in the highly combatant role of infantry man but not being physically competent has had to do his bit in a more menial way, an adjustment that many have found insurmountable. I regret that there is little to be gained by sentencing this unofficious person to other than the minimum penalty. The sooner his services can be utilized by the Can Forces, the better.

Exhibit A

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No D 56489 Pte Ducharme, H., Royal Cdn Army Service Corps on strength of No 3 Cdn Reallocation Centre, Cdn Army Overseas.

First Charge Absenting himself without leave.

THE COMMANDING OFFICER DIRECTS THAT THE EVIDENCE BE TAKEN UNDER OATH.

First Witness
for the prosecution

Captain Robert Russell Robertson, General List. The witness having been duly sworn, states:

"Iam Captain Robert Russell Robertson, General List, Acting Adjutant of No 3 Cdn Reallocation Centre and I produce Declaration of a Court of Inquiry dated 21 June 1944 regarding the absence and kit deficiencies of the accused No D 56489 Pte Ducharme, H. (Marked Exhibit A). I further produce Part II Daily Order No 5 dated 23 June 44 Para 2 showing the accused absent as of 2200 hrs 26 May 44 (Marked Exhibit B). I also produce AFO 1617 'Certificate of Surrender to the Civil Police of a Deserter or Absentee without leave' showing that D 56489 Pte Ducharme, H. surrendered to the Civil Police at Guildford Surrey at 1120 hrs 4 July 44 (Marked Exhibit C)".

R. R. Robertson, Capt

(R.R. Robertson) Capt & A/Adjt
3 Cdn Reallocation Centre

The accused declined to question the witness.

The accused was warned in accordance with Rules of Procedure 4E and declined to make a statement and reserved his defence.

I certify that the foregoing Summary of Evidence consisting of one page plus Exhibits "A" "B" and "C" (Attached) was taken down by me in the presence and hearing of the accused on the 5th day of July 1944 and that R.P. 4 (C), (D), (E) (F) and (G) were complied with.

C.B. Watson

(C.B. Watson) Capt

Exhibit A CRW

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 17th day of June 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D 56489 Pte Ducharme, H.

DECLARATION

The Court declare that No. D 56489 Pte Ducharme, H. Royal Cdn Army Service Corps, attached No 3 Cdn Reallocation Centre Cdn Army Overseas. illegally absented himself without leave at In the Field on the 26th day of May 1944, that he is still so absent, and that on the 27th day of May 1944 he was deficient, and that he is still deficient of the following articles:—

ARTICLES		VALUE	ARTICLES	VALUE
Blouses Battle Dress	1	$ 3.93		
Trousers Battle Dress	1	4.05		
Boots Ankle Prs	1	4.19		
Socks Prs	1	.28		
Caps, F.S.	1	.42		
Jersey Pullover	1	1.35		
Braces Prs	1	.21		
Brushes Shaving	1	.28		
Sheets Ground	1	2.20		
Tins Mess	1	.27		
Total		$17.18		

Major R.G.S. Lough President

Capt. C.B. Watson Member

Capt. R.R. Robertson Member

Signed at In the Field

this 21st day of June 1944

Signature of Commanding Officer Major N.M. Swaffield

Certified true copy N.M. Swaffield

(N.M. Swaffield) Major
Officer Commanding
3 Cdn Reallocation Centre

Signature of Officer having custody of original record

M.F.B. 271
A.F.B. 111
MM—6-42 (750)
H.Q. 1171-09-037

Exhibit "B" CAW.
Jones

Last Order
No 4
13 JUN 44

No 3 CDN REALLOCATION CENTRE
Part II Orders issued by
CANADIAN SECTION GHQ 2nd ECHELON
21 ARMY GROUP

No 5
23 JUN 44

"A" OFFICERS

N I L

"B" OTHER RANKS

1 STRENGTH INCREASE

(a) TOS from X 9 List CAC wef 18 JUN 44
Auth - EA7/5331 d/10 JUN 44
A87025 Tpr BRAY F S Dvr Mech "C"

(b) AMENDMENT Part II Order No 3 para 3(d) of 9 JUN 44 insofar as it refers to the u/n is cancelled
H42217 Pte BOUVIER H J

2 ABSENT WITHOUT LEAVE

(a) AWL from 2200 hrs 26 MAY 44 Still absent 2200 hrs 17 JUN 44 (22nd day)
D564489 Pte DUCHARME H

3 APPOINTMENTS AND PROMOTIONS

(a) To be A/Cpl wef 17 JUN 44
B138198 Pte CAREY D L
C30371 Pte MCKINNON S M

4 TRADESMENS RATES OF PAY

(a) Reverts to regt rates of pay of $1.50 per diem wef 18 JUN 44
A87025 Tpr BRAY F S Dvr Mech "C"

5 PUNISHMENTS

(a) On 6 JUN 44 awarded 25 days F P and a forf of 25 days pay for an offence under AA Sec 15(3) Forfs 25 days pay under FR&I 149(2)
B142523 Pte FISHER G E F

6 NEXT OF KIN

(a) The name and address of N-of-K is verified as shown (mother)
L106029 Pte WENTZ D A MRS ELIZABETH TEIDE WENTZ
GEN DEL JANSEN SASK CAN

7 STRENGTH DECREASE

(a) SOS to X 9 List CDC wef 13 JUN 44 Auth - Reallocation
B94813 Pte CUYLER J A

(b) SOS to X 9 List RCASC wef 13 JUN 44 Auth - Reallocation
A49755 Cpl HANNA G M Cook "C"

(c) SOS X 9 List CIC wef 21 JUN 44 Auth - Reallocation
B54521 Pte SLIWKA P

Exhibit "C" [illegible]

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

---

* Stations of Units and Depots are shown in the Monthly Army List.

† NOTE.—Special instructions apply in war for the disposal of absentees and deserters from the Army, who surrender to the civil police; e.g., such personnel will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops at the nearest military station. (A.C.I. 480/1940).

(22743) Wt. 88502/121 25,000 10/42 A.& R.W.Ltd. Gp.4/66 Forms/O.1617/13
(29560) Wt. 48526/1269 40,000 2/43 " "

I CERTIFY that the man whose personal description is given below surrendered himself to* P.S.43, D. Eldridge. at GUILDFORD at (hour) 11.20 on the 4th day of July, 1944. being No. D.56489, (Rank and Name) Pte. Houndas DUCHARME. XXXXXXXX (or absentee without leave) from R.C.A.S.C. and it appears to me from his confession that he is a XXXXXX absentee without leave.

*After the word "to" to be inserted the name and rank of the police officer concerned.

Age 40 Height 5 Feet 3½ Inches

Complexion Pale Hair Brown

Eyes Brown

Marks Tattoo left forearm

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	15-9-39
Probable Date of Desertion or beginning of absence, and from what place	27th May, 1944.

SURREY AND POLICE
GUILDFORD BOROUGH DIVISION
SECTION OFFICE
Recd 4-7-44
Ref

Signature of Officer of Police North Street, Station. Guildford Borough Div.

Date of Signature.

3 Reallocation Centre 1 CRPU.
29 May 44

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies *only* in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds incurred by the _____ Police in the case of No. _____ who surrendered to the Police at _____ on _____

Payable to _____

S.O.S. as Absentee 17 June/44

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at _____

Date of Signature.

Pte

No. D 56489 Name DUCHARME, Hounder Sqn. Battery or Company 3 Cdn Reallocation Centre. Corps RCASC Date of enlistment 15 Sept GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/P&S/136 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 39 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Temporary MFM 6. Original not obtainable.					

N. M. Swaffield

(N. M. Swaffield) Major
Officer Commanding
3 Cdn Reallocation Centre.

(PTO)

Exhibit "B"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be)*
D 56489	PTE	DUCHARME Houdas	R.C.A.S.C. 3 Cdn Reallocation Centre

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

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

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

INSTRUCTION.—If the charge is for drunkenness 1 b e entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		* Since Enlistment.	
For	Unknown	times	Unknown	times
For	"	times	"	times
For	"	times	"	times
For	"	times	"	times
For	"	times	"	times
Number of instances of gallantry or distinguished conduct. or There are no entries in the conduct sheets of the accused.			– Unknown	

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

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 75 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. ~~*or* The accused at the present time is under sentence as follows~~

~~beginning on the day of~~

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

5. The present age of the accused according to his ~~attestation~~ record of service is 40

6. The date of his ~~attestation~~ record of service specified in his ~~attestation~~ record of service is 15 Sept 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is NA

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 9 mos 19 dy Service.

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

10. The accused ~~is in possession of / entitled to~~ the following decorations ~~or orders and is in possession of~~ or entitled to (*state any military decoration or reward*). CVSM & Clasp.

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

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

W.3707/3339 20M. 5/40. P. Ltd. 712.

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

No. D56488 Rank PL+ Name DUCHARME, H of REAS. P. Regiment (or as the case may be).

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

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

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

Signed this 8th day of July

[signature] Major,
Officer Commanding,
3 Cdn. Reallocation Unit.

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

In the rank of years.

In the rank of years.

In the rank of years.

Date of Promotion.

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

LIST OF EXHIBITS IN THE CASE OF D 56482 Pte Ducharme N.

Exhibit 'A' - MFB 375, Declaration of a Court of Inquiry.

Exhibit 'B' - Pt II Orders No 5 d/23 Jun 44.

Exhibit 'C' - AF O.1617, Certificate of surrender to the civil police of a deserter or absentee without leave.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans..... Do you intend to call witnesses on your behalf?

Ans..... Are they witnesses as to character only? Ans.....

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans.....

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. A and Ex. B respectively.(3)

(1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. No.....(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 68. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D-56489 Pte Houndas DUCHARME, RCASC, No.3 Cdn Reallocation Centre.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.W.L.	Guilty.	Guilty.	
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 4 days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

90 days Detention

(Sgd) ..... 8 Oct 44 (Sgd) .....

Judge-Advocate, if any. Date awarded. President. (RP 41, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

(Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the finding & sentence.

..... (1) ..... (1) ..... (1)

HHH-8

PTE DUCHARME H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-56489 Pte DUCHARME, H. 2 CDN CORPS SIGS

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ... beginning on (date) ...~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which NO days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo Field Punishment for a period of 60 days and to forfeit all ~~of his~~ pay for a period of 60 days.

~~It is hereby recommended that this sentence be ... with a view to its mitigation.~~

(Sgd) ... Judge-Advocate, if any. 10 March 44 Date awarded. (Sgd) H. L. Morris Lt-Col President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

I ~~direct that the accused be not committed to prison or detention barracks until further order~~.* (1. AA 57A. Delete if not used.)

Date 22 March 44 (Sgd) C. A. Rae Brig. A.D.M.S. 2 Cdn Corps Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D56489 Pte DUCHARME H	22 Mar 44	J. Mason Capt ADJT. 2 CDN. CORPS SIGS.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF C.M. HHH 8

FIELD GENERAL COURT-MARTIAL

CFA96 (To form part of AFA2) 40/P & S. 16/98 (29864)

Convened by Order of Brigadier C.A. Rae, Comd DDMS dated 8 Mar 44

ACCUSED.

2 Cdn. Corps

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D56489	Pte.	Hormesdas	Ducharme	2 CDN CORPS SIGNALS

PROCEEDINGS REVIEWED
R Beaulieu Capt
15 Apr 44
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS REVIEWED
2 CDN CORPS SIGNALS

PROCEEDINGS OF TRIAL.

Held in the Fd in (*county*:) England on (*date(s)*:) 10 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

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

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

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

A3. The Court is opened. The accused is ~~were~~ brought before the Court. At 1100 hours trial commences.

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

(1. KR Can 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~Prisoner to accused: Do you object to ... an interpreter? Ans ...~~

~~The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans ...~~

~~The shorthand writer is sworn.~~(1)

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

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

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

President	Major	H. L. Morris	46 C.S.T.C. RCASC.
Member	Capt.	R. Church	6 Cdn. Light Reg. Pk. RCASC.
Member	Capt.	Lt/A. Wilson	42 C.S.T.C. RCASC.
Judge-Advocate			
Prosecutor	Capt.	J. S. Beacon	2 Cdn. Corps Signals RCCS
Defending Offr	Lieut.	F.G. La Rose	2 Cdn. Corps Signals RCCS

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

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

A8. The accused ... before arraignment make(s) (no) plea

(1)

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

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

(1. RP 26, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP Vol 2 fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(C) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. RP 155. 2. RP 40(A), see 80(C). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(E).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(2) (c), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans N/O Sir.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copies (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes Sir - Plea in Mitigation (2)
(1. RP 37(C), 46(2). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 120(B). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 148, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

To the confirming Officer

It is recommended that D 56489 Pte. Bucharme, H. be interviewed by the P.S.O. on completion of Sentence, with a view to re-allocation

Field
10 Mar 44.

E. Morris Major
President

CHARGE SHEET

The accused D56489 Pte Hormesdos DUCHARME, R.C.A.S.C. att 2 Cdn Corps Sigs, a soldier of the Cdn Army Overseas, is charged with

Final Charge
Sec 15(1) AA

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he in the field on 22 Feb 44, absented himself without leave from FORGE WOOD CAMP, from 2359 hrs 22 Feb 44, until apprehended in GUILDFORD, Surrey, at 1035 hrs 3 Mar 44. (Absent: 9 days 10 hrs and 36 mins)

(J.T. North) Lt-col
Comd 2 Cdn Corps Sigs

In the field
7 Mar 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(O. A. Rae) Brigadier
DDMS, 2 Cdn Corps

In the Field
8 Mar 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of A.F.A.B.) 40/P&S/1697 (2869)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D.56489	Pte		Hormesdos	DUCHARME	RCASC att. G 2 Cdn Corps Sigs RCCS

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 8 Mar 44 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.) C.A.R.

(Delete part in brackets when not required for compliance with RP 105(C).)

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

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto. C.A.R.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder. C.A.R.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	K. E. Morris	46 Cdn G.n Tpt Coy RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	L. A. H. Wilson	42 Cdn G.n Tpt Coy RCASC
Captain	R. Church	6 Cdn LAA Regt Pl RCASC

WAITING MEMBER.

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

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

In England (Country.) — C.A. Rae (Signed personally. RP 105 fn 2.) — Brigadier (Rank.)

(C.A.Rae)

Date 8 Mar 44 — ~~Commanding~~ D.D.M.S. 2 Cdn Corps

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RD (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 85(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as practicable*, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not *practicable*, the *following order* of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 93(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statements by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D).* *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 86(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 114(C), MML p 758.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No.D56489 Pte Ducharme,H. of RCASC att 2 Cdn Corps Signals and in my opinion is fit to undergo trial by court-martial.

Station Field

Date 10 Mar 44

G. C. McGarvey Major
(Medical Officer)

This man joined the army September 1939 with the expectation to come overseas with the unit of his own choice, namely the Regiment de Maisonneuve. When this unit departed for England, he was left behind, he asked the Colonel at the depot where he was posted, time and again to be sent overseas, with no results. This combined with family troubles, prompted him to go absent without Leave, at various occassions. He finally was sent overseas with a reinforcement draft for his regiment. Being 37 years of age at the time, he was not able to carry out hard training that was required of him. His Commanding Officer sent him off to a school of Cookery, where he qualified as a cook and subsquently transfered to the R.C.A.S.C. He was then posted to #4 Lines section 2 Cdn Corp sigs as a cook. While in that section he discharged his duties in a splendid manner, and he was happy until December 1943, because he was running his own show, and his Military conduct during that period was exploratory. After December 1943 he was put to work in a kitchen with other cooks, as a pool at Forge Wood Camp, this situation had a bad effect on him, for several reasons, his English is limited therefore he is not understood and he cannot very well understand the other people he works with. This resulted in being put to work, at various chores, which are below, the dignity of an accomplished cook, which he is.

When he came over to this country, he was deeply in debt, which caused him to receive only ten shillings each pay day, thus depriving him of recreation, seeing these other people enjoying themselves, he sought the companionship of other french speaking people, at the Canadian Infantry Reinforcement Unit.

LIST OF EXHIBITS

"A" Statement of K25608 L/Cpl Halley L.W.

I desire the convening offr to detail an offr to represent me at my forthcoming trial by Field General Court Martial. I desire the services of.....Lieut. F. G. La Rose.....

Ducharme

D56489 Pte Ducharme H.

CHARGE 3.18 1437

Army Form B 252
(See King's Regulations)

R.C.A.S.C. att 2 Cdn. Corps Sigs. Regiment

Battery
Squadron
Troop or
Company

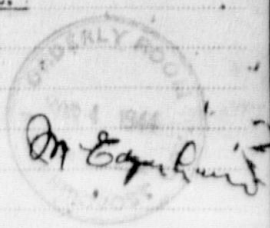
CHARGE against No. D56589 Rank Pte.

Name Ducharme H.

Place Guildford Date of Offence 3/3/44

OFFENCE W.O.A.S. A.W.L.

GOBERLY ROOM
APR 4 1944
M Edgar Lt



Names of Witnesses :—

K25608 L/Cpl. Halley L.W.

A56597 L/Cpl. Wolliston R.E.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded Remanded to Const. Mortal

By whom Awarded K. F. Smith Lt Col

2 Cdn Corps Signals Adjutant.

P.T.O.

H O'Leary

Statement of **EVIDENCE** in the case of

D56589 Pte. Duchrame H.
R.C.A.S.C.
Att. 2 Cdn. Corps Signals.

While on patrol in Guildford at about 1035hrs. 3 Mar 44 accompanied by L/Cpl. Wolliston R.E. The m/n soldier was checked for a pass, he said that he did not have one and that he had left 6 C.I.R.U. at 0930 hrs. 3 Mar 44. On further questioning and searching through his paybook a pass was found and dated 22 Feb 44, 2359hrs. He was was then placed under close arrest and escorted to the Guard Room at 6 C.I.R.U. and a receipt obtained for him.

L.W. Halley

K25608 L/Cpl. Halley L.W.
No.9 Cdn. Provost Coy.

I have read over the above evidence and corroborate same.

R.E. Wolliston

A56597 L/Cpl. Wolliston R.E.
No.9 Cdn. Provost Coy.

REMARKS

This is exhibit "A" referred to in the summary of evidence in the case of D56589 Pte Hornsados Duchrame taken before me this 7 Mar 44

J Deacon Capt

Exhibit A E. Morris Sigs

Summary of evidence in the case of D56589 Pte Hormesdas Sucharme, R.C.A.S.C., att 2 Cdn Corps Sigs, charged with absence without leave from 22 Feb 44 to 3 Mar 44.

The commanding officer directs that the evidence be taken on oath.

First witness K45614 Cpl Craig G.A., 2 Cdn Corps Sigs, sworn, states,

I am a corporal in 6 line sec, 2 Cdn Corps sigs. On 22 Feb 44 I was guard commander at Forge Wood camp. Pte Sucharme's name was on the midnight pass list for 22 Feb 44. He did not report in to me by 2359 hrs 22 Feb 44. I reported him absent without leave.

The accused declined to cross examine the witness.

G.A. Craig

Second Witness F91765 Cpl Hadley J.B., RCASC, att 2 Cdn Corps Sigs, sworn states:

I am the corporal cook at Forge Wood Camp. On 23 Feb 44, I called the roll in the cooks' quarters at reveille and found Pte Sucharme absent. I reported it to the guard room. I called the roll at reveille and tattoo daily until 3 Mar 44, when ~~the guard room~~ I was informed. Sucharme was in the guard room, Sucharme was absent from roll call at each and every one of these parades.

The accused declined ~~to~~ to cross examine the witness

J.B. Hadley.

Third Witness K25608 L/Cpl Halley L.W. 9 Cdn Pro Coy

Document purporting to be a signed statement of the evidence of K25608 L/Cpl Halley L.W. 9 Cdn Pro Coy, was read over to the accused, marked exhibit "A", and att hereto.

I certify that in my opinion owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured

J. Deacon Capt.

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing, and may be given in evidence"

The accused: I have nothing to say at this time

The accused declined to call witnesses on his own behalf.

I certify that R.P. 4 has been complied with. Taken by me in the field in the presence and hearing of the accused this 7 Mar 44

J. Deacon Capt.

Exhibit C

MFM 6
(AFB 122)
40/PAS/136 (3438)

No D56489 Name DUCHARME H. Sqn, Battery, or Company Corps R.C.A.S.C. Date of enlistment 14Sep39 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 1 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Canada	3May41	Pte		AA 15(1) AWL from 0745 hrs 3May 41 to 0745 hrs 5May41 (Absent: 2 days)	Sgt Hebert	14 days CB	5May41	Lt-col Pothier	Forf 2 days pay FR&I 149 (1)(a)
Canada	12May41	Pte		(1) AA 15(1) AWL from 1630 hrs 12May41 to 2330 hrs 12May41 (Absent: 7 hrs)	Sgt Laurencelle	28 days CB	14May41	Major Prudhomme	Forf 2 days pay FR&I 149 (1)(a)(Com-
Canada	12May41	Pte		(2) AA 10(4) Breaking out of barracks	Sgt Vaillancourt	See above	14May41	Major Prudhomme	puted on 2nd & 3rd charge
				(3) AA 15(1) AWL from 0800 hrs 13May41 to 2315 hrs 13May41 (absent: 15¼ hrs)	Sgt Miller	See above	14May41	Major Prudhomme	
Canada	1Jun41	Pte		AA 15(1) AWL from 2359 hrs 1Jun 41 to 2355 hrs 3Jun41 (Absent: 1 days 23 hrs 56 mins)	Sgt Roy	14 days CB	4Jun41	Lt-col Pothier	Forf 2 days p (1)(a) FR&I 149

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Canada	13Jun41	Pte		(1) AA 15(1) AWL from 1800 hrs 13Jun41 to 1800 hrs 14Jun41 (absent: 1 day)	CSM Trepanier	14 days Detn	18Jun41	Lt-col Pothier	Forf 1 days pay FRAI 149(1)(a)
Canada	16Jun41	Pte		(2) AA10(4) Breaking out of barracks	Documentary	See above	18Jun41	Lt-col Pothier	Forf 1 days pay FRAI 149(1)(b) Forf 14 days pay
Canada	16Jun41	Pte		(3) AA 15(1) AWL from 2345 hrs 16 Jun41 to 0700 hrs 18Jun41 (Absent: 1 day 7½ hrs)	Documentary	14 days Detn	18Jun41	Lt-col Pothier	FRAI 149(1)(b) Forf 2 days pay FRAI 149(1)(a)
Canada	2Jul41	Pte	(1)	AA 15(1) AWL from 1200 hrs 2Jul 41 to 0030 hrs 7Jul41 (Absent: 4 days 12½ hrs) In arrest 1 day	Documentary	10 days Detn	8Jul41	Lt-col Pothier	Forf 10 days pay FRAI 149(1)(b) Forf 5 days pay FRAI 149(1)(a)
			(2)	AA 9(2) Refusing to obey an order given by his superior offr	Documentary	5 days Detn	8Jul41	Lt-col Pothier	Forf 1 days pay FRAI 149(1)(c) Forf 5 days pay FRAI 149(1)(a)

No D56489 Name DUCHARME H. Sqn, Battery, or Company — Corps R.C.A.S.C. Date of enlistment 14Sep39 GC Badges — Service or Proficiency Pay — MFM 6 (AFB 122) 40/PAM/138 (3438)

Date of last entry in Company Conduct Sheet N/A — No and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No 2 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Canada	22Jul41	Pte		AA 15(1) AWL from 1800 hrs 22Jul 41 to 0125 hrs 23Jul41 (Absent: 7 hrs 25 mins)	Sgt Deslauriers	28 days Detn	24Jul41	Lt-col Pothier	Forf 28 days pay FRAI 149 (1)(b) Forf1 days pay FRAI 149(1)(a)
Canada	15Aug41	Pte		AA 15(1) AWL from 1240 hrs 15Aug 41 to 1440 hrs 18Aug41 (Absent: 3 days 2 hrs)	Sgt Soumis	28 days Detn	27Aug41	Lt-col Pothier	Forf 28 daysP FRAI 149-1-b Forf 4 days P FRAI 149-1-a
Canada	25Sep41	Pte		AA 15(1) AWL from 0100 hrs 25Sep 41 to 1855 hrs 10ct41 (Absent: 6 days 17 hrs 55 mins)	Cpl Forest	7 days Pay	60ct41	Lt-col Nantel	FRAI 149(2) Forf 7 days P FRAI 149-1-a
Canada	11Oct41	Pte		AA 15(1) AWL from 2359 hrs 110ct 41 to 2330 hrs 160ct41 (Absent: 4 days 23 hrs 29 mins)	Sgt Payette	28 days Detn	210ct41	Lt-col Nantel	Forf 28 days P FRAI 149-1-b Forf 5 days P FRAI 149-1-a

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Canada	17Nov41	Pte	(1)	DR AA 19 DRUNKENNESS	Col Nolin	ADMONISHED 1st offence	20Nov41	Lt-col Nantel	
Canada	17Nov41	Pte		AA 15(1) AWL from 0600 hrs 17Nov 41 to 1900 hrs 17Nov41 (Absent: 13 hrs)	CQMS Trinque	14 days Pay 14 days CB	20Nov41	Lt-col Nantel	FR&I 149(2) Forf 1 days pay FR&I 149(1)(a)
Canada	1Dec41	Pte		AA 15(1) AWL from 0600 hrs 1Dec 41 to 2315 hrs 1Dec41 (TTA 17½ hrs)	Documentary	28 days D"tn	4Dec41	Lt-col Nantel	Forf 28 days pay FR&I 149(1)(a) Forf 1 days pay FR&I 149(1)(b)
Canada	31Dec41	Pte		AA 15(1) AWL from 2359 hrs 31Dec 41 to 0050 hrs 8Jan42 (Absent: 7 days 51 mins)	Documentary	14 days CB	13Jan42	Lt-col Francoeur	Forf 8 days pay FR&I 149(1)(a)
Canada	28Jan42	Pte		AA 15(1) AWL from 2359 hrs 28Jan 42 to 01 40 hrs 4Feb42 (Absent: 7 days 1 hr 41 mins)	Documentary	7 days Detn	6Feb42	Lt-col Francoeur	Forf 7 days pay FR&I 149(1)(b) Forf 8 days pay FR&I 149(1)(a)
Canada	21Feb42	Pte		AA 15(1) AWL (Absent: 6 hrs)	Documentary	4 days CB	24Feb42	Capt McPherson	Forf 4 days pay FR&I 149(1)(a)

MFM 6
(AFB 122)
40/PAS/136 (3438)

No D56489 Name DUCHARME H. | Sqn, Battery or Company | Corps --- | Date of enlistment | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet: N/A | No and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No 3 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Canada	2 Mar42	Pte		AA 15(1) AWL from 0630 hrs 2Mar 42 to 1630 hrs 2Mar42 (Absent: 10 hrs)	Cpl Fournier	4 days CB	3Mar42	Capt McPherson	Forf 1 days pay FR&I 149 (1)(a)
Canada	2Mar42	Pte	(1)	AA 19 DRUNKENNESS	Cpl Lefebvre	$5.00 FINE (2nd Offence)	4Mar42	Lt-col Francoeur	
Canada	7Mar42	Pte		AA 15(1) AWL from 2300 hrs 7Mar 42 to 1020 hrs 13Mar42 (Absent: 11 hrs 20 mins)	Documentary	14 days Detn	17Mar42	Lt-col Francoeur	Forf 14 days pay FR&I 149 (1)(b)
									Forf 6 days p pay FR&I 149 (1)(a)
Canada	30Mar42	Pte		AA 15(1) AWL from 2200 hrs 30Mar 42 to 1030 hrs 31Mar42 (Absent: 21 hrs)	Documentary	7 days Detn	4Apr42	Lt-col Francoeur	Forf 7 days (1)(a) FR&I 149 Forf 1 days P FR&I 149 (1)(a)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Canada	12Apr42	Pte		AA 15(1) AWL from 2359 hrs 12Apr 42 to 0130 hrs 17Apr42 (Absent: 4 days 1 hr 31 mins)	Cpl St. Pierre	27 days Detn	17Apr42	Major Eadie	Forf 27 days pay FR&I 149 (1)(b) Forf 5 days pay FR&I 149(1)(a)
Canada	22May42	Pte		AA15(1) AWL from 2200 hrs 22May 42 to 0630 hrs 23May42(Absent: 8½ hrs)	Sgt Benoit	3 days CB	25Apr42	Major Brodeur	Forf 1 days FR&I 149 (1)(a)
Canada	14Jul42	Pte		AA 15(1) AWL from 2300 hrs 14Jul 42 to 2345 hrs 14Jul42 (Absent: 45 mins)	Documentary	3 days CB	15Jul42	Major Longtin	
Canada	20Jul42	Pte		AA 15(1) AWL from 0615 hrs 20Jul 42 to 2215 hrs 26Jul42 (Absent: 6 days 16 hrs)	Documentary	21 days FP	27Jul42	Lt-col Hervey	Forf 21 days pay FR&I 149(1)(b) Forf 7 days pay FR&I 149(1)(a)
Canada	31Aug42	Pte		AA 15(1) AWL from 2200 hrs 31Aug 42 to 2300 hrs 31Aug42 (Absent: 1 hr)	Documentary	5 days CB	16Sep42	Lt-col Hervey	

No D56489 Name DUCHARME H. Sqn, Battery, or Company Corps R.C.A.S.C. Date of enlistment GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 4 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	22Oct42	Pte		AA 15(1) AWL from 2200 hrs 22Oct 42 to 1300 hrs 25Oct42 (Absent: 2 days 15 hrs)	Documentary	6 days pay	27Oct42	Lt-col Fletcher	FR&I 149(2) Forf 3 days pay FR&I 149 149(1)(a)
Field	6Nov42	Pte		AA 15(1) AWL from 2200 hrs 6Nov 42 to 2300 hrs 6Nov42 (Absent: 1 hr)	Documentary	7 days CB	10May42	Major McGowan	
Field	14Mar43	Pte		AA 15(1) WOAS AWL from 2359 hrs 14Mar43 to 0045 hrs 15Mar43 (Absent: 46 mins)	Documentary	2 days CB	16Mar43	Capt LC Parkinson	
Field	1Apr43	Pte		AA 15(1) WOAS AWL from 0800 hrs 1Apr43 to 1110 hrs 9Apr43 (Absent: 8 days 3 hrs 10 mins)	Documentary	10 days Pay	12 Apr 42	Major LC Parkinson	Forf 8 days Pay FR&I 14 (1)(a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9Dec43	Pte		AA 15(1) WOAS AWL from 2359 hrs 9Dec43 until 2220 hrs 26Dec43 (Absent: 16 days 22 hrs 20 mins)	Documentary Guard Room K37024 A/Cpl King J. A2444 Sgt Hyatt W.K.	28 days FF 28 days pay FR&I 149 149(1)(a)	28Dec43	Lt-col JT North	Forf 17 days Pay FR&I 149(1)(b) Forf 2 days pay FR&I 149 whilst in close arrest

Awarded the Canadian Volunteer Service Medal & Clasp w.e.f. 15Jan44 Pt 11 Order No 9

CERTIFIED TRUE COPY OF ORIGINAL IN MY POSSESSION 10 Mar 44

ADJT.
2 CDN. CORPS SIGS.

Exhibit B

ARMY FORM B 2186.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D56489	Pte	DUCHARME H.	RCASC att 2 Cdn Corps Sigs

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

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

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

† See para. 675, K.R., 1940.

* The entries before entry should commence with the entry last or prior to the conduct sheet(s) produced, any sentence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

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

	* Within last 12 months.		*Since Enlistment.	
For AA 15(1)	3	times	29	times.
For AA 10(4)	Nil	times	2	times.
For AA 9(2)	Nil	times	1	times.
For AA 19	Nil	times	2	times.
For		times		times.

~~Number of instances of gallantry or distinguished conduct~~ N/A

~~There are no entries in the conduct sheets of the accused~~ N/A

2. The accused has not been previously convicted, or N/A

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

3. The accused is not under sentence at the present time. ~~The accused at the present time is under sentence of~~ N/A ~~imprisonment~~ beginning on the N/A day of N/A

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

5. The present age of the accused according to his ~~XXXXXXXXX~~ attestation paper is 39

6. The date of his ~~XXXXXXX~~ attestation, ~~specified~~ in his ~~XXXXXXXXX~~ attestation paper is 14 Sep 39

7. ~~The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~ N/A

8. ~~The accused is entitled to deferred~~ pay or gratuity in respect of N/A service.

9. ~~The accused is entitled to reckon~~ N/A service for the purpose of determining his ~~service, etc.~~

10. The accused ~~has been awarded or is entitled to~~ no military decoration or ~~military award and~~ is in possession of ~~or~~ ~~is entitled to~~ (*state any military decoration or reward*) Canadian Volunteer Service Medal & Clasp

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

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

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

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

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

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

NA

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

Signed this ~~XX~~ 10th day of Mar 44

[signature] ADJT.

2 CDN. CORPS SIGS.

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

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

Date of Promotion.

NA

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

G. Pte. Ducharme Alb.
(unpaid a/Cpl.)

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here.

HEADQUARTERS
26 FEB 1942
2nd DDN, INFANTRY BRIGADE

1.

Army Form A 3.

4-G.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Eighteenth (18) day of February, 19 42

Whereas it appears to me, the undersigned, an officer in Command of 2 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

* Omit if not applicable.

*[I am unable to appoint :—

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

*(2. A Field Officer as President.)

for the following reasons, namely :—]

Due to the exigencies of the service.

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

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

President.

Rank.	Name.	Regiment.
Lieut.	[illegible]	[illegible]

Members.

Rank.	Name.	Regiment.
Lieut.	[illegible]	Seaforth of C
Lieut.	[illegible]	[illegible]
Lieut.	[illegible]	[illegible] (waiting member)

*Signed [signature]

Commanding [illegible]

Convening Officer.

[illegible] REVIEWED

[signature]
Commanding Officer [illegible]
3 Apr 42

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
N16227 A/Cpl. (Unpaid) Cdo Carl DUCHARME, H.A. 2 Cdn Inf Bde (Substantive Rank Pte) A.S.P.	A.A. Sec 15 (1) [illegible] without leave. A.S.P.	Not Guilty	Guilty 60 days detention	Confirmed Arthur E Potts Brig 2 P/B.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :— No. [illegible]

(Signed) Arthur E Potts
Commanding

(Signed) [illegible]
Convening Officer (e)

[illegible]
President

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

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

5-4-1

1 Cdn Div Rear
2 Cdn Inf Bde

FGCM
H16227 Pte Ducharme O.C.

1. The attached proceedings returned - see statement attached

J.S. Ryan Capt

23 Mar 42.

CONFIDENTIAL

Edmn R 5-4
23 Mar 42

2 CIB

FGCM - H16227 Pte Ducharme, OC
HQ 2 CIB

1. In reply to 1CDR/5-4-1 dated 19 Mar 42 re the m/n.

2. The President of the Court, Capt JRC Carter has since been returned to Canada. I was a member of said Court and have completed the document as requested.

3. I certify the answer is correct and complies with RP 39(A).

4. I have read through the proceedings of the Court and find no other change at this time.

(R.T. Crawley) Lieut,
Edmonton Regiment

unpaid

CHARGE SHEET

The accused No. H 16227 A/Cpl Cdo Carl DUCHARME (Substantive rank Pte) unpaid
H.Q. 2 Cdn Inf Bde., a soldier of the Cdn Army (Overseas)
is charged with:-

ABSENTING HIMSELF WITHOUT LEAVE

Sec 15(1)
A.A.

in that he

at Preston, sussex, on the 13 Feb 42 absented himself from his quarters from 2300 hrs until 0745 hrs 14 Feb 42. (time absent 8 hrs 45 min).

Samuel Rosser Capt
S.C. 2 Cdn Inf Bde

In the Field
17 Feb 42

TO BE TRIED BY F.G.C.M.

Arthur S. Potts
Commander 2 Cdn Inf Bde.

1.

PROCEEDINGS OF FIELD GENERAL COURT MARTIAL
ON ACTIVE SERVICE.

TRIAL OF: H-16227 a/Cpl(unpaid)DUCHARME, Odo Carl
Hq 2 Cdn Inf Bde C.A.O.

PROSECUTOR: Lieut J.E.T. McMillan, Seaforth Highlanders of Canada.

DEFENDING OFFICER: Lieut A.J. Steeves, Edmonton Regiment

at 0940 hours the trial commenced

The names of the President and Members were read to the accused.
The accused was asked " Do you object to be tried by me as President or by any of the officers whose names you have heard read over."

Answer by accused. " No "

The accused is arraigned upon the charge in the schedule

1st witness for the prosecution — K-92132 L/Cpl Kinnear, W.E. Seaforth Highlanders of Canada, attached to 2 Cdn Inf Bde in the Field, sworn states:

" On Friday 13 Feb 42 I was Duty NCO for 2 C.I.B. Hq. I made a tattoo role call at 2300 hours. Cpl Ducharme was absent from his quarters. I made a re-check at 2359 hours, Cpl Ducharme was still absent. I reported it on my report to the duty officer. Cpl Ducharme was not booked out in the Entry Book. My duties as Duty NCO ceased at 0600 hours 14 Feb 42. I looked through all the other rooms for Cpl Ducharme.

Cross examined:

I made inquiries in adjacent rooms endeavouring to establish Cpl Ducharme's whereabouts, but could find no one who could answer my inquiries. I submitted my report to the duty officer at 0700 hours 14 Feb 42 under instructions.

No questions by the Court

R.P. 83(B) Complied with.

2nd witness for the prosecution — K-52221 L/Cpl Raffa,F Hq. 2 Cdn Inf Bde in the Field, sworn states:

" On the 14 Feb 42 I was Duty NCO at Hq. 2 C.I.B. After switching on the lights between 0600 hours and 0630 hours, I went around and woke up the personnel. On entering Cpl Ducharme's room I found his bed empty, it did look as if it had been slept in. I told the duty officer about it and he instructed me to place Cpl Ducharme under open arrest, this I did between 0730 hours and 0800 hours when the accused reported to me. I had, earlier, looked in the cook house and could not find him.

Cross-examination:

When I made my rounds at Reveille 14 Feb 42 the accused was neither in his bed nor his room. I checked the upstairs lavatories and some downstairs. I checked all the other rooms, I also checked the kitchen.

No questions by the Court

R.P. 83(B) complied with

The prosecution is closed.

Defense:

The accused states that he is going to call another witness as to facts.
The accused made a verbal statement.

1st witness for the defense — K-82768 Pte Conroy,H, Seaforth Highlanders of Canada attached H, 2 Cdn Inf Bde, in the Field, sworn states:

" On the night of 13 Feb 42 I slept in the same room as Cpl Ducharme, Pte Rodney, Pte Lavergne. I retired at approximately 2200 hours. Pte Lavergne at that time was in bed and Pte Rodney was on pass. Cpl Ducharme was not in bed, I was awaked at about 2315 hours by Cpl Kinnear and again at 2330 hours I was disturbed by the room door opening. Someone just stepped into the room. I did not see who.

Cross-examination:

I looked at my luminous dial watch on both occasions when I was disturbed. I got up at 0610 hours 14 Feb 42 and Cpl Ducharme's bed did not look as if it had been slept in. The accused may have tidied up his bed after rising early and before reporting to duty.

No questions by the Court.

R.P.83(B) complied with.

Findings

After finding: The Court being re-opened the accused is again brought in.

Evidence as to character etc. — Capt. F.J. Cooper, H, 2 Cdn Inf Bde, sworn states:

" I produce A.F.B.296 which I have compared with the regimental books which is a true statement as to character and service of the accused - H-16227 a/Cpl(unpaid)Ducharme, Odo Carl, H, 2 Cdn Inf Bde.

The document is read marked 'H' signed by the President and attached hereto.

The accused declines to cross-examine this witness.

The accused declines to make a statement in mitigation of sentence although asked if he desires to do so.

The Court is closed to consider the sentence.

Sentence

Detention for 60 days

The Court sentences the accused No. H-10227 a/Cpl(unpaid) DUCHARME, Odo Carl, Hq 2 Cdn Inf Bde to undergo detention for 60 days.

Signed in the Field this 23rd day of February, 1942.

President,
Field General Court Martial.

No. H16227 Name Ducharme O.C. Sqn., Battery, or Company

Corps PPCLI

Date of enlistment 22 Sep 39 G.C. Badges

Service or Proficiency Pay J

M.F.M. 6 (A.F.B. 122) 500M—8-39 (1703) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No. 1

Signature O.C. Company, etc.

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
MORVAL Bks	17 Jan 40	Pte		WOAS AWL from 2359 hrs 16 Jan 41 until 0725 hrs 17 Jan 40. (Absent 7 hrs 25 min) 15	Pte O'Hara K.W. Edmn R CSM R. Dunn PPCLI	7 days CB	18 Jan 40	Maj R.L. Mitchell	Forfeits 1 days' pay FR&I
MORVAL Bks	25 Feb 40	Pte		WOAS Failing to Comply with an Order Given by a Superior Offr. 40	Sgt Holten L. Pte Norris F.P.	7 days CB	26 Feb 40	Maj R.L. Mitchell	
BAROSSA Bks	10 Jun 40	Pte		WOAS (1) AWL from 2200 hrs 8 Jun to Reveille 10 Jun 40 (Absent 1 day 7 hrs 30 Min) (2) Breaking out of Bks 15 (3) Breaking into Bks	Cpl Watts R.C. Sgt Macfadden	3 days CB	11 Jun 40	Maj R.A. Starke	Forfeits 2 days' pay FR&I
BORDON	30 Jun 40	Pte		(1) Breaking Bks (2) AWL from 0830 hrs 30 Jun 40 till Reveille 1 Jul 40. (3) Breaking into Bks 15	Sgt McDonnell L/Cpl Watson	3 days CB	1 Jul 40	Maj J.E. Sinclair	Forfeits 1 days' pay FR&I

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
~~Dordon~~	~~Cofun~~	~~Pte~~		~~WOAS (1) Breaking barracks~~					
In Field	28 Nov 40	Pte		WOAS Being found asleep in bed during stand-to 0725 hrs. 40	L/C Jarman	5 days C.B.	28 Nov 40	Capt Ogilvie	
In Field	1 Dec 40	Pte		WOAS Absent from defaulters parade at 2030 hrs (2) Breaking out of billets (3) Absent from 2030 hrs 1 Dec 40 until found in bed at reveille 2 Dec 40 (4) Breaking into billets (absent 9 hrs 30 min) 15	Sgt Kelly J.	1 days pay CRI 120 hrs detention.	3 Dec 40	Lieut-Col Edgar. C.C.	
On Service	26 Dec 40	Pte		WOAS Absent without leave from 1200 hrs 26 Dec 40 until 0600 hrs 27 Dec 40 (absent 18 hrs) A.A. Sec 15 para 1.) 15	L/C Knowles	7 days C.B Forfeits 1 days pay.	27 Dec 40	Maj Lindsay	

No. H16227 Name Ducharme O.C. Sqn., Battery, or Company Corps P.P.C.L.I. Date of enlistment 23-9-39 G.C. Badges Service or Proficiency Pay J

MFM 6 (A.F.B. 122) 500M—8-39 (1703) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
South Farnborough.	23 Jun 40	Pte	--	Absent without leave from 2245 hrs 23 Jun 40 until 1445 hrs 26 Jun 40 (absent 64 hrs) Charged under Sec 15 AA	RSM Maitland Sgt Handforth	14 days C.B 3 days pay	27 Jun 40		
On Service	11 Dec 48	Pte	--	WOAB Losing by neglect an article of Govt property i.e. One respirator (anti-gas) AA Sec 24 Para 2	C.Q.M.S. Palmer S.	To make good the loss of the respirator lost 17/11.			

(P.T.O.)

No. H16227 Name Ducharme O.C. Sqn., Battery, or Company Corps P.P.C.L.I. Date of enlistment 2[illegible]-9-39 G.C. Badges Service or Proficiency Pay J 3/6/44 M.F.M. 6 (A.F.B. 122) 300M—8-39 (1703) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
South Farnborough.	23 Jun 40	Pte	--	Absent without leave from 2245 hrs 23 Jun 40 until 1445 hrs 26 Jun 40 (absent 64 hrs) Charged under Sec 15 AA	RSM Maitland Sgt Handforth	14 days C.B 3 days pay	27 Jun 40		
On Service	11 Dec 48	Pte	--	WOAS Losing by neglect an article of Govt property i.e. One respirator (anti-gas) AA Sec 24 Para 2	C.Q.M.S. Palmer S.	To make good the loss of the respirator lost 17/11.			

(F.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On Service									
	30 Aug 41	Pte	--	WOAS Conduct to the prejudice of good order of military discipline in that he left his room in an untidy and extremely dirty condition. (AASec 40)	L/C Stewart K.J	7 days C.B.	1 Sept 41.	Maj Ogilvie.	

Certified true copy.

[illegible] Capt.

[illegible] Bde.

Place	Date of offence	Rank	Cases of drunken-

No. H16227 Name Ducharme O.C. Sqn., Battery, or Company

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Corps No. 3 Inf Hold Unit.

Period not reckoning towards freedom from extra fine

Date of enlistment

Sheet No.

G.C. Badges

Signature O.C. Company, etc.

Service or Proficiency Pay J

M.F.M. 6 (A.F.B. 123) 500M - 8-39 (1703) H.Q. 1777-45-18

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	6 Jul 40	Pte		Smoking on duty 40	Sgt. Ozely	Asmonished	6	Maj Sinclair	
Borden	19 Jul 40	Pte		A.W.L. from duty "	Sgt. Baker	3 days G.H. 1 days pay	19 Jul 40	Maj Starke	
Borden	8 Aug 40	Pte		A.W.L. for 5½ hrs "	Sgt Atkinson	Admonished	8 Aug 40	Maj Starke	

(P.T.O.)

No. H1[illegible]27 Name Ducharme O.C. Sqn., Battery, or Company No. 3 Inf Hold Unit. Corps

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Date of enlistment | Sheet No. | G.C. Badges | Signature O.C. Company, etc. | Service or Proficiency Pay J July | Character

M.F.M. 6 (A.F.B. 122)

Place	Date of Offence	Rank	Cases of Drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	6 Jul 40	Pte		Smoking on duty	Sgt. Oxely	Admonished	6	Maj Sinclair	
Borden	19 Jul 40	Pte		A.W.L. from duty	Sgt. Baker	2 days C.B. 1 days pay	19 Jul 40	Maj Sterne	
Borden	5 Aug 40	Pte		A.W.L. for 5½ hrs	Sgt Atkinson	Admonished	5 Aug 40	Maj Sterne	

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On Service	30 Aug 41	Pte	--	WOAB Conduct to the prejudice of good order of military discipline in that he left his room in an untidy and extremely dirty condition. (AASec 40)	L/C Stewart K.J	7 days C.B.	1 Sept 41.	Maj Ogilvie.	

Certified true copy.

[illegible] Capt.

[illegible] 2 Cdn. Inf. Bde.

No. H16227 Name Ducharme O.C. Sqn., Battery, or Company Corps P.P.C.L.I. Date of enlistment 2-9-39 G.C. Badges Service or Proficiency Pay J

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

M.F.M. 6 (A.F.B. 122) 500M—8-39 (1703) H.Q. 1772-45-16

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
South Farnborough.	23 Jun 40	Pte	--	Absent without leave from 2245 hrs 23 Jun 40 until 1445 hrs 26 Jun 40 (absent 64 hrs) Charged under Sec 15 AA	RSM Maitland Sgt Bandforth	14 days C.B 3 days pay	27 Jun 40		
On Service	11 Dec 48	Pte	--	WOAS Losing by neglect an article of Govt property i.e. One respirator (anti-gas) AA Sec 24 Para 2	C.Q.M.S. Palmer S.	To make good the loss of the respirator lost 17/11.			

(P.T.O.)

No. H16207 Name Duchesne, O.C. Sqn., Battery, or Company Corps P.P.C.L.I. Date of enlistment G.C. Badges Service or Proficiency Pay J

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

M.F.M. 6 (A.F.B. 122) 500M—8-39 (1703) H.Q. 1772-43-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Entries on this sheet are to be added to original MFM 6						Sheet made up on 14 Feb 42.			
Field	4 Feb 42	A/Cpl. (WOP)		AA Sec 15(1) WOAS AWL in that he was absent from his quarters from 2300 hrs 4 Feb 42 until 0845 hrs 5 Feb 42. (Absent 9 hrs and 45 min)	Cpl. Browne Cpl. Young.	Reprimanded	6 Feb 42	(D.M.Rossar) Capt S.C.2 Cdn Inf Bde	1 Days automatic forfeiture
Field	8 Feb	A/Cpl (WOP)		AA Sec 15(1) WOAS Absent without leave in that he, on 6 Feb 42 was absent from duty from 0800 hrs to 1030 hrs thereby necessitating another man to do his duty.	Cpl. Browne CQMS A.P. Proudfoot.	Reprimanded	11Feb 42	(D.M.Rossar) Capt. S.C. 2 Inf Bde.	1 Days automatic forfeiture of pay.

[signature] Capt

[illegible]

(4)

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
W/16827	A/Cpl. (Unpaid)	PUGLIESE, D.S.	R.A.S.C. 2 Cdo Inf Bde

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	A/L	2 times	10	times.
For	Conduct to the Prejudice etc	1 times	4	times.
For		times		times.
For	Losing by Neglect	times	1	times.
For		times		times.

Number of instances of gallantry or distinguished conduct,

or

~~There are no entries in the conduct sheets of the accused.~~

One certified true copy of W.D.A.F. 5

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges, for ..... days in civil custody, and ..... days in military custody, making a total of ..... days, of which ..... days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 24 years.

6. The date of his ~~commission~~ / attestation specified in his record of service / attestation paper is 22 Dec 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 5 months

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 5 months service.

9. The accused is entitled to reckon 2 yrs 5 months service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of .....

12. (*In the case of an officer.*) The accused holds in the army the rank of ..... dated .....
and in his regiment (*or* corps *or* department) the rank of ..... dated .....

(71864) W.O. (P.S.O.) 75,000 12/40 A.& E.W.Ltd. Gp.498

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the disposing authority.	Punishment remitted.
		Nil		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23rd day of Feb 1942

Adjt 6th

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of	N/A years,	
In the rank of	years	
In the rank of	years.	

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck out, except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraph inserted amended accordingly.)

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23rd day of February 1942, and duly tried the person~~s~~ named in the Schedule, and that the plea, finding, and sentence in the case of ~~each~~ such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

~~*(3. The interpreter)~~

~~*(4. The officers under instruction)~~

were duly sworn.

* Omit if not applicable.

Signed this 23rd day of February 1942.

[signature]

President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

* See footnote (4) on page 762 M.M.L. 1929.

Signed this day of 19 .

President of the Court Martial

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 27 day of Feb. 1942

Arthur Potts Brigadier,
Comdg. 2 Cdn. Inf. Bde.
Confirming Officer.

Promulgated and extracts taken in the case of HQ 2 Cdn. Inf. Bde.

(a) (Dated) 27 Feb 42 (Signed) [signature] Capt
For S.C. 2 Cdn. Inf. Bde.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] W. & Co., Ltd. Gp. 740/2

C.A.O. 7-1-53.

Pte. Ducharme, H.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st See 40 A.A.	Guilty	Guilty	
2nd See 40 A.A.	Guilty	Guilty	
3rd See 9 (2) A.A.	Guilty	Guilty	
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A GdS beginning on (date) N/A GdS. (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which N/A days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo 90 Days Detention -

(Sgd) ..... 13 Nov 1945 (Sgd) J A Tindal Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 90.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 128(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(G) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 128(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : I confirm the findings and sentence of the Court.

~~I direct that the accused be not recommitted for trial on (charge) ..... further evidence.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) ..... Major
Date 19 Nov/45 Commanding A/CREME 3 Cdn Inf Div CAOF
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
H 20816	19 Nov 1945	J. Tindal Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 CAOF-1-53

FIELD GENERAL COURT-MARTIAL

CPA96 (To Be Used in Lieu of AF A32) 10-P-R-1608 (2664)

Convened by Order of Lt Col R.F. Jobson Comdg R.C.E.M.E. 3 Cdn Inf Div dated 9 Nov 45

ACCUSED.

C.A.O.F.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H 20816	Pte	Wilfred Richard	Buchanan	2/3 Cdn Inf Bde Coy Bde Hd Qrs RCEME (CAOF)

PROCEEDINGS REVIEWED Date 21 Nov 45

5 Dec 45 L.J. Brady Maj

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany on (date(s)) 13 Nov 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Can ROs. For guidance on procedure where a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which matters are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 118, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0945 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Can 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to N/A as interpreter ? Ans —
The Interpreter is sworn.(1) Do you object to N/A as shorthand writer ? Ans —
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 118, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President Major J.A. Tindal 2/203 Cdn. Inf. Ord. Sub. Park RCOC
Member Capt J.A. Couture 2/3 Cdn. Fd. L. & B.U.(A) R.C.O.C.
Member Lt. J.C. Moffett 2/1 Cdn. Sal. Unit R.C.O.C.
Judge-Advocate
Prosecutor Lt H.G. Osten 2/3 Cdn. Fd. L. & B.U.(A) R.C.O.C.
Defending Offr Capt J.A. Couture Ord Learner 2/3 Cdn. Inf. Div. HQ

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def. Offr not, accused is entitled to an adjournment where RP 99 (B) and fn 2 were not followed. See Dif p 33.)

A8. The accused H 20816 Pte. Buchanan before arraignment make(s) (no) (his) plea W.R. 2/3 Cdn. Inf. Ord. Field Pk RCOC (1)
(1. If a special plea is made or separate trial on one or more charges (RP 62(B), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's present fitness to stand trial (AA 130, RP 57), or be one of several accused charged jointly to be tried separately (RP 14, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C of R Doc 5 p 10

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 86, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para L3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on N/A charge(s). The accused is (are) so informed, and he (they) changes his (their) plea(s) on N/A to charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 155. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 151(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Forms B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that those documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "A" and Ex "B" respectively.(3)
(*1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. No but my Defending Officer will.
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused thereof guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas MO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(f), 44(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

EXACT CHARGE SHEET

The accused, H 20816 Pte Wilfred, Richard DUCHARME, 2/3 Cdn Inf Div Ord Fd Pk RCOC (CAOF), a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
Sec 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field in Germany at approximately 1650 hrs 29 Oct 45 was wearing the badges of rank of a Lieutenant to which he was not entitled.

SECOND CHARGE
Sec 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field in Germany at 1650 hrs 29 Oct 45 was unable to produce any means of identification when requested to do so by a member of the Cdn Pro Corps.

THIRD CHARGE
Sec 9 (2)
Army Act

WHEN ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

in the field in Germany at approximately 1700 hours 29 Oct 45 continued to remove the badges of rank of a Lieutenant from his tunic when ordered not to do so by D 142518, Opl Popiel, P., his superior officer.

In the Field
30 Oct 1945

(L.V. Patrick) Major
Officer Commanding
2/3 Cdn Inf Div Ord Fd Pk RCOC (CAOF)

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

In the Field
9 Nov 45

(F. R. Jobson) Lt-Col
Coad RCEME 3 Cdn Inf Div (CAOF)

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H.20816	Pte		Wilfred Richard	DUCHARME	2/3 Cdn Inf Div Ord Fd Pk RCOC (CAOF)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 9 Nov 45 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J. Tindall	2/203 Cdn Inf Ord Sub Pk RCOC (CAOF)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J. A. Couture	2/3 Cdn ML & BU RCOC (CAOF)
Lt	J. C. Moffatt	2/1 Cdn Sal Unit RCOC CAOF

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	R. Carpenter	2/7 Cdn ML & BU RCOC CAOF

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Germany (Country.)

R. F. Jobson. (Signed personally. RP 105 fn 2.) (F. R. Jobson) Lt-col (Rank.)

Date 9 Nov 45

Commanding RCEME 3 Cdn Inf Div (CAOF)
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TÉMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd is Court is Pte Smith. About 1400 hrs on 15 Jun 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 92(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn* 2(b)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(B)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 563(a).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA* 162 (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or representation by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(3), *RP* 118(*C*), *MML p* 709.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Final Address of the Prosecution

As the accused has pleaded guilty I have very little to say. I would like to point out with regard to the First Charge that the accused was alleged to have been wearing an officers' tie which would tend to indicate more preparation than we would be lead to believe. Also when approached by Cpl Popert and saluted he returned the salute.

With regard to the Second Charge the onus falls on every soldier or officer to produce identification at all times. Almost no circumstances would alleviate that responsibility and certainly not in the present phase of operations.

Regarding the Third Charge. It does not state nor is the charged with "Refusing to Obey an Order" but rather he is charged with "Disobeying a Lawful Command". This command was given by a superior officer and heard by Pte Blake. All of which has been given as evidence under oath.

Re:- PGOM

13 Nov 1945

2/3 Cdn Inf Div Ord Fd Pk RCOC (CAOF)

MEDICAL OFFICER'S CERTIFICATE

I certify that No. H 20810, Pte Duchesne, Wilfred, Richard

is fit to undergo trial by Court-Martial.

Regiment.

Signature of the Medical Officer.

"Insert "fit" or "unfit."

RECORD OF EVIDENCE

Final Address of Defence
(Statement of Mitigation)

The charges as stated on charge sheet are undeniable, however, there are certain circumstances that I think should be brought to the attention of the Court.

The accused met a friend of his from his home town who was an officer and who came to Oldenburg just prior to repatriation to see him. They had a drink together and this led to several and they finally had too much. They then went to the park opposite the Town Major and proceeded to sleep it off, placing their tunics under their heads for pillows. When the accused woke up the officer was gone and he put on the tunic that was there. He walked up town, was not saluted by any soldiers he passed, and went past the Provost post where nobody said anything to him and he had no idea he was wearing an officers' tunic until stopped by the Provost Corporal.

The evidence of the Provost Corporal to the effect that he stopped on seeing the jeep and attempted to conceal his identity is purely supposition. He could have stopped for the railway crossing.

As far as means of identity, he did not have on his own tunic and naturally didn't have any means of identity.

In regard to the third charge he had already admitted the fact that he was not an officer to the Provost and it is the natural behaviour of a man befuddled with sleep and drink to try to remove the pips. Also from the evidence it would appear that this charge should be "Failing to Comply with an Order" rather than "Refusing to Obey one" as at no time did he state that he refused to obey the order.

Ex 'A' 9 G.P.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H 20816	Pte	Ducharme, W.R.	2/3 Cdn Inf Div Crd Fd Pk

R.C.O.C. 9.43

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	A.W.L.	11 times.
For	Failing to obey an order	2 times.
For	Refusing to produce identity	1 times.
For	Driving Recklessly	1 times.

Date of first entry in Field Conduct Sheet 17 Nov 1941

Date of last entry in Field Conduct Sheet 11 Mar 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for ~~4 days~~ beginning on the ~~30th~~ day of ~~October 1942~~ 9.43

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 14 ~~9.43~~ days in military custody, *i.e.*, NIL days in open arrest, 14 ~~9.43~~ days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 24 years

6. The date of his attestation / calling up for military service is 15 May 1941

7. The service which the accused is allowed to reckon is 4 yrs 132 days

8. The accused is in possession of‡ 1939-45 Star, Italy Star, CVSM, France & Germany Star

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date—

Date of Proceeding

No. H 20816 Name DUCHARME, Wilfred Richard Sqn, Battery, or Company 5 Sec. A.C. Ord RCOC W/S Corps Date of enlistment 15 May 1941 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) Ex-B 96.1

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc RO, 5 Sec A.C. Ord W/S RCOC Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet Destroyed 20 June 42					
HMT Tobiecki	17-11-41	Pte		Absent from duty from 0730 hrs 17-11-41 to 1100 hrs 17-11-41 and caused K 70354 Pte Reid to perform his duty	S/Sgt Wood, EA K 70629	To attend all defaulters Parades	17-11-41	WL Sagar Lt-Col	Forfeits 1 day Pay
E. [illegible]	20-12-41	Pte		AWL from 1445 hrs 20-12-41 to 2230 hrs 20-12-41 (Abs 7 hrs 45 min)	S/Sgt Hallbert R.W.	72 hrs Detent.	22-12-42	WL Sagar Lt-Col	Forfeits 4 days P/Auto.
E. [illegible]	20-12-41	Pte		Conduct to the prejudice, tec Failed to obey lawful command by N.C.O.	Pte Flett, D. Cpl Hardy, OG Cpl McLevin, M.	2 Days C.B.	22-12-41	T.C. Graham	Capt
E. [illegible]	10-12-42	Pte		Conduct to the prejudice,, in that he did absent himself from parade	S/Sgt Tose C.	6 Days C.B. w/ extra fatigues	11-2-42	G.H. Parker	Capt
In the Field	16-9-42	Pte		A.W.L. from 1330 hrs 16-9-42 until 1515 hrs 16-9-42 (Abs 1 hr 45 mins) Sec 15 AA	S/Sgt Grimmelt B.F.		23-9-42	WL Sagar, Lt-Col	4 days Pay

(PTO)

CERTIFIED TRUE COPY

DATE 11/11/45

[illegible] Districts Major

Officer Commanding

2/3 Cdn Inf Div Ord Fd Pk RCOC (CAMP)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	[illegible]-1-43	Pte		Sec 15 A.A. AWL from Tattoo Roll Call at 2230 hrs 20 Jan 43 to 0830 hrs 21 Jan 43 (Abs 9 hrs)	S/Sgt Grimmelt B.F. L/Cpl Harju, HJ	8 days CB	21 Jan 43	E.H. Palmason Capt	Forf 1 day Pay FR & I 149
Field	14-6-43	Pte		AWL from 0800 hrs 13 June 43 until 14 June 43 (Total 1 day 1 hr 30 min)	L/Cpl Henry	Awarded forf 3 days Pay	15 June 43	MF, Hillary Capt	Auto forf 2 days pay
Field	5-8-43	Pte		Con to the prej of good order Did drive W.D. M/C Recklessly		Forf. 7 days Pay	26 Aug 43	MF, Hillary Capt	
Field	5-10-43	Pte		Cond to the prej. did talk on parade	S/Sgt Mayne	7 days C.B.	5-10-43	Lieut Atwell	
Field	4-11-43	Pte		Sec 11 AA Neglet to obey Unit Daily Order Part #244 d/1 Nov 43. On streets after curfew 2100 hrs (2) Sec 40 AA con to prej. etc., refused to produce MBM I Pt by superior officer & gave false Identity verbally.	documentary	14 days F.P. Forf of 14 days Pay FR & I 149(2)	25 Nov 43	(Cb Pitt) Major	
Field	9-2-44	Pte		Sec 15(1) AWL 1300 hrs 9 Feb 44 until 0600 hrs 10 Feb 44 (abs 17 hours)	Sgt Taylor, M. Cpl Burke, W.	28 days F.P. 28 days Forf pay	10-2-44	(CB Pitt) Major	FR & I 149(2)

No. H 20816 Name DUCHARME, W.R. Sqn. Battery, or Company 5 Cdn Armd Tns WESP RCOC Corps Date of enlistment 14-5-41 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/P&S/126 (5413)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Nil Sheet No 2 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
19 CGH	23-1-45	Pte		AA Sec 15(1) AWL from 23 Jan 45 to 1445 hrs 3 Feb 45 (10 days 21 hrs 45 mins)	----	15 days Pay	5 Feb 45	AW Palig Lt	Forf 11 daysP FR & I 149(1)a Forf 15 daysP FR & I 149(2) Total 26 days
RMCH	11-3-45	Pte		(1) Offence under AA Sec 40 (2) AA Sec 15 (1) AWL from 2130 hrs 11 Mar 45 to 1630 hrs 13 Mar 45 (1 day 19 hrs)	14 days CB 5 days Pay	19 Mar 45	JB Cahn, Capt		Forf 2 days Pay FR & I 149(1) a Forf 5 day Pay FR & I 149 (2) Total 7 days Pay

CERTIFIED TRUE COPY
DATE 11/11/45
[signature]
(R.V. Patrick) Major
Officer Commanding
2/3 Cdn Inf Div Ord Pd Pk RCOC (CAOF)

(PTO)

No. H20816 Name DUCHARME William Richard | Sqn, Battery, Company 5 Sec.A.C. Ord Corps RCOC W/S | Date of enlistment 1425-41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (5412)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc RO, 5 Sec AC Ord Corps RCOC | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				SHEET DESTROYED 20-6-42					
HMT Sobieski	17-11-41	Pte		Absent from duty from 0730 hrs 17-11-41 to 1100 hrs 17-11-41& caused K70354 Pte Reid to perform his duty.	S/Sgt Wood EA K70629	To attend all defaulters parades	17-11-41	WL Sagar Lt Col	Forfeits 1 days Pay
E.Waterloo Lks	2[illegible]-12-41	Pte		A.W.L. from 1445 hrs 2[illegible]-12-41 to 2230 hrs 2[illegible]-12-41 (Abs 7 hrs 45 min)	S/Sgt Hallbert RW (Pte Flett D	72 hrs det.	22-12-42	WL Sagar Lt. Col	Forfeits 4 days P/Auto.
E.Waterloo Lks	2[illegible]-12-41	Pte		Conduct to the prej. tec. Failed to obey lawful command by N.C.O.	Cpl Hardy OG Cpl McLevin M	2 Days CB	22-12-41	T.C. Graham	Capt
E.Waterloo Lks	1[illegible]-2-42	Pte		Conduct to the prej. in that he did absent himself from parade.	S/Sgt Tose C	6 Days CB w/ extra fatigues	11-2-42	GH Parker	C
In the Field	16-[illegible]-42	Pte		A.W.L. from 1330 hrs 16-9-42 until 1[illegible]15 hrs 16-9-42 (Abs. 1 hrs 45 mins) Sec 1[illegible] AA	S/Sgt Grimmelt B.F.		23-9-42	WL Sagar Lt col	Forf. 4 dys pay

CERTIFIED TRUE COPY DATE [illegible] Officer Commanding 2/3 Cdn Inf Div Ord Fd Pk RCOC

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field I	20-1-43	Pte		SEC 15 A.A. AWL from Tattoo Roll Call at 2230 hours 20 Jan 43 to 0630 hrs 21 Jan 43. (Abs. 9 hrs)	S/Sgt Grimmelt B.F. L/Cpl Harju HJ	8 days C.B.	21 Jan 43	E.H. Palmason Capt	Forf. 1 days pay F.R.& I
Field	3-6-43	Pte		AW L from 0800 Hrs 13 June 43 until 14 June 1943(Total 1 day 1 hrs 30 min)	0930 hrs L/Cpl Henry	Awarded forf. 3 days pay	15 June 43	Capt MF Hillary	Auto forf 2 days pay
Field	5-8-43	Pte		Con to The Pred. Of Good Order Did drive W.D M/C Recklessly		Forf. 7 days Pay	26 Aug 43	Capt MF Hillary	
Field	1-12-43	Pte		Cond To The Prej. did talk on parade Sec 11 AA Neglect to obey Unit Daily	S/S Mayne	7 days CB	5-10-43	Lieut Atwell	
Field	1 Nov 43			Order Part #244 d/1 Nov 43. On streets after Curfew 2100 hrs(2) Sec 40 AA con. to Prej. etc. refused to produce MBH 1 Pt by Superior Officer & gave false Identity verbally	Documentary	14 days FP Forf of 14 days Pay FR&I 149 (2)	25 Nov 43	(CB Pitt) Major	
Field	9-2-43	Pte		Sec 15(1) A A-AWL 1300 hrs 9 Feb 44 until 0600 hrs 10 Feb 44 (Ab.17 hours)	Sgt Taylor M Cpl Burke W	28 days F P 28 days Forf pr	10-Feb 44 FR&I 149	C.B. Pitt, Major SOC (2)	

CERTIFIED TRUE COPY
DATE Nov 5 1943
Officer Commanding
2/3 Can Inf Dist Ord Fd Pk

B. CAN INF DIV GRD FIELD PARK
ORDERLY ROOM
R.C.O.C.

No. H20816 Name DUCHARME W.R. Sqn, Battery, or Company 5 Cdn Armd Corps Tps Wksp RCOC Date of enlistment 14-5-41 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/P&S/138 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Mil Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
19 CGH	23-Jan 5	Pte		AA Sec 15(1) AWL from 1700 hrs 23 Jan 45 to 1445 hrs 3 Feb 45 (10 dys 21 hrs 45 mins)	----------	15 days pay	5 Feb 5	AW Palig Lt	Forf 11 dys pay FR&I 149 (1)a Forf 15 dys pay FR&I 149(2) Total 26 dys pay
RWCH	11 Mar 5	Pte		(1) Offence under AA Sec 40 (2) AA Sec 15 (1) AWL from 2130 hrs 11 Mar 5 to 1630 hrs 13 Mar 45 (1 day 19 hrs)	14 days CB 5 days pay	19 Mar 45	JB Cahn Capt		Forfs, 2 days pay FR&I 149(1) (a) Forf 5 days pay FR&I 19(2) Total 7 days pay

CERTIFIED TRUE COPY Date Nov 5. 1945

(DW [illegible]) Major
Officer Commanding 2/3 Cdn Inf Div Ord Field Pk RCOC

S.C. INF DIV ORD FIELD PARK ORDERLY ROOM RCOC

(PTO)

SUMMARY OF EVIDENCE IN THE CASE OF

H 20816, Pte DUCHARME, W.R. - 2/3 Cdn Inf Div Ord Fd Pk RCOC

By the order of the C.O. this summary of evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION - D 142518, Cpl Popiel, P, No 3 S.I.S. Provost, having been duly sworn, states:

"At approx 1650 hrs 29 Oct 45, whilst on tour of duty in the Oldenburg area, accompanied by F 87079, L/Cpl Johnsen, H.A., 2/4 Provost Coy CAOF we were driving along Heiligengeist when we came to a railway crossing and stopped at the barrier as a train was passing by. Here I noticed an Officer standing, whom upon seeing a Provost Vehicle come to a halt, turned slightly to his right in a manner as though trying to conceal his identity.

I immediately brought this to the attention of L/Cpl Johnsen, H.A. and we then proceeded to check the identity of this Officer. The correct compliments were paid to this Officer, which he returned same, before being checked. He was not in possession of any form of identification and later stated he was not an Officer and wanted to get out of town immediately.

Upon being questioned the reason for his wearing the insignias of a Lieut and an Officers' tie, he replied that he had made a mistake, by taking the wrong jacket out of a club and that the tie was his own personal property. He was then placed under arrest and escorted to 2/4 Cdn Provost HQ, CAOF, Oldenburg.

Whilst proceeding to the a/m unit, this soldier attempted to remove the Officers' insignias from his jacket, I ordered him not to remove same, but in direct violation of this order, continued to remove same. This act was witnessed by H 1642 Pte Blake, B.E. employed as a cook at Cdn Provost HQ, Oldenburg, who was met on street, whilst en route to Coy HQ. A voluntary statement was later obtained from Pte Blake, B.E.

Upon arrival at Coy HQ, the soldier was further interrogated, and gave his particulars as being H 20816, Pte Ducharme, Wilfred, 2/3 Cdn Inf Div Ord Fd Pk RCOC (CAOF) I then informed him he would be charged with the following:-

1. Impersonating an Officer
2. Disobeying an Order
3. No devoted means of identity.

Pte Ducharme was later escorted to his Unit, Major L.Y. Patrick, O.C. was informed the circumstances of arrest, and the accused was turned over to S/Cdr Wiggins, O.D., of the Unit.

.....
D 142518, Cpl Popiel, P.
No 3 S.I.S. Provost

The Accused declines to cross-examine the witness.

...../2

SUMMARY OF EVIDENCE IN THE CASE OF

H 20816, Pte DUCHARME, W.R. - 2/3 Cdn Inf Div Ord Fd Pk RCOC

SECOND WITNESS FOR THE PROSECUTION - H 1642, Pte Blake, B.R., RCASC 2/4 Provost Coy CAOF having been duly sworn states:

"At apprex 1700 hours 29 Oct 45 whilst walking along Heiligengeist, Str. I was met by a Provost Jeep, that pulled alongside of the road. I recognized the driver as Cpl Popiel, P., of No 3 Special Investigation Section, who is stationed at Provost HQ at Oldenburg. Cpl Popiel asked me to accompany him, as he had a soldier in the jeep who was wearing the insignias of an Officer (Lieut). Whilst on our Way to HQ, I noticed this soldier removing the pips off his shoulders. I then heard the Corporal ordering him to leave them on. He refused to obey this order and continued taking them off. Cpl Popiel then stated that he would be charged for disobeying an order.

B.R. Blake
.....
H 1642, Pte Blake, B.R.
RCASC, att. 2/4 Prov Coy

The Accused declines to cross-examine the witness.

THIRD WITNESS FOR THE PROSECUTION - F 87079, L/Cpl Johnson, H.A., 2/4 Cdn Provost Coy CAOF having been duly sworn states:

"At apprex 1650 hours 29 Oct 45 I was proceeding to the civilian Police Station (Heiligengeist Str) accompanied by Cpl Popiel, P. when we reached the railway crossing, we were compelled to stop, due to the barrier being down. Cpl Popiel noticed an Officer standing by the barrier and called my attention to this Officer, stating that he did not appear to be an Officer. We decided to check his identity. Cpl Popiel approached the Officer paid proper compliments, which were returned. I got out of the jeep and went over and the alleged Officer was stating to Cpl Popiel that he was a private and wanted to get out of town.

Cpl Popiel then ordered him into the jeep and we proceeded to the civilian Police Station where I left the jeep and carried on with another detail. Cpl Popiel then proceeded to take the accused to 2/4 Cdn Provost HQ.

H.A. Johnson
.....
F 87079, L/Cpl Johnson, H.A.
2/4 Cdn Prov Coy., CAOF

The Accused declines to cross-examine the witness.

The Accused was cautioned as follows:-

Q.- Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

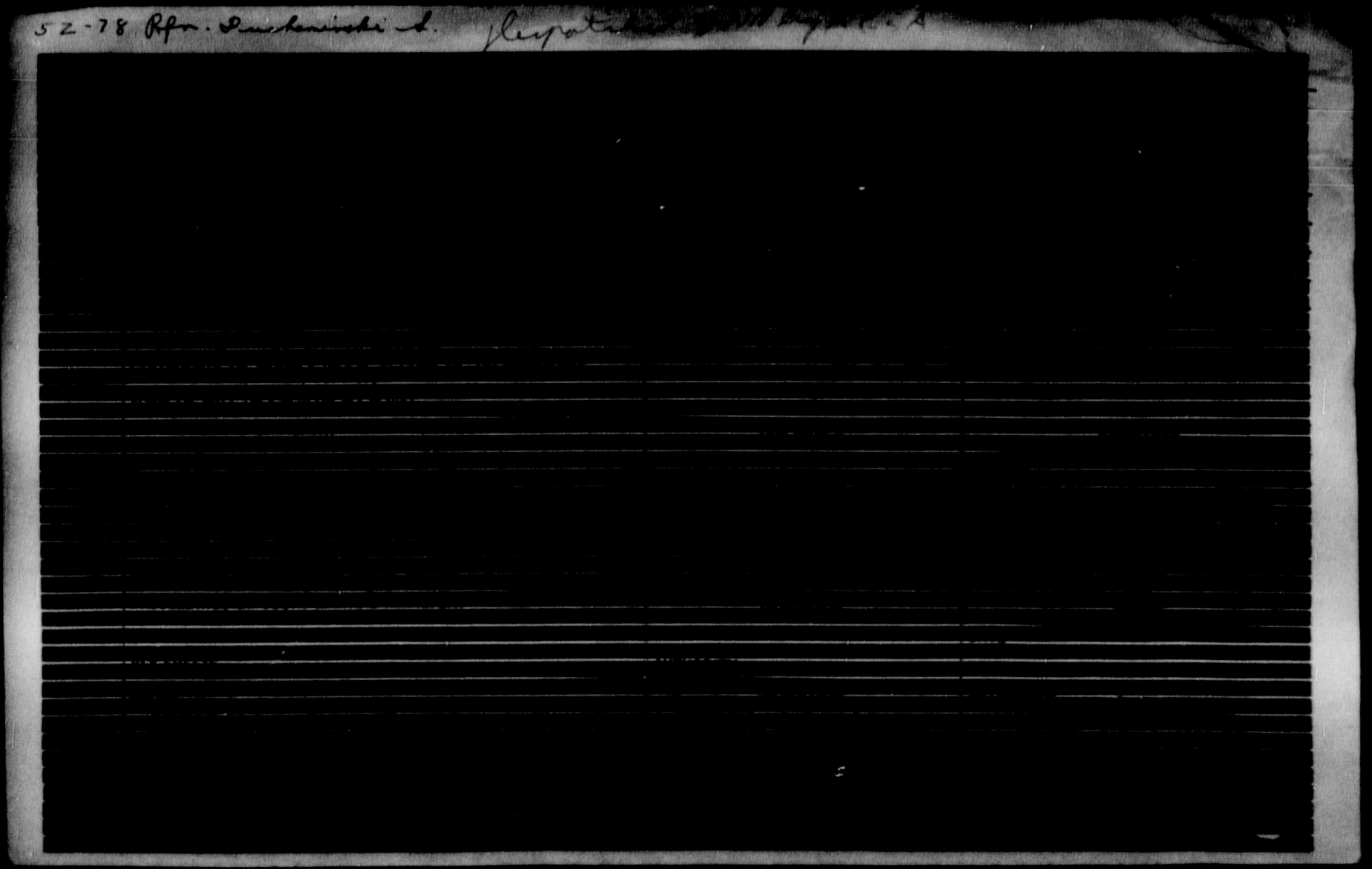
...../3

A.- I do not wish to make a statement. The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence consisting of three pages, was taken down by me in the presence of the accused and that RP r (c), (D), (E), (F) have been complied with.

In the Field
1 November 1945

H. G. Oster Lieut.
(H.G. Oster) Lieut
2/3 Cdn Mob Ldry & Bath Unit
RCOC (CAOF)



52-78 Rfn. Duchenivski S. Hypoth[illegible]

4 I-3.

Pte Duchesne A.

RECORDED AT CMHQ IN AB 180, 42-3

FIELD GENERAL COURT-MARTIAL

CFAIR 40 (To 1944) (or AFAIR 40) P & R 1940 (40/20)

1944/38B

Convened by Order of BRIG JPF BERNATCHEZ Comd 3 Mcn Inf Bde dated Nov 11th/44

ACCUSED.

(1. As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E5980	Pte		ANDRE	DUCHESNE	R22R

PROCEEDINGS REVIEWED

Capt Richardson Capt

1/4 Dec 44 REVIEWING OFFICER, JA

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) Nov 22nd/44

RECORD FORM A--OPENING PROCEEDINGS AND ARRAIGNMENT. 2D 146.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53; RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to MAJOR G. J. MAINGUY as interpreter? Ans No

The Interpreter is sworn.(1) ~~Do you object to as shorthand writer? Ans~~ The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	L.A. WATLING	C Q R
Member	CAPT	C.F. SPENCE	LDSR
Member	LIEUT	A. DUBE	R 22 R
~~Judge Advocate~~			
Prosecutor	LIEUT	L. PINEL	R 22 R
Defending Offr	~~CAPT~~ LIEUT	P. TREMBLAY	R 22 R

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D/ p 3.)

A8. The accused E5980 Pte ANDRE DUCHESNE before arraignment make(s) (no) ~~(a)~~ plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB 180 and name of the accused making the plea.)

A9. The accused is ~~(are) arraigned (re-arraigned)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A94 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and) considers the Instrs on Procedure after Arraignment~~ at top of p 2. The proceedings are continued on Record Form ~~Korea~~ THE PROCEEDINGS ARE CONTINUED ON RECORD FORM 4

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

F30 AM/85

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) p 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence as marked Ex ....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused E.5980 Private A-3RC DUCHESNE, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, is charged with:-

FIRST CHARGE
AA. Sec 18 (2)

WHEN ON ACTIVE SERVICE

WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE,

in that he,

In the field, in Italy, at about 1800 hrs 19 Oct 44, by discharging his rifle, wilfully injured himself by causing a through and through wound of the medius and annular phalenges, left hand, with intent thereby to render himself unfit for service.

SECOND CHARGE
AA. Sec 40
(Alternative)

WHEN ON ACTIVE SERVICE

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

In the field, in Italy, at about 1800 hrs 19 Oct 44, so negligently handled a rifle as to cause it to be discharged and thereby injured his left hand and rendered himself temporarily unfit for service.

In the field,
29 Oct 44

(J.V. Allard) Lt.-Col.
Commanding, Royal 22e Regiment.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field,
1 Nov 44.

(J.P. E. Bernatchez,) Brigadier,
Commander 3 Cn inf Bde.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E5980	Pte		Andre	DUCHESNE	R22R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 1 Nov 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by ~~an~~ ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am ~~unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached~~ hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	LA Watling	CYR
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	CF Spence	WNSR
Lieut	A Dube	R22R
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Capt	C Gagnon	R22R
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.) — E Burnett Hay (Signed personally. RP 105 fn 2.) — Brigadier (Rank.)

Date 1 Nov 44 — Commanding 3 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed : and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR-UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed : and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 69 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (or, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP* 60(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 46 *fn* 3(6)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 95(*C*).)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 81.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 565(a).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD ITEMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, and then pinned by top left corner to p 3 of CF A 96 in following order :

(a) Charge Sheet. (*On top.*)

(b) Convening Order with any declarations made by Convening Offr under RP 108, 106, 107, 114.

(c) Medical Certificate(s). (*KR Can 567.*)

(d) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(e) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of registered books see AA 163 (1) (g) (h).*)

(f) Summary of Evidence, if not already an exhibit.

(g) Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 107(f).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 758.*)

3. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", unless otherwise directed.

No 5 Canadian Casualty Clearing Station
R.C.A.M.C.

2 Nov 44

This is to certify that E 5980 Pte Dunleavy B.

of the Royal 22 Regt is fit to undergo trial by Field

General Court Martial.

M Kennedy Capt.
Medical Officer

1st Witness for Prosecution

Capt Y Dandenault R22R duly sworn states:

I am Y. Dandenault Capt. RCAMC attached to R22R.

Witness recognizes the accused.

On the date he was wounded he reported to the R.A.P. with a dressing on his left hand. I took off the dressing, to have a look at the wound. While I was doing this I asked Pte. Duchesne what happened. He told me he did not know. I looked at the wound, which was caused by a bullet involving third and fourth phalanges on the left hand. It was not bleeding. Around the wound there were traces of carbon powder. I made a dressing and had him evacuated.

~~Cross Examination by Prosecution~~ D.J.S.

1st Q: In your opinion what would traces of carbon powder on ~~the~~ or around the wound indicate

Ans: It would indicate that the hand was not very far from the muzzle. Close range.

Cross Examination by the Defence.

1st Q: Did you notice that the patient was very nervous at that moment

Ans: He was very cool (R.P. 83A complied with)

2nd Witness for Prosecution

D138609 Z/Cpl. Jarry J.A. for R22R duly sworn states:

I am D138609 Z/Cpl. Jarry J. R.M. R.22R - Company B. No. 12 Pl.

Witness recognizes the accused.

On 19 Oct. approx. 1800 hrs we took posns. in a large ditch. We were waiting there to make an advance, when suddenly I heard a gun fire.

2nd Witness for Prosecution (cont'd)

and at that same moment I heard someone calling for an "S.B." and C.S.M. LeFevre accompanied by two S.B.'s came to the spot where the accused was lying. C.S.M. LeFevre picked up Pte Duchesne's rifle and departed with it. The two S.B.'s evacuated the accused and it was then that I noticed that Pte Duchesne was bleeding from the left hand.

~~Cross Examination by Prosecution~~

1. Q. Did you hear only 1 shot.
Ans: I heard only 1 shot.

2. Q. At the time were you in close contact with the enemy
Ans: We were not near the enemy at that time.

3. Q. Was anyone firing on you.
Ans: Yes - there was heavy shell fire.

4. Q. Was there any small arms fire close to you.
Ans: No sir.

No Cross Exam. R.P. 83(B) complied with.
B 79750 Pte Soucy A. R.22R duly sworn states

3rd Witness for Prosecution

I am B 79750 Pte. Soucy, A. B Coy R 22 R - 12 Pl.

Witness recognizes the accused.

I heard a gun shot and I saw Pte Duchesne was bleeding from the left hand. This incident happened on 19 Oct. at approx 1800 hrs. I was in a deep ditch about seven feet from the accused under heavy shelling. I just heard the one rifle shot. We were not being fired on by small arms at the time.

At that moment ~~I heard~~ we shouted for the S.B. then the C.S.M. picked up the

rifle and extracted an empty cartridge from the rifle.

No Cross Exam. R.P. 83 (B) complied with
C 42573 Sgt (a/CSM) Lefevre, G. R22R. Only sworn states:

4th Witness for Prosecution

I am C 42583 ~~C~~ Sgt. (a/CSM) Lefevre, G. B. Coy. R22R.

Witness recognizes the accused.

On 19 Oct. 1944 we were in an area lined up along a road. We were waiting for the order to advance at about 1800 hrs. I heard a rifle shot not far distant from where I was. Someone called for the S.B. I got up and went in the direction from where I heard the rifle shot. I saw ~~Pte~~ Pte. Duchesne holding his left hand and his rifle was ~~leaned on~~ leaning against him. I took the rifle, opened the bolt and found an empty cartridge in the chamber, that had just been fired.

~~Cross Examination by Prosecution~~

1. Q. Where was the accused when you found him.

Ans: He was with the other members of his Pl. in the ditch by the road.

2. Q. Were you being fired on by enemy small arms at the time.

Ans No Sir.

3 Q: ~~Do~~ Have you ever had a S.A. course yes Sir:

Ans I ~~am~~ have had a small arms course

4 Q. Had Pte Duchesne been in your coy very long

Ans. From 3 to 4 weeks.

5. Q. During that period had your men had any tig in small arms

Ans: They had rec'd S.A. tig from the N.C.O's in their pls.

4 Q
Cartridges for Prosecution (Cont'd)

6 Q: Would you say, in your opinion, that the accused was qualified to handle a rifle.

ans: My opinion is that he is qualified

Cross Examination by the Defence

1. Q. How can you tell when an empty cartridge has just been fired.

ans: I picked up the rifle & when I extracted the cartridge it was still hot and smoke was coming out.

R.P. 83(B) Complied with

Ex

Submission of no case by def. Offr. on first charge:

The evidence for the Prosecution does not in any way show that the accused wilfully injured himself and therefor he should not be called on for his defence on the first charge.

Reply by Prosecutor:

The evidence is sufficient to make out a prima facie case on both charges and the Court should not allow the motion by the defence.

The Prosecutor declines to make a closing address.

The def. Offr. declines to make a closing address.

Italie 2 Nov. 1944

Mestigation de sentence

Le soldat André Pluchaine s'est enrolé dans la Marine canadienne en 1937 Il a servi deux ans et a été déchargé pour cause mental. Il avait eu fracture du crâne. Il s'est enrolé, comme volontaire, dans les forces actives canadiennes en novembre 1940. Il a fait la campagne de la Sicile et de l'Italie Il est soutien d'une belle-soeur avec plusieurs jeunes enfants. Sinfoins qu'il est au service il a une feuille de conduite sans charge

Task the court Je demande la clémence de la court dans cette cause

Léo Pinel Lieut
Royal 22e Regiment
C. A. C. M. T.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
E.5980	Pte	DUCHESNE, A.	Royal 22e Regiment

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Temporary sheet only - Original not available. times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N/A beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 9 days days in military custody, *i.e.*, N/A days in open arrest, 9 days in close arrest; of which 9 days were spent in hospital.

5. The present age of the accused is 32 years.

6. The date of his attestation ~~calling up for military service~~ is 10 Nov 40.

7. The service which the accused is allowed to reckon is N/A

‡State the military decorations (if any) held by accused.

8. The accused is in possession of‡ N/A

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date— NA

	Date of Promotion.
In the substantive rank of N/A	
In the war substantive rank of N/A	
In the acting rank of N/A	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

"A"

[23114] Wt.5670-668 200,000 4/42 A.& E.W.Ltd. Gp.488
[23459] Wt.20256/1873 60,000 9/42 " " Forms B.296 War/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		TEMPORARY SHEET ONLY- Original not available.		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this twenty-eighth day of October 1944

P.A. Tremblay) Lieutenant
Adjutant, R.22R.

No E.5980 Name DUCHESNE, A. | Sqn, Battery or Company | Corps CIC | Date of enlistment | GC Badge | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/138 (3488)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET- Original not available.					
				Certified true copy of regtl books in my possession.					
				(P.A. Tremblay) Lieutenant. Adjutant, Royal 22e Regiment.					
				In the field, 28 Oct 44.					

(PTO)

SUMMARY OF EVIDENCE

In the case of E.5980 Private André DUCHESNE, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service:-

By direction of the Commanding Officer this Summary of Evidence is taken under oath.

1st WITNESS For Prosecution. A document purporting to be a sworn statement of E.4267 Sgt Ste Marie, P.E. of the Royal 22e Regiment is read over to the Accused, marked Exhibit "A" and attached to the proceedings.

" I certify that in my opinion, owing to the exigencies of the service including the time and expense which the attendance of this witness would involve at the taking of the Summary of Evidence, can not be readily procured.

P.E.Y. Lemieux
..... Lieutenant.

2nd WITNESS For prosecution. A document purporting to be a sworn statement of D.138609 L/Cpl JARRY, J.A. of the Royal 22e Regiment, is read over to the accused, marked Exhibit "B" and attached tothe proceedings.

" I certify that in my opinion, owing to the exigencies of the service and the time and expense involved, the attendance of this witness at the taking of the Summary of Evidence can not be readily procured.

P.E.Y. Lemieux
..... Lieutenant.

3rd WITNESS For :prosecution. A document purporting to be a sworn statement of C.103284 pte BOUCHER, J.L. of the Royal 22e Regiment, is read over to the accused, marked Exhibit "C" and attached to the proceedings.

" I certify that in my opinion, owing to the exigencies of the service and the time and expense involved, the attendance of this witness at the taking of the Summary of Evidence can not be readily procured.

P.E.Y. Lemieux
..... Lieutenant.

4th WITNESS For Prosecution. A document purporting to be a sworn statement of Captain Y. DANDENEAULT, RCAMC, attached to Royal 22e Regiment, is read over to the accused, marked Exhibit "D" and attached to the proceedings.

" I certify that in my opinion, owing to the exigencies of the service and the time and expense involved, the attendance of this witness at the taking of the Summary of Evidence can not be readily procured.

P.E.Y. Lemieux
..... Lieutenant.

The accused having been duly cautioned in French in accordance with KO.1324 declines to make a statement and reserves his defense.

I certify that the foregoing Summary of Evidence consisting of one (1) page was taken down by me in the presence and hearing of the accused, and that rules of procedure 4 (c)(d)(e)(f)and(g) were duly complied with.

In the Field Italy
28 Oct 44

P.E.Y. Lemieux Lieut
R22R

EXHIBIT "A"

E.4267 Sgt Ste Marie, P.E. "B" coy, Royal 22e Regiment having been duly sworn states;

" I am E.4267 Sgt Ste Marie, P.E. of No. 12 platoon, B company, Royal 22e Regiment. On 19 Oct 44 at approximately 1800 hrs my platoon had taken cover in a ditch waiting for the order to advance. Suddenly I heard a bang and thought it was an enemy morter going off. Somebody then shouted " S B ". About one minute later the CSM got up and went to where E.5980 Pte Duchesne, A. was. When he returned I asked him what it was and he replied that Duchesne had shot himself in the hand. He had a rifle which he said belonged to Duchesne and he extracted a fresh empty cartridge in front of me. Duchesne was then evacuated.

P.E. Ste. Marie ... Sgt.

EXHIBIT "B"

D.138609 L/Cpl Jarry, J.A. of No. 12 platoon, B company, Royal 22e Regiment having been duly sworn states:-

" I am D.138609 L/Cpl Jarry, J.A. of no.12 platoon, B company, Royal 22e Regiment. On 19 Oct 44 at approximately 1800 hrs my platoon had taken cover in a ditch waiting for the order to advance. Suddenly I heard a bang and saw that E.5980 pte Duchesne, A. who was kneeling next to me had shot himself in the left hand. Somebody shouted "S B" and the CSM came around and took Duchesne's rifle away. He was bleeding (Duchesne) from the left hand and was later evacuated by the SBs.

Q - Had you heard Duchesne say he was discouraged and would shoot himself ?

A - No.

Jarry J.A.M. ... L/Cpl.

EXHIBIT "C"

C.103284 pte Boucher, J.L. of no. 12 platoon ,B company, Royal 22e Regiment having been duly sworn states:-

" I am C.103284 pte Boucher, J.L. of no. 12 platoon, B company Royal 22e Regiment. On 19 Oct 44 my platoon had taken cover in a slit trench waiting for the order to advance. At about 1800 hrs I heard a bang and saw that Duchesne who was kneeling behind me had shot himself in the left hand. I shouted " SB" and then the CSM came around and took his rifle away. Duchesne was later evacuated by the SBs.

Q - Had you at any time heard Duchesne say he was fed up and would shoot himself.?

A - No.

Boucher J.L. ..... Pte

EXHIBIT "D"

Captain Y. Dandenesult, RCAMC, attached to the Royal 22e Regiment having been duly sworn states:

" I am Captain Y. Dandenesult, RCAMC, attached to the Royal 22e Regiment as Medical Officer. At about 1830 hrs 19 Oct 44, E.5980 Private DUCHESNE, A. was admitted to my RAP suffering from a through and through wound of the medius and annular phalanges, left hand, caused by a bullet. There were traces of carbobe on palm and around the wound.

Y. Dandenesult Captain.

I hereby acknowledge receipt of a true copy of a Summary of Evidence taken prior to my trial by FGCM together with a true copy of a charge sheet upon which I am being brought into Court Martial.

I desire the services of an officer to represent me at my trial by FGCM. I desire the services of..... if he is available.

André Dubreuil .....pte

In the field,
28 Oct 44.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ND (2)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)

(1. RP 39(B), 60(A)(B), 90, 92(C)(D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D)(E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st charge (2). The Court is closed, and considers the submission.(3) ~~The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the~~ THE COURT IS RE-OPENED AND THE PRESIDENT ANNOUNCES THAT THE SUBMISSION IS 1ST CHARGE ~~charge(s), and that, accordingly, the trial will proceed on the former, but the accused is not found Not Guilty on the latter charge(s)~~.(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Neither. Do you intend to call witnesses on your behalf? Ans. "No". Are they witnesses as to character only? Ans. No.

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(5)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the Finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s) on special issue, subject to confirmation, will be promulgated later.(1)~~ Or, The President announces that the accused is found Not Guilty on all charges and in so far remains in force and that the proceedings are accordingly terminated. Part I of the Schedule is (is not) signed.(2)

(1. AA 54(1)(d), RP 42, 103(f). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. ~~President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?~~(1)

Ans. No

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copy(s)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1)(g)(h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. No.

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)

(1. When several accused tried separately see RP 71(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-564, Overseas 80 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 120. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Con 564. 2. RP 50. As to reimpose from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : E 5980 Pte ANDRE DUCHESNE R22R.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st ~~Charge~~ Sec. 19(2) AA (Alternative)	Not Guilty	Not Guilty	
2nd ~~Charge~~ Sec 40	Not Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At ~~present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which 9 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

6 Months Detention

(Sgd) ..... Judge-Advocate, if any. Date awarded Nov 2/44 (Sgd) [illegible] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record [illegible])

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Findings and sentence confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) [illegible]

(1. AA 57A. Delete if not used.)

Date 9 ~~Oct~~ Nov 44 (Sgd) [illegible] Brigadier

Commanding 3 Cdn Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

E 5980 Pte A. Duchesne 11 Nov 44. [illegible] R22R.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5 S-131.

Pte. Duchesne. L.A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B-143368 Pte Lawrence Alfred Deschene FEILH

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 41 .	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for _____ beginning on (date) _____ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 32 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be imprisoned without hard labour for a period of fifteen (15) Months

(Sgd) "EE Wasson" Maj. — 29 Aug 45 — (Sgd) "J.G.Perrigard" Major

Judge-Advocate, if any. — Date awarded. — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the finding and sentence of the Court. I direct promulgation on a Unit parade.

I direct that the accused be not committed to prison or detention barracks until further orders.(1) (1. AA 57A. Delete if not used.)

Date 3 Sep 45 — (Sgd) "R.H.Somerville" Lt-Col — Commanding "Comd 11 Cdn Inf Bde" — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
B 143368 Pte DESCHENE L.A.	5 Sep 45 ON UNIT PARADE	"W.R.Collins" Maj. Comd 2 Cdn Corps Def Coy (FEILH)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

55-131

FIELD GENERAL COURT-MARTIAL

CPA66 (1st Issue of AFA21) 40/1 & 2/1898 (1001) 4/38B

Convened by Order of Lt-Col R.H. Somerville A/Comd 11 Cdn Inf Bde dated 29 Aug 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-143368	Private	Lawrence Alfred	Deschene	P.E.I.L.H.

Certified True Copy
A.D.C.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 29 Aug 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p. 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto. The Court is satisfied that it is properly convened and constituted(1), accused is (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to Antonius Johan Janssen as interpreter ? Ans No Sir

The Interpreter is sworn.(1) ~~Do you object to _____ as shorthand writer ? Ans _____ The shorthand writer is sworn.~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ? Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	J.G. PERRIGARD	12 Cdn Armd Regt
Member	Major	H.T. FRIESEN	C.F.C.
Member	Major	I.D. CUNIS	Perth Regt
Judge-Advocate	Major	E.E. WASSON	DJA HQ 4 Cdn Armd Div
Prosecutor	Capt	C.D. McQUARRIE	HQ 11 C.I.B.
Defending Offr	Capt	E.P. YOUNG	Ir Regt Cdn

Questions by President : Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Div p 2.)

A8. The accused _____ before arraignment make(s) (no) objection(s) (to) plea(s) (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by two of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AE rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 14 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*)(*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO SIR.....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) ~~(no)~~ opening address.(1) "940"
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).) "940"

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court ~~is re-~~opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge~~(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. I will give evidence and call witnesses. Do you intend to call witnesses on your behalf? Ans. Yes. Are they witnesses as to character only? Ans. YES
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* 885. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened. "941"
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s)~~ of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, ~~and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(*7*) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(*3*), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 27(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*) "Ho"

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. A and Ex. B respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 556. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes by my Defending Officer.....(2)
(1. *RP* 27(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 27(*D*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas AO* 309, 2323, *MML p* 62, 737-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), (*bb*)(*i*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 367. *As to assembly and disposal of record after trial see insert on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23.

There should be a separate Convening Order for each person to be tried separately by the same Court, RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 143368	Private		Lawrence Alfred	DESCHENE	FSILH

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and of (date) 23 Aug 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	J G FERNIHAND (Must be named. RP 106.)	12 Cdn Armd Regt (Unit.)	

MEMBERS.

Major	D. V BAKER	12 Cdn Armd Regt	
Major (Rank.)	H T FRIZZEL (Named or detailed. RP 106.)	C S H (Unit.)	

WAITING MEMBER.

Major (Rank.)	J D CONIE (Named or detailed, if any. RP 106.)	Perth R (Unit.)	

JUDGE-ADVOCATE.

Major (Rank.)	E E WATSON (Must be named, if any. RP 106.)	DJA 4 Cdn Armd Div (Unit.)	

On Active Service in the Fd

in Holland (Country.)	"B. B. Somerville" (Signed personally. RP 105 fn 2.)	Lt-Col (Rank.)

Date 24 Aug 45

A/Commanding 12 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (CFAAS (to take place of AFAS) 40-9 & 8/1601 (46))

"JGF" Pres

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 85(C)*), any objections (*RP 85(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as* practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Con 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 587.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(F), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

I certify that I have this morning examined No. B143368

DESCHENE L A of P.E.I.L.H.

and in my opinion is fit ~~unfit~~ to undergo a trial by court-martial

Station Field

Date 29 Aug 45

"illigible" Capt.
(Medical Offr)

"JJP" Pres.

CHARGE SHEET

The accused, B143368 Pte Lawrence Alfred DESCHENE, 2 Cdn Corps Defence Company (PEILH), a soldier of the Canadian Army Overseas, is charged with:

First Charge
AA Sec 41

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, INDECENT ASSAULT CONTRARY TO SECTION 52 OF THE OFFENCES AGAINST THE PERSON ACT 1861

in that he

In the Field, in HOLLAND, on or about 14 Jul 45 indecently assaulted Johanna ter RIET, a girl under sixteen years of age.

"E.R.Collin"
(E R Collins) Major
Comd
2 Cdn Corps Def Coy
PEILH

In the Field,
27 Aug 45

Approved - KR Can 540

"John A Bourne" Major
DJA 5 Cdn Armd Div

To be tried by Field General Court Martial

"R B Somerville"
(R B Somerville) Lt-Col
A/Comd 11 Cdn Inf Bde

In the Field,
Aug 45

"JJP"
Pres.

OPENING ADDRESS

Prosecution will prove in July this year PTE[illegible] was in Enchede area. At the relevant time thecomplainant visited the camp of this unit.

On way home a Cdn Sold offered her choc to go with her - there he indecently assaulted her. She subsequently told her mother. She developed gonhorea.

24 Jul an identification parade was held - no one identified, Accused in hosp at that time. Subsequently when accused in parade he was twice identified by complainant.

First Witness for the Prosecution: Dr G E Rutgers, Medical Practitioner, Enschede, Holland, having been duly sworn, states:

I am a duly qualified medical practitioner practicing in Enschede. I recall visiting a child at 135 Dreiner Emchweg, Hengelo 21 July 1945. Her name was the child ter Riet. She was suffering from bleeding and discharge of pus from genitals. I took her to hospital for observation by gynaecologist.

X-examination declined.

(RP 83(B) complied with)

Second Witness for the Prosecution: Dr H J Amesz, Hortenaerstraat 5, Enschede, Medical Practitioner, having been duly sworn, states:

I am a woman's medical doctor, a gynaecologist. I have been practicing that more than 20 yrs in this Province. 21 July 45 I examined Johanna ter Riet a little girl eight years of age, living in Hengelo. I made this examination in the Hospital in Enschede. I found an inflammation and supuration of external genitals. This caused by infection from gonococcus. This was caused by infection of not less than 5 or 6 days and not so much as several months. It is possible that the infection was acquired from a man, a W.C. or clothes infected. For a little girl it is common that she gets it from bed of mother (if infected), the W.C. or laundry. There were no wounds or other marks of interest on the child.

X-examination: The shortest time the girl could have been infected would be 4 or 5 days, the longest one or two months. I could be more specific.

(RP 83(B) complied with)

Third Witness for the Prosecution: F75799 Cpl Poirier W F, 8 Cdn Pro Coy, 4 Cdn Armd Div, having been duly sworn, states:

22 Jul 45 I went to unit lines of PEILH and interviewed CO. 24 Jul 45 I went to Hospital in Enschede and saw Johanna ter Riet. The same day I arranged for an identification parade in unit lines of PEILH. Johanna ter Riet attended that parade at 1500 hrs accompanied by Nurse Dercksen. There were approx 125 men on parade. The child was carried by Cpl Snyder to the parade ground and up and down the ranks. She saw them all. I watched her closely, she did not indicate any soldier. 27 July 45 I held another parade at Hospital in Enschede where child was a patient. Between parades I went to Leeuwarden where I located the accused. I brought him to Olmelo. The accused and 3 others were on 2nd parade. The child's room was on 3rd floor of hospital. The soldiers were in line on ground below her window. It was about 1100 or 1200 hrs. I stood behind the soldiers on the ground. I stood in turn behind each one. When I stood behind accused, Johanna ter Riet nodded affirmatively. She shook her head when I stood behind others. I stood behind all. I then had Johanna brought to ground floor window and 4 soldiers were lined up again about 10 feet away. The accused was again identified by the girl. The soldiers were all dressed the same. I didn't indicate anyone to the child. While the girl was being brought downstairs, I collected 3 wrist watches and a pocket watch and my own. The accused produced a wristwatch and a pocket watch. I asked accused for his watch. He went towards his coat and came back with a pocket watch. I then asked hom where his wristwatch was. He told me it was broken. I then said get it. He started towards his coat again but discovered that he had it in his pants pocket. I examined the watch and saw that it read 20 minutes to 12. My watch read 10 min to 12. At 1430 hrs the same afternoon the watch was still 10 min slower than mine. I handed the four watches to thenurse. When I turned back the nurse handed me the wristwatch I had taken from the accused. The accused was not on the 1st parade at the PEILH. After this identification the accused was placed under close arrest by me. At this time

..../overleaf

I cautioned the accused as follows: You are not obliged to say anything unless you wish to do but whatever you do say may be taken down in writing and can be given in evidence. The accused signed this warning. I made no threats to the accused and held out no promises.

The witness produces original signed statement of accused in a record book.
The President of the Court examines same.
The Defending Officer consults to a certified copy of said statement being introduced in lieu of original which is returned to the witness. (Certified True Copy Marked Exhibit "A" and signed by the Pres).
I arranged for another identification parade 30 July 45 at approx 1500 hrs. There were about 24 ORs including the accused on the parade. The soldiers were all dressed alike. Lt Faulkner of PEILH accompanied me on this parade. The Lt and I went to child's room on 3rd floor. The child started from right flank of parade and counted in Dutch until number 6. The sixth man was squinting and screwing his face up - he was the accused. It was a dull day, no sun shining. He was the only one in ranks who disturbed his features.
The girl Johanna ter Riet was taken from window so she could not see. The parade was shuffled. The girl inspected parade again and identified 19th from right flank who was accused. He was still squinting. The girl was then taken to a ground floor open window. The parade was formed in file and they walked by the window. She reached out to touch accused as he went by. I can't say if she actually touched him. She didn't try to touch any othersoldier.
The first time I went to PEILH lines the girl took me to a place in the woods by the side of the road about 100 or 200 x from what were A Coy lines PEILH.

X-examination: I examined accused watch. He explained the hands would only turn one way. That was correct. I have held identification parades in previous cases. I sometimes hold as many as in this case. I don't know if accused was distorting his features on first parade. I held further parades to try to shake child's identification. I don't think it would be easier for her to pick out the same man again. I picked dark complected men on parade of 24 - there were no blondes or red heads.
There is not heavy undergrowth in place in woods shown to me by child.
The nurse indicated to me that the first watch the [redacted] girl picked up. It was that of the accused. She then picked up my watch. The nurse asked her to make sure. She then picked up the accused watch. The strap on the accused watch was punched right fro[redacted] watch so child could strap watch on tight. I gave my watch to girl to put on but she couldn't do it with mine as it is not punched back that far.

By the Court: There were 3 parades - 1 in lines - 2 in Hospital. At first parade at the Hospital the little girl was sitting on a table and [redacted] the nurse was close to her. The nurse was instructed to tell child to look over men and point out man.
The nurse did not know who the man was. I didn't say anything to accused about distorting his features.
The spot showed to me by child was about 200 yds from camp, you go left, turn left again. It is by side of the road - a little gully. In my opinion it would be dead ground to the camp. (AP 83(B) complied with).

Fourth Witness for the Prosecution: Capt T P Headman, RCAMC, 9 Cdn FDS, having been duly sworn, states:

I am a medical officer.
According to records of 9 Cdn FDS B143368 Cpl Deschene LA had been admitted at FDS on 15 Jul 45 and discharged 17 Jul 45.
A smear had been taken and he was found positive for gonococcus or VDG.
X-examination: I don't identify the accused.

Fifth Witness for the Prosecution: Mrs Johanna H Wennink, Driener Enschweg 135, Hengelo, having been duly sworn, states:

I am divorced. The home is in country between Hengelo and Enschede. I have daughter Johanna ter Riet. She is 8 yrs of age - born 12 Feb 37. That is my only daughter. She is in Hospital in Enschede. She went there 21st July 1945. 20 Feb 45 in the morning I found that pus and blood came from genitals of daughter. I first noticed because her pyjamas were soiled.
I remember the Saturday before. Johanna my daughter went to the camp. The cars from the camp have No 17 on them. It is about 15 minutes from my house. The child came home about 8:30 in the even that night. The child wanted to see the soldiers. She sometimes helped the cook in the kitchen. I had never seen a previous similar condition in the child. The child had not had gonorrhea before - nor have I. There had been no one in the house before with that condition so far as I know. I called Dr Rutgers on 21 Jul 45.

X-examination: I saw the child go in the direction of the camp.

By the Court: In my house there lives in addition to my daughter and myself, my son and a girl named Bonnie 21 yrs of age. My daughter sleeps in a room by herself.

Sixth Witness for the Prosecution: F26450 CSM McLeod HH, PEILH, 2 Cdn Corps Defence Coy, having been duly sworn, states:

I am Coy Sgt Maj of my unit and have been for some time.
During July this year our unit was between Hengelo and Enschede - about 1 mile off main road. Coming from Hengelo you would turn off road about 4 Km from Hengelo - turn off to left. The tactical sign on our vehicles was 17 - they were on in month of July.
The camp was in tents in woods. I remember the accused. He came to us 2 weeks before VE day. He stayed with us until 14 July 45. He went to hospital with VD. There were 2 cases in Coy between 14 July and 31 July. The other case was Pte Scavil. He did not turn out to be VD - he had strain - non-specific urethritis and was returned to unit.
I identify the accused.
When accused returned from hospital he did not have moustache he previously wore.
Hehas a moustache now again.
From hospital accused was posted to 5 Div. He came back to us for kit about 5 or 6 days after going to hospital.

X-examination: From 15 June to 14 Jul I cannot tell you how many cases went to hospital with VD. I haven't medical book. I swear the accused had a moustache when he came to unit and when he left to go to hospital.

By the Court : We were duty unit in immediate area at that time. I know now where complainant lives. Anyone leaving her house and walking in direction of our camp our camp would be first installation they would come to.

(RP 83(B) complied with)

..../overleaf

Seventh Witness for the Prosecution: Lt RD Faulkner, 2 Cdn Corps Defence Coy (PEILH) having been duly sworn, states:

I remember attending parade I think 30 Jul 45 at Hospital, Enschede. I think there were 24 ORs on parade. I know the accused from time he came back to unit after case started. The complainant indicated the accused by counting. No one helped complainant. The accused appeared to be squinting. I was with the unit 14 Jul 45. There were no other units in that area. I went downstairs with complainant on day of parade. She reached out when accused passed window. I ~~xxxix~~ don't know whether she touched him or not.

X-examination: I think there were some units in Enschede and Hengelo at ~~xxxx~~ this time.

Eighth Witness for the Prosecution: Johanna ter Riet, Driener Eschweg 135, Hengelo, a child 8 yrs of age. The Court questioned this child with a view to ascertaining if the witness understood the nature of an oath on the Bible and that said oath is binding her conscience. The Court learned that the child has attended school, Roman Catholic sunday school and the Court formed the decision that an oath would be binding on the conscience of the child. Accordingly the witness was duly sworn and testified as follows:

My name is Johanna ter Reit and I live at Driener Eschweg 135, Hengelo, the home of my mother. I am now in Hospital. I went to Hospital on a Saturday night. It happened on a Saturday and the Saturday following I went to hospital. What happened was that he lay on me. He lay upon me in a wood. I went to a camp that day of Bob and Jackie. They are Canadian soldiers. I went to their camp. The vehicles at that camp have the number 17. The camp was on the Bosweg. It took me about 5 minutes to go to the camp from my house. I went to the camp at 6 o'clock in the afternoon. I saw some soldiers in the camp. I delivered a letter to Bob and Jackie from the servant in our house. I then stood for awhile in the camp. I went towards home when the Tommy came along. I still was in the camp where the Tommy came to me. I was on my way home. By a Tommy I mean a Canadian soldier. I had not seen him before. I have seen him since by our hospital. (Witness identifies accused). First he walked up to me, took my hand and we walked into the wood. He said to me you eat with me chocolate. He didn't give me any chocolate. He took me to a wood. He then opened his pants and lay upon me. My pants were taken off. The accused took them off. I did not want him to do this. I tried to get away. He held me by my legs and my shoes and I couldn't get away. He touched me with his part with which he draws his water. I felt this. I did not see it. It caused me pain on the frong, the part where I also draw water. His part of his body went inside of me. That is what caused the pain. Afterwards I got away. I took off my shoes and ran home as fast as possible. I took my shoes off so I could run fast. I did not tell my Mother when I got home because there were visitors. I told my Mother later on because it caused pain. I told my Mother on the Friday before I went to hospital. I felt the pains I mention on the Monday. The day I told my Mother blood came out of it. I was frightened. I had not seen the blood before - on the Monday blood came - but never before that.
The first time I saw the accused at the Hospital was on the grass at the Hospital. I was first standing at the window in my room. Then I went downstairs. There were 4, Bob and Jackie and a certain one and the accused. Yes I saw the same accused from downstairs. They went away then and came back again and I had to point him out. The one I pointed out was theone I went into the wood with, the accused. The same day I saw 4 watches. I pointed out one watch, a brown one. I saw that here in the hospital. I saw a watch in the wood. The accused put a watch on my wrist the day he lay upon me in the wood. I took it off my wrist and held it down before my eyes. The reason I picked out a watch at the hospital was because I recognized it by the stem as the one I had on my wrist in the wood.
I say many more soldiers on another day at the hospital. I was first upstairs then I went down with Nurse Dercksen. That day I saw the same soldier (pointing to the accueded). He was 6th from my left

..../5

Eighth Witness for the Prosecution (Cont'd):

and 17 from my left after they were moved around. I counted up to No 6 very slowly. When I came downstairs that day I was placed before a small window, they walked before the window and I had to point out the soldier with my finger. I didn't touch him. I pointed to him (indicates accused) I pointed to him because I had seen him in the wood when he lay upon me.
It was 7 o'clock in the evening when the soldier was lying on me in the wood. I went home as quickly as possible.

X-examination: The soldier in the wood has black hair and in the beginning he had no moustache at all. The soldier with me in the woods did not have a moustache. When he was in hospital he made his whiskers grow. I don't remember telling Capt McQuarrie that the soldier had a moustache.
I remember Capt McQuarrie asking me questions in the hospital.
Reads from summary ques #43 and answer.
I remember giving that answer.
Reads ques #45 and answer.
I remember giving that answer.
In the wood he only had small moustache - a few hairs on his lip and now he has a big moustache.
Reads ques 48 and answer.
Yes I remember giving that answer.
He had a longer moustache at the hospital.
Reads ques 49 and answer.
I remember.
(Court adjourns for 5 minutes to give witness a rest. Court re-opens - same Court present.)
But when he was in the wood he only had a couple of hairs.
In the woods the soldier only had a shirt on same as Capt McQuarrie (khaki). He wore no jacket - no badges on his sleeves. I saw a watch in the hospital, it then had a brown strap - when I saw it before it had a black strap. The stem was the same. On the face everything was the same.

(RP 83(B) complied with)

Ninth Witness for the Prosecution: Elizabeth Dercksen, Ziekenzorg Hospital, Enschede, having been duly sworn, states:

I am a graduate nurse employed at Ziekenzorg Hospital, Enschede. I was there when Johannas ter Riet was admitted. I have been nursing her since. I recall a parade of soldiers at the hospital. The first parade of all was at the camp. I walked alone with child. She picked no one out. The child was told that if she recognized the man who had been with her she was to tell me, but not to point. She told me that the man was not there.
On the 1st parade at hospital there were 4 men. I was upstairs in the hospital. I could see the men. Up to that time all the soldiers were strangers to me. The child was told that she was to count the row and tell which man it was she was referring to. I told the child there would be some soldiers in the garden if she saw the one who had the case with her she should count and tell but not point. She indicated this man (witness points to accused). I did not assist the child in any way in pointing outthe accused. We then went downstairs and the child had to count again. She picked out the same man. I saw some watches that day - I tot the watches and showed them to Johanna. There were four watches - I'm not sure how many. I had the watchesin my hand. She first picked out one watch, starte d to doubt and then picked another one. The first one had a black strap, the second one had a brown strap. When Johanna picked out the 2nd watch she said something. I then showed the watch picked out by Johanna to the soldier who had biven me the watches. I later saw another parade of soldiers. They put the soldiers outside in the garden. Ther were three soldiers up in Johanna's room with Johanna and myself. Johanna was instructed by me to look

..../overleaf

and see if the certain man was there and if so to count slowly. Johanna started immediately to count. She counted and said the 6th one. No one helped her in any way. After that Johanna was moved from the window - the soldiers moved around and Johanna counted again. She picked the 19th one. Both times she picked the same soldier the accused.
Then we went downstairs and the soldiers marched by and when the accused went by the pointed to him. She pointed to no one else. Then the soldier with us pointed to one in front and asked is that him and then to the one behind is that him and then to the accused and she said yes that is him.
On both parades at the hospital the accused made faces when in line-up.

X-examination: The accused made faces when on the 1st parade of four also - but not so much as on the 2nd parade.

First Witness for the Defence: B143368 Pte Deschene LA, PEILH, having been duly sworn, states:

I joined PEILH 2 weeks before VE Day. Before I served with Royal Regt of Canada, Sept 44 to Apr 45, in 2 Div. I fought with Regt, through France, Belgium, Holland, Beveland. We were LOB in April. We were asked for personnel for PEILH and I volunteered.
14 Jul 45 around 3:30 p.m., I left the camp and went down to Enschede to some friends by name of Melking - I'm not sure of the spelling. The girls name is Teena. I arrived about 3:30 or 4:00. I picked up my radio in a shop first and took it to the house. I stayed till around 5:50. They wanted me to stay longer for supper but I didn't want to eat their rations. The mother and 2 brothers were there in addition to Teena. I went to NAAFI getting there about 6:10 p.m. I ate there. I stayed there about ½ hr. From there I returned to Teena's. They were playing the radio. They wanted me to leave it all night. I figure I arrived around 7 o'clock and left about 8 taking my radio back to camp. I got back about 8:30 p.m. I put my radio in barrack box - may have been there ½ hr then left for Hengelo and arrived at another girl friend's , Alice by name. I'm not sure of her last name. I arrived there at 9 o'clock or 9:30. I saw Alice. I stayed there all night and came back to camp in the morning reporting to RAP. I left about 0900 hrs for place in Hengelo where a doctor examined me and sent me on to Apeldoorn to a VD hospital. I stayed in Apeldoorn 3 days, arrived Sunday and left Tues. Iwas then sent to holding unit at Nijmegen - was there 3 days. From there I was sent to 5 Div at Groeningen and to Irish Regt of Canada. I was sent from there to Bde HQ in Leuwarden. I was orderly room clerk with PEILH up until 2 weeks before I left for hospital.
I first saw child Johanna ter Riet at identification parade at Hospital.
I did not have moustache on 14 Jul 45. I had moustache when I came to PEILH but cut it off at Bad Zuitzenan - early part of May - beginning of June. I started to grow moustache I have now when under close arrest at Leuwarden - have had one now for about 10 days. When in Leuwarden I got a new band for my wrist-watch. The old one wouldn't stay buckled. The old band was a brown color like brown one now. Name of shop where I got it is Copini.
I am married and have 6 children. The oldest is around 7 or 7½. There is one set of twins about a year old. I've not seen them. I have had intercourse with women in this country on average of 3 or 4 times a week.

X-examination: The follow who left with me from the camp 14 Jul 45 has left for Canada. He did not go with me to the NAAFI. I was in camp about ½ hr sometime between 8 to 9 o'clock in the evening. I had all this intercourse with Alice particularly for the last 2 weeks before I went to hospital. Before that it was Teena. I figure I contacted VD from a woman I picked up on the street. There was another one before Teena.
My wrist-watch had not been going previously. I forgot to wind it - it stopped. I was going to set it sometime I was at a jewellers. The Provost wound it a few times, I think I wound it a bit myself.

..../7

First Witness for the Defence (Cont'd):

It goes. It keeps time. There was nothing wrong with it. I couldn't set it but when the Provost tried it the hands did turn. The reason I distorted my features was because I was worried the way the evidence was going, so I deliberately tried to make it impossible for her to recognize me the second time.
I took the treatment for gonhorrea when I went to hospital.

(RP 83(B) complied with).

Second Witness for the Defence: Erustine Caroline Melching, Hengelostraat 143, Enschede, having been duly sworn, states:

I know the accused as Harry. He visited my house many times. I last saw him on a Saturday about 6 wks ago. He came at 4 o'clock and brought a radio and went to NAAFI. He came back at 7 or 7:30 and then went to Hengelo taking radio with him. He had a friend with him. He was not wearing a moustache. I had not seen him before with a moustache.

X-examination: I first met him about 2 or 2½ months ago. I am certain that he did not a moustache before. I don't know his last name.
I am called Teena.
I did not pay special attention to the timehe left that night.

By the Court : I don't know what day of the month it was. I don't know the date.

(RP 83(B) complied with)

Third Witness for the Defence: Alide Van der Slius, Van Marknenstraat 11, Hengelo, having been duly sworn, states:

I know the accused as Harry. The last time I saw him was a Saturday the 14th of July last. I don't know what time I saw him because he came, went away and came back again. He went away on a Saturday morning. I don't know because he came every night to my house and ate and slept.
Saturday he came to the house at 8:30 or 10:30 in the morning. He came back in the evening. It was nine o'clock or 9:30. I can't say. He was not wearing a moustache. I saw him with moustache yesterday for first time.

X-examination: I didn't recognize him yesterday because of moustache. I have known him all together about 3 weeks or maybe a month. I didn't know him very well. I knew him through Teena. Yesterday I saw afterwards that it was Harry. His last name is Scott or Scotty - I don't know. I don't know exactly, I heard it from the Provost or Teena. I never asked him his name.
I remember a conversation with the Provost Corporal about 1 month ago. I didn't remember them whether it was Fri nite or Sat nite that he last stayed at our house.
I know now it was Sat nite.
I talked it over with Dr Frosh who lives in the same house and we decided we could not remember the hours.
I am sure about the day because Harry went away that nite and I thought he went with the visitors who went that nte.
That Fri nite he came about 12:30 at nite. He had asked before if I was off duty and he could sleep and eat with us.

By the Court: I am a graduate nurse. We did not sleep together, this man and I. I used to have sexual intercourse with this man but not regularly, only 3 or 4 times.

..../overleaf

Third Witness for the Defence (Cont'd):

I thought a month ago that the Friday nite was the last timehe was here.
But I know now that it was Saturday nite. I am sure it was Saturday nite he did notcome because we went to the camp on the Sunday tc find out why he did not come to have tea with us. He came Saturday nite.
I went to the camp Sunday because he did not come back to sleep Saturday or Sunday so I went to the camp to look for him because I liked him very much. It was after supper Saturday nite that I last saw him. I don't know the time. I figure it was late in the evening because when he left I played the piano for a bit and then went to bed. I don't remember how long he was at the house that night. I didn't expect him back to sleep. I expected him for dinner Sunday. But he didn't come and then I went to the Camp to look for him. We couldn't find the camp.

(RP 83(B) complied with)

B-143368 Pte Deschene L.A.

Notes on closing address by defending officer.

In the case of indecent assault, the only witness who identifies the acucsed is the complainant JOHANNA de Riet. Although the court was satisfied that the child was sufficiently intelligent and understanding to take an oath, her testimony should in practice not be accepted without corroboration (Archbold page 1034)

The child at the taking of the summary of evidence (Questions and Answers 43, 45, 46, 48, and 49) states the man who aasaulted her had a moustache. She now denies the man who assaulted her had a moustache.

The accused by his own evidence and of the witnesses Tina Melching and Alice v.d. Shis, who knew him well establish he had no moustache at the time of the alleged offence.

The child ter Riet, picked the accused out of a parade in which therewere only four men two of whom she knew having referred to them as "Bob" and "Jack". There was therefore a 50% chance that she would pick the accused as the unknown asailant once she had picked a man it was easy to keep on picking the same man on subsequent parades.

Evidence of a child that she went to the camp about 600 pm on saturday, was assaulted shortly after. Evidence of child's mother that child was home at 8.30 that evening. The witness Tina Melching established the accused visitied her house in Enschede Saturday afternoon, left about 6.00 pm to go to the NAAFI came back at 700 or 7.30 and remained until 7.30 or 8.00 p.m. the offence likely being committed while he was at the Melching home in Enschede. Evidence of Alice v.d. Shies that accused came to her house between 9 and 10 p.m. that evening.

Evidence of accused and of Alice v.d. Shies that accused had sexual relations with v.d. Shies. He was not peculiar or queer type who would likely be the nam who committed such an offence.

Prevalence of honnorrhea in this country - child might have picked it up from various sources or from some other man who assaulted her.

Child uncertain when she selected the watch.

Accused should be acquitted as he waselse where at the time the offence was likely committed and the complainant wa s originally positive that her assaillant wore a moustache.

2 "H R Young" Cpt.
Defending Officer.

29 Aug 45

ADDRESS OF PROSECUTING OFFICER

May it Please the COURT:

There is one outstanding fact in this case. A child of eight years of age lies in hospital with gonorrhoea. To my mind the fact outweights all the others and causes this case to differ immensely from others of a similar nature.

The child has gonorrhoea and she has told this Court what even led to here present suffering. It is not credible that this child of eight could first imagine a story of the nature she told this court here today and thenrelate the details of it as the Court saw hr do unless the story were true. That an assault as charged was committed against her, I submit, is proven by her evidence. There is no evidence to the contrary.

All that remains to do is to determine who committed the offence. The evidence points directly to the accused. First, he was unhesitatingly identified by the child on two separate days in several different ways and this despite the fact that he deliberately distorted his features on two occasions to avoid identification. It is suggested that the first parade at the hospital was not properly held because there were only four men and two of these were known to the child. I submit if the child had had any doubt about the identity of the man but at the same time understood she must pick someone then the logical time for her to have picked a man would have been on the very first identification parade where 125 men were present. But on that occasion she looked at every may and stated that the one who assaulted her was not present. The accused was in fact not there. But the moment the child saw the accused on the next parade she identified him instantly and consistently continued to do so when tested in several ways. How, it is beyond mere coincidence, that she picked out the only logical suspect, and the one whom, unknown to her, the provost Cpl had brought all the way back from LEEUWARDEN, 100 miles away. Why was the accused the logical suspect? Because he was the one man in the PEILH Camp, the only camp in the vicinity of the scene of the offence, who was evacuated to hospital with gonorrhoea from several days before the date of the offence up until two weeks or more thereafter. The accused was admitted to hospital the very morning after the night of the offence took place.

The points that bring hom this crime to the accused are therefore;

1. The child swears he is the man.
2. Both he and she are found shortly after date of the offence to be suffering from VD '0'. This in itself is corroboration of the child's already sworn statement and I refer to Archbald Criminal Pleadings and Practice page 1028 on the subject of corroboration where it is stated that VD under such circumstances may amount to corroboration.
3. The child independantly of the parades identified the wrist watch of the accused. This perhaps may see a small point judging from the way she gave here evidence on this subject but the effect is that identification of the watch is just one more link in the chain. Each link lessens the possibility of these circumstances being mere co-incidence.

Finally, the accused has admitted in his own sworn evidence that he was in the camp area at the very time the offence was there committed. He says he was in camp between 2000 and 2100 hrs on the 14 Jul 45. The child's evidence as to the time of the attack is not positive. If she says "sometime after 6 o'clock or 7 o'clock" it not to be wondered at for such a small child does not concern herself too closely with the exactness of time. But her mother gave evidence that on the night in question she saw the child come home at 2030 hrs. The child says she got away from the man as soon as she was able and ran fast all the way home. Her home was previously proven to have been within 15 minutes walking time of the PETH Camp. Therefore the best estimate of the exact time of the offence would place it between 2000 hrs and 2030 hrs, the very period during which the accused admits being in the vicinity of the crime. Moreover, it is probable that the accused was not exactly right himself and it is therefore possible that he was in the vicinity a little before 2000 hrs. The offence would be committed quickly and the girl could easily run home by 2030 hrs. Thus the accused by his alibi has in fact added to the final link to the chain of evidence that now overwhelms him.

I therefore submit that the proof of the guilt of the accused is complete and that the finding of 'Guilty' should be entered against him."

Respectfully

(C.D. MacQuarrie) Capt
Prosecuting Officer.

"EEW"

JUDGE Advocate Summs up.

1. Functions of Court - Judge of facts. Any opinion inadvertently expressed by me on facts should be disregarded.

2. Functions of JA. Advise on law - directions on law should not be lightly disregarded.

3. Court will bear in mind that the accused is innocent until proven guilty and that the onus is on the prosecution throughout Onus explained.

4. Court will also bear in mind that the accused is intitled to the benefit of any reasonable doubt. (Reasonable doubt defined).

5. In Addition to the evidence heard in Court the court will bear in mind that under RP 74 they may take judicial notice by matters known to them by virtue of their military service.

6. The charge is read. Indecent assault defined. The charge falls withing a special class of offences namely those against females. The law is that it is dangerous to convict on the oncorroborated evidence of the complainant. It is my duty to warn you specifically on this point and I am so warning you.

7. In respect of this charge, consent of an 8 year old child is no defence nor is ignorance of age. However these points are not in issue and to mention them is merely academic.

8. You have heard the evidence of the complainant, she appreciated the nature and quality of an oath and it is binding on her conscience, according by her evidence is sworn testimony.
This child is young, only 8 years of age, on the other hand there is little likelihood of her evidence being colored by emotives of jealousy, blackmail or any of the many emotional impulses to which mature woman might be subject. I know that you have listened attentively to the testimony of this child and I am sure that you will examine it carefully before coming to a dicision based upon it.

In cases of this sort evidence of early complaint by complainant is admissable to show the consistency of her story. altho it is not corroboration in law. However there is no evidence of early complainat in this case the reason appears in evidence.

9. The court was previously warned that it was dangerous to convict in these cases on the uncorroborated evidence of the complainant. The question of the contraction VDG by the complainant and the fact that the accused had the same disease might be studied to see if it amounts to corroboration. You have had midical testimony as to how a child could contract this disease. One conclusion can be drawn from the evidence viz that the disease could have been contracted by the child from other sources than the accused.
This particular question is mentioned in Archbolds Criminal pleading Evidence and Practice, 31st Ed., page 1028(Read to Court)
10 The Defence offered as denial and alibi. You have seen and heard the witnesses and will give their testimony the consideration which in your opinion it merits.
11. The charge is a serious one and I know that the Court will give the question the most careful consideration.

PLEA IN MITIGATION. a""EEW"

The accused is married with a large family. He has served in infantry under fire as he testified.
This MFM 6 though containing a number of minor offences has no serious offences.
He has never served any detention or field punishment or been court maritaled. Taking these things into account a minimum punishment should be awarded.

"EEW"

Exhibit "A" "J G Pemgard" Major, President.

Statement of B 143368 Cpl Deschene, L.A. , Irish Regiment of Canada, 5 Cdn Armd Div.

"You are not obliged to say anything unless you wish to do so but whatever you may say will be taken down in writing and can be given in evidence".

"L. Deschene"

"I am Deschene, L.A., a member of Irish Regt of Can, 5 CAD. I was a member of the Prince Edward Island Light Horse up until I was sent to Hospital on July 16th 1945.

I was in Hospital from 16 Jul 45 until 17 Jul 45. I was released to 13 Bn CBRC at NIJMEGAN arriving there at approx 1600 hrs, July 17th 1945.
On July 19th 1945 I was shipped to 6 Div Holding Unit at Groningen, from there I was posted to the Irish Regt of Canada at Heerenveen. On July 18th I reported on sick parade and sent from Unit MAP to 9 FDS at HENGELO and from there I was taken to VDTU at APPELDOORN for treatment.
On July 27 I was identified as the soldier who committed an offence against a young girl and I was placed under arrest (close arrest). In view of the fact that I was identified as the person who committed this all I can say is that it is a case of mistaken identity and have no knowledge of the case whatsoever, time and place where it occurred and had never seen the young girl before today."

"I have read over this statement and I have been given the opportunity to make any corrections necessary. I sign my name to show that the statement is true"

"L. Deschene"

CERTIFIED TRUE COPY OF ORIGINAL ENTRY IN RECORD BOOK OF F 70799 Cpl POIRIER, W.F., No. 8 Cdn Pro Coy, produced at trial of B143368 pte Deschene, L.A.

(C.D. McCarrie) Capt
Prosecuting Officer.

SUMMARY OF EVIDENCE

Taken at ENSCHEDE on 18 Aug 45

Summary of Evidence in the case of B 143368 Cpl Deschene, Lawrence Alfred, PEILH, a soldier of the Cdn Army on Active Service, charged with:

-

The Commanding Officer directs that the evidence be taken on oath.

The Accused was asked whether he had any objection to Antoine Johan Jansen acting as interpeter on the taking of the Summary of Evidence to which he replied "No".

Antoine Johan Jansen, Official interpeter for 8 Cdn Provost Coy was then sworn as follows:

" I swear by Almighty God that I will to the best of my ability interpet and translate, as I shall be required to do, touching the matter before this Summary of Evidence."

FIRST WITNESS Johanna ter RIET

The officer taking the summary accompanied by the interpeter, the accused and escort attend at the bedside of the above named witness in the ZIEKENZORG Hospital, ENSCHEDE. The witness appeared to be a young girl of about 8 years of age.
The girl was questioned at considerable length and appeared to be alert and intelligent and fully understood the nature and purpose of an oath upon the same being explained to her. Upon it becoming clear that the child was competent to be sworn the oath was administered.

Johanna ter RIET, having been duly sworn states as follows:

" I am Johanna ter RIET and live at Driemer Eschweg 135, HENGELO. I am eight years old. My birthday is on 12 Februrary. I came to this hospital on a Saturday night at about 8 o'clock. I came because of a pain which occured on the previous Monday. On the Saturday evening one week before I came to hospital something happended to me. That Saturday afternoon I left my house and went to a soldier's Camp nearby H' ZIEKE. I went home again in the late afternoon. I stayed for a short time and saw my mother but did not have anything to eat. Our servant girl gave me a letter for one of the soldiers, "Jackie" and I went back to camp getting there about 6 o'clock. I saw Jackie and gave him the letter. I stayed in Camp for a while and at about 6.30 o'clock I started home. I came out of the woods to the road and a soldier, that man (pointing to the accused who was present at the taking of the evidence) came out of another wood. He said to me "You want to eat chocolate with me?"

...../ 2

FIRST WITNESS (Cont)

I went to him and he took my hand and took me into the wood. He laid me on the ground and got my knickers off and opened the front of his pants. He was lying beside me. He then lay above me and caused me much pain. When I was free and I ran home fast.

Q.1. When you were lying on the ground you felt pain, where was the pain?

A.1. Indicates by pointing at her genital region.

Q.2 Did you see anything of his body at this time?

A.2 No, I didnt look. I covered my eyes with my hands.

Q.3 Did you feel any part of his body?
A.3 Yes, his 'thing'

Q 4 How did you feel it?
A 4 It was in me.

Q 5 When you went home was there any blood any place?
A 5 No, I saw some on Sunday.

Q 6 Did you tell your mother when you got home about what happened?
A 6 No, there was a guest in the house.

Q 7 Had you any pain when you got home?
A 7 No, there was pain that night.

Q 8 Where was the pain?
A 8 Indicates by pointing to region previously pointed to.

Q 9 When did you tell your mother?
A 9 I told mother one morning and mother got a doctor the same day.

Q 10 Why did you tell your mother?
A 10 Because much blood came out, red blood.

Q 11 Did you go back to the soldiers camp after this happened any time?
A 11 No

Q 12 Did you see the soldier who did this to you again?
A 12 No.

Q 13 After you came to the hospital did you ever see the same soldier?
A 13 Yes, I saw him outside the building, (turns and looks out window and points to grass lawn), there.

Q 14 How many times did you see him?
A 15 I saw him 4, no, 5 times. The first time there were 4 men and he was one of them. The next time there were many men, I counted one, two, three, four, five, six.

Q 16 Did you ever point him out to anyone?
A 16 Yes.

Q 17 When you were with the soldier in the wood did you see anything special he had?
A 17 No.

Q 18 Did he give you anything?
A 18 No.

FIRST WITNESS
(cont)

Q 19 Did he show you a watch?
A 19 Yes, he took it off his wrist and put it on mine. He strapped it on and left it for about 5 minutes.

Q 20 Did you see some watches at the hospital?
A 20 Yes.

Q 21 Had you seen any of them before?
A 21 Yes, I recognized one watch.

Q 22 Do you know whose it was?
A 22 It was his (Pointing to the accused)

Q 23 How do you know whose it was?
A 23 I had seen it before and had had it on my wrist.

Since the child was obviously becoming very tired the summary was adjourned.

A.M. McQuarrie
(A.M. McQuarrie) Capt
Officer taking the Summary.

19 Aug 45 - The examination is resumed.

Q 24 What time did you get home that day you were with the soldier in the wood?
A 24 At 9.30 at night.

Q 25 You said your knickers were taken off, who took them off?
A 25 Indicates pointing to accused.

Q 26 Did you try to stop him?
A 26 Yes, but I couldnt.

Q 27 You said you were lying on the ground, did you try to get away when first on the ground?
A 27 Yes, first lying on one side. Then he took me to a ditch two times.

Q 28 When you first lay down, did you lie down or were you made to lie down?
A 28 I was pushed down.

Q 29 Did you try to get up to get away?
A 29 Yes, I tried to get away.

Q 30 Did the soldier hold you down in any way?
A 30 The first time he pushed me to the ground and then he got above me. He was not holding me .

Q 31 Why did you not get away then?
A 31 I couldn't, at first he was holding by one finger, then by shoes.

Q 32 Were you trying to get away all the time?
A 32 Yes.

Q 33 Did you say anything to him?
A 33 No.

FIRST WITNESS
(cont)

Q 34 Did you realize at the time what he was intending to do?
A 34 No.

Q 35 Do you know now?
A 35 Yes, he tried to fuck me.

Q 36 Did he fuck you?
A 36 Yes.

Q 37 Did he put his "thing" into you or just between your legs close to you?
A 37 He put it in.

Q 38 How many times had you seen the accused before the night when this happened to you?
A 39 I had not see him before that night and he called himself Pete

Q 40 Had you ever seen the soldier in the Camp or around there?
A 40 No.

Q 41 Was the soldier wearing a cap?
A 41 No.

Q 42 Was he wearing anything on his shoulders (pointing to shoulder flashes)
A 42. No he was wearing a yellow shirt. He was wearing one medal with a star on it.

Q 43 Why do you say this is the same soldier?
A 43 I could see, same face, moustache and hair.

Q 44 Did you want him to do what he did to you on the ground?
A 44 No.

Cross Examination:

Q 45 Did the soldier who lay on top of you have a moustache?
A 45 Yes.

Re Examination

Q 46 What makes you say he had a moustache?
A 46 Because he had.

Q 47 Did he kiss you?
A 47 No

Q 48 Was the moustache a long or short one?
A 48 It was black, it was here and here (indicating over length of mouth.

Further cross-examination by Accused

Q 49 Was it like the one I have on now?
A 49 Yes.

(Johanna ter Riet)

The accused declined to cross examine the witness further.

(B 143368 Deschene, LA) Cpl

SECOND WITNESS F 76799 Cpl POIRIER, William Francis, No. 8 Provost Coy, having been duly sworn states:-

"I am investigation Cpl for 8 Provost Coy. On instructions received I commenced an investigation of the facts herein on 22 Jul 45. On that day I proceeded to the unit lines of the Prince Edward Island Light Horse which were situated in a wood on the left side of the HENGELO - ENSCHEDE highway about 4 mile from HENGELO. There I obtained information and a document purporting to be a medical certificate"

Document produced, examined, and marked Exhibit 'A' in this Summary of Evidence.

(C.D. McQuarrie) Capt
Officer taking the Summary.

" As a result of the information received I visited Dr. H.J. Amesz, Kortemaerstraat, ENSCHEDE. From him I received a medical certificate on 23 Jul 45. "

Document produced, examined and marked Exhibit 'B' in this summary of Evidence.

(C.D. McQuarrie) Capt
Officer taking the Summary

"

" After some further investigation on the morning of 24 Jul 45 I again visited Dr Amesz. In the company of Dr. Amesz I visited Johanna ter Riet in the Ziekenzorg Hospital in ENSCHEDE. I found her in bed and found that she was a small child. I spoke to her through the doctor as interpeter and after asking her several questions determined that she was an intelligent child. With the doctor's consent I then arranged for an identification parade to be held at the unit lines of the PEILH. The parade was held as arranged at about 1500 hrs on 24 Jul 45. The child Johanna, was carried to the parade ground. She was then taken along both front and rear ranks of the two rank parade. I was beside her and watched her closely as she glooked at each man in turn. No identification was made on this parade. I then checked the PEILH records for absentees through duties, leaves and hospitalization. I found that three members of the unit had been evacuated to hospital subsequent to 14 Jul 45, two of these with VDG and one with tonsilitis. After further investgation I proceeded to LEEUWARDEN on 26 Jul 45 and visited HQ 11 Cdn Inf Bde where I found B 143368 Cpl DESCHENE, L.A. whom I now identify as

...../6

SECOND WITNESS (cont)

the accused present at the taking of this Summary of Evidence. I brought him to No. 8 Provost Coy where I detained him.

Since I had not seen this man on the first identification parade I held a second parade on 27 Jul 45. Four men were present, none of whom I had seen on the first parade. Both the men who had been evacuated to hospital subsequent to 14 Jul 45 suffering from VDG were present on this parade. The parade was held between 1100 hrs and 1200 hrs on the grass lawn of the hospital in ENSCHEDE where the girl was. The four men were lined up after their hats and tunics had been removed. I stayed outside. The child, Johanna, was brought to her window on the third floor of the hospital over-looking the lawn. I then placed myself behind each man in turn. The child watched and as I placed myself behind the accused she nodded her head affirmatively but as I stood behind the others in turn she shook her head negatively. I made no signal of any kind to her but merely stopped behind each man and waited for her signal.

The child was then brought downstairs and placed at an open window. The men stood about 5 feet in front of her outside the window and she identified the same man.

During the time the child was being brought downstairs I gathered together her four watches two of which I got from the accused, one of these being a pocket watch and one a wrist watch. After the identification parade I placed the watches on the window sill in front of the girl. I instructed the nurse, Miss Derksen, to ask the child if she recognized any of the watches. I turned away and did not watch the girl make her selection and when I turned back the nurse showed me one of the watches. I examined the watch and found that it was the wrist watch handed to me by the accused. I told the accused I was going to retain his watches and I returned the others. At the time I first asked the accused for his watch he produced a pocket watch. He was not wearing his wrist watch. I said to him "Where is your wrist watch?" He replied "it is broken, its in my coat". He proceeded towards his tunic but on the way reached in hispants pocket and got out the writs watch and came back and gave it to me. I examined the watch and found that it was still going and was ten minutes slower than mine which showed 10 minutes to 12 o'clock. I again checked the same watch at 1430 hrs and it was still going and was still 10 minutes slower than mine. I then returned Deschene to his unit and placed him under close arrest in unit custody. No charge was laid at the time.

After further investigation I returned to the PRISON at about 1800 hrs on the same day and interviewed the accused. I first cautioned him as follows:

...../7

SECOND WITNESS
(cont)

"You are not obliged to say anything unless you wish to do so, but whatever you may say will be taken down in writing and can be given in evidence".

The accused then made the following statement which I took down in writing and have in my possession in my record book.

"I am Deschene, LA, a member of the Irish Regt of Canada, 5 Cdn Armd Div. I was a member of the PEILH Regt up until I was SOS to hospital on 15 Jul 45. I was in hospital from 15 Jul 45 until 17 Jul 45. I was released to 13 Bn CBRG at NIJMEGEN, arriving there at approx 1800 hrs 17 Jul 45.

On 19 Jul 45, I was shipped to 5 Div holding unit at GRONINGEN, from there ~~wa~~I was posted to the Irish Regt of Canada at HEERENVEEN.

On 15 Jul, I reported on sick parade and was sent from unit RAP to FDS at HENGELO, and from there I was taken to VDTU in APPLEDORN for treatment.

On 27 JulIwas identified as the soldier who committed an offence against a young girl and I was placed under close arrest. In view of the fact that I was identified as the person who committed this, all I can say is that it is a case of mistaken identity, and I have no knowledge of the case whatsoever, time and place where it happened and had never seen this young girl before today."

"I have read over this statement and I have been given the opportunity to make any corrections necessary. I sign my name to show that the statement is true"

The accused then signed his name to the statement.

"In order to eliminate any possible doubt I held a third identification parade at the hospital at about 1500 hrs on 30 Jul 45. Twenty four other ranks in shirt sleeves and without caps were lined up in the lawn. In the room with the child, Johanna were her nurse, Sister Derksen, Lt R.D. Faulkner, an officer from the PEILH and me. The girl indicated the sixth man from the right flank of the parade. I looked there and recognized the accused. The girl was then taken back to her bed so she couldn't see. The parade was shuffled. The girl was brought back to the window and without hesitation indicated the 19th man. I looked and recognized him as the man. Previously I had instructed the nurse, as interpeter, to ask the girl if she could see the man who had been the cause of her coming to the hospital. Each time on this parade I saw that the accused was squinting and distorting his features although there was no sun or other obvious reason for so doing. Next, we~~e~~ all came downstairs to a window and ~~s~~he men walked past in single file slowly within reach of the child. When the accused passed I saw the child reach out and touch him. She made no attempt to touch any of the others. My instructions to the nurse had been to have the child touch the man who had molested her if he was among those present on the parade.

...../8

SECOND WITNESS (cont)

I should add that on 24 Jul 45 I brought the nurse, Miss Derksen and the girl from the hospital. Shm, the child, directed me to a place in the woods where she pointed out a particular spot as the place where something had happened to her. The PEILH Camp was in the immediate area being about 200 yards away and it had been there for some time. The Tactical Number of the PEILH is No. 17. The place the child showed me was about a mile from her home which I had already visited.

(W.F. Poirier) Cpl

Cross examination by Accused:

Q 1 Did you examine the watch carefully when you checked the time of it.
A 1 I checked the watch, it read 10 minutes slower than mine. It read 20 minutes to 12 and mine 10 minutes to 12.

(W.F. Poirier) Cpl

The Accused declined to cross examine witness further.

(L.A. Deschene) Cpl

(C.D. McQuarrie) Capt
Officer taking the Summary

THIRD WITNESS

Henricus Joannes Amesz - ENSCHEDE, having been duly sworn states as follows:

"I am a qualified physician specializing in gyneacology and obstetrics and practice in the Province of Overyssel in the Netherlands. I have been specializing for 20 years."

A document marked Exhibit 'B' in this Summary of Evidence is shown to the Witness and recognized.

" I wrote this paper, it is a medical report dated 23 Jul 45. I wrote it after an examination of Johanna ter Riet who is here in this room. I found her condition to be suffering from pain in the external genitals and a flow of puss from those organs. It was caused by an infection of gonoccus. The condition was one which would have existed for a period of from 3 days to 3 months. It is not possible to place the date of contraction closer. There were no wounds to be seen. It is not possible for me to say whether she had ever had contact with a man. There was definitely no penetration. "

Q 1 If an man had inserted his penis in this childs genitals about 1 week before your examination would you have seen the effects?
A 1 Yes. There was no such penetration.

Q 2 Could there have been any insertion at all?
A 2 No, not without leaving visible signs and there were none.

Q 3 May there have been contact?
A 3 I suppose so because she had contracted gonorrhoea but it is not sure. She could have contracted it from a toilet seat or some other source.

THIRD WITNESS
(cont)

Q 4 Did the child tell you where she thought she had contracted the disease?

A 4 Yes, she told me a story.

Q 5 Was the accused present?

A 5 No.

Q 6 Is it possible that the soldier inserted his penis in the childs genitals to the slightest extent?

A 6 NO, it is NOT possible, she is too small.

(W.J. Amesz)

The Accused declined to cross examine the witness

(L.A. Deschene) Cpl

(C.D. McQuarrie) Capt
Officer taking the Summary.

FOURTH WITNESS Johanna Hermana Wennink having been duly sworn states:

" I am Johanna Hermana Wennink, divorced woman, residing at DRIENER Eschweg 138, Hengelo (O). I have two children, one boy and one girl Johanna Hillygje ter Riet. She is known by the name of her father where as I have resumed my maiden name. My daughter Johanna is 8 years and 6 months of age have been born to me at ENSCHEDE on 12 Feb 1937. Johanna is now in hospital, the Ziekenzorg Hospital at ENSCHEDE.
I do not know what the illness is, I only saw that puss and blood were coming out from here genital organs. I saw that on Friday morning the 20 Jul 45. In the morning my daughter came to me in my bedroom and said"mother, look here I have got my pyjamas dirty" So I went downstairs to the kitchen. I had a look at it and cleaned it and sent my daughter back to bed. When later she came down stairs to the W C she asked me to hold her because of much pain. In the morning when the child came to the kitchen I said, "Jojo tell me what happened". The child said "No Mother I wont tell you because I am afraid you will beat me". I replied "No, I will not beat you, you should tell me ev rything". The child said, "I have been to the camp on Saturday". She said, " I intended to go home and a soldier jumped over barbed wire and told me to come to him, so I went to the soldier". He said, "Come with me, I have chocolate and cigarettes". "The child also told me that she was sitting down with the soldier and he placed a wrist watch on her wrist.

...../10

* put his thing in mine and when he finished I intended to go but the soldier said

FOURTH WITNESS (cont)

"The child said, "and then the soldier/* s[illegible] come here I will give you a packet of cigarettes and I got the packet". She then told the soldier she had to leave because she had to pass water. Meanwhile she ran home and then she hid the cigarettes under the leaves.

I then wrote a letter at about 8 o'clock Friday night to Jack and French, soldiers from the camp which had number 17 on the cars. It is about 15 minutes walk from here. As aresult the child was examined by Dr Rutgers of ENSCHEDE who came to the house here. The child was taken to hospital on Saturday night at 7 o'clock on 21 Jul 45."

Q1 Was the child in the habit of going to the camp?
A1 Yes, practically every day.

Q2 Did any one go with her?
A2 Yes, sometimes her brother.

Q3 Did she know any of the soldiers?
A3 Yes.

Q4 When the child was talking to you in the kitchen did she say who the soldier was?
A4 Yes, it was the soldier who was sitting with Bonnie, John and herself beside the street when it was raining heavy on a Tuesday two weeks before.

Q5 Do you know the soldier referred to?
A5 No.

Q6 Did you find out?
A6 No

Q7 When did she tell you these words about the soldier?
A7 Friday morning, when I helped the child in the kitchen, 20 Jul 45.

Q8 Did she tell you this at the same time she was telling about what had happened?
A8 Yes, I asked who the soldier was. She said it was the one sitting in the rain and so on.

Q9 Do you remember the Saturday the girl referred to and if so when did the girl come home?
A9 At 8,30 at night because I looked at the clock because it was so late.

The Accused declines to cross examine the witness except as follows:

Q1 Who is this 'Bonnie'
A1 Points to a girl in the next room.

(J.H. Wemmink)

(L.A. Deschene) Cpl

...../11

FIFTH WITNESS

Derkge Boukje, SCHUT, now residing at Driener Eschweg 135 with Mrs Wennink but real home in DEVENTER, Enkdwarstraat 19.

Q1. How old are you?
A1. 21 years

Q2 What is your nickname?
A2 Bonnie

Q3 Do you remember ever sitting in the rain with Jojo and a soldier?
A3 Yes.

Q4 Who is Jojo?
A 4 She is the daughter of Mrs Wennink.

Q5 Do you remember the solder?
A5 Yes, when he came here on a Sunday afternoon with Cpl (she indicates Cpl Poirier)

Q6 Was this soldier who came here the same one who was sitting with you in the rain?
A6 Yes.

Q7 Have you seen him since?
A7 No.

Q8 Would you know him if you saw him again?
A8 Yes, because there he sits, there on the chair (indicates the accused)

Q9 Where was it you were sitting in the rain with him?
A9 I do not know because I was new here. It was about 15 minutes walk from here.

Q10 About when was it you were sitting with him in the rain?
A10 About 6 weeks ago at 3 or 4 o'clock in the afternoon.

Q11 Were you here when Jojo went to the hospital?
A11 Yes

Q12 How long before was it that you sat in the rain with the soldier? ~~about 14~~
A12 About 14 days

Q 13 Why were you sitting in the rain?
A13 We were hiding under a tree because it was raining heavily. We were there about 15 minutes.

Q14 How was it that the soldier was with you?
A14 I was sitting with Jojo and the soldier came down the street and spoke to us in English which I understand having learned it in school.

Q15 Did you talk to the soldier?
A15 Yes, of course.

Q16 After the rain finished what happened?
A16 We came home. The soldier did not come. I did not see him again until the Sunday afternoon with the Cpl.

...../12

FIFTH WITNESS (cont)

Cross examination by the Accused:

Q1 Were you not sitting with your young brother in the rain when I came with a radio under my arm?
A1 Yes, only my brother with me. Jojo was not there.

Re-examination

Q1 Did Jojo see the soldier?
A1 No

Q2 Had you seen the soldier before?
A2 No.

Cross examination

Q1 How did Jojo know that it was me who was sitting under the tree with you and your brother?

A1 I do not know.

(Bonnie Schut)

(L A Deschene) Cpl

B 143368 Cpl Deschene, Lawrence Alfred, PEILR was then warned as follows:

" Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The Accused then stated upon oath:

"My former statement which was repeated in evidence of Cpl Poirier still stands and is the truth. Through a case of mistaken identity I am accused of an offence of which I have no knowledge or of the place or time where it occured. I am not guilty of this offence of which I have been accused"

(L.A. Deschene) Cpl

The accused declines to call any witnesses at the present time

(L.A. Deschene) Cpl

I hereby certify that the provisions of RF 4 have been complied with.

(C.D. McQuarrie) Capt
Officer taking the Summary.

SUPPLEMENTARY SUMMARY OF EVIDENCE

In the case of B 143369 Cpl DESCHENE, LA.

FIRST WITNESS

Lt R.D. Faulkner, Pl Comd, Prince Edward Island Light Horse having been duly sworn states as follows:

"I know the accused Deschene, from date of his return to unit when he was brought back by Provost Cpl. I had not known him previously. On the day of an identification parade I was taken along as a witness that Cpl Poirier used no kind of persuasion or help with regard to the child Johanna identifying the accused. I was present in the child's room with the Provost Cpl and the nurse during the identification parades on this day. The parade was formed up below us. The girl was brought to the window. By counting the men she identified Deschene, that is to say she started from her left and counted to the right. She stopped when she reached Deschene. The girl was then taken away from the window. Cpl Poirier gave instructions to shuffle the parade. When this had been done she was brought back to the window and once more identified Deschene in the same manner. He had been placed in a new position. The girl was then brought down to the ground floor and the men were paraded past an open window in single file. As Deschene passed she reached out and touched him to identify him as she had been instructed to do.
When the two previous parades were held the men had to look up in order that we could see their faces. Deschene appeared to me to be distorting his features by squinting his eyes. There was no sunshine at the time. It was a dull overcast day.

Q1 What is the tactical n mber of the PEILH?
A1 It is No. 17.

Q2 Does that number appear on your vehs?
A2 Yes.

Q3 At the time referred to where was your camp?
A3 It was situated between HENGELO and ENSCHEDE in the previous 2 Corps area, in a wooded farming area.

Q4 Can you state the approximate dates between which it was in that place?
A4 I would say the month of June and the month of July.

Q5 You said you were taken along as witness that no persuasion was used or help given to the child on the identification parade, can you state whether there was any sort of persuasion or help to the child?
A5 No, there was no persuasion or held whatsoever.

Cross examination by accused

Q1 In connection with distorting my features, would you that be a logical move after I had already been identified in 2 previous parades?
A1 I don't know, that would depend on the individual himself.

...../2

Q2 How can you b
A2 as well as tha
The child was
watching the pa
could easily hav
proximity.

movements
in the room
those

Q3 Were you not standing side by side in were all
A3 No, I dont believe we were, We were gathered
the window and I dont think there was any definite
formation.

"L.A. Deschene" Cpl

The Accused declined to question the witness further.

The accused was then again cautioned and stated:

"My prior statement still holds"

"L.A. Deschene" Cpl

I hereby certify that the provisions of RP 4 have been complied with.

(C.D. McMurrie) Capt
Officer taking the Summary

Q2 How can you be sure when you were watching my movements as well as the child at the same time?
A2 The child was counting from left to right and we were all watching the parade, any movement, e.g. anyone in the room could easily have been noticed because we were in close proximity.

"R.D. Faulkner" Lt

Q3 Were you not standing side by side in a parallel line?
A3 No, I dont believe we were, We were gathered around the window and I dont think there was any definite formation.

"L.A. Deschene" Cpl

The Accused declined to question the witness further.

The accused was then again cautioned and stated:

"My prior statement still holds"

"L.A. Deschene" Cpl

I hereby certify that the provisions of RP 4 have been complied with.

(C.D. McQuarrie) Capt
Officer taking the Summary

Dr. G.E. RUTGERS
Arts

Enschede 22.7. 1945

On July 21 I visited the child (girl ter Riet, Drienerschweg. The girl looked very bad. There was excretion of much pituite (Nederlandsch: elyen) and of some blood from the genitals. The child was sent for observation and treatment by the gynaecologist Amesz to the hospital Ziekenzorg at Enschede.

Signed

"Dr G.E. Rutgers"

This is Exhibit 'A' in Summary of Evidence
re B 143368 Cpl Deschene, LA taken 18-19 Aug 45.

Signed

"C.D. McQuarrie" Capt "L.D."

H.J. AMESZ
Vrouwenarts
Kortenaerstraat 6 Tel 3505

Enschede 23. VII. 45

Spreekuur 8.30 - 9.30 VM
1.30 - 3.00 N.M.

I examined the 8 year old girl Johanna Hilligje ter Riet on Saturday the 21st July 1945 for the first time. At the external genitals there were no wounds to be seen, but a suppuration in which there were many gonococs.

Signed "H.J. Amesz"

This is Exhibit 'B' in the Summary of Evidence
re B 143368 Cpl Deschene, LA taken 18-19 Aug.

Signed "C.D. McQuarrie" Capt "L.D."

CERTIFIED TRUE COPIES OF DOCTORS REPORTS

(C.D. McQuarrie) Capt
Officer taking the Summary.

NOTICE PURSUANT TO R.P.76

TAKE NOTICE that at the trial by Field General Court Martial of B143368 Pte DESCHENE, LA the following witness will be called to adduce evidence of the nature herein stated. Such witnesses were not available at the time of the taking of the Summary of Evidence.

1. Dr. GE Rutgers - ENSCHEDE

To prove examination of the child Johanna ter Riet on 21 Jul 45 and to state her condition at that time and to prove the medical certificate made by him after said examination, such document being Exhibit' 'A' in the summary of Evidence.

2. A Medical Officer from 9 Cdn FDS, APPLEDORN to prove the admission of the accused to 9 Cdn FDS on 15 Jul 45 diagnoxed as "Urethritis" Fres, Pos for G.C. to wit, gonorrhoea. Such medical Officer will be either Capt E.A.S. Reid or Capt Headman.

3. The child's nurse, Miss Deichmsen who will testify as to the following:

(a) That she was present at the varios identification parades and what occured there.

(b) That she was present at the time the watch was identified by the child, the nature of her instructions to the child, and that the child picked out the watch in question. Said watch will be produced at the trial.

4. Two possible rebuttal witnessess who will state that on 14 Jul 45 to the best of their knowledge the accused was wearing a moustache and that they cannot recall having seen him without one prior to that date but that he had none on his return from hospital.

They are:

CSM HH MacLEOD - PEILH
F31334 Pte Gallant JE - PEILH

"CDM"
(CD McQuarrie) Capt
Officer taking the Summary

Copies to:
The Accused
Capt HR Young -Defending Officer.

FURTHER NOTICE PURSUANT TO R.F. 76

TAKE NOTICE that at the trial by F.G.C.M. of B L43368 Pte Deschene L.A. the witness CSM MacLeod M.H. ref to in the previous notice herein will also be called to prove

(a) That only the accused and one other FMILH soldier were evac to hosp with VD "S" during the period 12 Jul to 1 Aug and details.

(b) Situation, location etc, of FMILH Camp at material time.

TO Accused
and to Def. Offr.

"C.D.MacQuarrie" Capt.
Offr taking the Summary

I desire the Convening Officer to detail an Officer with legal experience to represent me at my forthcoming trial by Field General Court-Martial.

"Lawrence Deschene"
(Signature of Accused)

99/20/2 Corps Def Coy/1(A56)

Officer Commanding,
2 Cdn Corps Def Coy (PWILR)
Canadian Forces in the Netherlands.

10 Aug 45

APPOINTMENTS AND PROMOTIONS
B143368 PTE DESCHENE L A

1. Ref your 2CGDC/6-0/Pers d/1 Aug 45 concerning the m/n soldier.

2. This headquarters has no record of any appointment or promotion concerning the m/n since his enlistment.

3. For your necessary information please.

"Illigible"
(W.J.Gardiner) Captain
for Officer i/c
Cdn Sec 2 Ech HQ 21 A Gp

/hgc

Signed 1600 B hrs

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B.143368	Pte	DESCHENE, LA	2 Cdn Corps Def Coy (PEILH)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 15 (1) 1 times.

For A.A. Sec 15(2) 1 times.

For AA. Sec 11 1 times.

For A.A. Sec 40 5 times.

Date of first entry in Field Conduct Sheet 24 Jul 43

Date of last entry in Field Conduct Sheet 1 Feb 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*~~3. The accused at the present time is under sentence~~ for ~~hardening on the~~ ~~day of~~

4. The accused has been awaiting trial on the present charges for ____ days in civil custody; and for ~~24~~ 32 days in military custody, *i.e.*, ____ days in open arrest, ~~24~~ 32 days in close arrest; of which no days were spent in hospital.

5. The present age of the accused is 28 yrs

6. The date of his attestation ~~taken up for military service~~ is 25-2-43

7. The service which the accused is allowed to reckon is 2½ years

8. The accused is in possession of‡ CVSN & CLASP

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date— N/A

		Date of Promotion.
In the substantive rank of	N/A	
In the war substantive rank of	N/A	
In the acting rank of	N/A	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

[illegible] Wt.24939/3404 24,000 7/44 A.& E.W.Ltd. Gp.498 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 29th day of August 1945

"E.R.Collins" Major
2Cdn Corps Def Coy
(PEILS)

B143368 DESCHENE Lawrence Alfred

No | Name | Sqn, Battery, or Company | Corps CIC | Date of enlistment 25 Feb 43 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3488)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No one | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				Sheet Destroyed 25 Aug 43					
Petawawa	24 Jul 1943	Spr		1 Conduct to prejudice: did break quarantine A.A.40 2.AWL from 0600 hrs 24 Jul 43 till 0700 hrs 30 Jul 43. (Abs 6 days 1 hrs). AA Sec 15 (1)	documentary	14 days C.B. Sum Forf of 7 days pay	31 Jul 43	Lt-Col J.A.Warburton	Forf 7 days Pay under PR&I 149(1)(a)
Petawawa	20 Sep 43	Spr		Conduct to the prejudice:-When asked his name & number by Sgt Anderson,(A5) Orderly Sgt, gave his name as Spr Scott, #6 Coy A.A.40	Sgt Anderson Documentary	3 days C.B.	21 Sep 43	Capt H.N. Burton	
Petawawa	24 Feb 44	Spr		Neglecting to obey Part I orders (Neglecting to report for Muster Parades) A.A.11	Sgt Sartorotto, Cpl Butler	7 days C.B.	25 Feb 45	Major G.C. Tyrrell	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6 Sep 44	Pte		Conduct to the prej, etc Came on parade unshaven AA 40	Cpl Gurr	3 Days CB	6 Sept 44	Major HN Summers	
Field	11 Sep 44	Pte		Absent from parade appointed by superior offr. failed to report kitchen fatigue after supper 11 Sept Left work early in afternoon, not dismissed. AA 15 (2)	Cpl Robin	3 Days CB	13 Sept 44	Major HN Summers	
Field	27 Sept 44	Pte		Conduct to the prej, etc. on 27 Sept at approx 0900 hrs was improperly in possession of a pen & pencil set, the property of Capt RM Sinclair AA Sec 40	L/Cpl Antoniu Capt RM Sinclair	7 fays forf of Pay	27 Sep 44	Major WC Graham	

No. Name | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PRS/138/15413

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Feb 45	Pte		Conduct to the prej,etc in that he, did leave his platoon position without permission of his platoon Sgt AA 40.	Sgt Marlwhile Pte Adjuck L/Cpl Hughes	7 Days CB	3 Feb 45	Capt Pleasance	

Certified True Copy

"ER Collins"
(ER Collins) Major
O/C 2 Cdn Corps Def Coy (PEILH)

(PTO)

50 - 45.

Tpr. Duclos, M. A. G.

RECEIVED 22 JUN 1945 [illegible]

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/F & S/1698 (6144) 4/38B

Convened by Order of Brig. G. W. Robinson Comd 2 C A B dated 25 May 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D131750	Tpr		Marcel Auguste Gustave	Duclos	27 CAR (SFR)

PROCEEDINGS REVIEWED J. K. Miquelon Capt. 30 June 45 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED 18 Jul 45 D.J.A. Cdn. Sec. 21 Army Gp.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany on (date(s)) 29 May 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 33/65

A1. The President, Members, waiting Member, JA, if any, ~~and Offrs under instr, if any~~, assemble, and the Court is closed. KYD

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) KYD. The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1520 hours trial commences. KYD

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ KYD

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to~~ as interpreter? Ans KYD.

~~The Interpreter is sworn.(1) Do you object to~~ as shorthand writer? Ans

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, ~~and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc: KYD.

President	Major	J. M. Bowie	10 CAR.
Member	Capt.	C. F. Derton	6 CAR.
Member	Lieut	G. M. Kay	10 CAR.
Judge-Advocate	Capt.	K. Y. Dick	Cdn see 1 Rch H.Q. 21 A. Gp.
Prosecutor	Lieut	J. G. Riehl	27 CAR.
Defending Offr	Lieut	W. H. Lewis	27 CAR.

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused D131750 Tpr Duclos before arraignment make(s) (no) (~~a~~) plea KYD.

(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

KYD A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "C"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

[illegible] 3-25

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans No sir (5)

(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty on third charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~ MD

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP* 35(*E*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP* 37(*A*) (*E*).)

C2. The charge(s) on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1) 15 MD

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

COURTS-MARTIAL

CHARGE SHEET

D-131750 Trooper Marcel Auguste Gustave DUCLOS, 27 CANADIAN ARMOURED REGIMENT (Sher Fus Regt) a soldier of the CANADIAN ARMY OVERSEAS, is charged with:

FIRST CHARGE
Army Act
Sec 9 (2)

WHILE ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

at approximately 1315 B hours, 13 May 45, when ordered by D-47038 A/SSM CAFFREY, N. L. to report for kitchen fatigue, refused to do so.

SECOND CHARGE
Army Act
Sec 8 (1)

WHILE ON ACTIVE SERVICE OFFERING VIOLENCE TO HIS SUPERIOR OFFICER

in that he

at approximately 2130 B hours, 13 May 45, threatened Pilot Officer STRUB, D. A. P. M., R. A. F. Police, 84 Gp Police Unit, with his pistol, and ordered Pilot Officer STRUB to get him a drink.

THIRD CHARGE
Army Act
Sec 40

WHILE ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at approximately 2130 B hours, 13 May 45, was in a Mess out of bounds to him.

In the Field
16 May 45.

F. T. Jenner
.....Lt-Col.
(F. T. Jenner)
Commanding Officer,
27 Cdn Armd Regt (Sher Fus Regt)

To be tried by Field General Court-Martial

In the Field
25 May 45

Geo R Johnson Brig
Comd 2 Cdn Armd Bde

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/F&S/1697 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D131750	Tpr		Marcel Auguste Gustave	DUCLOS	27 Cdn Armd Regt (SFR)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~[illegible]~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) ..... endorsed by me, (~~or by an offr of the staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s) and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	J. W. Bowie (Must be named. RP 106.)	10 Cdn Armd Regt (Unit.)

MEMBERS.

Capt	C. F. Oerton	6 Cdn Armd Regt
Lt (Rank.)	G. M. Kay (Named or detailed. RP 106.)	10 Cdn Armd Regt (Unit.)

WAITING MEMBER.

Lt (Rank.)	R. H. Pimblett (Named or detailed, if any. RP 106.)	6 Cdn Armd Regt (Unit.)

JUDGE-ADVOCATE.

Captain (Rank.)	K. Y. DICK (Must be named, if any. RP 106.)	Cdn Sec 1 Ech Hq 21 Army Gp (Unit.)

On Active Service in the Fd

in Holland (Country.)

[signature] (Signed personally. RP 105 fn 2.) Brig (Rank.)

Date 25 May 45

Commanding 2 Cdn Armd Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

[signature]

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 76 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 46-47 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 90(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 46 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn* 3, *46 fn* 1, *86*.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn* 1.)

(iv) Evidence for prosecution in rebuttal or on *new matter*, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C)*.)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 46 fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 46 fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(K), KR Can 565(a).*)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On* inp.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, *etc*. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163* (1) (*g*) (*ii*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 739.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL CERTIFICATE

I CERTIFY THAT I have this morning examined D131750 Trooper Marcel Auguste Gustave DUCLOS, 27 CANADIAN ARMOURED REGIMENT (Sher Fus Regt) and find him FIT to undergo trial by Court-Martial.

29 May 45

H.W. McLuckie Capt
Medical Officer

Re Duclos 1 I Jmh.

D-3

Evidence for prosecution

First Witness - F 30247 Tpr J.C. Kehoe, 27 C.A.R.

having been sworn states:

"I am as above described. I was in the Sgt Mjrs room at the time that Tpr Duclos refused the order. Sgt. Mjr gave Duclos an order to report to the kitchen & Duclos replied "I will not do it, Sir".

Sgt. Mjr replied, "You refuse my order?"

Duclos replied, "Yes Sir". I recognize the accused. The sgt mjr placed the accused under arrest when he disobeyed the order. The sgt mjr didn't show any signs of prejudice at the time. The accused did not give any reason for not being able to work in the kitchen. (Dfdg offr objects to a leading question & the prosecutor does not pursue the matter farther)

X - exam

Duclos was not ~~drunk~~ under the influence of liquor when this order was given. There was a great deal of drinking amongst the men of the reg't

due to VE day celebrations. I am not certain that Duclos may not have been suffering from a bad night the night before.

By the court.

I don't know the approximate time of this occurrence. I don't know what date it happened. The person referred to as the Sgt. Mjr is Sgt. Mjr Caffrey.

By the J.A.

This happened in the Sgt. mjrs room. It was in the early evening. I had had my supper. I had been on duty all day with the Sgt. mjr. I am his driver. I don't know why the Sgt mjr was detailing Duclos to report to the kitchen in the evening. I belong to Argyle & so does Duclos. The sgt mjr did not say what job was to be done in the kitchen. The sgt mjr said to Duclos "Report to the kitchen" The Sgt mjr had sent for Duclos. I told the sgt mjr send a runner out for him. I had driven the Sgt mjr on several trips that day. I can't

remember where my last trip was.
R.P. 83(B) complied with.

* 183990

2nd Witness. P/O H.E. Struh, 84 Group Provost + Security Unit, B.L.A. having sworn states:

"I am as above described. I recognize the accused (points to him). He is Spr Duclos. On 13 May 45 about 11.30 hrs, I was coming out of O/m at Police H.Q. at ~~Lingem~~ Lingem, when I saw Duclos. He had a Browning automatic in his right hand. He was pointing it at Cpl. Simpson of our unit. He was forcing Simpson towards the steps which lead down from the building. I called to Duclos + suggested that he should give me the weapon. He pointed the weapon at me and said "Get me a drink" or words to that effect. W/O Rowe appeared on the scene and Duclos immediately recognized his badge of rank + called him R.S.M. + threatened him with the pistol. I seized

Duclos & disarmed him & Rowe & Simpson secured him. I examined the pistol later. It was not cocked but there were 10 rds. of line ammo. in the mag.

(Prosecutor produces a pistol.). This looks like the weapon. ~~(Witness checks~~ The weapon was # 1566. (witness checks weapon & identifies it by the number) Exhibit "A"

Defence cross-examines.

I would say that Duclos was under the influence of liquor. I would say that he did know what he was doing because he recognized the W.O. as an R.S.M & he appeared to recognize me as an offr. I don't know how far away Duclos lines were. The nearest Can vehicle to our lines was parked about 100x away. Our two areas were adjacent.

Re exam. Our quarters are plainly

Jack

marked.
R.P. 83 (B) complied with.

Third witness: - 1284562 Warrant Officer. C.W. Rowe, 84 Group, ~~Provo~~ Police Unit. having been sworn states.

"I recognize Duclos, the accused. He is sitting there. (Points.) At 2130 hrs on 13 May '45 I had occasion to go ~~on~~ to the terrace adjacent to the Offr's + sgts. mess of my unit. I there saw P/O Struh + Cpl Simpson of my unit + a cdn soldier whom I now know to be this tpr Duclos. ~~[illegible]~~ Duclos was pointing a pistol at P/O Struh & then he saw me & said. "Here's the R.S.M." + he ordered me into line - pointing the pistol at me. I got into line; we hesitated for a second; Duclos' attention was distracted. P/O Struh disarmed Duclos, whilst Simpson + myself over powered him. We took him to the civilian jail in Lingem.

VI. Jas.

X. exam^n.

I had encountered Duclos earlier in the evening. It was 1900 hrs – 7 o'clock, sir. The accused had been drinking, but he was not incapable. I could not say whether he was worse at 2130. He was very unsteady on his feet. It seemed to me he had been drinking heavily.

By the court:

I think the accused knew what he was doing at 2130. He recognized me as the R.S.M. ~~the~~ I had had him escorted from the sgts mess 2 hours earlier.

By J.A.

The accused face was flushed. I concluded that he had had more to drink since 1900 hrs.

R.P. 83(B) complied with.

VII.

Fourth Witness - 1046750 Cpl Simpson J. R. 84 Group, Police Unit, having been sworn states:

"I am as above described. I recognise Pte Duclos. (Points to him). On I was in my sleeping quarters at H.Q. at 2125 hrs, 13 May '45. I went from there towards dining hall & there I saw on the steps. I saw Duclos. He stopped me & said. "Where is your R.S.M.?" I said. "I don't know" He then said. "You'll do then." And he produced a pistol & put it in my ribs. He then said. "Where is your arm?" I said, "It's down the steps outside." He marched me thro' dining room to terrace outside. & We stopped at the top of the steps to attract attention. We were then joined by P/O. Stink who came across & Duclos turned to Mr Stink & said "I want a drink," pointing the gun at Mr. Stink, and ordering him to get into him against the

wall. Mr Rowe came along then & Duclos said. "Ah! You're the R.S.M." & Duclos attention was attracted for a moment. Mr Strube knocked Duclos' arm up & Mr. Rowe & I secured him.

X-exam^n.

- I would say that Duclos had had some drink. He seemed to know what he wanted. There were 10 live rounds - all in the mag. The pistol may have been cocked when he pointed it at me. Afterwards it was not cocked.

R.P. 83(B) complied with.

Prosecutor announces that S S M Caffrey, a witness in the S. of E. is in a base hospital in Belgium & cannot be produced. Defending offr does not require attendance of S S M Caffrey.

Prosecution closes its case.

J.B.

IX.

D-4.

Dfdg offr = submits 1st charge not substantiated. Relies on notes that accused must be given an opportunity to comply with command. Merely answering "I will not do it" is not failure to obey.

On second charge.

for 2. of sec 8 A.A. - pointing an unloaded weapon should be charged under sec 40. This type of weapon is not loaded until the action is cocked & a round is moved into the chamber. Consider a loaded of rifle & a ~~loaded mag~~ rifle with a loaded magazine.

Prosecutor has no reply.

Court is closed.

Court is reopened & Pres. announces the findings.

D-6

First witness. - Lieut. H. G. C. Mercer, 27 C.A.R.

sworn states:

"I am as above described. Spr Duclos first came to me about 1 Apr '45. He served as gunner in my tank. I had

him in my crew for about 1 month. During this time we were almost constantly in action. I found him to be a keen & alert gunner. He did a creditable job & at all times carried out his duties to the best of his ability. He got on well with the rest of my crew, & the rest of my troop. Towards the end of the month of April, I noticed that Tpr Davies showed that he was under some strain when he was in action. A few days later, whilst under fairly heavy shell fire, he displayed more signs of exhaustion. The next morning he asked if he could be sent back from F. echelon for a rest as he was incapable of further work in tanks. I immediately notified my Sqn. Ldr & suggested that Tpr Davies' request be complied with as further action would possibly bring him to the breaking point and it was not good for the morale of the rest of my men. This request was complied with. In my opinion, Tpr Davies was, at the time,

a case of battle exhaustion, & was no longer able to carry out the duties assigned to him to the best of his ability. After VE day, there was quite a bit of liquor in the regiment and there was considerable drinking. It was going on at the time of this incident. After disciplinary action was taken & liquor confiscated things settled down. I think that if Deals had not been given a rest at that time he might have been a bad case. After VE day Deals told me that he had volunteered for service with the Far East Forces.

Prosecutor has no summing up.

Defence sums up.

Renews submission that pistol was not loaded. It is understood that a rifle is not loaded until such time as a round is placed in the chamber & the bolt closed. When the mag. contains rounds but there are none in the chamber, it has never been considered as loaded. It is the same with the Browning pistol. The action must be worked after the mag. has been placed in place.

Although the pistol was pointed at the

Jas B.

XII

accused, there is no statement that the accused threatened them. There is no evidence that the accused had the intention of harming the witnesses.

Pres. believes that in view of fact that it has already considered ~~this~~ the 2nd charge, + no defence was offered, no summing up by the J.A. is necessary.

E-1.

Plea in mitigation.

Jas B.

E-1.

'X 111

Jacob.

Duclos has served his country well.
On VE day there was free liquor of a high alcoholic contents around the regiment. It was cessation of hostilities & the celebrations carried on over the week-end; - not only in this particular regt but throughout the entire United Nations. Duclos having recently been under great nervous strain, & being a gunner had it instilled into him that might is right; having hung on to life itself by his weapons, can quite conceivably, under the influence of this liquor, which has already been declared dangerous & poisonous in military documents, could easily have reverted to the weapon he was still authorized to carry not realizing under, the flush of alcohol, the seriousness of what he was doing. The fact of Duclos being in some one else's camp, is a very easy error when under the influence, especially when the 2 camps were adjacent to each other. I would ask you to consider that in both these charges. Duclos could have been

spared this trouble by proper supervision of the liquor being drunk. Or being somewhat of a battle casualty, the N.C.O's & other men of the regiment would have been doing no more than their duty in looking after Duclos.

MFM 6. shows no serious crimes previously, but only a run of the mill minor offences which are an every day occurrence.

If you must punish this man consider that he has served his country, that he got into trouble when celebrating victory with his fellow countrymen, that he has volunteered to serve in the far east. Even with this service in the far east, there is the possibility of demobilizing him still under the handicap of a heavy punishment.

There are weak spots in the evidence & they should be considered when fixing punishments. These events could not have occurred if Duclos had not been under the influence of liquor.

Exhibit A.
Jos Bonnie Major.

COURTS-MARTIAL

CASE OF D131750 Trooper Marcel Auguste Gustave DUCLOS, 27 CANADIAN ARMOURED REGIMENT (Sher Fus Regt)

LIST OF EXHIBITS

One Browning Automatic Pistol - No IT 1566
Marked "Exhibit A".

Exhibit C
for Jones Maj.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
D131750	Tpr	Marcel Auguste Gustave DUCLOS,	27 Cdn Armd Regt (Sher Fus Regt)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For AWL	AA15(1) times	1 times
For Breaking out of Barracks	AA10(4) times	1 times
For Drunkenness	AA19 times	1 times
For Conduct to the Prejudice	AA40 times	1 times
For	times	times

[redacted]

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

[redacted]

3. The accused is not under sentence at the present time. [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for ONE days in civil custody, and ~~one~~ 15 days in military custody, making a total of ~~one~~ 16 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his [redacted] is attestation paper

6. The date of his [redacted] specified in his [redacted] is 4 May 1943
attestation attestation paper

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is Nil

8. The accused is entitled to deferred pay or gratuity in respect of 2 Yrs service

9. The accused is entitled to reckon Nil service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*).

11. ([redacted]

12. ([redacted]

W.L.5/3000/1339 JDM. Lwe. F. Ltd. T10-3.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

NAD

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18th day of May 1945

NAD Captain

(N.A.J. Dann), Captain & Adjutant

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of _____ years.

In the rank of _____ years.

In the rank of _____ years.

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

Exhibit D Johnnie Maj.

NoD-131750 Name Duclos MAG | Sqn, Battery, or Company N/A | Corps CAC | Date of enlistment 4-5-43 | GC Badges | Service or Proficiency Pay N/A | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden, Ont	21-3-44	Tpr		15 (1) AA. A WL from 1200 hrs 21-3-44 until 2145 hrs 22-3-44 Time absent 1 day 9 hrs 40 mins	Documentary	7 days C.B.	23-3-44	JA Tuxford Capt	Forfeiture of 2 days pay
Field	14-5-44	"		AA Sec 10 (4). in the field, breaking out of barracks whilst under open arrest at 2230 hrs.	Cpl. Oke, F Cpl. Strachen JB	14 days Det.	16-5-44	Cpl. JP Perry	Forfeiture 14 days pay FR&I 149B
"	14-5-44	"		AA 19 (.) Drunkenness in that he was found drunk and incapable at 2330 hrs 14 May 45	Documentary	A dmon ished	16-5-44	Col JH Perry	
"	8-12-44	"		AA 40(.) Conduct to the prejudice failed to report for duty after being warned	SgtNW Telford	14 days FP and forfeits 14 days pay	11-12-44	Major VO Walsh DSO	

Certified true extract from the Regimental books and documents in my possession

(SAJ Dann), Capt & Adjt

(PTO)

Exhibit "A" being a Browning 9. mm. pistol was returned to .27 C.A.R. (S.F.R.) it having been taken to ledger charge by that unit.

K. Y. Dick, Capt.
J.A.

Exhibit 'B'

-1-

Summary of Evidence in the case of D 131750 Tpr. Duclos, M.A.G. 27th Cdn Armd Regt (Sher Fus Regt) Cdn Army O/Seas, Charged with:

A.A. 9 Sec 2 (1) Disobeying a lawful command given by a Superior Offr, in that he on the 13th May 45 refused to obey an order given to him by D 47038 A/SSM Gaffrey, N.L.

A.A. 8 Sec 1 (2) Offering Violence to a Superior Offr, in that he on the 13th May 45, held up F/O H. Strub (RAFP) at point of loaded automatic.

A.A. 40 (3) Conduct to the prejudice of good order, and military discipline, in that he on the 13th May 45 entered a H.Q. that was Out of Bounds to him (84 Grp R.A.F. Police).

The Commanding Officer directs that the evidence be taken on Oath.

First Witness D 47038 A/SSM Gaffrey, N.L. 27th Cdn Armd Regt (Sher Fus Regt) being duly sworn states:

I am D 47038 A/SSM Gaffrey, N.L. "A" Sqn 27th Cdn Armd Regt (Sher Fus Regt), on the 13th May 45 the accused Tpr. Duclos, M.A.G. upon being given a direct order from me to work in the Sqn kitchen replied, " I won't do it, Sir"., to which I queried him with " Do I understand Duclos that you refuse to obey my order?". Duclos replied, " Yes Sir." I placed Tpr. Duclos under Open Arrest.

The accused declines to cross examine the witness.

Norman Gaffrey

(N.L. Gaffrey, D 47038) A/SSM

Second Witness F 30247 Tpr. Kehoe, J.C. being duly sworn states:

I am F30247 Tpr. Kehoe, J.C. "A" Sqn 27th Cdn Armd Regt (Sher Fus Regt) I was in A/SSM Gaffrey's office where I heard him give Tpr. Duclos a direct order to work in the Sqn kitchen to this he replied, " I won't do it Sir." Then the A/SSM replied, " Do I understand Duclos that your refuse to obey my order?", to which Duclos replied, " Yes Sir".

The accused declines to cross examine the witness.

J. C. Kehoe

(F 30247 Tpr. Kehoe, J.C.)

Third Witness P/O H. Strub D.A.P.M.,R.A.F. Police 84 Grp Police Unit, having been duly sworn states:

I am P/O H. Strub D.A.P.M. R.A.F. Police 84 Grp. Police Unit, On the 13th May 45 at 2130 hrs I left the anti-room of the Offrs Mess 84 Grp Police Unit.

On coming out of the main door into the terrace, I saw a Cdn soldier, now known to me as D 131750 Tpr. Duclos, M.A.G. of the 27th C.A.R. (Sher Fus) Regt. threatening 1046750 Cpl. Simpson, K.J. R.A.F. Police with a Browning automatic pistol, he was pointing the pistol at Cpl. Simpson's chest in the region of his heart, and he forced Cpl. Simpson down the steps at pistol point. I could see the above named Cdn soldier had been drinking, his whole bearing was unsteady, and his steps uncertain. I called him, and suggested that he let me have his pistol. The soldier then said, " Right, get me a drink", and pointed the pistol at me. By this time 1284562 W/O Howe, C.W. Unit W/O 84 Grp Police Unit arrived on the scene, the soldier recognized W/O Howe as the R.S.M. ordered him to get into line, and pointed the pistol at him. We managed to distract his attention when I immediately

(cont 3rd witness) =3=

disarmed him, and W/O Rowe, and Cpl. Simpson secured him. I gave orders for him to be taken to the Civil jail to be detained in Close Arrest, pending further inquires. Immediately after disarming Tpr. Duclos I examined browning pistol automatic Number IT 1566 (produced) it was not cocked, in the magazine their were 10 rounds of live ammunition.

The accused declines to cross examine the witness.

(P/O H. Strub) D.A.P.M.
84 Grp Police Unit.

Fourth Witness 1284562 W/O Rowe, C.W. R.A.F. Police 84 Grp Police Unit. beeg duly sworn states:

I am 1284562 W/O Rowe, C.W. R.A.F. Police 84 Grp Police Unit. At 2130 hrs on the 13th May 45 I had occasion to visit the Terrace adjacent to the Offrs, and Sgts Mess at this unit. I saw a Cdn soldier whom I now recognize as D 131750 Tpr. Duclos, M.A.G. of the 27th Cdn Armd Regt (Sher Fus Regt), he was pointing a revolver at P/O Strub, and Cpl. Simpson R.A.F. both of this unit. The soldier recognized me as the R.S.M. by virtue of an incident which occured at 1900 hrs this day, when I had ordered him from the Sgts. Mess of this unit. Tpr. Duclos pointed the revolver at me, and ordered me into line with P/O Strub, and Cpl. Simpson. Together we distracted his attention. P/O Strub disarmed him, and Cpl. Simpson, and myself secured him.

The accused declines to cross examine the witness.

(1284562 W/O Rowe, C.W.)
R.A.F. Police 84 Grp. Police Unit

Fifth Witness

1046750 Cpl. Simpson, J.K. R.A.F. Police 84 Grp. Police Unit being duly sworn states:

I am 1046750 Cpl. Simpson, J.K. R.A.F. Police 84 Grp. Police Unit. At 2225 hrs on the 13th May 45 I was in the airmens sleeping quarters at this unit H.Q. On the steps from the airmens sleeping quarters, to the airmens dining room I saw a Cdn soldier who I recognize as Tpr. Ducles, M.A.G. He said to me, " Where is your R.S.M. ?" I replied, " I don!t know.". He then produced a revolver, which I regognized as a Browning Automatic, pointed it at me, and said, " You!ll do then". He further said to me, " Where is your arms ?" (meaning my revolver) "Surely you have something!" I replied, " It is outside, down the steps." He said, "We will go and get it.", putting the revolver to my ribs, he marched me thru the airmens dining room, and anti-room to the steps outside. We stopped at the top of the steps for a moment, I talked to him trying to attract attention when we were joined by P/O Strub D.A.P.M. of this unit. He pointed the weapon at P/O Strub, and said he wanted a drink. We were then joined by W/O Rowe, C.W. of this unit, the soldier immediately recognized him as the R.S.M. and pointed the revolver at him. His attention distracted, P/O Strub disarmed him, W/O Rowe, and myself secured him. I examined the revolver number IT 1566 which was the revolver that was taken from Tpr. Ducles, which contained 10 live rds of ammunition.

The accused declines to cross examine the witness.

J.K. Simpson

(1046750 Cpl. Simpson, J.K)
R.A.F. Police 84 Grp. Police Unit

The accused was warned as follows:

Do you wish to make a statement, or to give evidence upon Oath?. You are not obliged to say anything, or give evidence unless you wish to do so, but whatever you say, or any evidence you may give will be taken down in writing, and may be given in evidence.

The accused: I desire to make no statement at this time.

M H Dudley

(D 131750 Tpr. Dudley, M.A.G.)
The Signature of the Accused.

I certify that R.P. 4 (c) (d) (e) and (f) has been complied with.

Taken by me in the field in the presence, and hearing of the accused on the 15th day of May 1945.

Signed in the field this 15th day of May 1945.

J Rheal Lieut

Signature of Offr. taking Summary
(J.G. Rheal) Lieut.
27th C.A.R. (Sher Fus Regt) C.A.C.
Offr. detailed to take This Summary of Evidence.

TO: PRESIDENT OF FIELD GENERAL COURT MARTIAL ON D-131750 Tpr DUCLOS, M.A.C. 27 Cdn Armd Regt (Sher Fus R)

I certify that due to the exigencies of the service, to wit;

1. The distance required to be covered to get D-47038 A/SSM Caffery to attend this trial at LEUR from Base Hospital in Belgium

2. The fact that D-47038 A/SSM Caffery is undergoing medical treatment.

3. The time and expense involved.

it is not practicable to get the attendance of D-47038 A/SSM Caffery, N.L. at this trial on the 29 May 45.

29 May 45

(N.A. Lann) Capt & Adj
27 Cdn Armd Regt (Sher Fus R)

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No Sir.(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (no) opening address.(1) K. G. L.
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the first & second charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the second charge(s), and allowed on the first charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (not) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans No. Do you intend to call witnesses on your behalf? Ans Yes. Are they witnesses as to character only? Ans Yes
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 1 & 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1st Charge charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(2) (a), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "2" and Ex "3" respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes, by my Defending Offr.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 108, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2322, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(c), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D-131750- Tpr Duclos, M.A.G.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 9(2)	Not Guilty	Not guilty	
2nd AA 8(1)	Not Guilty	Guilty	
3rd AA 40.	Guilty	Guilty	
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 16 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for 60 days.

(Sgd) K.Y. Dick, Capt — Judge-Advocate, if any. 29 May 45 — Date awarded. (Sgd) Jos Bonnie Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : I confirm the finding of the court on the first & third charges. I do not confirm the finding on the second charge. I confirm the sentence of the court.

~~I direct that the accused be not accounted to present on detention hereunder and further orders (1).~~

(1. AA 57A. Delete if not used.)

(Sgd) Geo Robinson Brig

Date 7 June 45 — Commanding Comd 2 Cdn Armd Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D131750 Tpr Duclos MAG	11 Jun 45	[illegible] Capt & Adj.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

X-141

Pte DUDLEY, GJ

X-141

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court. [signature] major

On Active Service, this 30th day of JANUARY, 19 43

Whereas it appears to me, the undersigned, an officer in Command of FIRST CANADIAN CORPS ARTILLERY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ 3/P

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~[I am unable to appoint:—~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~ 3/P

~~for the following reasons, namely:—]~~

H

President.

Rank.	Name.	Regiment.
Major	R. L. Main	1 Cdn Corps Fd Pk Coy, RCE

Members.

Rank.	Name.	Regiment.
Lieut	T. G. Lukes,	12 Cdn Army Fd Coy, RCE
Lieut	B. C. Carter	14 Cdn Army Fd Coy, RCE

*Signed 3/P Plow

(E. C. Plow) Brigadier,

Commanding C.C.R.A., -- 1 Cdn Corps

Convening Officer.

H. Main major
President

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

Proceedings Reviewed [signature] Reviewing Officer (JAG) CMHQ 14 Feb 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A-22489 Private GEORGE JUNIOR DUDLEY 3 C Pro C	First Charge A.A. Sec 9(2)	Not Guilty	Guilty Sentence of the court is 56 days detention H. Main Major President	Confirmed E. C. Plow Brig CCRA

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) E. C. Plow (E. C. Plow) Brigadier, C.C.R.A. *Commanding* 1 Cdn Corps *Convening Officer* (e)

(Signed) H. Main Major *President*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

"BZ"

H. S. Mann Major
President

CHARGE SHEET

The accused Regt. No. A22489 Pte. George Junior Dudley, No.3 Cdn. Provost Coy., Cdn. Provost Corps, a soldier of the Canadian Army Overseas, is charged with, when on Active Service:-

First Charge: DISOBEYING A LAWFUL COMMAND, GIVEN BY HIS SUPERIOR OFFICER.

In that he

Sec 9(2) A A

in the field, at Rear H.Q. 1 Cdn. Corps, at about 1350 hrs. 23 January 1943, did not take up his duties as Security Guard when ordered so to do, by Regt. No. G27295 Cpl. Forse, Bertram Robert, No.3 Provost Coy. Canadian Provost Corps, ~~and did not do so.~~

L. A. Whittington Lieut.
(L.A.Whittington)
A/O.C. No.3 Provost Coy.
Canadian Provost Corps.

Field
28 Jan. 43

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

E. C. Plow Brigadier
(E.C. Plow)
C.C.R.A.
1 Cdn. Corps H.Q.

Field

MEDICAL OFFICER'S CERTIFICATE.

I CERTIFY THAT REG. NO. A.22489 PTE. DUDLEY, GEORGE JR. IS PHYSICALLY AND MENTALLY FIT TO UNDERGO TRIAL BY FIELD GENERAL COURT MARTIAL.

FIELD:
1/FEB/43.

CAPT.
R.C.A.M.C.

X President

I CERTIFY THAT REG. NO. A.22489 PTE. DUDLEY, GEORGE JR. IS PHYSICALLY AND MENTALLY FIT TO UNDERGO TRIAL BY COURT MARTIAL.

FIELD:
2 FEB 43.

C. P. Dudleham CAPT.
R.C.A.M.C.

Y H. Marie Major
President.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Rear HQ 1 Cdn Corps on the First day of February 1943 by order of E. E. Plow, Brigadier, C.C.R.A. 1 Cdn Corps

Commanding the first Cdn Corps Artillery dated the 30th day of January 1943

President.

Major H. L. Main, 1st Cdn Corps Fld Rk Coy R.C.E.

Members.

Lieut T. O. Lukes 12 Cdn A Fd Coy R.C.E.

Lieut B. E. Carter 14 Cdn A Fd Coy R.C.E.

, ~~Judge Advocate~~

Trial of* A-22489 Pte Dudley, George Junior, 3rd Cdn Pro Coy.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~

~~waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt. L. A. Whittington #3 Cdn Pro. Coy. 1st Cdn Corps.

Counsel‡ or defending officer† Lieut A. S. Irwin 15th Bty, 7 Cdn A/T Regt R.C.A.

At 1415 o'clock the Trial commences.

The order convening the Court is read, and is marked A, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No, sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4276. W3 W16636/78. 25,000 sets. 1/43. R. & H., Ltd. G627/11. Form A 9/20.

B

The President, and members ~~and judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Lieut J. H Stewart R.C.A.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 40 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read ? *Question to the accused.*

Not Guilty *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read ?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the third~~ charge against you, which ~~you have heard read ?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth~~ charge against you, which ~~you have heard read ?~~ *Question.*

Answer.

~~The accused having pleaded~~ Guilty to ..... charge , the ~~provisions of~~ Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

*Instruction. (See R. P. 39 (A))

Proceedings on Plea of Not Guilty.

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No, Sir.

~~The prosecutor makes an opening address (hands in a written address which is read, marked ~~ , signed by the President, and attached to the proceedings.)~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. G-27295 Cpl Bertram Robert Forse, No 3 Cdn Base Corps

being duly sworn, is examined by the prosecutor.

Question by the Prosecutor. The charge was read to the witness.

Tell the court what you know about this charge beginning with the times and dates.

Ans. I am G-27295 Cpl Bertram Robert Forse.

On the 25th Jan 1943 I duties took over security duties at Base HQ, 1st Cdn Corps at approximately 1150 hours. The names of the men on the different shifts were called and the first shift took over duties. Pte Dudley was on the 2nd shift at approximately 1350 hrs. I approached Pte Dudley and warned him it was time to get dressed to take over his duties at 1400 hrs. At approximately 1355 hours he had made no move to get up so I again approached him and told him to get dressed as he was going to be late. I then left the billets and went around the post to visit the men who were on guard. Then I returned to the main gate at approximately 1405 hrs. I met Pte Montgomery who told me the Pte Dudley was not turning out to take over his duties and knowing that it would have to take his place had come to meet me in order that the men might be relieved as soon as possible. I ordered him to take over Pte Dudley's duties at the post and proceeded on to the billets. Pte Dudley was standing by the stove. I asked him if he realized what he was doing and his answer[2] was yes. I placed him under close arrest and ordered Cpl Shields to act as escort. On my way to report the incident to the Orderly Sgt by phone I met Sgt Boyce and reported to him the above charge. That is all, Sir.

Pros Ques. You gave the accused an order to go on duty?

Ans I addressed him with the following words:- "It is 10 min to 2. Get dressed and get out or you will be late."

Pros Ques. The accused knew beforehand what shift he was going on, did he not?

Ans. Yes, Sir.

Pros Ques. Can you tell the court exactly what the accused said?

Ans. At approximately 1300 hrs Pte Dudley asked me if he could be replaced on guard as he did not think that he was going out. I asked him why he replied that he did not seem to be able to get along in the Coy. I told him that he knew that we had no spare men and that he would do his guard. He then asked me if a man could be called from the "shoal toe" section. I told him I would call no one and not to be so foolish and to do his own guard.

Defense Ques. Was the accused asleep when you went to arouse him at 1350 hrs?

Ans. No, Sir.

Def Ques. Did you use any strong argument to get Pte Dudley out or were your words only "come on get out"?

Ans I tried to explain to him what it would mean if he refused to take over his duties and he replied that he knew.

Def Ques. How long has Pte Dudley been in the Coy prior to this incident

Ans I'm not sure, Sir, but for some time.

Def Ques. It is the custom with your guard that if a man is late he makes up the extra time on his next shift?

Ans No, Sir. The men are warned in time to get dressed and take over their duties

Def Ques. Did you warn Pte Montgomery to take over Pte Dudley's shift?

Ans. No, I did not, sir. I had mentioned previously that Pte Montgomery was the only available man. 1 Section was to carry out a security detail regardless of how short they were.

Def Ques When you returned from the Guard Room at approximately 1405 hrs you found Pte Dudley out of bed?

Ans Yes, Sir Pte Dudley was standing by the stove with a stick in his hand poking in some sawdust. His tunic was not buttoned up.

Def Ques Did he say anything to you about going out and taking on his duty then

Ans No, sir. I told him to go out and take over from Pte Montgomery but I received no answer.

No re-examination

The evidence was read back to the witness and was accepted as correct. R.P. 83 (B) Complied with

Second Witness for Prosecution

H-6399 Sgt William John Inge #3 Cdn Prov. ~~Corp~~ Coy. 1 Cdn Corps. being duly sworn:-

Pros Ques. Will you tell the Court exactly what you know about this charge.

Ans. I am ~~Sgt~~ H-6399 Sgt William John Inge.

On Dec 23 1943 I was in charge of the Security Guard at Rear HQ. At about 1415 hrs I arrived at the gate and saw Cpl Fonse. He informed me that he had put Pte Dudley under close arrest for refusing to go on guard. He also stated that he had put Pte Montgomery on guard in Dudley's place. I instructed Cpl Fonse to take Pte Dudley to Coy HQ and this he did. When Pte Dudley was getting into the truck I asked him what was the matter with him and he replied nothing. I asked him why he refused to go on guard and he replied I did not say that. That is all, sir.

Pros Ques. You stated just now, you said 23 Dec '43. You mean 23 Jan '43?

Ans Yes, Sir.

Pros Ques Pte Dudley was taken to Coy HQ under escort?

Ans Yes, Sir.

Defense Ques. Was Pte Dudley dressed for duty when put into the truck

Ans No, Sir.

no re-examination

The evidence was read back to the witness and was accepted as correct R.P. 83(B) Complied with

Third Witness for Prosecution

K-52852 Pte George Edward Montgomery #3 Cdn Prov. Corps. 1st Cdn Corp. being duly sworn:-

Pros. Ques. Will you tell the Court what you know of the evidence concerning Pte Dudley.

Ans. I am K-52852 Pte George Edward Montgomery.

On 23rd Jan 1943 at about 1350 hrs I was in the hut at Rear HQ 1 Cdn Corp. I heard Cpl Fonse tell Pte Dudley that it was time to go out and take his shift. Pte. Dudley did not move. After a while Cpl. Fonse again ordered Pte. Dudley to go out and take his shift. Pte Dudley still made no answer and did not move. Cpl Fonse

left the hut immediately afterwards. After a short space of time I asked Dudley myself if he was going to take his post. He said "No". I therefore put on my equipment and went out and reported to Cpl Fonse. He ordered me to take Pte Dudleys shift. That is all, sir.

Pros Ques. About what time did you leave billets to take over the posts?

Ans. Roughly about 1400 hrs, Sir.

Pros Ques. Had Pte Dudley made any move to go on duty?

Ans. At the time I left the hut Pt Dudley was off the bed and rolling up his bedroll.

Pros Ques. At what time should Pte Dudley have been at his post?

Ans. I believe his shift was at 1400 hrs

Pros Ques. That is to say he should have been at his post at that time?

Ans Yes, Sir.

Defense Ques. Was Pte Dudley asleep or half asleep when he was ordered to go to his post.

Ans. No, Sir.

Def Ques. On taking his post did you expect to be relieved by Pte Dudley?

Ans I expected to do the whole shift

Def Ques. Did you receive any order to prepare for duty?

Ans No, Sir.

Def Ques. Did Pte Dudley ask you to take his duty for him?

Ans He asked me if I would like to take his shift. I saw no reason why I should.

Def Ques. Do you on guard Duty occasionally leave your post a few minutes late and make up for the extra time on your next shift?

Ans. It is not a regular habit, sir, It is a matter of the individual.

Court Ques. What was your job on the afternoon of Jan 23 1943?

Ans As truck driver for E Section, Sir.

No re-examination

The evidence was read back to the witness and was accepted as correct. R.P. 83(E) Completed with

The prosecution is closed.

The Court adjourned for five minutes at the request of the defence
R.P. 40(A) complied with.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes, Sir

Question. Do you intend to call any other witness in your defence?

Answer. Yes, Sir

Question. Is he a witness as to character only? *Answer.* No, Sir.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. ~~Have you anything to say in your defence?~~

Answer. ~~The accused in his defence says~~† ~~[hands in a written address which is read, marked signed by the President and attached to the proceedings.]~~

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

First Witness for Defence. Pte George Junior Dudley # 3 Coln Prov. Coy 1 Coln Corp. being duly sworn:

I am 17-22489 Pte George Junior Dudley

Sir, I have been with is Coy for approximately 18 months. It has always been a mutual understanding with the boys on guard that if a man is late taking over his shift the time is made up on the shift to come. That is all, sir.

Def. Ques. Were you asleep when you were ordered to turn out for guard

Ans. I was not asleep, sir.

Def Ques. Cpl Forse says that when he told you to report for duty that you gave him a negative answer, and when asked why you said that you had not been getting along very well with the Coy. Is that true.

Ans. No, sir.

Def Ques. Will you, in your own words, tell why you did not get up when told to by Cpl Forse?

Ans. At that time, sir, I had been given the understanding that when I was posted to be at a certain place at a laid down time I was not to be there one minute before or one minute after but exactly at the time laid down.

Def Ques. Did you intent to take your post

Ans. I had every intention of taking my post at the appointed time 1400 hrs when Pte Montgomery told me he would go out and take over my post. I therefore saw no reason as to why I should hurry.

Def Ques. You state that Pte Montgomery told you he would take over your post when?

Ans. At 1356 hrs, sir.

Def Ques. Did Cpl Forse order nobody to take over your post

Ans. In my presence, no, sir.

Pros Ques. Who gave you the understanding about arriving on duty not more than 1 min before or 1 min after the time given.

Ans. Lieut Whilington of #3 Coln Prov. Coy

Pros Ques. When?

Ans. Jan 7th 1943 at 1400 hrs.

Pros Ques. What was that in regard to?

Ans. I was brought up in orders Jan 7th 1943 as I had refused to obey an order. Lt. Whitington the told me that when time was laid down for you to be at a certain place you must be there at that time not 1 min before or 1 min after.

Pros Ques. Are you sure, I state "1 min before"?

Ans I am positive.

Pros Ques You have enough time to get dressed between 1350 hrs and 1400 hrs?

Ans I did have time.

Pros Ques Would it not be impossible to start getting dressed, leave your hut, and be on your post by 1400 hrs if you only had 1 min to do it.

Ans It would be, sir.

Pros Ques Did you intend to go on duty?

Ans I did intend to go on duty and be there at 1400 hrs. had not Pte Montgomery told me he would take over for me.

Court Ques Did you receive a direct order or instruction from Cpl Forse at 1350 hrs to prepare yourself for duty

no re-examination

Ans. Yes, sir. Cpl Forse said 'come on. It's time to get up and get ready.

Court Ques Did you know that you had to go on duty at 1400 hrs

Ans Not prior to 1350 hrs, Sir.

Court Ques Did you at 1300 hrs tell Cpl Forse that you were not going on duty?

Ans No, Sir.

Court Ques. Did you ask Cpl Forse if another man would be called from the "stand in" section.

Ans I did, Sir

Court Ques. Why did you ask for this other man.

Ans I wanted to find out as to whether a Pte in the Pros Corp. was to do Security Guard

Court Ques Do Security Guard when?

Ans At any time, Sir.

Court Ques Did Cpl Forse speak to you at 1355 hrs?

Ans He did, sir.

Court Ques What did he say?

Ans. Are you going on Guard? Do you realize what you are doing. I answered "Yes" to both questions.

Court Ques Did Pte Montgomery speak to you after 1355 hrs

Ans Yes, Sir. He asked me if I was going on guard.

D

The prosecution is closed.

The Court adjourned for five minutes at the request of the defence
R.P. 40(A) complied with

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes, Sir

Question. Do you intend to call any other witness in your defence?

Answer. Yes, Sir

Question. Is he a witness as to character only? *Answer.* No, Sir.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. ~~Have you anything to say in your defence~~?

Answer. ~~The accused in his defence says~~†

[~~hands in a written address which is read, marked~~

~~signed by the President and attached to the proceedings~~.]

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

Court Ques. Was there anybody else present?

Ans There were 3 other men present.

Court Ques. What did you answer?

Ans No.

Court Ques. Did you ask Pte Montgomery to take your shift for you?

Ans No, sir, I did not.

Court Ques. What watch were you at 1400 hrs

Ans I was in the billets, sir.

The evidence was read back to the witness and accepted as correct. R.P. 83(b) complied with

The Court adjourned until 1000 hrs 2nd Feb 1943

The Court having been reopened the accused is again brought before it and the charge & which he pleaded not guilty read & him again

2nd Witness for Defence — Lieut L.A. Whittington No 3 Provost Coy. Chief Provost Coy. having been duly sworn states

In regard to the case in question on the 7 Jan 43 the accused was paraded before me on a charge of refusing to obey an order and at that time I wished to point out to him that when he was detailed for a duty he was to be there at that time and not decide afterwards.

The evidence was read back to the witness and accepted as correct R.P. 83(b) complied with

3rd Witness for Defence — L/Cpl ~~Wilkes~~ Wilkes J. C4457 having been duly sworn states

Sir ~~xx~~ I am C4457 L/Cpl Wilkes, on the 23rd 7 Jan 43 I was detailed for escort for Pte Dudley at about 1430 hrs he was dressed in skeleton web. There is an understanding that when you are late for security to guard you make up the time & the person who you relieved late. The custom we carry out is that when it comes time for us to

Ans. I was brought up in orders Jan 7th 1943 as I had refused to obey an order. At Whitington the told me that when time was laid down for you to be at a certain place you must be there at that time not 1 min before or 1 min after.

Pros Ques. Are you sure, I state "1 min before"?

Ans I am positive.

Pros Ques You have enough time to get dressed between 1350 hrs and 1400 hrs!

Ans I did have time.

Pros Ques Would it not be impossible to start getting dressed, leave your hut, and be on your post by 1400 hrs if you only had 1 min to do it.

Ans It would be, sir.

Pros Ques Did you intend to go on duty?

Ans I did intend to go on duty and be there at 1400 hrs had not Pte Montgomery told me he would take over for me.

Court Ques Did you receive a direct order or instruction from Cpl Forse at 1350 hrs to prepare yourself for duty

Ans. Yes, sir. Cpl Forse said 'come on. It's time to get up and get ready.

Court Ques Did you know that you had to go on duty at 1400 hrs

Ans Not prior to 1350 hrs, sir.

Court Ques Did you at 1300 hrs tell Cpl Forse that you were not going on duty?

Ans No, sir

Court Ques Did you ask Cpl Forse if another man could be called from the "third lot" section.

Ans I did, sir

Court Ques. Why did you ask for this other man.

Ans I wanted to find out as to whether a Pte in the Prov Corp was to do Security Guard

Court Ques Do Security Guard when?

Ans At any time, sir.

Court Ques Did Cpl Forse speak to you at 1355 hrs?

Ans He did, sir.

Court Ques What did he say?

Ans. Are you going on Guard? Do you realize what you are doing. I answered "yes" to both questions.

Court Ques Did Pte Montgomery speak to you after 1355 hrs

Ans Yes, sir. He asked me if I was going on guard.

3rd Witness for def cont'd

go on duty we go out without being ordered to

no cross examination

The evidence was read back to the witness and accepted as correct. R.P. 83(B) complied with

4th witness for def

L/Cpl Steidl A D182585 having been duly sworn states

I am L/Cpl Steidl A D182585 on the day of Jan 23 at approx 1300 hrs Pte Dudley was going out the door of the hut with his equipment on. The accused was dressed properly for guard.

In mounting the guard it is customary for the corporal to tell us it is time to change shifts and we change on our own.

Some of the provost men if they are late on a guard will make up the time on the next guard

no cross examination

Court Ques. At 1300 hrs on Jan 23 was Pte Dudley going to take over his tour of duty when you saw him leaving the hut properly dressed.

Ans. Sir I don't know

Court Ques Did you know that Pte Dudley's tour of duty started at 1400 hrs

Ans I knew he was on second shift at 1400 hrs

Court Ques ~~Th~~ Where were you at 1350 hrs

Ans I was laying on my bunk with another L/Cpl.

Court Ques Will you tell the court ~~wt~~ whether you saw Cpl. Forse or heard him give any

instructions in the hut at 1350 hrs & the accused.

Ans Sir I saw Cpl Forse walk down to hut and say to the accused it is time to go on guard what the accused said & Cpl Forse I dont know. The accused was laying on the bunk He had his blankets over him Sir

Court Cpl Forse came over to me at about 1405 hrs and told me to put on my equipment and guard the prisoner Pte Dudley was standing beside his bunk with his battle dress and tunic on I was with the accused for about 20 min in the hut. Pte Dudley rolled up his bed roll and I remained with him till he left under escort.

The evidence was read back to the witness and accepted as correct. RP 83(B) complied with

Court has to the accused at 1405 hrs in reply to what did you say & Cpl Forse at 1405 hrs in reply to his ~~question~~ instructions to go out and take over from Pte Montgomery.

Ans I was not told the same.

The evidence was read back to the witness and accepted as correct. RP 83(B) Complied with

Court for the defence summed up the evidence for the defence which is attached and marked DDI summary for the prosecution

In the first place sir I dont agree with the defense when he says that young soldiers take a little time to come under meleing

discipline by the time the man has from 1 year onwards in the army he should know enough about military discipline & do as he is told ~~that~~ The defenses point does not prove that the accused refused ~~to obey the order~~ did not disobey an order. Secondly in regard to his superior officer muddling him up the accused was ~~paraded before the me the afte~~ told by ~~me~~ a superior officer that when he was given an order he was to obey it and argue about it after the order had been carried out. Regardless of whether it is the custom amongst the members of the security guard how they relieve one another it does not prove ~~he did~~ that the accused did not disobey an order. ~~No agreem~~ The evidence ~~so~~ does not show that any agreement was arrived at between the accused and Pte Montgomery that Pte Montgomery should take over his shift therefore the accused should not have assumed that Pte Montgomery would do his shift for him & his incident also does not prove that the accused did not disobey ~~disobeyed~~ an order. The point of ~~the~~ how the accused was dressed after the time of arrest does not prove that he did not disobey the order. The accused stated in his evidence that he did not wish to go on guard as he was to find out if a ~~pro~~ pte in the Cdn Provost Corps should or could do guards. If this is true why did he wait

until the last minute before going
to find out. When he was in the provost corp for
approximately one year and six months.
The summary was read back & to prosecutor
and accepted as correct. R.P. 83(13) complied
with

Summing Up for the Defence "DDI"

H. [illegible] maj.

No. A. 22489 Pte. Dudley, G. J.

The defence has taken a keen interest in the accused's case and finds in it a parallel to the attitude of a great number of our younger soldiers in this army to-day. Being individualists born and bred, irregardless of home background, they have experienced great difficulty in adapting themselves readily and agreeably to army life and discipline. Too often one finds a man whose basic training has been sadly neglected in certain ~~[illegible]~~ less stringent aspects of ~~training~~ discipline. They have been taught that they must stand to attention, salute and say 'Sir' to an officer. Let any individual respects and accepts, especially has he reached mature years. But the younger soldier is non-inclined to lip service and unless checked early in army life, well

H.E. Main major

develops intolerance of junior officers and N.C.O.s and become inclined to let his own 'common sense' rule his actions. Such attitude and action is admittedly wrong, but the defence maintains that censure cannot fully be laid on the man. A correction or rebuff for a person with such an attitude more often than not ~~[illegible]~~ cause sullenness and develops in the man's mind a feeling of persecution. Unless understandly handled by a ~~[illegible]~~ fellow man, this ~~[illegible]~~ self pity or persecution complex will cause no end of trouble for the man and his colleagues.

Such is the defence's attitude towards this case.

Previous to this present charge Pte. Dudley had been arraigned on a ~~[illegible]~~ charge and through using his own

'common sense' was Brigadier from the Royal Regt
N.C.O. rank. With this promotion came
the authority from a superior officer
that when he had been detailed no
orders or by order to report at a certain
place at a certain time. He was to be
there by at that time and not one
minute before or one minute after.
He then left Pte. Fenner ordered
him to prepare for his tour of duty was
found Pte Dudley rather uncertain in his
own mind as to just what he ought to
do; due to his recruit, though strong
feeling of having been wronged before
through no fault of his own - the
prosecution enquiries - together with the
absence of his superior officer Pte Dudley
[illegible] - he finally left - at the end of the camp
[illegible] the new duty arrived. Now proceed individually, I
[illegible] to make up their parts

At no time was the person felt
certain that Pte. Dudley had felt
intention of neglecting to do his tour of
duty - By his own admission, given

"DD1"

H L Main Major

4.

on oath, he states that he had every intention of doing his tour of duty. By his own evidence firmly & unhesitatingly given under oath, he showed to the Court how unsettled he was in his thoughts, together with the fact that, having made an effort to get himself replaced, he was resolved to do his tour of duty. He was up and his bed rolled back, and turned on when Gd Force returned at 1405 hrs on the 23 of Jan. Surely such actions are indicative of an intention to do his turn at the door. That he was late is no great failure on his part. Apparently it was the custom, by mutual agreement of the sentries on duty, that should one sentry be late in reporting to his post the number of minutes late would be made up in his next tour of duty. Such action is a time honoured custom with guards and sentries on posts.

That no one was warned or ordered to take Pte. Dudley's place on guard would point to Cpl. Force's belief that Pte. Dudley would take his tour of duty — or show a lack of preparedness on the part of Cpl. Force; which latter fact ~~[illegible]~~ must appear to the court to be improbable in view of the definite and determined action taken by Cpl. Force when Pte. Dudley was late.

Pte. Montgomery, becoming ~~[illegible]~~ concerned lest Pte. Dudley fail to reach his post ~~in~~ time, prepared for guard and went out thus giving Pte. Dudley the impression that Pte. M. was taking over for him. ~~It is possible, if not indeed quite probable, that Montgomery's preparation for the further [illegible] against [illegible] Dudley for the purpose of [illegible] particular [illegible] of the [illegible] to do this since Pte. D. had asked Pte. M. to do this previously, it is quite logical and right to assume such the case. Seeing this, and being aware that he could make up lost time on his next shift, Pte. D. made no hurried effort to turn out to his post.~~

 "DD1" H. Duncan Major

In summing up the defence would like to lay before the court the fact that while Pte. D. allegedly refused verbally to prepare for his tour of duty, he did made efforts to prepare for it and by his own sworn statement, actions, had every intention of doing it. His bed was made and turned on before he was placed under arrest. Bearing in mind the conflicting thoughts in Pte Dudley's mind, the defence cannot say with absolute honesty that Pte Dudley did, refuse to obey the order to get up and prepare for duty. May it please the court to approach their findings with these facts in mind.

S. B. Irwin, Lieut.

The above statement was read back to the defence council RP 83 B complied with

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused is guilty of the charge recorded on appendix B2 of these proceedings

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction before Sentence.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Lieut L. A. Whittington 3 Cdn Pro Cog is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* yes sir. I produce MFB 222 and certified copy of the accused MFM 6

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E2-3 signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* yes sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. yes sir

Cross-examined by the accused.

I do not wish to cross examine the witness

Question to the accused.

Do you wish to address the Court? *Answer.* yes sir See appx E1

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused to 56 days detention

Sentence.

H. Smarty Major

2 Feb 43

E1.

address by the accused to the Court

From the date of my marriage Oct 29 1941 I wish to say that I have always tried to do my work in the best possible manner. Prior to my reduction from L/Cpl to the permanent rank of Pte I have done very good work at the time of my reduction Jan 7 1943 in my own mind I felt that I did the right thing I then accepted the O.C's punishment and was reduced to the permanent rank of Pte.

The address was read back to the accused and accepted as correct. R.P. 63(B) complied with

[signature]

Orderly Room
No.3 Cdn. Provost Coy.
Canadian Provost Corps
1615 hrs. 26 January 1943

Summary of evidence in the case of A22489 Pte. George Junior Dudley, of No.3 Cdn. Provost Coy. Canadian Provost Corps, stationed at EastGrinstead Sussex.

The evidence will be given on Oath.

1 st. witness: Regt. No. G27295 Cpl. Bertram Robert Forse, No.3 Cdn. Provost Coy. Canadian Provost Corps, stationed at East Grinstead, Sussex, states on Oath:-

On 23 January 1943 'E' section took over Security Duties at Rear H.Q. 1 Cdn. Corps at approximately 1150 hrs. The names of the men on different shifts were called out and the first shift went on duty. At approximately 1350 hrs. 23 January 1943, Pte. Dudley was warned that it was time to get dressed to take over his duties on the second shift, which goes on duty at 1400 hrs. At approximately 1355 hrs. he had made no move to get ready and was asked again. I then left our billets to check the men on the posts. When I was returning to the billets at approximately 1405 hrs. I met Pte. Montgomery at the main gate dressed for duty. He informed me that Pte. Dudley had made no move to come out, and knowing he would have to take over his post, had come out to meet me so that the other man would be releived no later than necessary. I ordered him to take over Pte. Dudley's duties at the door in the rear courtyard of Rear H.Q. 1 Cdn. Corps. I then proceeded to our billets and endeavoured to persuade Pte. Dudley to take over his duties from Pte. Montgomery. At first I received no reply, and when I asked him if he realized what he was doing, his answer was "Yes." I then informed him that he was under close arrest and ordered L/Cpl. Steidl to act as escort. On my way to the telephone to report the incident to the Orderly Sgt. I met Sgt. Inge and reported the matter to him. He then took charge.

Question by the accused: Cpl. Forse at 1150 hrs. as you stated in your evidence, where was I at the time you warned the men for their different shifts.

Answer : All the men of the section are not always present when the names are called out, but they usually enquire from the other men or the Corporal.

Question 2 by accused: Cpl. Forse at 1355 hrs. when you left the billets and asked me to get up and get ready for duty, was I not in bed without my tunic, and cap on.

Answer to question 2: You were lying in bed without your cap but I did not notice whether you had your tunic on or not.

Question 3 by accused: In your evidence Cpl. Forse you stated that I made no further move to get ready for guard. At 1405 hrs. when you returned, was I not out of bed with cap and tunic on?

Answer to question 3: I stated that at 1355 hrs. you had made no move after being called at 1350 hrs. and that I called you the second time at 1355 hrs. and then left the billets. I did not state in my evidence where you were or what you were doing when I returned to the billets at approximately 1405 hrs.

Question 4 by accused: Was I ordered to go out on guard, or did you say are you going on guard?

Answer to question 4: At approximately 1300 hrs. when we were in the billets, you asked me if you could be replaced on the guard, that you didn't think you were going out. I informed you that we had no one to take over your duties and that you would take over your duties anyway and not be so foolish. You asked me then, if a man could not be called from the 'Stand To' section. I told you that you were going to take over your own post. When you were called at 1350 hrs. you were told to get dressed and get out and take over your duties.

G.B. Forse Cpl.
G27295 Forse, G.B.

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2 nd. witness: Regt. No. H6399 Sgt. William John Inge, No.3 Cdn. Provost Coy., Canadian Provost Corps, stationed at East Grinstead, Sussex, states on Oath:-

On 23 January 1943 I was in charge of Paddockhurst Security Guard. About 1415 hrs. Cpl. Forse reported to me that he had put Pte. Dudley under close arrest and ordered Pte. Montgomery to take his post. I asked Cpl. Forse the reason for putting Pte. Dudley under close arrest and he told me Pte.Dudley wouldn't go on his guard. I then ordered Cpl. Forse to bring Pte. Dudley back to Company H.Q. under escort. As Pte. Dudley was getting into the truck I asked him what was the matter, and he replied, "Nothing." That is all sir.

Question by accused: After asking me what was the matter, you also asked me why I refused to go on guard. Did I not say, "I didn't say that."

Answer: Yes, that is correct.

W.J. Inge
H6399 Sgt. Inge, W.J.

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3 rd. witness: Regt. No. K52852 Pte. George Edward Montgomery, No.3 Cdn. Provost Coy., Canadian Provost Corps, stationed at East Grinstead, Sussex, states on oath:-

I heard Cpl. Forse order Pte. Dudley to go out and take over his shift. Pte. Dudley made no move and said nothing. A few minutes later, Cpl. Forse again ordered him to take over his shift and warned him of being late. Pte. Dudley made no move and said nothing. Cpl. Forse then left billets. After a few minutes had passed I asked Pte. Dudley if he were going on post. He answered in the negative and I therefore put on my equipment and went out to meet Cpl. Forse. I explained the situation to him and he ordered me to take over Pte. Dudley's post. That is everything sir.

Question 1 by accused: Pte. Montgomery, didn't Cpl. Forse ask me "Come on it's time to get ready and go out."

Answer to question 1: I couldn't interpret that to be a question. I would say it was an order.

Question 2 by accused: Pte. Montgomery, when Cpl. Forse left the billets was I not in bed.

Answer to question 2: Pte. Dudley you were lying on the bed. You had your pants on, shirt and cardigan, and either one or two blankets thrown over you.

Question 3 by accused: Pte. Montgomery, as you were getting ready to go out, did I not get out of bed, straighten the blankets and put my tunic on.

Answer to question 3: When I left the billets with my equipment on, you did not have your tunic on and you were engaged in rolling up your bed.

E.E. Montgomery Pte.
K52852 G.E. Montgomery.

The accused did cross examine the witnesses, but did not give evidence nor make a statement:-

The requirements of R.P. 4, c, d, e, f, and g have been complied with taken down in the presence and hearing of the accused, who had every opportunity to examine each witness.

At East Grinstead, Sussex, this 27 day of January 1943.

Sgd. L.A. Whittington Lieut.
(L.A.Whittington)
A/O.C. No.3 Cdn. Provost Coy.

Field
27 Jan.43

'STATEMENT by the accused as to whether or not he desires to have an Officer assigned by the Convening Officer to represent at his trial.

I desire to have Major A. Embury, S.L.I. (M.C.) represent me at my trial.

G. J. Dudley Pte.

Field
28 Jan. 43.

A-22489 (G. J. Dudley)
No. 3 Provost Company.

PROSECUTION AND DEFENCE

List of witnesses for the Prosecution and defence, with their present stations or addresses:-

PROSECUTION

Cpl. Bertram Robert Forse	No.3 Cdn. Provost Coy. East Grinstead Sussex.
Sgt. William John Inge	No.3 Cdn. Provost Coy. East Grinstead Sussex.
Pte. George Edward Montgomery	No.3 Cdn. Provost Coy. East Grinstead Sussex.

DEFENCE

The accused states that he does not wish to call any witnesses for the defence.

L.A. Whittington Lieut.
(L.A.Whittington)
A/O.C. No.3 Cdn. Provost Coy.

Field
27 Jan.43

No. A-22489 Name DUDLEY, GEORGE JUNIOR Sqn., Battery, or Company Essex Scottish Regt. C.A.S.F. Corps Date of enlistment 2-7-40 G.C. Badges Service or Proficiency Pay E3 H.P.M. 16 (R.F.B. 122) Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. One Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Attached No 1 C I (R) T.C. C.A.S.F., Camp Borden from Essex Scottish Regt.						Depot effective	18 July 40	D.O. 180, 19 July 40	
Camp Borden	12 Aug 40	Pte		Absence without leave from 0200 hrs 12 Aug 40 to 0600 hrs 13 Aug 40 AA 15(1)	C.S.M. Hussey	Admonished	13 Aug 40	Maj. McPherson	[illegible] 2 days pay
T.M.H.	6 Dec 40	Pte		Absence without leave from 2100 hrs 6 Dec 40 to 1300 hrs 8 Dec 40 AA 15(1)	Sgt Stubbert	Admonished	8 Dec 40	Lieut. Col. K.L. Gray	Forfeits 2 days pay F.R.2 [illegible] Lieut
Aldershot	20-4-41	Pte		W.O.R.S. Refused to obey an order given by a N.C.O.	L/C Parent, Pte Grant	4 days CB & Extra Drill	22-4-41	C.W. Graham	
West Lavington	19-7-41	L/C		W.O.R.S. did operate H.D.M.C. improper manner contrary Sec 40 A.R.	Sgt Hatch H.L.	Reduced to rank	19-7-41	Major Sorgie	
" "	19-7-41	L/C		W.O.R.S. did refuse to obey an order given by Senior N.C.O. Sec 40 A.R.	Sgt Hatch H.L. Sgt [illegible]	" " "	19-7-41	" "	

(P.T.O.)

Field	Date of Offence	Rank	Class of Punishment	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Ashtead	8 Oct 41	Pte		W.O.H.S. was absent from his coy bellets between the hrs of 2359 hrs 8 Oct 41 and 1455 hrs (2 Oct 41 (Absent 3 days 14 hrs 56 mins) without authority from his O.C. having been duly warned for duty his absence necessitating such duty being performed by another member of the company. Contrary to Sec 15 para (2) AA	R.S. McIntosh F.F. Sgt Knight W.H. Cpl Peterson W.B.	8 days Ld Punishment	14 Oct 41	J.R. Stewart Capt	Forfeits 4 days pay F.R. + I 429(1)
Gnr Grinstead	7 Jan 43	L/C		W.O.H.S. Disobeying a lawful command given by his superior Officer in that he had lay bellets at Beverlo Jn 7 Jan 43 when personally ordered by Cpl Gorse to get up out of bed and report for Kitchen Patrols said. No I want to go on fatigues and remained in bed. Sec. 9 (2) AA	Cpl Wilkson Cpl Gorse	Reverted to Permanent rank of Pte. 7-1-43.	7-1-43	Lieut Whittington	

CERTIFIED TRUE COPY L.A. Whittington LIEUT.
(L.A. WHITTINGTON)
A.10.C.

E2

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number A-22489 Rank Pte. Name George Junior DUDLEY Regiment (or unit)

No.3 Provost Coy., Cdn. Provost Corps.

1. The following is a fair and true summary of the entries in the ~~Service and General Regiment and Squadron, Battery Conduct sheets~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For Refusing to obey an Order (Sec 40 A.A.)	Nil	times	2	times
For Disobeying Lawful Command (Sec 9(2) A.A.)	1	times	1	times
Absence without Leave (Sec 15(1) A.A.)	Nil	times	2	times
Absence from Billets (Sec 15(2) A.A.)	Nil	times	1	times
Did operate W.D. Motorcycle in improper manner (Sec 40A.A.)	Nil	or,	1	

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~Previous convictions of the accused by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 5 days in military custody, making a total of 5 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 23 years 4 months.

6. The date of his attestation specified in his record of service is 1 July 1940.

7. The service which the accused is allowed to reckon towards discharge is 2 years 6 months 25 days

8. The accused is entitled to reckon 2yrs.6mos 25 days service for the purpose of determining his pension, etc.

9. The accused is entitled to no military decoration, or military air force reward (or is in possession of or entitled to). State any military air force decoration or reward. N/A

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of N/A dated ....., and in his regiment (or corps), the rank of ..... dated .....

Permanent Force unit

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A ..... Date of promotion.

In the rank of L/Cpl. ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Name ..... of ..... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		N/A		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27 day of January 1943. [signature] Lt Whittington Lieut A/C 3 Ldg Provost Coy

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

...nce and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the First and Second days of February 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~ H.M.
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this Second day of February 1943.

H. Main Major

President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

~~*President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders~~) Z.I.P.

Signed this 3rd day of Feb 1943.

Z.I. Plow

Confirming Officer. D.J. Clark

Promulgated and extracts taken in the case of

(a) (Dated) 5 February 1943 (Signed) [illegible]

Promulgated and extracts taken in the case of A22489 Pte George Junior DUDLEY

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(B4) Wt. 18092/1316 70m 2/41 W. & Co., Ltd. Gp. 743-2

5E-75

Pte. Dudley, G.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-22489 Pte (L/Cpl) Dudley George Junior

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	15 (1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 86, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

At present under sentence ~~he~~ [beginning ~~on date~~] ~~(1)~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which N/K days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

28 days detention

(Sgd) ..... 19 Apr 45 (Sgd) W.M.W. Shaw Lt Col
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(2), RP 49(1), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 122(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) ..... Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A-22489 Pte. Dudley, G.J.	24 April 45	(A.E. Tyrrell) Lieut. Officer Commanding (Area) Provost Company

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

No illegitimation or irregularities such would warrant withholding confirmation. 21 Apr 45

RECORDED AT CMHQ IN AB 160 5 SEP 45

FIELD GENERAL COURT-MARTIAL

CF AB 160 (in lieu of AFAB) RCN FORM B/1608 (WD)

4/38B

Convened by Order of A/Col R.F. Williams Comd CMHQ dated 16 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-22489	Pte.	L/Cpl	George Junior	Dudley	NPG Area Provost Coy.

PROCEEDINGS REVIEWED
27 Apr 45
W.M.W. Shaw Lt Col
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Assembled at CMHQ on (date(s)) 19 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereinafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 103-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: Do you object to ~~—~~ as interpreter? Ans ~~—~~

The Interpreter is sworn.(1) Do you object to ~~—~~ as shorthand writer? Ans ~~—~~
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans ~~No objection~~(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(3). If objection, see procedure AA 31, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G.R. Bickerton	4 Fd Svy Coy RCE
Member	Capt	T.J. Cowpe	Can Int Corps
Member	Lieut	J. Peel	5 Fd Svy Coy RCE
Judge-Advocate	Capt	J.A. St Germain	CMHQ
Prosecutor	Capt	J.A. St Germain	CMHQ
Defending Offr	Lieut	T. Ingram	9 Fd Svy Coy RCE

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused ~~Lieut T. Ingram~~ before arraignment makes(s) (no) ~~A~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or to one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*B*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* L3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (~~them~~) plea(s) of Guilty to Not Guilty on ~~the~~ charge(s).(2) The accused is (are) so informed, ~~and he (they) changed his (their) plea(s) on charge(s)~~. ~~Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 38(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ~~B~~, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charge(s) on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under* B5 *such parts only of the Summary of Evidence are read as relate to the charges dealt with under* C2. *If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. ~~President to accused~~: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 93(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans .....
Do you intend to call witnesses on your behalf?
Ans .....
Are they witnesses as to character only? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ~~C~~ and Ex ~~D~~ respectively.(3)
(1. *MFB* 255 *or AFB* 295. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(2), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), (*d*)(*i*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, A.22489 Pte. (L/Cpl.) George Junior Dudley, of the No.6 (Area) Provost Company, Canadian Provost Corps, a soldier of the Canadian Army Overseas, is charged with --

CHARGE
Sec. 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENT WITHOUT LEAVE

in that he

At London, absented himself without leave, from 2030 hours, 4 April 1945 until his surrender at 2000 hours, 9 April 1945. A total absence of 4 days, 23 hours and 30 minutes.

Lieut.
(A. E. Tyrrell)
A/Officer Commanding,
No.6 (Area) Provost Company,
Canadian Provost Corps.

London
10 Apr 45

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

In the field,
16 Apr 45.

(RJ Williams) Lt-Col
Camp Commandant
CANADIAN MILITARY HEADQUARTERS

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A22489	Pte	L/Cpl	George Junior	Dudley	No. 6 (Area) Provost Coy, Cdn Provost Corps

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on ~~the~~ this date endorsed by me, (~~order of my superior~~) "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable that the trial for offences of a superior quality of~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I may vacate or appoint any other officer for the Court, if a Pr Offr as President, for the reason that~~ ~~absent hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate, to try the offence(s) hereunder~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

MAJOR (Rank.)	M.M. McFARLANE, (Must be named. RP 106.)	G.L.	"MS" Branch, CMHQ (Unit.)

MEMBERS.

CAPTAIN (Rank.)	P.L. BECKETT,	G.L.	"Records" CMHQ
LIEUT (Rank.)	J. NICOL, (Named or detailed. RP 106.)	C.A.C.	"G" Branch, CMHQ (Unit.)

WAITING MEMBER.

CAPTAIN (Rank.)	H.C. CAYLEY, (Named or detailed, if any. RP 106.)	C.I.C.	"A" Branch, CMHQ (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Dat 16 Apr 45

R. Holland Lt Col (Rank.)

(Signed pursuant to RP 105 (e 2))

(R.) Williams, Lt-Col

Camp Commandant

Convening CANADIAN MILITARY HEADQUARTERS Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFAO (In lieu of AFA 3) 40/F & S/1601 (2143)

Approved K.G. Lucas Lt.Col. CMHQ

16 Apr 45 DJAG

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Con) 2693.)*

Je jure, par Dieu Tout-Puisant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At *option* of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than as to mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Con 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and them pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Con 507.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Con 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already so exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for money will be inserted in Part I of Schedule on p 4 after mention of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

CANADIAN PROVOST CORPS
No. 6 (Area) Provost Company

"A"

6 Prov/20/PGCM/45

To:

MEDICAL OFFICER'S CERTIFICATE:

I certify that No A.22489 L/Cpl Dudley, G.J. 6 (Area) Provost Coy Regiment.

is" fit to undergo trial by Court-Martial.

F. H. Waller
.....
(Signature of Medical Officer)

" insert 'fit' or 'unfit'

B2

Statement of the Accused :-

"B"

Statement of the Accused (Cont'd)

To Hermitage St & after waiting outside for a period of 20 - 30 mins, I was told to go down to the Can where I would be met by a friend. I was told that they would phone this friend to say I would be waiting for me.

I went to the Can Canes Rouge & met a C.W.A.C. & a group of women behind the counter. I do not remember that I was coming down. I came back to the table & had a few drinks & after I had (2 hrs ") I left & went to Piccadilly & stood around the Regent Club & met drinking afternoon with RAF people. We went drinking & that evening, I left & caught a train as I believed to be the one taking me to my home. The following morning (5th Apr '42) I left for the train & arrived at Victoria Station. I did not remember anything that happened that day. I got to Victoria & bought a ticket & got off at Victoria. I bought a paper & a ticket & got off at Victoria. I bought a paper & a ticket & got off at Victoria. I bought a paper &

"D"

Canadian Provost Corps
6 (Area) Provost Coy.
Page One

Witness No. 1 D77511 A/Sgt Scruton, A. of No 6 (Area) Provost Company Canadian Provost Corps. a soldier of the Canadian Army Overseas. having been duly sworn states. At about 2000 hrs 9 April 45 whilst on duty as Orderly Sgt at St John I saw the accused whom I recognized as A22489 L/Cpl Ousby D.J. BEM. surrendered himself to me. I contacted the Duty Officer Lieut A.H. Reid who instructed me to place the accused under close arrest. The accused was taken under escort to Kenmuir St. at 2030 hrs 9 April 45.

Cross The accused was sober and properly dressed in uniform at the time he reported to me. D-77511 A. Scruton
No 6 (Area) Edm Provost Coy

Accused declines to call Sgt. Scruton for cross-examination

Witness No. 2 B116877 A/Cpl Wells F.K. of No 6 Area Provost Company Canadian Provost Corps. a soldier of the Canadian Army Overseas. having been duly sworn states: At about 2030 hrs 9 April 45 whilst on duty as Orderly Cpl. at St John I saw A22489 L/Cpl Ousby failed to report to me at the Orderly Sgts office. Upon inspection of billets the accused was found to be absent

but had booked out at 12.30 hrs of April 45 to proceed to Beaver Club. I immediately contacted the Duty Officer Lieut F.J. Kuchyk and informed him of same. Therefore the Union Jack Club patrol had to be cancelled.

B116844 S.R. Hills Cpl.
No 6 Area Provost Coy Canadian Pro Corps

Accused declines to call Cpl Hills for cross-examination

A 22489 L/Cpl Dudley G.J. B.E.M. of No 6 (Area) Provost Company Canadian Provost Corps, Canadian Army Overseas was cautioned as follows "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence. The accused wishes to make a statement and after being duly sworn states: "Being that the officer commanding and myself have for the past two and a half years been on unfriendly terms I was under a handicap when I first entered No 6 Canadian Provost Coy on my return from Italy. I had made up my mind and tried to do the best that I could, having had family troubles and believing my officer commanding the one I should see for information and assistance

I went to him for this help. After being before him twice and finding out that he was not helping me. My worries ~~only~~ got on my mind. I therefore decided to go A.W.L. which I did and returned. My wife has contacted tuberculosis and having been in the hospital for the past eighteen months I wished to have her sent to my home in Arizona where I know that the climate and country would be better for her health

A22489 L/cpl Dudley G J (BEM)
No 6 Area Provost Coy

I hereby certify that the Summary of Evidence on the foregoing three pages was taken in writing in the presence of and hearing of the accused and Rules of Procedure 4 (c)(d)(e)(f)(g) have been complied with

[illegible] Lt.
No 6 (Area) Provost Coy
Canadian Provost Corps.

9 April 45

CANADIAN PROVOST CORPS
No.6 (Area) Provost Company

Summary of Evidence in the case of A-22489 Pte.(L/Cpl.) Dudley, George Junior, of No.6 (Area) Provost Company Canadian Provost Corps, a soldier of the Canadian Army Overseas.

Witness No.1 for the Prosecution.

D-77811 A/Sgt. Scruton, A. of No.6 (Area) Provost Company Canadian Provost Corps, a soldier of the Canadian Army Overseas having been duly sworn states:-

" At about 2000 hrs, 9 Apr 45, whilst on duty as Orderly Sjt. at St. Johns Wood, the accused whom as I recognized as A-22489 L/Cpl. Dudley, G.J.(HER) surrendered himself to me. I contacted the Duty Officer, Lieut.A.W. Reid who instructed me to place the accused under close arrest. The accused was taken under escort to Henrietta St. at 2030 hrs, 9 April 45. The accused was sober and properly dressed in uniform at the time he reported to me.

A. Scruton A/Sgt.
(D-77811 Scruton, A.)
No.6 (Area) Provost Company
Canadian Provost Corps.

Accused declines to call Sgt. Scruton for cross-examination.

Witness No.2 for the Prosecution

B-118644 A/Cpl. Wells, F.R. of No.6 (Area)Provost Company Canadian Provost Corps, a soldier of the Canadian Army Overseas having been duly sworn, states:-

"At about 2030 hrs, 4 April 45, whilst on duty as Orderly Cpl. at St. Johns Wood, A-22489 L/Cpl. Dudley, G.J. failed to report to me at the Orderly Sgt's office. Upon inspection of billets, the accused was found to be absent, but had booked out at 1230 hrs,4 April 45 to proceed to the Beaver Club. I immediately contacted the Duty Officer, Lieut. F.J. Rutherford and informed him of same. Therefore the Union Jack Club patrol had to be cancelled.

F R Wells A/Cpl.
(B-118644 Wells, F.R.)
No.6 (Area) Provost Company
Canadian Provost Corps.

Accused declines to call Cpl. Wells for cross-examination.

A-22489 L/Cpl. Dudley, G.J. (HER) of No.6 (Area) Provost Company, Canadian Provost Corps, Canadian Army Overseas was cautioned as follows:-

"Do you wish to make any statement or to give evidence upon oath ? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

O.C. No 9 Cdn Prov Coy.

Q.E.

Having been called as a character witness by the accused and having been duly sworn states as follows —

Capt Lawson — Statement as Character Witness

"The first time I met the accused was when I joined 1 Cdn Div in Dec 43. At the Battle of the Moro W/Cpl Dudley was in the assault sec of 1 Prov Coy, & worked on the Diversion that kept the traffic going to San Apollinare X & Dundee X rds. His work at that time was exemplary. In Feb 1944 I was PL Offr in Italy Dudley was in the PL at the time & at Capitano Bridge just outside of Ortona he won the BEM. The citation finished by saying — "had it not been for the courage & devotion to duty of this NCO a traffic jam & quite possibly numerous casualties would have resulted".

As PL Offr I had to cover this NCO's mail. I know a great deal about his character & private life. I know he loves his wife very dearly. All the way from then until I left the Div Dudley did an excellent job of work. (July 1944)

I think I know Dudley well enough to say that now as Offr Cond No 9 Coy (C Prov C) that when this FBCM is finished I would be very glad to have Dudley serve under my command."

Questions by Defending Officer

Q — Did you know of accused's wife's illness

A — Knew things were not well

Q — Had accused been worrying

Yes

~~Q — Have you heard any rumours why the case was not tried by SC Units~~

~~A — I heard some discussion to the effect accused~~

E1

Questions to Accused by Def Offr.

Q - Are you an Amer of Can citizen
A - Am not certain - born in US but enlisted in Can - Am an American.
Q - How long married?
A - 4 yrs
Q - How long has wife been sick
A - 18 mos
Q - Before you went O.W.L. had you been drinking?
A - I had been drinking
Q - After you left Newcastle did you go to see your wife
A - I went to London & to see my wife & then back to London
Q - When you got on the train that went to Newcastle were you intoxicated
A - I had been doing a lot of drinking.

E.3.

Statement

By Defending Offr

Accused has pleaded Guilty

Extenuating Circumstances —

(1) married — wife has TB - long time in Hosp.
(2) Wifes health a constant worry - expecting a child
(3) Accused tried to bring troubles to his CO - no success
(4) Constant mental anguish
(5) An unguarded moment - drinking
(6) Record in Italy - good soldier - BEM

CANADIAN PROVOST CORPS
No.6 (Area) Provost Company

LIST OF WITNESSES FOR THE PROSECUTION IN THE CASE OF A-22489 Pte.(L/Cpl.) DUDLEY, George Junior,(BEM) OF THE NO.6 (AREA) PROVOST COMPANY CANADIAN PROVOST CORPS.

B-116844 A/Cpl. WELLS, F.R.

D-77511 A/Sgt. SCRUTON, A.

The above listed N.C.O.s are of No.6 (Area) Provost Company, Canadian Provost Corps.

LIST OF WITNESSES FOR THE DEFENCE IN THE CASE OF A-22489 (Pte(L/Cpl.) DUDLEY, George Junior (BEM) of the No.6 (AREA) PROVOST COMPANY, CANADIAN PROVOST CORPS

Lieut.
(A.E. Tyrrell)
A/Officer Commanding
No.6 (Area) Provost Company
Canadian Provost Corps.

London
10 Apr 45.

CANADIAN PROVOST CORPS
No.6 (Area) Provost Company

LIST OF EXHIBITS FOR THE PROSECUTION IN THE CASE OF A-22489 Pte.(L/Cpl.) DUDLEY, George Junior, (BEM) OF NO.6 (AREA) PROVOST COMPANY CANADIAN PROVOST CORPS

(a) ABSENTEE REPORT

Lieut.
(A.K. Tyrrell)
A/Officer Commanding
No.6 (Area) Provost Company
Canadian Provost Corps.

London
10 Apr 45

Canadian Provost Corps.
No.6.(Area)Cdn.Provost Coy.

Officer Commanding,
No.6.(Area)Cdn.Provost Coy.,
Canadian Provost Corps.

Re: Application for Defense Counsel. F.G.C.M.

Sir:

1. I hereby make application for the appointment of Captain J. Rosenbloom, C.M.H.Q. as defence counsel on my behalf at my forthcoming trial by Court Martial.

2. For your information, Sir.

London.
11-April-45.

G.J. Dudley L/Cpl.
A-334499. G.J. Dudley.
No.6.(Area) Cdn.Provost Coy.

ABSENTEE REPORT

No. 6 { ~~Canadian Battery~~ Company } Canadian Provost Corps

10 April 1945

Regl. No.	Rank and Name	When Absent	Hour of Return	In What State	Remarks
A-22489	L/Cpl. Dudley C.J.	AWL from 2030 hrs, 4 Apr 45.	Returned 2000 hrs 9 Apr 45	Sober and properly dressed.	

3/60 MFD 273 40 PAS/301 (6200)

W. G. W. Lane
Orderly-Sergeant
(A-56606 Sgt. Lane, W.G.W.) MM
No.6 (Area) Provost Company

M.F.B. 355
(2M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A-22489	Pte.(L/Cpl.)	Dudley, George Junior	No.6 (Area)Provost Company

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery / Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	One Time(1 A.A.Sec.15(1)	times	3 times (A.A.Sec.15(1)	times
For		times	2 times (A.A.Sec.40)	times
For		times	1 Time (A.A.Sec.9(2)	times
For		times		times

Number of instances of gallantry or distinguished conduct One, Awarded BEM

or,

~~There are no entries in the conduct sheets of the accused~~.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.F.A. 73~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 12 days in ~~Air Force~~ military custody, making a total of 12 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 24 yrs,6 mos, 22 days

6. The date of ~~his commission specified~~ in his record of service ~~is~~ ~~attestation~~ ~~attestation paper~~

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in ~~military~~ ~~military~~ possession of or entitled to). State any air force decoration or reward. ~~military~~ CANADA 1939-45 STAR B.E.M.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held ~~Air Force~~ the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

28 Feb 45 L/Cpl. Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number A-22489 Rank Pte.(L/Cpl) Name Dudley, G.J. of 6(Area)Provost Coy.Cdn.Prov.Corps. Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
Field General Court Martial	3 Cdn.Prov.Coy. 2 Feb 43	A.A.Sec.9(2) Disobeying a lawful command	56 days Detention	18 days remitted.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13TH day of APRIL 45

[signature]

The above statement (with the schedule of convictions and [illegible] in which trial has been dispensed with) is read, marked C signed by the [illegible] and annexed to the proceedings.

Officer Commanding
Cdn Provost Corps.

Place	Date of offence	Rank	Cases of drunkenness	"A" OFFENCE	Names of Witnesses	Punishment awarded	Date of award of or order dispensing with trial	By whom awarded	Remarks
				as Security Guard when ordered to do so by Reg. No. C.27295 Cpl. B.R. of No.3 Cdn. Provost Coy Cdn. Provost Corps. (AA Sec 9 (2)	Cpl. Forse Sgt. W.J.Inge Pte. H.E. Montgomery	56 days detention	2 Feb 43	FGCM	
Field	25Dec44	L/C	WOAS	AWL from 1200 hrs 25 Dec 44 until 1130 hrs 1 Jan 45 (6 days 23 hrs 30 mins)	Sgt. Parker	Reduced to Pte.	2 Jan 45	Capt. R.P. Harrison	Auto. forf. 7 days pay.

AWARDED BRITISH EMPIRE MEDAL. O/S. R.O. 5367 d/30 Dec 44.

CERTIFIED TRUE COPY

(A.E.Tyrrell) Lieut.
A/ Officer Commanding,
'A' Ares' Provost Company - Cdn Provost Corps

M.F.M. 6
(A.F. B.127)
40/P & S/5136 (2962)

No. A22489 Name DUDLEY George Junior | Sqn., Battery, or Company | Essex Scottish Regt. C.A.S.F. Corps | Date of enlistment | G.C. Badges | 2-7-40 | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | Period not reckoning towards freedom from extra fine | Sheet No. One | Signature O.C. Company, etc. Sgd

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Attached No.1 CI(R)TC C.A.S.F., Camp Borden from Essex Scottish Regt. Depot effective 18 Jul 40 D.C. 180, 19 July 40									
Camp Borden	12Aug40	Pte		Obsence without leave from 0200 hours 12 Aug 40 to 0600 hours 13 Aug 40 (AA 15 (1)	CSM Hersey	Admonished	13 Aug 40	Major McPherson	Forfeits 2 days pay FR&I J.A.F. Lt.
T.M.H.	6Dec 40	Pte		Absence without leave from 21 hours 6 Dec 40 to 1300 hrs 8 Dec 40, A.A. 15(1.)	Sgt. Stubbert	Admonished	8Dec 40	Lt.-Col. K.C.Gray	forfeits 2 days pay FR&I W.J.B. Lieut.
Aldershot	20-4-41	Pte.		WOAS refused to obey an order given by an N.C.O.	L/C Parent Pte. Grant	4 days C.B. 4 extra drill	22-4-41	C.W.Graham	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE "2"	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	19-7-41	L/C		WOAS did operate WD M/C improperly manner contrary Section 40 A.A.	Sgt. Hatch H.L.	Reduced to Rank	19-7-41	Major Forgie	
st Lavington	19-7-41	Pte.		WOAS did refuse to obey an order given by senior NCO Sec 40 AA	Sgt. Hatch H.L. L/Cpl. Parker F.E.	Reduced to Rank	19-7-41	Major Forgie	
shtead	8 Oct 41	Pte.		WOAS was absent from his coy billets between the hrs of 2359 hrs 8 Oct 41 and 1455 hrs 12 Oct 41 (absent 3 days 14 hrs & 56 mins) without authority from his O.C. having been duly warned for duty his absence necessitating such duty being performed by another member of the company contrary to Sec 15 para 27 A.A.	RSM Putnem E.F. Sgt. Knight W.H. Cpl. Peterson W.B.	8 days Fd. Punishment	14 Oct 41	J.R.Stewert Capt.	Forfeits 4 days pay FR&I 129 (1)

Essex Scottish Regt C.A.S.F.

No. A22489 Name Dudley George Junior | Sqn, Battery, or Company | Corps | Date of enlistment 2-7-40 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/536 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	"3" OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
East Grinstead	7Jan 43	L/C		WOAS disobeying a lawful command given by his superior officer in that he at Coy billets at Reveille on 7 Jan 43 when personally ordered by Cpl. Forse to get up out of bed and report for kitchen fatigues said "No I wont go on fatigues", and remained in bed Sec 9 (2) A.A.	Cpl. Willison Cpl. Forse	Reverted to Perm. Rank of Pte. 7-1-43	XXIXX 7-1-43	Lieut. Whittington	
Field	23Jan 43	Pte.		WOAS disobeying a lawful command given by his sup rior officer in that he at Rear H.Q. 1 Cdn. Corps at about 1350 hrs on 25 Jan 43, did not take up his duties					

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	"4" OFFENCE	Names of Witnesses	Punishment awarded	Date of award of or order dispensing with trial	By whom awarded	Remarks
				as Security Guard when ordered to do so by Reg. No. G.27295 Cpl. Forse B.R. of No.3 Cdn. Provost Coy Cdn. Provost Corps. (AA Sec 9 (2)	Cpl. Forse	56 days detention	2 Feb 43	FGCM	
Field	25Dec44	L/C	WOAS	AWL from 1200 hrs 25 Dec 44 until 1130 hrs 1 Jan 45 (6 days 23 hrs 30 mins)	Sgt. W.J.Inge Pte. H.E. Montgomery Sgt. Parker	Reduced to Pte.	2 Jan 45	Capt. R.P. Harrison	Auto. forf. 7 days pay.

A WARDED BRITISH EMPIRE MEDAL. OS. R.O. 5367 d/30 Dec 44

CERTIFIED TRUE COPY

(A.E.Tyrrell) Lieut.
A/ Officer Commanding,
6 Area Provost Company - Cdn Provost Corps

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

G-44

fm. Dudley. A. D. C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.64113 Rfn Ralph Dodwell Charles DUDLEY, 1 CGRU.,

Charge. (insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 18(4)	NOT GUILTY	NOT GUILTY	
2nd AA Sec 40	NOT GUILTY	GUILTY	
3rd AA Sec 40 (Alt)	GUILTY	GUILTY	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lass of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B396.)

Time in confinement awaiting present trial—a total of 4 8 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of Six (6) months

(Sgd) ..... 22 Nov 44 ..... President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 57. MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) A B Connelly Brig

Date 27 Nov 44 Commanding Comd "B" Gp CRU

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
B.64113 - Rfn Dudley, R.D.C.	29 Nov 44	W Murray Capt
DO 287 d/1 Dec 44		No. 1 Cdn Gen. Rein. Unit. C.A. (E.)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 9 DEC 1944 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ AS No. [illegible] (TO BE USED FOR APARS)

HG-411

40/P As B/1698 (61441) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig A B CONNELLY Comd "B" Gp CRU dated 14 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 304, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.64113	Rfn		Ralph Dodwell Charles	DUDLEY	1 CGRU

PROCEEDINGS REVIEWED 9 Dec 44
J.C.C. W. C. Winch Capt.
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 21 & 22 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JAs, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and ~~each~~ charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 45, 50, RP 105-107. 3. RP 11-13, 23, 24.) 21 NOV/44

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1040 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused~~: ~~Do you object to~~ ~~as interpreter? Ans~~

~~The interpreter is sworn.~~(1) Do you object to Sjt SHULTZ J as shorthand writer? Ans No, Sir.

~~The shorthand writer is sworn.~~(1) F.28129 Sjt SINCLAIR AH

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No, Sir.

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JAs, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the names, ranks and units of the offrs comprising the Court, etc:

~~President~~	Lt-col	D.L. REDMAN	HQ CRU
~~Member~~	Capt	W.E. JAMES	1 CASCRU
~~Member~~	Lt	J.S. MELBOURNE	1 CASCRU
~~Judge-Advocate~~			
~~Prosecutor~~	Capt	M.L. MAGILL	3 CACRU
~~Defending Offr~~	Maj	N.A. FELLOWS	1 CGRU
	Lt	A.M. WILDING-WHITE	1 CGRU LT WH/16

~~Questions~~ by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. Lists of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (5) and fn 2 were not followed. See D1 p 2.)

A8. The accused ~~are~~ before arraignment make(s) (no) ~~(s)~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 35(A), 113), or on bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or if two or several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the decision, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are severally~~) arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does (~~do~~ not) adhere to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is advised and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. If you make a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. However, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO - SIR (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) charge(s) his (their) plea(s) on charge(s). Part 1 of the Schedule is amended accordingly.~~
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(*1. RP 37(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using para D4 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him ~~(them)~~ again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO. SIR. (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE - ATT
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. NEITHER TO MAKE A STATEMENT. Do you intend to call witnesses on your behalf ? Ans. YES SIR. Are they witnesses as to character only ? Ans. NO - SIR
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 2nd charge(s), being subject to confirmation, will be promulgated later.(1) ~~(or, The President announces that the accused is found Not Guilty on all charges and so the proceedings are accordingly terminated. Part 1 of the Schedule is dated and signed.~~(2)
(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The ~~accused having been found Guilty on one or more of the charges, the~~ proceedings are concluded by using Record Form ~~E~~ B above.

CONTINUED

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO - SIR. Call Char. witness NOTE - ATT
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Service as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes Sir - Gd mil Offr - (NOTE ATT)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RD 309, 1323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(7), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET:

The Accused, B-64113 Rfn. Ralph Dodwell Charles DUDLEY, "A" Wing, No 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Sec 18(4) A.A.

WHEN ON ACTIVE SERVICE, STEALING PUBLIC PROPERTY

in that he

At No 1 Canadian General Reinforcement Unit on 5 Oct 44 stole 700 blankets, public property, from the accommodation stores, No 1 Canadian General Reinforcement Unit.

SECOND CHARGE
(ALTERNATIVE)
SEC 40 A.A.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

At Walworth, London, England on 5 Oct 44 when apprehended by Ernest Cook, Detective Sergeant, New Scotland Yard, was in improper possession of 700 blankets, public property.

THIRD CHARGE
SEC. 40 A.A.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

At No 1 Canadian General Reinforcement Unit on 5 Oct 44 improperly and without authority used Canadian Military Vehicle No L7628820.

(B.R. Ker) Colonel
Comd
No 1 Cdn Gen Rft Unit
Canadian Army Overseas.

Field
10 Nov 44.

Approved on behalf of the J.A.G.
Cdn Army Overseas pursuant to
K.R. (Can) 540 and Overseas RO
4756 (13)

.....
for DJA HQ CAN

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(A B Connelly) Brig
Comd B Gp
Cdn Rft Units

14 Nov 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B64113	Rfn		Ralph Dodwell Charles	DUDLEY	1 CASCRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 14 Nov 44 endorsed by me, (~~evidence on oath of witnesses~~). " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for the purpose of obtaining evidence~~)

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I hereby nominate and appoint (a) the Officer Executive Court, R.) a Fd Offr as President, for the reasons I have stated hereto~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	P L Redman VD	HS CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by	1 CASCRU
Lt	to be detailed by	1 CASCRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

In	(Signed personally. RP 105 fn 2.)	(Rank.)
England (Country.)	(A B Connelly)	Brigadier

Date 14 Nov 44 Commanding HS B Cp Gdn A-ft Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (For Abs. 1 to Item 40 of AFAI 40/P & R/1807 (1401))

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICER'S REPORT

I certify that No. B.64113 Rfn. DUDLEY, R.D.C.

of No.1 C.G.R.U. is in a good state of health,

and fit Tbc to undergo Trial by Court martial.

Thackeran Capt Captain
Medical Officer
No.1 C.G.R.U.

Station Field

Date 21 Nov 1944

MS

M. F. B. 246
25M—6-41 (792)
H.Q. 1772-39 480

MEDICAL OFFICER'S REPORT

I certify that No. B.64113 Rfn. DUDLEY, R.D.C.
of No.1 C.C.R.U. is in a good state of health,
and fit to undergo Trial by Court martial.

T. Chadwick RAMC Captain
Medical Officer
No.1 C.C.R.U.

Station Field

Date 21 Nov 1944

M. F. B. 246

MEDICAL OFFICER'S REPORT

I certify that No. B-64113 Rfn. Dudley, N.D.G.
of #1 CCRU is in a good state of health,
and fit to undergo Trial by Court martial.

Captain
Medical Officer

Station Field

Date 22 Nov 44

M. F. B. 246

F.G.C.M. IN THE CASE OF

B 64113 Rfn DUDLEY, R.D.C., 1 CGRU

21 & 22 NOV 1944

OPENING ADDRESS BY THE PROSECUTOR: Note D-2

Sir,

The accused, Rfn Dudley, R.D.C., was arrested at about 2015 hours near the Black Prince Public House, in London. He was arrested by two officers from New Scotland Yard Det Sgt E Cook, and Det Sgt A Webb. At the time the accused was arrested he was seated in the cab of a Cdn Mil veh with a certain number on it which was noted and had a certain unit sign on it, that was L CGRU. These facts will be demonstrated by witnesses I propose to produce. The accused was taken into custody as he was unable to answer as to what he was doing in a truck at such a place, and at such a time, the facts were reported to the Cdn Mil Provost at Cdn Mil HQ and S/Sgt Nelson of the SIS at CMHQ went to the Police station where the accused had been taken by the police officers, and took him into mil custody and removed him to the Cdn Provost Detention Barracks. The next day upon interview Dudley, it appears, made a statement. This statement will be produced, the Prosecution will also prove that in this truck were 700 army blankets. It will also be proved that at 1530 hours Dudley appeared with the same truck at the blanket xxx stores, or accommodation stores and that the truck was loaded with 700 blankets and that Dudley drove the truck away. It will further be proven from various witnesses that there was no legitimate authority of any kind granted for this purpose. Dudley further admitted that at the time of his arrest had certain documents alleging to give him the authority to proceed on such a journey, which the Prosecution will prove were not genuine, and that he knew them to be not genuine. I will now call my first witness.

EVIDENCE FOR THE PROSECUTION Note D-3

1st WITNESS FOR THE PROSECUTION

Det Sgt E COOK, New Scotland Yard, having been duly sworn states:

I am a detective sergeant employed at New Scotland Yard. About 8:15 p.m. on the 5 Oct 44 with Det Sgt Webb also of New Scotland Yard, and other officers I went to Walworth Road, Walworth, S.E. in London and about 100 yards from the Elephant and Castle I saw an army lorry No L 762820.

DEF OFFR objects to witness using his notes:

Witness: I xxx made these notes the same evening of the affair.

PRESIDENT: He may refresh his memory from notes made on the evening in question.

WITNESS CONTINUES:

I saw motor lorry L 762820 and went up to it and in the driver's seat and found a Cdn soldier, he was Cfn Dudley, he is present in the Court, (points to the accused) that is the man I found in the lorry. I said "we are police officers, what are you doing here?" He said, "I am waiting for my Sgt, he has gone to get something to eat." I said to him "where are you going? and what load have you got on?" He said "I am from Aldershot, and I am taking a load of blankets to Watford", I said "you are miles off your route", he said I am only acting on instructions", I said, "where is your sgt gone?" He said, "I have not any idea" I checked the lorry which was covered by a tarpaulin tied down, under it and in the truck I was able to see that it contained a xxxx large quantity of army blankets.

PROSECUTOR:

Outside the Court there is standing a lorry which is loaded with blankets, I would like the permission of the Court for this witness to view this lorry and the blankets and tell us if this is the lorry and if he saw a similar load of blankets, I would also ask the Court to view the lorry.

(Court, Witness, Def Offrs, Prosecutor and Accused, proceeded to view the lorry Number CL 762820 and witness continues:)

That "C" has been added in front of the "L" since I saw it on the night of 5 Oct 44. But it is definitely the veh I saw.
Def Offr did not object to marking truck Ex 1.
(Veh CL 762820 marked Ex "1" by the Court) Witness continues:

I told Dudley that I was not satisfied and that enquiries would have to be made. He then produced a printed form which he handed to me saying "this is my authority,"it showed the particulars of the load of blankets from Aldershot to Watford. This form was handed to S/Sgt Nelson of the Cdn SIS.

(Witness is shown a form and he continues):

This is the form, it is a tpt work ticket.

(Def Offrs examine form) There is no objection to the admission of it.

(Tpt work ticket marked Ex "2" by the Court) Witness continues:

I then said to Dudley,"I am still not satisfied with your explanation and enquiries will still have to be made," he then said "I will tell you the truth."
(Major Fellows)
Def Offr: /I object to that evidence because the accused had not been warned:

Wilding-White: I object on the ground that this is irrelevant and hear say evidence and that the accused had not been cautioned by the police officer. Apart from that I have no questions to ask the witness at this point.

Witness continues:

Q Had you made up your mind to charge Dudley?
A No at that time.

PROSECUTOR: I draw the attention of the Court to Sec 78, Sub Sec 1, MML. The evidence is certainly not hear say, the accused was present, and at the time he was charged with any offence and it was not in the minds of the police to charge him, the accused had merely been told that enquiries would have to be made and volunteered his statement.

Def Offr (Lt Wilding-White) He may be asked questions and he may answer them, but they cannot be used in evidence as the caution had not been given, and the man may have been allowed to go ahead and convict himself. I ask that this evidence be struck from the record and no more that the accused said before he was cautioned be taken.

COURT IS CLOSED TO CONSIDER THE OBJECTION
COURT IS RE-OPENED AND THE PRESIDENT ANNOUNCES THAT THE OBJECTION IS DIS-ALLOWED AND THE STATEMENT WILL BE ADMITTED.

What else did the accused say?
He said, "I will tell you the truth, the blankets are stolen"

He also said "I made the particulars out myself and my sgt told me what to do and where to go." I then left the lorry, leaving one officer inside the cabin with Dudley.

PROSECUTOR: Do not mention any names, go ahead with your evidence

WITNESS: From some distance away we kept observation, at about 1015 p.m. I saw a Cdn Sgt about to climb into the cabin of the lorry, and we went up to him. Later we took Dudley and this sgt and the Lorry to Carter Street Police Station where they were detained and I later informed S/S$_{gt}$ Nelson of the Cdn Mil police.

Q Did you find out who this other sgt was?
A Yes, his name was Gratrix.

CROSS EXAMINATION BY Major Fellows:

Q Can you state that you saw the accused leave the cab of the truck except at your request?
A No Sir, he did not leave until I told him to.

Q Can you say that the accused, ~~Dudley~~ Dudley endeavoured to unload the truck?
A No.

Q Can you state that the accused endeavoured to sell or pawn the blankets?
A No.

Q How do you recognize the form which we call Ex 2?
A By the particulars on it and I believe it is endorsed by Sgt Nelson.

Q How can you actually indentify it, did you initial it?
A No Sir, I took it from Dudley and gave it to Sgt Nelson.

Q Did you see Sgt Nelson actually sign the form in your presence?
A No Sir.

Q Could it be another form?
A It is possible (looks at the form) but this is no doubt the one that the accused handed to me. I remember it quite distinctly and the wording of it.

Q Do admit that it could be a form something similar to it but not exactly that form?
A It is possible as it has been out of my possession.

Q Did you meet another soldier in addition to Sgt Gratrix that evening?
A No Sir.

By Lt Wilding-White:

Q Did you count the blankets in the truck?
A No Sir.

Q You have no idea how many there was in the truck?
A No Sir.

Q to the best of your knowledge where these blankets taken off the truck at any time in London?
A No Sir.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

2nd WITNESS FOR THE PROSECUTION
Det Sgt A WEBB, New Scotland Yard, having been duly sworn states:

I am a det sgt at New Scotland Yard. On the evening of 5th Oct 44 I went to Walworth road at about 8:15 p.m. with Det Sgt Cook of New Scotland Yard and some other police officers, we saw an army lorry No L 762820. There was a man in the driver's cabin and Sgt Cook spoke to him and said "what are you doing here?" The man said "I am waiting for my sgt, he has gone to get something to eat." That man was Cfn Dudley, he is present in this room, (points to the accused). Sgt Cook asked him where he had come from and where he was going to and what was the load. Dudley replied he come from Aldershot and was going to Watford. Cook said it was a round about way of getting to Watford, Dudley said "I am only acting on instructions." He said he did not know where his sgt had gone. We looked in the truck and saw a very considerable number of blankets, the lorry appeared to be filled with them. Sgt Cook said he was not satisfied with him. Dudley then handed Sgt Cook a form and said"this is my authority" it appeared to be a form authorizing him to take blankets to the hosp. I saw the form the night it was handed to S/Sgt Nelson. (Witness looks at Ex 2) Yes that would be the form I saw that evening.

Q What happened then?
A Sgt Cook said he still was far from satisfied with Dudley and the whole thing and further enquiries would have to be made. Dudley said, "I will tell you the truth."

DEF OFFR OBJECTS
OBJECTION OVER RULED

Dudley said "I will tell you the truth, the blankets are stolen I made the particulars out myself. My sgt told me what to do and where to go."

Q What did you do then?
A We continued to keep observation on the lorry and at about 10:15 p.m. another soldier came to the lorry, I had certain conversation with him and finally Sgt Cook said he was not satisfied with the explanation of either man and he said "you are going to be arrested and detained p nding further enquiries." We took them to the police station and later S/Sgt Nelson, of the Cdn Mil Police came and took them into his custody. The blankets and lorry were also taken over, Ex 2 was also taken over.

CROSS EXAMINATION BY THE DEF OFFRS:
(Maj Fellows)

Q Did you see the accused, Dudley, get out of the truck and endeavour to unload the blankets?
A No Sir.

Q Have you any evidence to show that Pte Dudley endeavoured to sell or pawn the blankets which were in the veh?
A No Sir.

Q What date did you mention in connection with your investigation?
A 5 Oct 44.

Q How can you definitely state that the form shown to you as Ex 2 was the form you saw that night?
A I had a good look at it, I have seen such forms before and Sgt Cook later handed it to S/Sgt Nelson and to the best of my knowledge that is the same form.

Q Could it be another form?
A I never initialled it, but unless someone substituted another one for it then it is the same one that I saw that night.

Q Was it dark that night?
A Yes, but we have a torch.

(By Lt Wilding-White)

Q Did you count the blankets in the truck?
A No Sir.

Q You have no idea how many there were?
A There was a large number, we could see there was a stack in the back of the lorry?

Q You had no idea what was at the front of that pile or stack?
A I did not examine them thoroughly.

Q To your knowledge were these blankets taken out of the truck while in London?
A No Sir.

Q About this form, Ex 2, you say it is possible that it could be another one other than the one you took?
A Yes it is possible but I should say it is the form which we obtained from Dudley and handed to Sgt Nelson. I cannot imagine what trickery has gone on since that time if it is any other form.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

3rd WITNESS FOR THE PROSECUTION
Capt R.N. KEEN, on strength No 1 CGRU, having been duly sworn states:

I am the Tpt Offr of 1 CGRU, I know the accused, he is Rfn Dudley. He is one of the drivers in our section. He used to drove veh CL 672820, this veh previously did not have the letter "C" in front of the "L". Dudley was the driver of this veh on the 5 Oct 44 from information that I now have.

Q Could you explain to the Court the authority upon which vehs are allowed outside the 20 mile limit?
A It is authority given by a Comd senior to the unit, in other words Group or by CRU. It is usually given verbally by phone to the Adj who gets in contact with me and then the authority is followed up by written letter.

Q What form does it take?
A There are numbered as messages are numbered, the system is kept by Group.

Q When you make out a work ticket to send a veh out of the 20 mile limit what happens?
A The authority is generally attached to the work ticket, some times we merely write the authority and hold the letter on file until the veh returns then I return them to the Adj.

Q Could you quote us an example of an authority which would be on a work ticket?
A If the job was to be done for ADOS, CRU, we would merely put "ADOS, CRU" in the authorizing column.

Q Is that practice still in use in your tpt office?
A Yes.

CROSS EXAMINATION BY THE DEF OFFRS:
(Major Fellows)

Q Wherre were you on the 5 Oct 44?
A I was in barracks.

Q How do you know that Pte Dudley, the accused was the driver of this veh?
A Because in the evening I was given permission to be absent from the barracks and the CO recalled me.

Q In connection with these blankets and also with your work tickets, were there buch shee blankets and bucksheе trips made with vehs?
A I do not understand what you mean?
Q Were unauthorized trips made from time to time, on the 5 Oct or previous to that?
A I know of one occasion 15 months ago.

Q Anyother occasion?
A No to my knowledge, I have suspicion of one which is not relevant to this case.

Q You feel you system usually works?
A My system does work.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

4th WITNESS FOR THE PROSECUTION
U 1889 S/ Sgt NELSON, F.R., on strength SI S, CMHQ, having been duly sworn states:

I am a member of the SIS, Cdn Provost Corps at CMHQ. I was on duty on the 5 Oct 44 on which night I was called to Carter Street Police Station. I was on duty at about 2220 hours and I received a phone message from the civilian polce in consquence of which I, acting on instructions of Major Holmes, the APM, I proceeded to the Carter Street Police station. In the station yard I saw a Cdn WD lorry L 762820. This lorry was covered with a tarpaulin which was secured at the back with ropes. I looked inside under the tarpaulin and saw a large quantity of blankets.

Q Did you find anyone in the police station?
A I found Det Sgt Cook and Webb of the Flying Squad, New Scotland Yard and also in the police station I saw the accused whom I see here, Rfn Dudley. I also saw S/Sgt Gratrix of 1 CGRU. In company with police officers I escorted Dudley to the SIS office.

Q Did you remove the veh?
A Not personally, but I saw that it was moved.

Q Were any blankets at the time in it?
A Yes Sir. I took Dudley to the SIS office in Henrietta Street SW 2, London. I had the truck placed outside the guard room of No 6 Cdn Prov Coy and I had the blankets removed from the truck and had them placed in a safe place in the building. I counted them and found there were 700. They were tied to gether with string in bundles of 10. By a safe place I mean a room within the building which is kept by the Provost and where they were not touched by anyone. There were no blankets in the room before I put these in it. Last Friday I personally superintended the removal of these blankets from the room to the truck which I found them in and handed them to 1 CGRU. On that date I [redacted] accompanied the QM of this unit, Capt Lake, to his stores where I handed over the blankets to him. In my presence Capt Lake put them in a room placing a pad lock on the door and he gave me a receipt for the blankets. I have that receipt dated 17 Nov 44.

DEF OFFR: I object to the submission of the receipt.

OBJECTION SUSTAINED.

Q Did you find anything in the possession of the accused?
A Yes Sir. I found in his possession a work ticket, the last entry of which was dated 5 Oct 44 and showed a detail for mob stores to Farnham and Farnborough.

Q I show you a tpt work ticket, will you tell the Court if that was the ticket you found in possession of the accused?
A That is the work ticket.

(Def Offrs examine work ticket and offer no objection to the submission of said work ticket)

(Work ticket marked Ex 3) Witness continues:

I endorsed it on the back as having been seized from Dudley.

Q Did you find anything else in his possession?
A There was another work ticket I found, but I cannot say it was in the possession of Dudley, as it was handed to me by Det Sgt Cook of the police force.

Q Can you tell me whether or not Ex 2 is the work ticket which was handed to you by Sgt Cook?
A Yes Sir. I endorsed it on the back, I see I have put siezed on it as in the other case, but that is not quite correct as I did not sieze it, but received it from the police officer.

Q What became of the truck?
A I informed the unit, the duty offr at 0020 hours on the 6 Oct of my findings and on the 6 Oct I handed over the truck to Sgt Childes of 1 CGRU on an order signed by the Adj of that unit.

Q Did you interview the accused, Dudley, on the 6 Oct 44?
A Yes Sir. At about 1400 hours on the 6 Oct I saw Dudley in the SI S office. I cautioned him and said to him, "you do not have to say anything unless you wish to do so, but anything you do say will be taken down in writing and may be given in evidence." I asked him what about these blankets, he said something to the effect "Well I will tell you" and he made a statement, first of all I wrote out the caution which he signed, and he made a statement which I took down in writing which I read over to him and explained to him that he could delete, alter, add or correct anything and he signed the statement in my presence. I have here the statement that he made.

Q When you received this statement from the accused, did you exert any pressure on him to get him to make it?
A No Sir.

Q Promise anything?
A No Sir.

Q did you explain the caution to him?
A Yes Sir.

Q Did he seem to understand it thoroughly?
A Yes Sir.

Q Were there any words written which showed that the statement was made voluntarily?
A Yes -

OBJECTION BY DEF OFFR
OBJECTION OVER RULED

Q Were any words added to this to show he made the statement voluntarily?
A Yes Sir.

Q Do you recall what they were?
OBJECTION BY DEF OFFR
OBJECTION OVER RULED

A I do not remember the exact words, but the effect was "I have read over the statement which has been made voluntarily without hope of favour or fear from any threat."

Q Did the accused sign it?
A Yes Sir.

Q Did he seem to know what it meant?
A Yes Sir.

Q Did you examine him on the statement?
A No I read it over with him but I do not know if he made any alterations. I do not think he did.

PROSECUTOR TO PRESIDENT: May this statement be admitted in evidence?

DEF OFFR: I object.

PRESIDENT TO DEF OFFRS: You may cross examine this witness at this point regarding the statement only.

CROSS EXAMINATION BY DEF OFFRS:
(Major Fellows)

Q Did you find the accused a willing soldier during the investigation
A Yes Sir.

Q In discussion with other detectives or other persons did you ever intimate in your opinion that the accused was a good chap and you would like to see him get a break?
A No Sir I do not remember saying anything like that.

Q Did you make such a statement to anyone at any time?
A I may have mentioned it someone but I do not recall it.

Q Did you use any planned or psychological means to obtain the alleged statement from the accused, or mthod, did you work on the accused either on his sympathy or any other angle which would induce the accused to make his statement?
A I can only repeat that statement was perfectly voluntary.

Q Did you use any planned means whatsoever to obtain the original alleged statement from the accused?
A No Sir.

Q Will you explain to the Court the exact method you used to obtain the statement.

A I cannot remember exactly what I said to the accused prior to the actual writing down of that statement or what he said to me in its entirety. I said to him "now Dudley what about these blankets and his reply, if I remember correctly was "I will tell you".

Q You are sure you cannot remember all you said previous to the actual statement?
A That is about as much as I can remember, there was very little said.

Q Was there anybody with you in the room when you asked Dudley to make his statement?
PROSECUTOR OBJECTS
OBJECTION OVERRULED

Q Did you have a witness when you were discussing the making of the statement with Dudley?
A There was no discussion respecting the making of the statement.

Q Did you have a witness between the time which you first talked to Dudley and the time he started to make his statement.
A There may have been people in the room but I paid no attention and did not see any, there are chaps coming in and going out all the time.

Q Ifthe accused is to be assumed innocent until he is proven guilty is it not fair and usual for examinations to be made in the presence of at least one witness.?
A If you will allow me I was not examining him and as for having other people there the answer is "no" he is allowed to be alone or with other people as he chooses.

Q It is not your practice?
A It is not my practive to run around with a force of witnesses.

Q Did you mention any offensive weapon while talking to the accused previous to or during the investigation?
A No Sir.

Q A weapon of any kind?
A I did not.

Q Did you intimate that the accused was not a criminal type and that he was in bad company?
A I amy have passed that remark, I do not remember.

Q Did you intimate to the accused that he was not the criminal type and he was actually in bad company?
A I do not know.

Q Were any compliments or expressions used to gain the confidence of the accused?

PROSECUTOR OBJECTS:
OBJECTION OVERRULED

Q Were any compliments used to the accused in order to gain his confidence?
A What do you mean by compliments?

Q Was nice things said to him about himself?
A I can only say I do not know Sir. There might have but I do not know.

Q Did you intimate to the accused that it would be better for him to put in a statement before Sgt Gratrix tried to throw the blame on his shoulders?
A No Sir I did not.

Q Are you sure?
A I am quite sure.

Q Regarding the weapon are you quite sure that you did not mention a weapon or object allegedly carried by another soldier while talking to Dudley?
A Yes Sir I am quite sure that I did not.

Q Did you mention to the accused anything concerning Sgt Gratrix alleged record or character?
A Sir, if you will read Dudley's statement you will see that he said to me that this man said to him "I was pinched over there once." I may have said "yes there was a spot of bother there" but that is as far as I would say.

Q Then the answer to our question regarding Gratrix alleged character would be"yes". In making the case against Pte Dudley did you show him statements alleged to have been made by other accused?
A Yes.

Q Did you, at any time during the investigation intimate that you were a friend of the accused and wanted to heop him?
A It is very difficult to remember but my answer is "no sir."

Q You did not intimate that you wanted to help the accused or you were really his friend?
A I tobd Dudley that I was interested in the truth and that I was

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Q Promise anything?
A No Sir.

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Q Did he seem to understand it thoroughly?
A Yes Sir.

Q Were there any words written which showed that the statement was made voluntarily?
A Yes -

OBJECTION BY DEF OFFR
OBJECTION OVER RULED

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A Yes Sir.

Q Do you recall what they were?
OBJECTION BY DEF OFFR
OBJECTION OVER RULED

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the remaining accused to became aware of certain questions that I wish and shall ask in cross examination, if they are allowed to communicate what has been asked them and wht they have answered I have a strong feeling that this court will not acquire the truth.

DEF OFFICER: I object. The Prpsecutor is to assist the Court in the administration of justice and to behave in an impartial manner, I refer to RP 60(A). I am sure that if these witnesses are allowed in in the manner that is ordinary and usual that the Prosecutor will be very pleased that he is assiting in the administration of justice.

PROSECUTOR:

I feel that the administration of justice will not be furthered by allowing witnesses to go back outside and talking over what has been said in here, I still ask that they be kept separate, at least until Dudley's trial is over.

PRESIDENT:

The Court rules that the other accused be not allowed to communicate with each other until the trial of Dudley is over. I do this so that greater credence may be given by the Court to their evidence. The Court allowed the suggestion of the Defence that these other accused be called as witnesses on this trial within a trial respecting the admission of this statement. The accused persons for this purpose are merely ordinary witnesses.

1st WITNESS FOR THE DEFENCE ----ON TRIAL RESPECTING ADMISSION OF STATEMENT
B 64113 Rfn DUDLEY (The Accused) on strength No 1 CGRU havingbeen duly sworn states:

Q Would you please give the Court your statement concerning any dealings with S/Sgt Nelson of the SIS and yourself previous to and during the making of your alleged statement?
A S/Sgt Nelson took me to the room alone at HQ of the Provost Coy in London where he asked me if I knew S/Sgt Gratrix well. I said "no". He said "well I do", he told me he was a bad character and he said he had a black jack which he took from S/Sgt Gratrix. He also said that S/Sgt Gratrix had beat up some police officers and that I would be as much to blame for him carrying that black jack as was Gratrix himself. He also said that if I did not make a statement I might be charged with reference to the black jack. He said that if I did make a statement before S/Sgt Gratrix could try to blame me that I would off a lot lighter. He used soft words xxx to the effect that I was not a real bad guy and thereby gave me confidence.

Q Did you want to make a statement?
A No Sir, I had not intention of making a statement but I was never in a jam before and I was afraid of another charge reference to to the black jack and S/Sgt Nelson had me scared.

Q When he said that S/Sgt Gratrix had beaten up some police offrs did he say or mention anything about the black jack?
A I cannot remember his exact words, I took the impression that they had been beat up with the black jack.

Q When he told you you might be involved in S/Sgt Gratrix's case with respect to the black jack was that also respecting the beating up the officers?
A He did tell me about the beating up first.

CROSS EXAMINATION BY THE PROSECUTOR

Q What was the first question that Nelson asked you?
A I cannot remember his exact words, I do remember him asking me if I knew S/Sgt Gratrix.

Q What was the 2nd question?
DEF OFFR OBJECTS
OBJECTION OVERRULED

Q What was the 3rd question?
A He asked me if I knew S/Sgt Gratrix, that was the 1st question.

Q What was the second question, what was the 3rd question?
A --

Q How many questions did he ask you?
A I cannot say for sure?

Q Will you tell the Court this, why you can come here and give the details in a statement, saying all these things and yet you cannot give the court the 1st or 2nd or 3rd question or how many questions you were asked, how do you explain that?
A I do not think he asked me any more actual questions.

Q In other words he did not ask you anything at all?
A He certainly did.

Q Now you tell us you do not know, now you tell us you do know and that he asked you questions, is that the case?
OBJECTION BY THE DEF OFFR
OBJECTION OVERRULED

Q He asked me if I knew S/Sgt Gratrix very well, I told him I did not. He told me he did and that he was a bad character, and that he had a black jack that he took from Gratrix, he then told me about beating up some police officers.

Q How many police officers?
A As far as I can remember he did not give me an exact number. He told me I could be held responsible as much as S/Sgt Gratrix for carrying that black jack. He said if I did not make a statement I might be brought in for carrying the black jack. He also said if I made a statement and got in ahead of Gratrix before he tried to throw the blame on my shoulders that I would get off a lot easier. He was very nice to me, he said some nice things about me, he told me I was not a bade guy and should not be mixed up in this mess at all and he said he did not think I was in the right company that I was not that sort of a guy to be mixed up in this sort of business. When I went up to that room I had no intention of making that statement as fellows I had talked to down in the cell, people I never saw before and I cannot give their names, told me that what ever I did not to make a statement. That was the idea that I went up there with and as I had never been in this sort of business before I took their word, but as I was scared of being taken in on this black jack business I was nervous and scared and I made the statement.

Q Let us go back to the story S/Sgt Nelson is supposed to have told you about S/Sgt Gratrix having beaten up some police offrs, when did this happen?
A I do not think he said but I took it that he meant the night before.

Q Were you in the Carter Police Station that night and did you accompany S/Sgt Gratrix to the No 6 Prov HQ?
A Yes Sir, but not in the same car, he was with somebody else.

Q Were you taken to the Prov HQ in Henrietta Street and was Gratrix taken there also?
A Yes Sir.

Q How do you know?
A I saw him.

Q Did you see S/Sgt Gratrix beat up any police officers?
A No Sir.

Q Did you see G"atrix seized for beating up any police officers?
A No Sir ~~thxxxxwxx~~ he was brought in at the same time as I was.

Q You finally made a statement?
A Yes Sir.

Q Were you cautioned before you made that statement?
A Yes Sir.

Q Was it explained to you?
A He told me the caution that is all.

Q Did you sign it?
A Yes Sir.

Q Did you sing it under the words to the effect that "I understand the caution and to know that I understand it I sign my name here?
A I think so.

Q When you finished this statement did you sign the following - "I have read ~~xxx~~ over the above statement which has been made voluntarily without fear of any threat or hope of any favour to come and it is true" did you sign that?
A Yes Sir.

Q You have told the Court the reason why you made this statement presumably the reason you signed it was because you were afraid you were going to be charged over this alleged black jack business?
A Yes Sir.

Q Now then Dudley will you tell me why you lied when you signed that statement and said -

OBJECTION B/ DEF OFFR
OBJECTION OVERRULED

"I have read over the above statement which has been made voluntarily without fear of any threat and hope of any favour to come and it is true" why did you lie?
A I was scared of getting into more trouble.
Q Is it not a fact that/you said there is ~~xxx~~ the truth and what you have said to the Court a lie?
A No Sir.

Q How can these gentlemen of the Court believe you or anybody believe you, is it not a fact that you are a liar?
A No Sir.

Q There is evidence been presented that on one or two occasions you have lied, how long did it take you memorize the statement you have given in this court?
A I read it over and over again.

Q Who wrote it out?
A I wrote it out.

Q You wrote out this evidence and read it over and over again so you could repeat it to this court, did you not think that if you could write it out you could also speak it to this Court, or was it necessary to write it down and read it over and over to impress it on your memory, is it not a plain fact that everything you have told this Court is a falsehood from the beginning to end?
A No Sir.

Q Then from the time you signed this statement you have lied. When you signed the caution you lied. Again when you wrote out this statement given in Court you lied, it is obvbus that you memorized it. You made it up yourself, did you consult the aid of any person about it?
A My lawyer, I talked it over with some of the other accused, Cpl Jeynnes, Bdr Davies and the rest.

Q Did you read the statement over to them, have they ever see it before?
A They never saw it?
X
Q Did you tell them anything that you were going to say in it?
A Yes Sir.

Q When did you ~~wix~~ write it out, this statement?
A About last Sat, I cannot say for sure.

Q Was that the day after the first time you were brought here?
A I believe so sir.

OBJECTION BY DEF OFFR The reason for this is that the whole was given to me the night before the trial.

Prosecutor - I merely want to know when it was written out.

OBJECTION OVERRULED

Q After you had written that statement out did you show it to the other people, other than the Def Offrs?
A I showed it to Sgt Gemmel.

Q Did you discuss it with him?
A Yes Sir.

Q What did you say about it?
A I asked him if it looked alright?

Q Is that all you asked him?
A Yes Sir.

Q Did he suggest any changes?
A No Sir.

Q Have you a copy of that statement?
A Yes sir, here is a copy, it is the statement, written in my hand writing.

(Statement marked Ex 1A by the Court)

Q Will you tell me what the last para in this statement is?
OBJECTION BY THE DEF OFFR: This is not a university or school where people are expected to memorize paras or scripts.

PROSECUTOR: This statement is alleged to be the exact words and statements of the accused.

OBJECTION OVERRULED

A The words are to the effect "I swear that this is the solemn truth, that S/Sgt Nelson did by clever methods use influence to get my statement".

Q Read the last para.
(Witness reads the last para).

Q Did you show this statement to anyone other than Sgt Gemmel and the Def Offrs?
A No Sir I did not show it to them to read they knew I had a statement but did not know the contents of the statement.

DEF OFFR: Some of the Def Offrs did see this statement. They saw it but did not read it, they had an idea of its contents as I talked it over with them, I talked it over with all of them.

PROSECUTOR CONTINUES WITH CROSS EXAMINATION

Q One minute you say you did not talk it over with anyone other than the def offr and the next you say you did, what is your answer?
DEF OFFR: He discused it with me before he said anything to anyone else.

Q Did you discuss it with anyone else besides Sgt Gemmel?
A Yes, not the actual statement but the contents.

Q Did you and the remainder of the accused decide to cook up something that would get your statements thrown out of Court, is that true?
A That is a lie.

Q In other words you and the others cooked this up to get the statements thrown out.
A No but I intended to give it in evidence, it is not cooked up.

Q Had you ever had, since the day you made those statements seen your statement you made to Sgt Nelson or heard it read to you?
A No Sir, I have not.

OBJECTION BY DEF OFFICER - the accused had the summary given to him.

PROSECUTOR - The accused is giving evidence

PRESIDENT - Proceed.

Q Were you present at a summary of evidence which was taken on the 1st or 2nd Nov of this year?
A Yes Sir.

Q You were present throughout the entire summary?
A I believe so.

Q On page 3 of that summary I find this statement referring to the same statement taken on the 6 Oct 44, "at about 1400 hours in the Special Investigation Section office, Canadian Mil HQ I saw Rfn Dudley, I cautioned him and he made to me a xxx voluntary statement which I took down in writing and which he signed in my presence, a copy of which I here produce" "The statement having been read to Rfn Dudley is attached to the Summary," why did you say you have never heard it read before?
A I said I never heard it read before or after I made the statement to S/Sgt Nelson. I meant I had not seen the statement I made on the 6 Oct after I had made the statement in my evidence which is Ex 1A.

Q Did you make any objections to the xx statement at the time of the Summary?
A No Sir I was scared at the time.

Q I took the summary when you came in for the purpose of having that summary taken what was the first thing that I, as officer who took the summary said to you?
A I think you explained why we were there, for a summary of evidence concerning some blankets alleged to have been stolen from this unit.

Q What else did I say?
A The next thing I remember you started in on this statement, read them to us and showed them round to us.

Q Did I not tell you anything else?
Nothing that I remember.

Q You memory of recent events is not very good, now we come on to another thing. You say he used soft words, what do you mean?
A He was nice to me, said I was not a bad guy.

Q In other words he did not beat you up, he treated you decently?
A He gave me the impression that I was not a bad guy.

Q It is a fact that he treated you decently at that time, when did he stop treating you decently?
A I would say when he brought up this black jack angle.

Q Lets go over your evidence so far, so that I can be certain we have it all straight, you were arrested, that right?
A Yes Sir.

Q S/Sgt Nelson Came to you?
A Yes Sir.

Q Took you to the SIS?
A Yes Sir.

Q He turned you over to No 6 Cdn Prov Coy?
A Yes Sir to the NCO IC the desk.

Q What happened next?
A I was taken down to the cell where I was for the night.

Q Where did you see S/Sgt Gratrix?
A I saw him in the Carter Police Station and at the Provost.

Q Was he when you saw him at the Prov Coy marked up or as usual?
A I did not notice anything particular.

Q You would have noticed though had he been roughed up?
A Yes.

Q If he had in in a fight?
A Yes.

Q No the next day, the first thing of importance, S/Sgt Nelson came down and got you?
A And took me up to the room in the SIS, he said he wanted to ask me some questions, he asked me I knew S/Sgt Gratrix well.

Q What was the next question?
OBJECTION BY DEF OFFR - The accused has given this evidence twice verbally and has given a written statement.
OBJECTION OVERRULED

A I cannot say for sure what he asked me, he asked me a lot.

Q The thing that puzzels me, Dudley, is this, you can remember the first question as if you knew it by heart, i.e. "do you know S/Sgt Gratrix well?"
A Well I would not swear that was the first thing or his exact words.

Q You can not remember the first things I said to you at the summary of evidence but strangely enough you can remember a long involved detail of events and yet you cannot remember the second question that was asked you. You admit you can remember the first thing you hear, because if it is not then the Court is waiting to hear what you remember.

DEF OFFR - The witness has given this evidence three times, whether he remembers what question was 1st, 2nd, 3rd or 4th is irrelevant as long as he has stated three times exactly the same thingthen surely he has answered satisfactorily.

OBJECTION OVERRULED:

Q What happened next?
A He told me that he wanted the statement and he got it, I signed it.

Q Then the next time you heard this statement read was at the summary of evidence, is that right?
A S/Sgt Nelson read it back to me, the next time was at the summary.

Q Did you ask any questions about it?
A No Sir.

Q Did you speak to me about it?
A I recognized it, but I said nothing to you about how it was obtained.

Q Did you have opportunity to do so?
A Yes Sir.

Q When you were brought before you CO did you say anything about the method by which this statement was obtained?
A No Sir.

Q In other words the first time you did anything about the method this statement was taken from you was either on last Sat or Friday night?
A The first time I mentioned it was the day before the trial.

RE EXAMINED BY Lt Wilding-White:

Q Your signature appears on your statement given to S/Sgt Nelson three times doesn't it?
A Two times that I know of Sir. I signed at the bottom of each page?

Q What induced you to put all these signatures on each page?
A I was afraid I would get into more trouble.

Q You signed the statement and all other statements under the same influence?If You were afraid of being prosecutred for a more severe crime than you are being charged with now would you naturally tell the Prosecutor about them, or the CO?
A No Sir, I wanted to tell my Def Offr about them first.

Q Before you saw S/ Sgt Gratrix at the Police Station was there a long interval of time during which he could have been in trouble? And maybe beaten up on someone?
A Yes Sir, I did not see him for two hours.

Q At the summary of evidence did the Prosecutor make any general threats?
A I cannot say they were threats, he said words to the effect that how much time we were going to get out of this. He kept making reference to Sgt Johns, he said something about a pronged fork. He said he built a fork with many prongs and if he did not get you with one he would get you with another.

Q Did he say that to you?
A Not to me in particular but to all of us.

Q You said that S/Sgt Nelson [illegible] treated you decently, did he

not treat you particularly decently?
A Yes Sir he did.

Q In fact did he not try to appear to be your friend?
A Yes Sir.

Q What did S/ Sgt Nelson say about the black jack, what were his words?
A He said he had a black jack that he took from S/ Sgt Gratrix, I cannot day for sure but I took the impression that he got it from Gratrix.

REEXAMINATION BY THE PROSECUTOR

Q Did you ever see this mysterious black jack?
A No Sir.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

S/Sgt NELSON is recalled under RP 86(B) to give evidence on matters that have arisen in the evidence of the last witness:
Def Offr: I have no objections I wish to Call Capt Keen. Granted;
S/Sgt Nelson, already sworn states:
PROSECUTOR:
Q We want you to go over the circumstances surrounding the taking of this statement from Dudley, do you recall what the first thing was that you said to Dudley, when you brought him up to your office?
A The first thing I said to Dudley, "what about these blankets?"

Q Did you ask him anything about S/Sgt Gratrix?
A I did not sir.

Q Did you tell him that Gratrix was a bad egg?
A No Sir.

Q Did you state that S/Sgt Gratrix had a balck jack with which he had beaten up some police officers?
A No Sir.

Q Did you know whether or not S/Sgt Gratrix had beaten up any police officers?
A He had not done so to my knowledge.

Q Has any complaint been made to you at any time that S/ Sgt Gratrix beat up any police officers?
A No sir.

Q Did you say to the accused, you had better make a statment before Gratrix blames you for all this?
A No Sir.

Q Did you tell the accused that he was not a bad fellow and should noy [illegible] take the whole balme for all this?
A No Sir.

Q The accused has complained that you were nice to him? How did you treat the accused?
A I treated him as man to man.

Q You let him sit down?
A Naturally I let him sit down.

Q Did you treat him as you would treat an ordinary soldier?
A I think so.

Q Did you let him smoke?
A Yes Sir.

Q He says you used soft words to him, can you think of anything you might have said to him that might be presumed "soft words"?

A No sir I am sure I can't.

Q Did you brow beat him?
A No sir.

Q Bully him?
A No sir.

Q Swear at him?
A No Sir.

Q Did you tell him that he would be ch arged along with S/Sgt Gratrix for having possession of a black jack?
A No sir.

Q Did you hear that S/ Sgt Gratrix was in possession of a black jack?
A Not at that time.

CROSS EXAMINATION BY DEF OFFR (Lt Wilding-White)

Q Did you ever make a trip out to Farnborough in connection with this case?
A Yes Sir.

Q Who did you see there?
A I saw a number of people. I spoke to Major Creasy and Capt Lowe.

Q Who else? Did you see a Mrs Ward?
A I remember a Mrs Ward, but am not sure that I saw her at Farnborou

Q Who did you go there with?
A Det Constable Lightfoot and Capt Keen.

Q Did you ask Mrs Ward any questions?
A Yes I think I did.

Q Did you say to her, "we are Bill Miskimmins friends, if you tell us all you know it will be to his advantage? Did you say that?
A No Sir.

OBJECTION BY PROSECUTOR
DEF OFFR - This conversation with Mrs Ward is to show the method that was used in obtaining evidence from people, it is part of the method and the sort of method he used?
OBJECTION OVERRULED

Q Did you intimate that you were attempting to help Miskimmins and you were his friend?
A Actually I did not question Mrs Ward, it was done by Constable Lightfoot, and I did not say any such a thing to her.

Q Did you not hold yourself up as a friend of Miskimmins and would help him?
A I do not think so, I may have told her that I knew Miskimmims

Q And you would help him?
A No sir.

CROSS EXAMINATION BY Maj Fellows:

Q The question by the Prosecutor regarding the black jack being used to beat up officers, I would like to disassociate the police officers, did you mention to the accused the presence of a black jack or the existance of a balck jack?
A I did not sir.

Q At any time during the taking of the statement did you mention a black jack?
A No sir.

Q When did you first learn of the existance of this black jack?
A On the 7 Oct. I took it out of the bag containing the personal property of S/ Sgt Gratrix in the SIS office. I confiscated it.

Q On what authority did you take this black jack?
A On my own authority as a policeman.

Q In whose custody was it when you took it?
A In the custody of the provost of which I am a member. When I interviewed S/Sgt Gratrix I took him and his personal property and gave a receipt for the live body and personal property in the presence of S/ Sgt Gratrix I opened the bag to look at his belongings and found the black jack and pulled it out of the bag. When it was taken off him by the Provost it was left with the rest of his property.

Q You produced it in front of Gratrix?
A Yes sir.

Q After you had finished talking to Gratrix regarding this black jack what did you do with his property and the black jack?
A I replaced the personal belongings and returned the property bag, I retained the black jack as it is my duty to do so as no Canadian soldier is allowed to carry one about. I told Gratrix I was taking it, I said "I had better have this" he said"please do". I placed it with the collection of other weapons that have been confiscated, I did not leave it with his personal property because I was afraid that some L/Cpl might return it to the owner.

Q When you interviewed Gratrix did you stand in front of him xwinging the black jack and say "Now Gratrix what do you know of this?"
A No sir.

Q After all the statements were completed did you say to anyone of the accused,"the black jack is at the bottom of the Thames".
A No sir.

RE EXAMINED BY THE PROSECUTOR

Q What do you mean by "a collection of weapons"?
A It is weapons that we have confiscated, they are kept in the office

BY THE COURT:

Q Did you say to the accused anything to this effect, that if he did not make a statement that he might be xxx charged with respect to the black jack?
A No sir.

Q Are you positive?
A Yes sir.

Q Did you say to him anything to this effect, "xxxxx if you make a statement before S/Sgt Gratrix tries to blame you, you will get off a lot lighter?"
A No sir.

Q Are you positive?
A Yes sir, at the time of the interview with Dudley I did not know of the existance of the balck jack.

WITNESS RETIRES

2nd WITNESS FOR THE DEFENCE ON THE ADMISSIBILITY OF THE STATEMENT
L 1161 Pte (A/S/Sgt) GRATRIX, R.J., on strength of No 1 CGRU, having been duly sworn states:

Q Will you please give the Court in detail any dealing you had with S/ Sgt Nelson of the SIS generally and with special regard to any reference of a black jack?
A I was taken to the SIS office at Henrietta Street in London and there interviewed by S/Sgt Nelson. This was on the 7 Oct 44; he asked me if I wished to make a statement, prior to asking me he cautioned me. I told him the only statement I would make would be to my CO. He then said that I was a dam fool and that I was in a serious jam, he told me there were two ways of doing things, a hard way or the easy way, he said"it is up to you, if you wish to play ball with me, I will play ball with you, but if you want it the hard way that is the way you are going to get it". He had with him at that time a sack containing my personal belongings that had been taken from me by the Provost at Henrietta street and he produced from that bag a black jack that I was carrying on 5 Oct, he held it out to me and said "what about this, this is going to make things look much worse than they are." He said it is my duty to see that you are charged with carrying a concealed weapon and in this country it is a serious charge and a heavy penalty. He then went on and asked me who owned the black jack and if the person who owned it would want to have it back, I replied "no" he said "if you are smart you will tell me the whole story and let me deal with the black jack". I told him I would type a statement and he said "before lunch we will get a rough idea of the story and if you tell me the whole story there will be no need to mention the black jack." After lunch under S/ Sgt Nelson's supervision I typed a statement. While typing that statement he repeatedly asked me to put it in my own words as it would too obvious that he told me what to say. I signed that statement that afternoon under the impression that no more would be said about the black jack and that there would be no charge of carrying a concealed weapon. That is all that I had to do with Sgt Nelson in London.

Q You mean you did not have anything to do subsequent to that?
Q He was with me on 5 Oct when I was brought to Henrietta Street where they took my personal belongs and it was there that when they searched me they got the black jack. A L/Cpl of the Provost searched me and he produced the black jack and handed it to the cpl at the desk.

CROSS EXAMINATION BY THE PROSECUTOR

PRESIDENT TO ACCUSED: You are not compelled to answer any question which might te d to incriminate you unless you wish to do so.

Q What day were you taken to Henrietta Street?
A 5 Oct 44, at about 2300 hours.

Q Who took you there?
A S/ Sgt Nelson in a CID car, I was accompanied by two members of the CID.

Q What happened to you that night after you were taken to Henrietta Street?
A I was searched by the L/Cpl, my personal belongings were checked and registered in the desk book.

Q Were you cautioned at any time that night?
A S/ Sgt Nelson cautioned me when he first came to the CID office.

Q How long were you in the cells at Henrietta Street before you saw S/ Sgt Nelson.
A I was not in the cells at Henrietta Street, I was taken to an English guard room, I was there until 7 Oct 44.

Q What time did you see S/Sgt Nelson?
A Around 1000 hours.

Q Where was this statement taken, in what room?
A A room in the SIS office at Henrietta Street.

Q Were you brought into that room by someone?
A Nelson and a L/Cpl of the Provost brought me in, Nelson had my belongings in a bag which he got from the Cpl at the desk who had gotten them from me. He opened the bag in front of me and took the articles out, among the articles was the black jack.

Q You were carrying it the night you were arrested?
A Yes Sir.

Q What was the first thing he said to you?
A "you are in a bad jam".

Q Did he say anything else?
A He said "you are a dam fool".

Q What did he say first.
A He cautioned me and then said "you are in a bad jam" and then asked me if I wished to make a statement. I said "I would make a statement to my CO." He then said "you are a dam fool".

Q That is not the way you have said it here? Were you standing up when he was examining you?
A I was sitting down sir.

Q You say you typed this statement out?
A Yes Sir.

Q Did you type the caution out also?
A No sir.

Q Was it already on the paper?
A S/ Sgt Nelson typed it and I read it over.

Q Did you type at the end of it anything like this "I have read over the above statement which has been made voluntarily without fear of any threat or hope of any favour to come and it is true" and did you sign it?
A Yes sir.

Q Why?
A I was under the impression that if I did not make that statement I would be charged with a more serious charge i.e. that of carrying a concealed weapon.

Q One statement must be a lie?
OBJECTION BY DEF OFFR - I feel that the statement is one thing and the reference to the black jack might or might not have been put in the statement but it is no lie to say there was a reference to the black jack?

OBJECTION OVERRULED

Q Either the statement you made to this Court which is that you signed this original statement because you were afraid of being charged with the black jack is true or else the statement you signed is false. One of those statements cannot be true is that not right?
A When I signed that last statement which says "no threat or promise" that is false.

Q Did you understand the caution you were given?
A Yes Sir.

Q How are you employed?
A I am chief instructor of the Clerks Training Wing, 1 CGRU?

Q Then you would have no trouble knowing what words meant?
A No Sir.

Q These words were quite clear were they not?
A Yes sir.

Q Were you present at the summary of evidence taken on the 1st or 2 Nov?
A I do not know the date but I was present at a summary of evidence.

Q Was your statement read over to you at that summary?
A Yes Sir.

Q Did you ask any questions regarding it?
A No sir.

Q Did you make any complaints?
A No sir.

Q When you appeared before your CO did you complain?
A No sir.

Q Will you tell your story over again exactly as you told it to the Def Offr?

DEF OFFR: Is that necessary?
PRESIDENT: Yes.

A On the morning of 7 Oct I was taken to the SIS office, Henrietta Street and I was interviewed by S/Sgt Nelson. He cautioned me and asked me if I wished to make a statement, I told him the only statement I would make would be to my CO. He then told me that I was a dam fool and that I was a bad jam. That there were two ways to do everything, an easy way and a hard way. He told me if I wanted to play ball with him he would play ball with me but if I wanted it the hard way that is the way I would get it. He had with him at the time a bag in which were my personal belongings that had been taken from me by the provost personnel at Henrietta Street on 5 Oct 44, he took from that back a black jack which I had been carrying on 5 Oct 44. He showed it to me and said "what about this", he also said "it is my duty to see that you are charged with carrying a concealed weapon, and in this country it is a serious charge and the penalty is heavy. He then asked me who owned the black jack and if the person who owned it would require it back. I replied "no" and he said "if you are smart you will tell me the whole story and let me take care of the black jack. I offered to type a statement for him and he said "before lunch let's get a rough idea of the whole story and if you tell me the whole story there will be no need to mention the black jack." After lunch under S/Sgt Nelson's supervion I typed a statement. While typing that statement he repeatedly said to me to put some of this in your own words so that it would not be so obvious that I told you what to say.

Q Did you write all this out before you come to Court? Did you interview any of the accused in regard to this statement, that you just made?
A I was in the presence of the Def Offrs.

Q Did you see any of the other accused?
A Yes with the def offrs present.

Q Did you try to see any of the accused when the Def Offrs were not present?
A I tried to but did not. We were not allowed to be together.

Q When?
A I cannot state any definite time.

Q I suggest to you that it was yesterday that you tried to see the remainder of the accused, that it was yesterday afternoon did you or did you not?
A I tried to see some of them.

Q Did you consult with any of the accused as to what they were going to say?
A No sir.

Q Have you seen at any time any of the statements that the other accused are going to make here?
A Yes sir, I have see them all.

Q Have you read them all?
A No sir.

Q Have you discussed them with the other accused?
A Yes sir.

Q When?
A During the last couple of days.

Q Did you memorize this statement before you come into Court?
A No sir.

Q Have you a written statement of this evidence?
A Yes Sir.

(Prosecutor reads the statement)
Q Why did you not give the complete statement that you wrote out?
A I gave a complete statement to the Court as far as I can remember.

(Statement marked Ex 1 B by the Court)

Q I read on it "what I had been told by two other accused after I had arrived in the guard room", what does that mean?
A Pte Gemmel was brought into the guard room about two days after I arrived there and put in the same cell as I was, I cannot tell the exact date.

Q This conversation took place while you and Gemmel were in the guard room?
A I think Sgt Davies was there.

Q Suppose that I suggest to you that after consultation with the rest of the accused you decide that it would be very useful to have these statements you signed thrown out and arranged a story the story that you have told and then after that you and Gemmel and Davies consulted about what you said and you decided you would add a little weight to their remarks by adding it to yours?
I would say it is not right sir.

After you had finished writing out your original statement which I see you signed did you decided that this was not good enough that you would better it that you had been told the same thing by other people and then added it?
I added it, yes sir.

For that reason? wrote
I added it after I [redacted] that statement in case I needed to give it in evidence.

You cannot remember what day you arrived in the guard room at 1 CGRU?
No sir.

RE EXAMINED BY THE DEF OFFR

Q How many places is your signature on the statement you made?
A Several times.

Q What influenced you to write them there?
A I was under the ~~impression~~ impression that unless I signed it I would be charged.

Q Under what inducement?
A The fact that I would not be charged regarding the black jack and that I would hear no more about it.

Q The Prosecutor also mentioned that you never referred to the black jack at the summary or to the CO, when faced with a more serious charge would the prosecutor or the CO be the normal persons to tell things like this to?
A I did not think so at the time, and when I was up in front of the CO I did not say anything as I was remanded for CM.

Q Do you remember at the taking of the summary the Prosecutor making any threats?
A He stated that when he built a pitch fork he put enough prongs on it so that if he missed with one he would get us with another, I understood that if he did not get us on one charge he would on another.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

PROSECUTOR ASKED FOR LEAVE TO RECALL S/Sgt NELSON to rebut evidence given by the last witness - request granted.

S/Sgt Nelson, already sworn states:

Q Did you interview a S/Sgt Gratrix?
A Yes sir, on the 7 Oct 44.

Q Will you tell us the circumstances of your interview with him?
A I gave a receipt for his live body and brought him to the SIS office where I made some remark to him as to what it was all about and ~~if~~ I cautioned him in the usual manner, after which he made a statement. I had noted down his remarks on some scrap paper. After he finished his statement I opened a bag containing his personal belongings and it was after that that I suggested to him that I take it down in writing, he did not object. I cautioned him again and he typed the statement out. I saw Gratrix at about 1445 hours on the 7 Oct, it was the first time that I had seen him that day.

Q Did he make a statement that you jotted down in pencil?
A Yes Sir. Gratrix then said he would type it out himself.

Q Did you dictate his statement to him and use the following words, "you had better put some of this in your own words or it wont sound right"?
A No sir. He told me he was a typing instructor and volunteered to type it out.

Q Did you use to him the following phrase, "you are a dam fool and are in a serious jam" or similar words?
A No sir.

Q Is it your custom ~~xxxx~~ to call people dam fools?
A No sir.

Q Did you say anything similar to the following "There are two ways to do everything, a hard way and an easy way, if you play ball with me, I will play ball with you" or similar phrase?
A I do not recall it sir.

Q Would say positively that you did not say such a thing?
A I am not sure, it might have arisen?

Q Did you say when you found this black jack, "this is going to make things much worse for you"?
A No sir.

Q Did you say "you have been carrying a concealed weapon and there is a heavy penalty for that sort of thing?
A No sir.

Q Did you say "it is really my duty to charge you with carrying a concealled weapon?"
A No sir.

Q Did you say to him "if you are smart you will tell me the whole story and I will deal with the black jack"?
A No sir.

Q Did you promise S/Sgt Gratrix any amunity from anything?
A No sir.

Q Did you make any effort at any time to bully him?
A No sir.

Q How many times do you recall cautioning S/Sgt Gratrix?
A Once when I arrested him, once when I first started to speak to him on the 7 Oct and when he started to type his statement.

Q Did he sign a statement to this effect?
A He did, something to the effect that "I have read over the above statement, it is made voluntaryily without fear of any threat and hope of any favour and it is true".

DEF OFFRS DECLINE TO CROSS EXAMINE THIS WITNESS

BY THE COURT

Q At what stage in the taking of the statement did you open the bag with his belongings and pull out the black jack?
A He had finished his story which I had made notes and it was after that that I opened the bag and found the black jack.

Q Did you know the black jack was in the bag?
A No sir.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

3rd WITNESS FOR THE DEFENCE ON THE ADMISSIBILITY OF THE STATEMENT
L 15134 Pte GEMMELL, N.A., on strength No 1 CGRU, having been duly sworn states:

PRESIDENT: You are not compelled to answer any question which might tend to incriminate you.

EXAMINED BY THE DEF OFFR

Q Would you tell the Court of your dealings with S/ Sgt Nelson generally and with special regard to any reference made to a black jack.

A On Friday, 6 Oct I heard a rumor that S/ Sgt Gratrix and a driver from 1 CGRU were in arrest in Lond having been picked up

with Gratrix carrying a black jack. I heard this rumor repeated several times during the next three or four days then on the 10 Oct I was put under arrest by S/Sgt Nelson, I was cautioned and taken out to No 9 Prov Coy. There, after lunch, I was taken into a room and S/Sgt Nelson cautioned me again and asked me what I knew of the affair that Gratrix and the driver were involved in. I told him I knew nothing. Then he told me that Gratrix had been arrested in possession ~~fm~~ of a black jacm. He went on to say that serious charges could be laid against Gratrix and that he had proof that I was involved in the affair and therefore would be serious for me too. But if I made a statement it would go lighter and be much easier on me and that I should make a statement. I thought for a few minutes and then agreed to sign a statement which Staff Nelson took down in his hand writing.

CROSS EXAMINATION

Q At what time on Friday 6 Oct did you hear this rumor that Dudley and Gratrix had been arrested in London carrying a black jack?
A It was when I went to mess for lunch at approx 1145 hours.

Q Who said it?
A I do not remember who first told me this story, I believe it was Spr Gorman. I understand he is now in France, he left shortly after that.

Q Who was carrying the black jack according to the rumor?
A S/ Sgt Gratrix.

Q Have you ever seen him with a black jack?
A No.

Q Had you ever known him to carry one?
A I have never known him to carry a black jack.

Q How long have you known him?
A Over two years.

Q Where were you arrested on the 10 Oct?
A "A" Wing office, 1 CGRU, Major McLean was present, and there may have been others in the office. S/Sgt Nelson arrested and cautioned me there. I understood the caution.

Q You are a member of the CMSC?
A Yes sir.

Q You understand the meaning of the words?
A Well enough for the purpose.

Q Where were you questioned by Nelson after lunch?
A No 9 Prov Coy I believe was the place.

Q Will you tell me the first thing that Nelson said to you?
A He cautioned me.

Q Next thing?
A He first asked me what I knew of the affair of Gratrix and the driver who was with Gratrix.

Q What was your answer?
A I told him I knew nothing of it. xxxxxx

Q What next?
A He then told me that when Gratrix was arrested he was carrying a black jack and it was serious and serious charges would be laid against me.

Q What happened next?
A He told me that he had proof that I was implicated with Gratrix.

Q What next?
A His words were to the effect that serious charges could be laid against me because I was implicated but if I made a statement these serious charges would not be laid.

Q Did you write out the evidence you have made to the Court today?
A I made notes.

Q Have you them with you?
A Yes Sir. Here they are in my own hand writing.

(Notes marked Ex 1C by the Court)

Q Have you shown these notes to any personnel other than your Def Offr?
A The other officers have seen them.

Q Have any of the accused seen them?
A No sir.

Q Have you discussed the matter of that statement with any of the other accused?
A Yes sir.

Q To what extent?
A Quite a good deal.

Q Did the remainder of the accused tell you what their statements were going to be?
A They told me the essence of what their statements were.

Q Did you discuss their statements with them?
A The statements were made one to another but it could not be called or taken as discussion.

Q In other words you understood what the others were going to say.
A Yes I suppose so.
Q Have you a general idea of what Miskimmons is going to say?

OBJECTION BY THE DEF OFFR:

OBJECTION OVERRULED

A I have a general idea of what Miskimmons will say.

Q And the rest?
A And the rest.

Q On what date did you write out that statement?
A Yesterday.

Q When did you make your first notes for it?
A Some time ago, I cannot tell you just when.

Q Last week?
A Before last week.

RE EXAMINED BY THE DEF OFFR

Q On whose request did you make out this statement?
A The first notes I made were on my own suggestion, I made up the statement at the request of the Def Offr.

Q With regard to the statement that S/Sgt Nelson got you to sign did you sign it in several places?
A Yes sir.

Q What induced you to sign that statement?
A Because I believed there was a threat and promise in it.

Q What induced you to sign in the various places, and in particular that it was in your own free will?
A I had been cautioned and it was to be a statement of my own free will so I thought I might as well sign it as such.

Q Was it in your own free will?
A No sir.

Q In other words the promises or threats of Nelson induced you put your signatures on that statement?
A Yes sir.

did
Q Some days/I come down to the guard room and interview you?
A Yes sir.

Q Did each one of you give a statement at that time?
A Yes sir.

Q Was that repeated at any time?
A That procedure was again repeated very recently.

Q What other offrs were present at the time?
A On the second occasion all the def offrs were there.

Q And the first time do you remember who was there?
A Yourself and Capt Saunders.

RE CROSS EXAMINED BY THE PROSECUTOR

Q Were you prsent at the summary of evidence on the 1st and 2 Nov 44?
A Yes sir.

Q Was your statement read over to you on that occasion?
A Yes sir.

Q Were you given an opportunity to make any comments on it had you wished to do so?
A Yes sir.

Q Did you do so?
A No sir.

RE EXAMINED BY THE DEF OFFR (Lt Wilding-White)

Q What influenced you not to make any complaints at the time of the summary of evidence?
A I had realized by this time that the making of statements could not help me in any way or anyone else, I thought I had made enough by then and there was no one there urging me to make any more.

Q Would the Prosecutor be the normal person to make any statement to?
A No sir.

Q Did the officer taking the summary on that occasion make any threats?
A He suggested the penalties that we would receive would be very heavy.

Q Did he say anything else?
A He also mentioned that a good many charges would be laid so that if we beat one we would be got on another. He told us that when he built a pitch fork he made it with lots of prongs on it and if he missed us with one he could get us with another.

BY THE COURT

Q Did you tell the officer taking the summary of the inducements made to you by S/Sgt Nelson?
A I did not feel it was the place to make any protests.

BY THE DEF OFFR

Q Were you still under the influence of the threats?
A Yes sir.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

S/Sgt NELSON, already sworn is recalled: Examined by Prosecutor

Q Did you on the 10 Oct 44 arrest a then Sgt Gemmel?
A Yes sir, in the office of the OC "A" Wing, 1 CGRU, the OC was present when I arrested this man.

Q Did you caution him?
A I took him over to the guard room and then to the APM's office at CRU and then to No 9 Cdn Prov Det. I interviewed him at the No 9 Prov after cautioning him.

Q Did you say to Gemmel these words or words similar? "Sgt Gratrix when arrested was in possession of a black jack and it is going very hard with him"?
A No sir.

Q Did you at any time metnion to Gemmel anything about this black jack?
A No sir.

Q Did you show him the black jack?
A No sir.

Q Did you tell him that because S/Sgt Gratrix had a black jack that very serious charges would be laid against Gemmel.
A No sir.

Q Did you use any such expression?
A No sir.

Q Did Gemmel make a statement?
A Yes sir.

Q Was it voluntary?
A Yes sir.

Q Was he given the usual caution?
A Yes sir.

Q Did he sign it?
A Yes sir.

Q Did he then sign this statement or a similar statement? "I have read over the above statement which has been made without fear of any threats or hope of any favour and it is true"?
A Yes sir.

Q Did you at any time in your dealings with Gemmel threaten, bully, abuse or do any other thing to induce him to make a statement?
A No sir.

Q Did you offer him any favour or infer if he made a statement that he would be let off easier?
A No sir.

CROSS EXAMINATION BY DEF OFFR

Q When you went from accused to accused on these occasions did you ever show the statements of one to the other?
A Yes sir.

Q Did you ever read it to them?
A No sir, I gave it to them to read themselves.

Q Then after showing it to one and if he gave a statement you carry it back to show it to someone else, is that true?
A No sir.

Q You might have done it?
A But I did not.

Q You did to a number of accused before they had made statements produced statements of the other accused?
A No sir, I produced the original statement to another accused but that would not be the statement which had been taken as a result of previous action I had taken.

BY THE COURT

Q Did you in your discussions with Gemmel before he made a statement say anything to this effect, "that if he, Gemmel, made a statement it would be lighter for him?"
A No sir.

Q Did you say to him, "that if he made a statement it would go easier for him"?
A No sir.

Q Are you positive?
A Yes sir I am sure of it.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

WITNESS RETIRES:

4th WITNESS FOR THE DEFENCE ON THE ADMISSIBILITY OF THE STATEMENT
D 91032 Bdr DAVIES, J.C., on strength No 1 CGRU, having been duly sworn states:

PRESIDENT: You are not compelled to give any evidence or answer any questions which might tend to incriminate you.

EXAMINED BY THE DEF OFFR (Maj Fellows)

Q Would you tell the Court any dealings you had with S/Sgt Nelson of the SIS in general and in particular with reference to a black jack?
A On the 11 Oct 44 I was taken to Aldershot Police station and interviewed ~~xxx~~ by S/ Sgt Nelson. I told him that I had no intention of making a statement about an alleged theft. I was worried at this time about reports that were rife in the Sgts Mess and in all the camp in general that S/Sgt Gratrix had caused bodily harm to some police officers in London, I think I heard these rumors about the 5 Oct. I asked S/Sgt Nelson a direct question, did S/Sgt Gratrix beat up some police officers in London and ~~xxx~~ he rather avoided the question and said "so you realize how serious a charge this can be" so I told him I could not realize just how serious a charge can be as I did not know what occurred in London. S/Sgt Nelson went on and said "your friend Gratrix is in trouble and if you want to help him and help yourself too", as a matter of fact he used bad language, he said "you will fucking well do as I say" so I made a statement and I won't accused S/Sgt Nelson of dictating it word for word, but he was continually referring the statement that Gratrix made and Gemmel. He kept reminding me to use my own phrasing as he continually referred to his notes I was doing the typing.

Q On whose request did you write out the statement
A I had already volunteered this information to my Def Offr.

Q What induced you to sign in the various places, and in particular that it was in your own free will?
A I had been cautioned and it was to be a statement of my own free will so I thought I might as well sign it as such.

Q Was it in your own free will?
A No sir.

Q In other words the promises or threats of Nelson induced you put your signatures on that statement?
A Yes sir.

Q Some days/I came (did) down to the guard room and interview you?
A Yes sir.

Q Did each one of you give a statement at that time?
A Yes sir.

Q Was that repeated at any time?
A That procedure was again repeated very recently.

Q What other offrs were present at the time?
A On the second occasion all the def offrs were there.

Q And the first time do you remember who was there?
A Yourself and Capt Saunders.

RE CROSS EXAMINED BY THE PROSECUTOR

Q Were you prsent at the summary of evidence on the 1st and 2 Nov 44?
A Yes sir.

Q Was your statement read over to you on that occasion?
A Yes sir.

Q Were you given an opportunity to make any comments on it had you wished to do so?
A Yes sir.

Q Did you do so?
A No sir.

RE EXAMINED BY THE DEF OFFR (Lt Wilding-White)

Q What influenced you not to make any complaints at the time of the summary of evidence?
A I had realized by this time that the making of statements could not help me in any way or anyone else, I thought I had made enough by then and there was no one there urging me to make any more.

Q Would the Prosecutor be the normal person to make any statement to?
A No sir.

Q Did the officer taking the summary on that occasion make any threats?
A He suggested the penalties that we would receive would be very heavy.

Q Did he say anything else?
A He also mentioned that a good many charges would be laid so that if we beat one we would be got on another. He told us that when he built a pitch fork he made it with lots of prongs on it and if he missed us with one he could get us with another.

BY THE COURT

Q Did you tell the officer taking the summary of the inducements made to you by S/Sgt Nelson?
A I did not feel it was the place to make any protests.

Q Suppose I produce a witness to say he did nothing of the kind? Do you still maintain that what you told the Court is true?
A Yes sir.

Q Did S/ Sgt Nelson start to type this statement out and you told him that xxxxxxxxx he was a poor typist and say that you would do it yourself?
A He is not a poor typist.

Q Did you take over from him?
A Yes sir, S/Sgt Nelson asked me how many words I could type and I told him and he asked me to type it.

Q You say he practically dictated it?
A Yes sir.

RE EXAMINATION BY DEF OFFR (Lt Wilding-White)

Q Did he question you concerning the statement and examine you regarding other statements?
A He asked me questions but he did not examine me.

Q Did this seem inducement and threats to you?
A Yes sir.

Q The same inducement that caused you to sign all the statements?
A Yes sir.

Q When you were at the summary of evidence was this same influence or promises affect you?
Aa Yes sir.

Q Did the officer taking the summary make any threats.
A Yes sir, he went around to various individuals and said you are liable to 10 years and you good for five years and I think it influenced out judgement. I made the correction in my statement to see what psychological effect asking to have a change made would have over S/Sgt Nelson. The officer taking the summary also said something about when he built a pitch fork he made it with many prongs meaning that we were to have many charges so that if we beat one we would be found guilty on another. This also made me refrain from complaining to him at the time he asked me if I had anything to say.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

S/Sgt Nelson, already sworn is recalled and examined by the Prosecutor

Q Did you on the 11 Oct take Cpl Davies to the Aldershot Police station?
A It was on the 10 Oct I believe and I interviewed him on the 11 Oct.

Q Did he ask you a question in the following words or to the effect "is it true that S/ Sgt Gratrix has beat up some civilian policemen in London with a black jack?" or any similar xxxxx expression?
A I am not positive but I think not sir.

Q Did you use to Cpl Davies the following or similar words "your friend Gratrix is in trouble, if you want to help him and help yourself you will fucking well do as I say"?
A No sir, I did not.

Q Did you administer the usual caution to him before taking the statement?
A Yes sir.

Q Did you dictate it from other statements?
A No sir.

Q Were there any other persons in the office?
A Yes, several members of the CID, there was Det Constable Kidd and Burns.

Q Did you offer Davies any inducement to make his statement?
A No sir, and no threats or promises and no hope of any favours if he made his statement, I in no way induced him to make a statement.

CROSS EXAMINATION BY Maj Fellows:

Q Did Davies mention a black jack at all?
A No sir, not that I remember.

Q Was there any discussion?
A There was some discussion, but I do not remember a black jack being mentioned.

BY Lt Wilding-White:

Q Would that not be rather an important thing for you to remember?
Q No sir, the question was just whether he had beat up a policeman.

Q Was that not an unusual question?
A No, there were rumors all over camp and I would not place any importance on it.

BY THE COURT

Q Did you say any words to this effect to Davies before he made his statement "if you wish to help Gratrix and yourself you will make a statement?"
A No sir.

Q Positive?
A I am sir.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

2nd WITNESS CALLED TO REBUT PREVIOUS EVIDENCE

Det Constable N. KIDD, Hants Joint Police Force, stationed in Aldershot, Hants, having been duly sworn states:

Q Were you present in the Aldershot Police Station on the morning of 11 Oct of this year?
A Yes sir.

Q Do you recall a S/Sgt Nelson?
A Yes sir, he was at our station on the 11 Nov of this year he was with a Cdn soldier named Cpl Davies from 1 CGRU. Davies was charged with stealing 700 blankets and Nelson was representing the SIS from Cdn Mil HQ as investigator. I had Sgt Davies in the office, I had to take his finger prints and certain records and Nelson came in and the conversation took place about the theft of blankets.

Q Did Davies say anything?
A I took no particular heed to any of the conversation but I know that Davies too the sttitude that he had been a dam fool and disgusted with the whole thing.

Q Do you know whether or not he made a xxx statement in connection with the matter?
A Yes sir he did.

Q Do you know who took down that statement?
A The statement was started by S/Sgt Nelson but he was rather slow on the typewriter and in the end Davies was asked to take

over the typewriter and do his own statement.

Q Were you close enough to them to hear the conversation?
A I was within three feet during the proceedings.

Q Did you hear S/ Sgt Nelson use the following words "your friend Grabrix is in trouble, if you want to help him and help yourself you will fucking well do as I say"?
A No sir.

Q Did S/Sgt Nelson dictate to Davies the confession which was typed out?
A On the contrary Davies was asking S/Sgt Nelson how shall I say so and so, or explain and was saying his own statement and getting S/Sgt Nelso to delete anything irrelevant to the issue.

Q Was any other person besides yourself and Nelson and Davies present?
A Our full staff was there but the only person interested was Det Constable Burns, he made out the charge sheet against Cpl Davies and was around.

Q Why was a charge sheet made out?
A Davies was being lodged in a civilian cell, but it was a mil office, however while in civilian custody it was necessary to make out a charge.

Q You heard then that no threat of any kind was made?
A I am sure there wasn't.

Q Any promises?
A None sir.

Q Why can you be so sure about all this?
A It is something I have never seen before, that a person should not only make a statement but voluntarily type it out and put in everything required without any threat or inducement. I have had considerable experience at taking statements as I have been on the staff here for two years, and I never saw that happen before.

CROSS EXAMINATION BY DEF OFFRS (Major Fellows)

Q How long have you known S/Sgt Nelson?
A This was my first introduction to him.

Q Had he been in the room with Davies when you come in?
A No sir I was there when Davies and Sgt Miskimmons were brought in the evening before. At that time they were charged mil offences and would have to be charged with civilian offences to be lodged in civilian custody.

Q Could Nelson have said anything to Davies before you come in?
A No sir. I saw that they were lodged in the cell for the night and was there the following morning long before S/ Sgt Nelson arrived. I was there after he had left the evening before. He could not have seen them during the night, as no one can see the prisoner during the night, it is against regulations and except in very exceptional cases no one can get in and in that case I would know about it the next morning, S/ Sgt Nelson had not been there and had not seen Davies from the time they were brought in until the next day. Davies had been brought to our office by a mil escort.

Q You say you were very much surprised that a person should come out with all these statements?
A Not that he should come out with them but that he should type them out. To see a man typing his own statement out was what surprised me, that he was willing to make it by typing.

Q Did you have other business to tend to?
A Yes I had some other work.

Q Can you say truthfully that you heard every single word said by Nelson and Davies?
A I think I can because when we get a new or different officer down, especially a Canadian, we listen to see if we can learn anything new, I was doing a routine job of typing most of the time. It was simple routine typing and did not require much concentration.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

3rd WITNESS CALLED TO REBUT PREVIOUS EVIDENCE
Det Constable R BURNS, Hants Joint Police Force, stationed at Aldershot, having been duly sworn states:

I am a det constable stationed in Aldershot. On the 11 Oct 44 I was in the Aldershot police station. I know S/Sgt Nelson I saw him on that morning. Constable Kidd and some other police officers were in the office and another Cdn soldier, named Cpl Davies. S/Sgt Nelson was interviewing Davies I did not take much notive to the conversation at the time.

Q Were they talking in loud voices?
A No just normal.

Q Did you hear any unusual remarks?
A No sir.

Q What finally happened?
A I saw Davies typing out a statement.

Q Did he seem to be doing it willingly?
A Yes Sir.

Q Was Nelson talking to him.
A Davies seemed to be doing most of the talking, he seemed to be talking and typing simultaneously.

Q Did you hear S/Sgt Nelson make the following remark or similar remark "your friend Gratrix is in trouble, if you want to help him and help yourself, you will fucking well do as I say"?
A Definitely not sir, as a policeman if we heard a remark like that we would prick up our ears and listen, that would be so unusual.

CROSS EXAMINATION BY THE DEF OFFR (Maj Fellows)

Q How big is this room?
A About as large as this room. I was about ten to fifteen feet away from them. They were not talking loudly but quite normally and I actually did not follow their conversation.

Q How long have you known S/Sgt Nelson?
A About two months. We are friends from a business point of view, I would say we are friendly.

Q What were you doing in the room at the time?
A I was writing out reports.

In the opinion of the Court it is unnecessary to comply with RP 83(B/
Court is adjourned at 1730 hours, 22 Nov 44 until 0930 hours 23 Nov 44

22 Nov 44

CONTINUATION OF THE TRIAL OF

B.64113 Rfn DUDLEY R.D.C., 1 C.G.R.U.,

TRANSCRIPT OF EVIDENCE
BY
P.28126 SJT SINCLAIR
A.H.

COURT REASSEMBLED AT 0930 HRS 22 NOV 44 PURSUANT TO ABOVE MINUTE SAME MEMBERS BEING PRESENT

FIFTH WITNESS (FOR THE DEFENCE)

B.88451 Pte (formerly CQMS) MISKIMMONS, W., 1 CGRU, having been duly sworn, states:

Q. Would you tell the Court in your own words any relations or discussions you had with S/Sjt Nelson?
A. On or around 23 Oct I was taken down to the Aldershot Police Stn where I was questioned by S/Sjt Nelson and asked if I would come clean on a blanket deal at 1 CGRU. I denied any knowledge of it. He then told me "Miskimmons, do you call yourself a Canadian?" and also accused me of taking rations to my girl friend's place at Camberley. He became very annoyed at my answers and said to me "would you like your girl friend brought into this?" and my reply was "no". I told him that the only thing I had taken out to Camberley was a sewing machine that she had lent to the Unit to make Xmas toys. S/Sjt then said that there was a serious charge may be brought into all this and it was being investigated. He said I had better make a statement. I had already heard diff rumours around camp that some police up in London had been beaten up by S/Sjt Gratrix and Pte Dudley, and realizing what Nelson had brought up to me I made a statement under that threat of accusing me of taking rations to my girl friend's place and also bringing into the case he had already asked me about.

CROSS-EXAMINED

Q. When did Nelson interview you?
A. On the 23rd.

Q. Is that the only occasion you made a statement to him?
A. No.

Q. Explain to the Court your dealings with Nelson then.
A. He had taken me diff times, twice before that, to Aldershot Police Stn and the first time I denied I knew anything about it.

Q. Did you make a statement to him?
A. Yes.

Q. What date?
A. I couldn't tell you.

Q. Do you remember very clearly that the first one was 21 Oct?
A. No, I don't know.

Q. Why did you say it was then.
A. I didn't say.

Q. The first statement I suggest to you was made on 12 Oct?
A. I don't know.

Q. I suggest also that this statement on the 12 Oct was an entirely voluntary statement, is that correct?

A. Yes, I imagine it would be.

Q. I suggest that in that statement you denied all knowledge of this offence?
A. That is correct.

Q. I suggest that you then made a second statement on the same day, is that correct?
A. I don't remember making a second statement on the same day, Sir.

Q. I suggest that you made 3 distinct statements, is that correct?
A. Yes.

Q. I suggest that the first statement was entirely voluntary?
A. Yes.

Q. That the second statement was voluntary?
A. What day was that on?

Q. On the 12 Oct?
A. I did not make 2 statement on that date.

Q. What date did you make a 2nd statement?
A. I couldn't tell you.

Q. I have here 2 copies of 2 statements both dated 12 Oct 44, and both signed by you?
A. I didn't make 2 statements on the same day.

Q. Were the first 2 statements you made voluntary statements?
A. The first one was.

Q. What about the second?
A. Yes, it was voluntary.

Q. What was the nature of the threat made to you on the 23rd?
A. First I was accused of taking rations which was a lie and I denied it. Second was that he wanted to bring my girl friend in of my taking rations

Q. What other threat did he make?
A. There was supposed to be a serious charge come out of this and it was to be investigated.

Q. What was this serious charge?
A. I didn't know at the time

Q. Did you think the blanket case would be a serious charge?
A. No, not as far as myself was concerned.

Q. Then how did you regard that as a threat?
A. I heard afterwards, later on after all this had happened, before the 23rd, about the police.

Q. Who from?
A. It was all around camp.

Q. Who told you? - name me one person?
A. Davies, who was under close arrest with me. There were also others.

Q. I'm going to suggest 3 things to you which I want answered. The first is this. That you consulted all the remaining accused about the statment you have made to the Court - is that correct?
A. I don't know about them all, two of them, Sjts Davies and Gemmell.

Q. Anybody else?
A. Not that I know of off hand.

Q. The next thing is this. That the statement of which you complained was not taken on the 23 Oct.
A. I didn't say it was.

Q. The next thing - I want to suggest this to you. That your statement was not made in connection with any case of rations at all, that it

actually made purely voluntary, by you, after you had made a statement in connection with another matter - is that correct? I want you to think very carefully about your answer. Is it not a fact you had made a purely voluntary statement about another matter entirely with which you were then charged - was another statement made by you to the police on the same day?

A. Yes, a purely voluntary statement.

DEF OFFR: What statement are you referring to here?
PROS: The statement made on the 24 Oct to the civil police.

Q. Your other statement to S/Sjt Nelson was made immediately after that statement?
A. Correct.

Q. Then why did you tell this - that it was made after you were threatened about some rations?
A. On the other case it was the detective that I told that to, Nelson had nothing to do with the other case.

Q. Was Nelson present?
A. Yes, but he had nothing to do with it at all.

Q. Were the police still there when you made the statement to Nelson?
A. They were there.

DEF OFFR: I would like to object to all these continuous COMMENTS that the Prosecutor makes.

RE-EXAMINED

Q. You made this statement to the police on the 24th in connection with another case?
A. Yes.

Q. Was a certain document shown to you before you made that statement and did it have any relation with your making the statement?
A. Yes, a document was shown to me but it had no relation with my making the statement.

Q. What induced you to make the first statement was entirely diff and separate from what induced you to make the second?
A. Yes.

Q. Could you tell us more in detail about this questions S/Sjt Nelson brought up about rations?
A. Right after he asked me he got me annoyed by asking me if I called myself a Canadian.

Q. Any truth in these allegations about rations?
A. Definitely not.

Q. When you made this third statement of yours on the 23-24 or whichever it was, you signed it in about 3 places?
A. Yes.

Q. You signed it was voluntary?
A. Yes.

Q. What induced you to sign that it was voluntary?
A. The same inducement.

Q. Is a sewing machine all you ever took out to your girl friend?
A. I took my washing out there a few times.

QUESTIONS BY THE COURT:

Q. Did you when you signed your statement on the 24 Oct sign it under the following words "I have read over the above statement which has been made voluntary without fear of any threat or hope of favour to some and it is true"?

A. I suppose I did, yes.

Q. Were you telling the truth then?
A. No, I was not.

Q. But you are today?
A. Yes.

Q. Was your statement on the 24 Oct read over to you?
A. Yes.

Q. Did you mention the threat to the offr taking it?
A. No

Q. Why not?
A. It was put to us to leave it until the court-martial.

Q. How was it put to you?
A. If you have any questions to ask or any statement to make on your oath----------I forget the other part of it, Sir, but it was put to us that way.

Q. That doesn't seem to make any sense to me at all?
A. That's all I can remember, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

LEAVE GRANTED TO PROSECUTOR TO CALL S/SJT NELSON UNDER RP 83(B).

U.1889 S/Sjt NELSON, W.C., 1 CGRU, being recalled, on his former oath states to the Prosecutor:

Q. Do you recall interviewing a then CQMS Miskimmons on 12 Oct?
A. Yes.

Q. Recall how many times you interviewed him that day?
A. Twice.

Q. Did you obtain a statement from him that day.
A. Two, Sir.

Q. Were they made voluntary?
A. Yes, I did not threaten him in any way.

Q. Recall interviewing him on 24 Oct at the Aldershot Police Stn?
A. Yes.

Q. Was he interviewed that day by other persons than yourself?
A. Yes, he was questioned by the civil police with respect to another matter.

Q. Did he make any statement to the police about this other matter?
A. Yes, and I was present part of the time, towards the end of it.

Q. Know if a threat was used against him by the civil police?
A. Certainly not.

Q. Did he make any statement to you in regard to the present matter under trial?
A. Yes, after the police statement had been read to him and he signed it he then turned to me and said "I want to tell you the truth and make a full statement about the blankets". I cautioned him and he then made a statement to me which I took down in writing and had him sign it.

Q. Did you say at any time to him "look, you've been stealing rations and we are going to bring your girl friend in on it" or "there's a very serious charge coming out of this, you had better tell the truth"?
A. No, I did not say either of those.

Q. Did you say to him that a S/Sjt had been detained by the civil police who was carrying a blackjack?
A. I did not.

DEF OFFR: I object to this questioning.

Q. Did you ever say to him "do you call yourself a Canadian"?
A. I can't be sure of that, I remember saying that some time or another, but to whom I can't be sure. I think not.

Q. Did you bully him or threaten him with any violence or threatening to arrest his girl friend?
A. No.

NO CROSS-EXAMINATION

QUESTIONS BY THE COURT:

Q. Did you say anything of this nature "would you like your girl friend brought into this"?
A. No, there was some mention about that because I questioned him on a matter of rations.

Q. Did you say anything of this nature to him "there's a serious charge which is being investigated"and that for his own sake he should make a statement?
A. No, Sir.

Q. Did you threaten him by accusing him of taking rations to his girl friend and that his girl friend would be brought into the case respecting the rations?
A. No, the matter was mentioned in some way, but I didn't threaten him in that way.

Q. Did you in any way indicate that you were going to bring his girl friend into this case or any case?
A. I may have told him that I intended to see his girl friend or had seen her or something like that, with respect to rations, Sir.

Q. Did you ever go up to Camberley to see her?
A. Yes, she was interrogated by a civil policeman ~~and~~ OR a civil whatter something concerning rations. I know that he inspected some catering license.

Q. Did you ask any questions?
A. No.

Q. Did you speak to this girl's mother?
A. The police did.

Q. You did not?
A. Not that I can remember. During or after these questions by the civil policeman to the girl she burst into tears and I said to her "look, don't worry, nobody is trying to accuse Miskimmons of something he didn't do".

EXAMINED BY DEF OFFR BY PERMISSION OF THE COURT:

Q. What did the Mother do then as a result of this kindly investigation?
A. It wasn't my investigation.

Q. You were very kind though weren't you?
A. Excuse me, Sir, that is an exagerration.

Q. What did the Mother do?
A. I can't remember.

Q. Didn't she bring out her books and slamp them down on the table and say "take those up to the Ministry of Food if you want to"?
A. I don't remember. I remember that books or something or other were brought out.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

WITNESS FOR THE PROSECUTION (IN REBUTTAL)

D.C. R. BURNS, Hampshire Joint Police Force, stationed at ALDERSHOT, being duly sworn, states:

Q. Did you ever have occasion to interview Miskimmons in connection with a civil matter and what is the date?
A. Yes, 24 Oct.

Q. Did he make a statement respecting that civil matter?
A. Yes, and S/Sjt Nelson was present.

Q. Anyone else that you know of?
A. No.

Q. Where?
A. In the Aldershot Police Stn in the CID Office at 2.30 p.m.

Q. Did Miskimmons then make a statement to Nelson?
A. Yes, immediately after.

Q. A voluntary one?
A. Yes. I finished this matter with Miskimmons and S/Sjt Nelson was sitting next to me and Miskimmons then said "I may as well make a statement now and clear up the matter of the blankets".

Q. Then what did Nelson do?
A. He said "alright" and got up and took my place at the table next to Miskimmons. He cautioned him and then they went into the business about the blankets.

Q. Did you hear Nelson use any words such as "do you call yourself a Cdn? " "there's an investigation going on regarding rations, do you want your girl friend brought into this" or "there's a very serious charge coming out of this matter, it will be better for you to tell me the truth".?
A. I heard no such words, Sir.

Q. Did you have a good opportunity of hearing everything that was said to Miskimmons?
A. Yes.

Q. Did you leave Nelson alone with him?
A. No, I was in the same room all the time.

CROSS-EXAMINED

Q. How far were you away from Miskimmons at the time of this statement?
A. I was sitting right next to them I was making a few notes in my book to complete another matter with Miskimmons.

Q. Were you doing that all the time?
A. Yes, I was pretty busy alright.

Q. You heard everything that was said?
A. Yes.

Q. In spite of the fact that you were working all of the time?
A. Yes.

Q. Any mention of rations?
A. No.

Q. About a Mrs Ward?
A. No.

Q. Did you answer the phone at all during that time?
A. No, we have a clerk there who answers the phone.

Q. How does it happen then that since Nelson has just admitted on being examined by the Court that he did bring up the question

of rations and of his girl friend and yet you heard everything that was said and didn't hear this?
A. I heard nothing about that at all.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

WITNESS (RECALLED BY THE DEF OFFR)

D.C. KIDD, recalled at the request of and cross-examined by the Def Offr, states:

Q. Do you remember when you were in the Police Office and Davies was being examined by Nelson?
A. Yes.

Q. How many times did you answer the phone during that period?
A. I can't remember.

Q. Did you answer it?
A. I can't remember.

Q. You could have answered it?
A. I could have but we keep civilian clerks there to answer it.

Q. Did you take any infm which concerned an RC Chaplain being recalled from France?
A. I did have an inquiry through the APM's Office by phone.

Q. Did you not go over to the table where Nelson was sitting and ask Nelson how you would get in touch with this chap?
A. It's quite possible.

Q. Didn't Nelson reply "through Records at Acton"?
A. I can't remember.

Q. Would the Police Register that day show all records of bikes being stolen?
A. Yes.

Q. Do you remember who took down the particulars?
A. No.

Q. If the book was there would it show it as being taken down in your handwriting?
A. Not necessarily, it is taken down on a message form first and then put in the book later.

Q. Did you at that time with the assistance of various offrs take certain articles from a suitcase?
A. No, I was particularly interested in S/Sjt Nelson as he was a Cdn investigator and we can often learn something from them.

Q. Do you remember leaving the room?
A. I don't remember.

Q. Could you have left the room to wash your hands?
A. I could have

Q. How far were you away from Nelson and Davies when the Supt inquired as to when 4 typewriters were stolen from 1 CGRU?
A. There was a table between us.

Q. Did you handle that inquiry?
A. Yes.

Q. When you went for lunch was Davies still making a statement?
A. I don't know.

Q. He could have been?
A. Yes.

Q. Was he making a statement when you came back after lunch?
A. He wasn't left there during the lunch hour.

Q. Could Davies have been alone with Nelson during the lunch hour and possibly other people?
A. He could have, but he was not because Nelson and I went to lunch together.

Q. Could you give us a gen idea of what Davies said to Nelson on this statement?
A. No, it was all written and was not of interest to me.

Q. Did you hear Nelson say that when Davies made a statement to him that he would get him released from civil custody?
A. No.

Q. Was there not a civilian charge read to Davies?
A. Yes, both to Davies and Miskimmons.

Q. There was?
A. Yes.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

SIXTH WITNESS (FOR THE DEFENCE)

A.9843 Sjt JOHNS, JC, 1 CGRU, having been duly sworn, states:

Q. Would you give in your own words any conversation you had with S/Sjt Nelson in an attempt by him to obtain a statement?
A. Yes, Sir. On 10 Oct at 1000 hrs I was interviewed by S/Sjt Nelson; He cautioned me and then said he had my friend S/Sjt Gratrix in arrest in London; that he had been found with a load of blankets, and he said that he knew that I had very little to do with this affair but if I would give a statement as to what I did know it would help my friend Gratrix. He then went on to tell me all that S/Sjt Gratrix, myself and others were supposed to have done in this affair and also that my friend Gratrix was found with a blackjack on his person which was in itself a serious offence. He said that he was a good fellow, meaning himself, Nelson, and that he did not want to make it any tougher than possible for me or any of us and also mentioned the fact that if we had anything to do with this affair we were just as guilty as the parties concerned. At that point I interrupted him and he then got quite angry and said when talking to Gratrix he believed that I had brains, but he said "you are stupid and are nothing but a God damned fool". That made me a little angry and I said "Staff, when you have finished investigating this case you will find that I had nothing to do with it". He then said "you take me for a God damned fool" and said further "you can either make a statement now or take it the hard way". I told him I didn't give a damn what he done. He placed me under arrest then and had me paraded to the Gd Room where I was locked in a cell. He also sent a note down to the Sjt of the Gd and also informed me before going down there that if I changed my mind while in there about making a statement I was to inform the Sjt of the Gd. I've been in that cell ever since, and to my knowledge the other Sjts were placed in arrest at their own quarters. That is as close as I can remember, Sir.

CROSS-EXAMINED

Q. Where ~~you~~ were you placed under arrest?
A. Upstairs in Command Post.

Q. Was Maj McLean present?
A. No, there was nobody present.

Q. Did Nelson interview you on 12 Oct?
A. He came in several times, I could not tell you the exact dates.

Q. Was it a rumour you heard that Gratrix had beaten up 2 policemen.
A. Yes.

Q. Who told you that?
A. A Cpl Gorman of the MT Garage.

Q. Where is he now?
A. I couldn't tell you.

Q. You say definitely it was 2 policemen?
A. That is what I got.

Q. When did you hear this rumour?
A. I couldn't tell you exactly, it was either the following day or the day after Gorman was put under arrest.

Q. Did you make this statement to Nelson "I've been advised by an offr to say nothing and I don't intend to say anything".?
A. I don't recall.

Q. Did you say "I've a good chance of beating this rap, if I make no statement it will give my Def Offr a chance"?
A. It's possible I did, Sir.

Q. How long have you known Gratrix?
A. Oh, about 2 yrs anyway.

Q. Have you seen Gratrix since the day of your arrest?
A. In the Gd Room.

Q. Talk to him?
A. Yes.

Q. Have you talked to Gemmell?
A. Yes.

Q. Miskimmons?
A. Not direct, other than to say good morning.

Q. To Dudley?
A. I don't know him very well.

Q. At any time about this case to Dudley?
A. No.

Q. Did Nelson abuse you in any way?
A. No, except calling me a God damned fool and stupid.

Q. He used abusive language to you?
A. He did that alright, Sir.

Q. Did he say that this rumour with regard to Gratrix was true?
A. No

Q. What did you take from the remark "I should have got here sooner and stopped that"?
A. I didn't know what to take from it.

Q. Did you think the rumour was true - or do you think it is true?
A. Not necessarily, the facts could be true. I've not thought of it if it was true or not.

Q. Then it didn't influence you one way or the other?
A. No

Q. How are you employed in civil life Sjt Johns?
A. I drove Canada Coach from Hamilton to New York before joining up, and I've also done investigation work, insurance investigation.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

WITNESS (FOR THE PROSECUTION)

U.1889 S/Sjt NELSON, being recalled by the Prosecution, on his former oath states:

Q. Did you arrest a Sjt Johns?
A. Yes, on 10 Oct 44.

Q. Anybody else present?
A. Maj McLean the OC "A" Wing, 1 CGRU, Sir.

Q. When did you interview Johns?
A. I'm not quite sure of the date.

Q. Did you say to him "I've your friend Gratrix in arrest in London and you had better make a statement if you want to help him" or words to that effect?
A. No, Sir.

Q. Did Johns ask you if it were true that Gratrix had beaten up 2 policemen in London with a blackjack?
A. Yes, I believe he did. I said I knew nothing about it. As a matter of fact, Sir, it did not happen.

Q. Did you say to Johns that he had better make a statement?
A. No.

Q. Did you tell him that you were of the opinion that he had brains but that since he would not make a statement he must be a God damned fool and stupid?
A. No, Sir.

Q. Did you curse or swear at him or offer any violence or promises to him?
A. Certainly not.

Q. Did he make a statement?
A. A verbal statement I took down what he said in note form, but he refused to make a written statement.

Q. Did you lock him up and tell him that as soon as he made a statement he would be released?
A. No.

Q. Did you tell Johns that if he desired to make a statement to send for you?
A. I told him I'd be about Sir, if he wished to see me.

NO CROSS-EXAMINATION

QUESTIONS BY THE COURT:

Q. Did you say anything to Johns to the following effect: "You can either make a statement now or take it the hard way"?
A. No. He said to me "what would you do?" or something to that effect. I immediately told him that I wasn't allowed to advise him or something to that effect. He told me that he had been an investigator once and asked me "what happens if I don't make a statement?", and I replied "you can please yourself about that". and said further "In our job the work sometimes comes easy, and sometimes the hard way. If you make a statement the job is more easily completed and if you don't I will have to make further inquiries" or something to that effect, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

THE DEF OFFR SAID HE WAS NOT GOING TO CALL CPL JEYNES.

THE PROSECUTOR SAID THAT HE HAD THOUGHT HE WOULD BE CALLED BY THE DEFENCE BUT NOW THAT HE WAS NOT GOING TO BE CALLED HE ASKED THAT S/SJT NELSON BE AGAIN RECALLED FOR SOME QUESTIONS HE WISHED TO ASK.

GRANTED.

WITNESS (FOR THE PROSECUTION)

U.1889 S/Sjt NELSON, being again recalled, ~~xxx~~ on his former states, and is examined by the Prosecutor:

Q. What has been your experience in Police work, complete?
A. I was a private investigator for 3 yrs for a retail credit company in Canada, Sir, and in England I was trained as a PC at Peel House, London, which is the Met Police Trg School, and I've over 2 yrs as a PC at Gerald Rd Police Stn "P" Division. For the past 2 yrs I have been a member of the Pro Corps and for the past 18 mths I've been with the SIS. I'm stationed at CMHQ and my rank is S/Sjt. In my Section it is not possible to rise to a higher non-commissioned rank than S/Sjt.

Q. Have any complaints been made by your superiors as to your ability or efficiency?
A. Not to my knowledge, Sir.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

DEF OFFR: I WISH TO CALL A MRS WARD TO GIVE EVIDENCE AS TO THE ADMISSIBILITY OF THIS DOCUMENT.

PROSECUTOR: I MUST OBJECT TO THE CALLING OF THIS WITNESS. EVIDENCE HAS BEEN BROUGHT BEFORE THIS COURT THAT MRS WARD WAS QUESTIONED IN REGARD TO CERTAIN RATIONS. A PRINCIPLE HAS BEEN LAID DOWN THAT A CONFESSION WILL NOT BE EXCLUDED WHICH HAS BEEN OBTAINED FROM THE ACCUSED BY AN INDUCEMENT RELATING TO SOME COLLATERAL MATTER UNCONNECTED WITH THE CHARGE. PLEASE SEE THE CASES CITED IN PHIPSON ON PAGES 250 AND 251. THE QUESTION BEFORE THE COURT IS THIS: THE ADMISSIBILITY OF A STATEMENT MADE BY DUDLEY -----NOW NOTHING THAT THIS MRS WARD CAN SAY CAN HAVE ANY RELEVANCY TO THE QUESTION OF WHETHER A STATEMENT MADE BY DUDLEY IS OR IS NOT ADMISSIBLE IN THIS COURT. I THEREFORE MUST OBJECT TO THE CALLING OF THIS WITNESS.

DEF OFFR: THIS ALL TIES IN WITH THE COMPLAINT OF ACTION USED BY S/SJT NELSON AND SECONDLY, BECAUSE IT ALSO SERVES TO UPHOLD THE STATEMENT MADE HERE ON THE QUESTION OF ADMISSIBILITY OF S/SJT MISKIMMONS ACT, AND THIRDLY IT IS MOST UMPORTANT BECAUSE IT IS THE EVIDENCE OF SOMEONE OUTSIDE OF THIS GROUP. I THINK IT WOULD GO TO THE CREDIBILITY OF THE EVIDENCE GIVEN BY S/SJT NELSON.

THE PRESIDENT ANNOUNCES THAT THE COURT WILL ALLOW MRS WARD TO GIVE EVIDENCE.

SEVENTH WITNESS (FOR THE DEFENCE)

Mrs AM WARD, Southcote, CAMBERLEY, having been duly sworn, states:

Q. Do you remember a visit paid to you sometime ago by a S/Sjt Nelson in the company of an offr and another policeman?
A. Yes, it was on a Sat morning about 11.30, the date I can't be sure of.

Q. Could you tell us in substance, what occured there?
A. Yes. It is a canteen for tps we have there and they came in and had tea, and then asked me if I had seen Bill Miskimmons lately, my boy friend. I think it was S/Sjt Nelson who asked me this. The other man was in civvies and a Cdn Army Offr. I don't know either of the other two men. The man in civvies said he was a police detective.

Q. Do you remember who the offr was?
A. I would know him by sight. I have seen S/Sjt Nelson yesterday and today and would not mistake his face anyplace.

Q. Yes?
A. He wanted to know who wrote me a message to say he was in trouble. I said I had not seen him in 2 wks. I told him that no one brought me a message. Then the Capt turned around and asked "do you know Miss Anderson" and I said I did not know her but only knew her by the name of Kathleen.

Q. Did he ask you about rations?
A. Nelson said afterwards that he had proof that Miskimmons had brought me tea and sugar and I denied this, and I said the only thing he had brought me was his washing. He then said "you did have a ham for Christmas" and I said I did not have a ham for Xmas. He then said I would get myself into serious trouble, and I said I had nothing to say. After that he left and said not to say they were there. S/Sjt Nelson said they would be a great help to Miskimmons.

CROSS-EXAMINED

Q. Who was the second civilian?
A. He said he was a police offr.

Q. Did he say anything else during all the time he was there?
A. Yes, he said he was a friend of Bill's.

Q. Anything else?
A. He said that he knew he had brought out sugar to me. They both said this at diff times.

Q. Do you know a CWAC whose name is Anderson?
A. Yes.

Q. Know whether she knows Miskimmons or not?
A. Just in a friendly way.

Q. How long have you known him?
A. 3 yrs.

Q. Did the Capt say anything?
A. The Capt whom I now know to be Capt Keen also said he was Bill's friend.

Q. What time was this?
A. Approx 11.30.

Q. Any other tps there?
A. Yes, they just stayed in line to get their tea

Q. Who was first?
A. Nelson.

Q. Did he go up to a box of cutlery and pick up a spoon?
A. Yes, he just picked it up and asked if we had any to sell. He then showed it to the others.

Q. Any other item?
A. No, not then. After they got their tea they went to the

tearoom, had their tea and then Capt Keen came out and asked for a teaspoon; he took one and went back into the room. After that they came out and S/Sjt Nelson, I think, was the first to speak to me. I was alone at the time.

RE-EXAMINED

Q. Did S/Sjt Nelson and the other men then interview your Mother?
A. She came in afterwards but they did not have much to say to her.

Q. What did your Mother do?
A. The PC asked my Mother how we kept records and she showed him her papers and said "you can look at this or you can take them with you".

Q. Did you burst into tears at any time?
A. Yes, because I was so upset, and because of the sneaking way they came in.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

XXXXXX WITNESS (FOR THE PROSECUTION)

Capt R KEENE, being recalled by the Prosecutor and on his former oath, states:

Q. Do you remember making a visit to a canteen in company with S/Sjt Nelson and a policeman in civilian clothing?
A. Yes.

Q. Explain the circumstances of that visit?
A. S/Sjt Nelson had knowledge that a friend of one of the accused, S/Sjt Miskimmons, operated a small restaurant or tea shop, and asked me if I knew where it was. I told him that I knew the approx area of the shop and I would endeavour to find it for him. On our first journey we did not find the shop and I returned to bks and contacted a dvr by the name of Gnr Wood who showed us where the shop was. It was getting late in the evening at that time and Nelson explained to me that he had no jurisdiction to enter that shop as a military policeman and make inquiries and we then left the area and contacted a civilian policeman at Farnborough Police Stn, DC Lightfoot. An appointment was made to pick up this PC the following morning and to go out to the tea shop, which we did. We had 3 cups of tea there, then after finishing our tea the civilian policeman said that he would like to see the back of the shop, so he got up first followed by Nelson, followed by myself. The PC then asked for Mrs somebody, I don't remember the name, and a young lady informed him that she was out and would be back in a few mins. That young lady is present here today. He then asked her if she was Mrs so and so, the girl friend of S/Sjt Miskimmons, and she said she was. The civilian constable asked this. Then the PC explained to her his visit, that S/Sjt Miskimmons was concerned with certain irregularities pertaining to items belonging to the military and wondered if she could enlighten him on anything. She formed a very beligerent sort of attitude

towards the constable and said she knew nothing and that if she did know anything she intended to keep it here, pointing to her head. The constable then asked her one or two questions which I don't recall now, but it was more or less of a gen conversation type about rations and she continued with this attitude that she was in and would not give any infm at all or offer any help, and just then an elderly lady came in whom I now know to be her Mother, and the young lady broke down and began to cry, saying "they are after Billy and are saying that Billy has been stealing things". PC Lightfoot asked this elderly lady if she was the owner of the tea shop and she said she was and that the young lady, her daughter, came in each day to assist her with her work. The PC then informed the lady of his reasons for his visit and said he was wondering if she had at any time any WD property around the shop and she said a phrase similar to "on my word to God, I've never had any rations or eqpt in my premises". The PC then asked to see her license of trade and she showed it to him. She either showed it to him or explained to him how her license ran. Somewhere around this time S/Sjt Nelson said to the younger lady "doesn't S/Sjt Miskimmons stay with you on weekends?" and she replied "yes, he does". The PC then said "does he ever bring you anything in the way of rations" and she said "yes, a little bit of tea and sugar occasionally","but he does not use them from his own rations in barracks" I then said to the younger lady "just a pound of sugar or tea at a time" and she replied "oh, yes, not any more".

DEF OFFR: I object to this evidence.

THE PROSECUTOR REPLIED THAT IT WAS NO DIFFERENT THAN THE KIND OF EVIDENCE THE DEF OFFR HAD BROUGHT OUT OF THE LAST WITNESS, MRS WARD, AND POINTED THIS OUT TO THE PRESIDENT OF THE COURT.

THE PRESIDENT ORDERED THE WITNESS TO CONTINUE.

(Witness continues)

Lightfoot then informed both the ladies that S/Sjt Miskimmons was in trouble and would they be kind enough to give him what information they could so as to ease the case on Miskimmons if necessary and both ladies then assumed the beligerent attitude and said they knew nothing about anything. Lightfoot then informed them that if he could gather sufficient evidence himself that civil action may have to be brought against them. S/Sjt Nelson asked them himself again if they could not assist him, and they replied "no". We then left the premises and returned.

Q. Who did most of the talking throughout all this?
A. Lightfoot did 99% of the talking.

Q. Did Nelson question this younger woman?
A. Only what I've already said.

CROSS-EXAMINED

Q. Did Mrs Ward's Mother at any time produce her books?
A. I didn't see her produce any books although she may have - she got a license.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

NINTH WITNESS (FOR THE DEFENCE)

B.44328 Lcpl THAXTER, RR, 6 Pro Coy, having been duly sworn, states:

Q. Were you tell us where you were at 2300 hrs 5 Oct 44?
A. On stand to duty at the dtn room 6 Pro Coy. A S/Sjt Gratrix came in that evening brought in by S/Sjt Nelson. I told him to put his personal property on the table and then I searched him. I found a blackjack on him and put it with the rest of the property.

Q. What is this document?
A. It is a certified true copy of a property statement made by me when S/Sjt Gratrix was brought in.

CERTITIED TRUE COPY OF PERSONAL AND OTHER PROPERTY OF S/SJT GRATRIX MADE BY THIS WITNESS OFFERED AND RECEIVED IN EVIDENCE AND MARKED EXHIBIT "1-E".

NO CROSS-EXAMINATION
IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).
DEF OFFR:

This document is a statement in my own handwriting of CWAC Pte Anderson. She works at the Tpt Office here and I tried to find her there and they said she had gone to hospital with pleurisy. I finally found her in HQ CRU of the CWAC. I went in and got her CO Cynthia GOFF, and we went in together and questioned her on this matter and she made this statement here which she signed. The CO then said "this is to certify that Pte Anderson is in Sick Bay and cannot attend as a witness at any court-martial". I believe that the requirements for the admission of a document like this is for it to be signed by a field officer. It is not signed by a field officer but by a Capt, so I wondered if it could be accepted as it is. If not, I will postpone putting it in now until I get the signature of Maj Lefroy on it.

PRESIDENT: The situation would be no different then as it is now if you had the signature of Maj Lefroy on this document. I know of no rule of law which would enable me to admit that document as evidence. That evidence could only be given if Pte Anderson were sworn in this Court and made herself subject to cross-examination.

DEF OFFR: I see, Sir, may I enter an objection then, please?

PRESIDENT: Yes, you may if you wish.

THE PROSECUTOR ADDRESSES THE COURT ON THE QUESTION OF THE ADMISSIBILITY OF STATEMENTS MADE BY THE ACCUSED

(NOTE ATT)

THE DEF OFFR ADDRESSES THE COURT ON THE QUESTION OF THE ADMISSIBILITY OF STATEMENTS MADE BY THE ACCUSED

(NOTE ATT)

THE COURT IS CLOSED TO CONSIDER THE SUBMISSION

THE COURT IS REOPENED AND THE PRESIDENT ANNOUNCES THAT THE COURT WILL ADMIT THE STATEMENT.

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TENTH WITNESS (FOR THE PROSECUTION)

U.1889 S/Sjt NELSON FR, on his former oath, states:

Q. I hand you a written document, what is it?
A. This is a statement made by the accused to me on 6 Oct 44. The signature of the accused is on it, and it also bears my signature. I saw it signed.

STATEMENT MARKED EXHIBIT 4.

Q. Did you interview the accused again on the 19 Oct?
A. I did. I saw the accused again on the 19 Oct in the Gd Room of this unit CGRU, and showed him a statement made by another soldier, immediately cuationed him and handed him the statement which he read over, and he then made to me another statement which I took down in writing and which he signed. I have that statement here and I will produce it to the Court.

Q. Was this statement voluntary?
A. Yes.

Q. It was made after due caution?
A. Yes.

Q. Was it in all respects taken in the same manner as the first statement?
A. Yes.

Q. Does it involve other persons?
A. Yes.

DEF OFFR: We have no objection to this statement going in but I would like to ask the witness a few questions with respect to the first and second statements.

We object to the introduction of this evidence on the same grounds and supported by the same evidence as we did with respect to the first statement.

PRESIDENT: The Court will admit the statement.

STATEMENT MARKED EXHIBIT 5.

Q. Did you take any further statement from the accused?
A. Yes, on the 7 Oct in the SIS Office when I showed to him a statement made by another soldier. I cautioned him, and he made a statement which I typed out on the same piece of paper on which his first statement was made, and he signed it in my presence. This is the statement.

DEF OFFR: We object to the introduction of this evidence on the same gounds and supported by the same evidence as we did with respect to the first statement.

PRESIDENT: The Court will admit the statement.

STATEMENT MARKED EXHIBIT 6.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

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ELEVENTH WITNESS (FOR THE PROSECUTION)

B.51699 Sjt CHILDS, WC, 1 CGRU, having been duly sworn, states:

Q. How are you employed?
A. Tpt Sjt 1 CGRU, Sir.

Q. Did you go to London on 6 Oct 44?
A. Yes, to pick up a veh at Pro HQ, and the number of that veh was L.262820. I returned the veh to the unit as instructed. The veh was empty.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

TWELFTH WITNESS (FOR THE PROSECUTION)

H.12347 Pte TOEWS, D, 1 CGRU, having been duly sworn, states:

Q. How are you employed?
A. Working in the bk stores. I was working in the Blanket Room on 5 Oct. On that day we were cleaning palliases to be sent to the laundry. In the afternoon we went to the Hale Laundry to get some blankets. We brought back 800, I counted them. That afternoon we sent 700 out of the blanket stores. I helped to load them, Gnr Gould was counting them.

Q. Do you know the accused and is he in this courtroom?
A. Yes.

Q. Where were these blankets going?
A. To the Recep Coy, CQMS Miskimmons told me that, he was the CQMS of the Stores, or known by its other name, Accn Stores.

Q. Where was the accused while the blankets were being loaded?
A. In the back of the truck piling them.

Q. Did he say anything about them?
A. Not that I could say.

CROSS-EXAMINED

Q. Did the accused go into the Blanket Room, take the blankets and load them on the truck?
A. No.

Q. Did you bring any blankets back from the laundry on 5 Oct?
A. I went to the laundry in a truck that Pte Toews had that day. We brought back 800. That day we sent 700 of them out of the unit after we came back from the Hale Laundry. Pte Toews helped me load them on, and S/Sjt Miskimmons was present and he said they were going to the Recep Coy. The dvr of the truck helped to load the blankets. I don't know the dvr's name.

Q. Would you recognize him again if you saw him?
A. At that time I would not.

Q. Is he, in this Court?
A. I don't see him - actually, I never looked at the dvr that day.

RE-EXAMINED

Q? How many people actually loaded the truck from the loading platform into the truck?
A. Pte Toews and I.

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Q. Is that all?
A. To my knowledge, yes.

Q. Do you wish to correct a statement you made a few mins ago?
A. No.

Q. Where was the dvr at the time?
A. He was in the back of the truck. He was just straightening them up in the back of the truck.

Q. Did either you or Toews get into the truck?
A. No.

Q. The dvr stayed in the back of the truck?
A. Yes.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

THIRTEENTH WITNESS (FOR THE PROSECUTION)

Capt CE LAKE, 1 CGRU, having been duly sworn, states:

Q. Were you present here on Fri last at approx 1630 hrs?
A. No, about half an hr before that time.

Q. Was there delivered to you a truck containing blankets?
A. Yes, I accompanied the truck over to QMSTORES to a bldg there and then sent for 2 storemen to come over and unload the blankets. I counted the blankets, there were 70 bundles of ten blankets each, making a total of 700. I locked the door myself and later the blankets were brought to this Court in the truck. I signed a receipt for them presented to me by a member of the SIS.

Q. Has there been recently made in this unit a check of blankets?
A. Yes, a Cdn Bk Stores check on 11 Oct.

Q. What did it disclose?
A. An apparent shortage of approx 800 blankets.

Q. Did you know that it was alleged that 700 blankets belonging to this unit were in London?
A. Yes.

Q. Did you not, stating there was an apparent shortage of 800, include in that shortage the blankets that were in London?
A. If I had taken those into consideration the shorage would have been 100 just around.

Q. Do you know army blankets?
A. I do. I've been the QM of this unit since Aug 43, and have roughly 9000 on charge.

Q. I now show you a bundle of blankets?
A. Yes, these are identically in every respect the same as as army blankets

Q. If they were blankets which came from your Stores would they be Army blankets?
A. They would be.

CROSS-EXAMINED

Q. You don't know if they came from your Stores?
A. No.

Q. You say you have 9000 on charge?
A. Yes.

Q. It is quite apparent then that you can't tell one from the other?
A. They are all the same typo of blanket.

Q. I'm quite willing to admit that these are the blankets that came from London, but how do you know that these are the blankets that came from your Stores?
A. I do not know.

QUESTIONS BY THE COURT:

Q. Do you ever send blankets to the Reception Company?
A. Yes.

Q. Did you on 4-5 Oct authorize anyone to take 700 blankets from your Stores to London?
A. No, I did not.

Q. Would you know as QM if anyone else gave authority for that to be done?
A. There was nobody else except the assistant QM and he was away on course.

Q. Before 10-11 Oct was any record of blankets recd kept?
A. I couldn't say.

Q. Do you know of your own knowledge what date blanket records started in the blanket book?
A. No.

PROSECUTOR TO PRESIDENT: Before this witness leaves the room may I offer these 700 blankets as an exhibit?

PRESIDENT: Yes.

700 BLANKETS MARKED EXHIBIT 7.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

FOURTEENTH WITNESS (FOR THE PROSECUTION)

Lt JC DRAGER, 1 CGRU, having been duly sworn, states:

Q. Were you employed at 1 CGRU 5 Oct?
A. Yes, as Asst Tpt Offr. I recognize the accused who was employed as a dvr on that date. I did not on that day authorize the accused to proceed to Watford in a veh. The authority would have to come through "B" Gp as Watford is out of the 20 mile limit, signed by the Adjt or the Col. On 5 Oct I saw no authority for a veh to proceed to Watford.

Q. I now show you a work ticket which has been marked Ex. 2?
A. I did not authorize that work ticket, nor did I authorize anyone else to authorize it. The signature here is Capt Keene. I've seen the signature of Capt Keene many times and this is not his signature, as I'm quite familiar with his signature.

Q. I now show you another work ticket, marked Exhibit 3, do you recognize that ticket as having been authorized by you?
A. I can't recall ever having seen it.

Q. Did you authorize that journey?
A. No.

Q. Is the last journey on that work ticket legimately ~~xx~~ authorized on that work ticket?
A. No.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

THE PROSECUTION IS CLOSED

- D E F E N C E -

FIRST WITNESS

Capt FA ITTER, 1 CGRU, having been duly sworn, states:

I am the Offr IC of the Recep Wing. We receive personnel into the unit and issue them with blankets and other eqpt. We get our blankets from the Blanket Stores.

Q. When were you formed?
A. I can't say offhand.

Q. What is that book you have?
A. It is a record of all blankets issued & recd. It starts on 12 Oct 44.

BLANKET BOOK MARKED EXHIBIT 8.

Q. Is this sheet of paper I have here a true extract from entries in Exhibit 8?
A. Yes, I made it myself.

EXTRACTS MARKED EXHIBIT 8.

PRESIDENT TO WITNESS: Do you wish the original back for urgent reasons.
WITNESS: Yes, please, Sir. (BOOK IS RETURNED)

CROSS-EXAMINED

Q. Were you OC the Recep Coy 5 Oct?
A. No.

Q. The 11th Oct?
A. No.

Q. Know anything about the state of blankets in the Recep Coy on 4-5 Oct to your knowledge?
A. No.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS

D.96314 Sjt BECHER, E, 1 CGRU, having been duly sworn, states:

Q. What is your job?
A. I am in the Recep Coy and I receive all the men that come from the fd, hospital and on draft. I am the senior NCO there, and I see they go through the jumps, that is the MO, DO, Accn, QM Stores, etc. The men are issued with 3 blankets each. We get the blankets from the Accn Stores of 1 CGRU.

Q. When was this Coy formed?
A. They started on 3 Oct, but I don't know when it was formed.

At that time we had no blankets at all, but we asked Lt Dunlop, the OC, for blankets. He ordered the blankets through the QM Stores. He went down and asked for them and I and Mr Reed and a Cpl went down to the Accn Stores to get some tables and chairs and then we went to get the blankets that were already arranged for.

Q. What were the purposes of these blankets apart from the men coming in?
A. We wanted to build up a supply at the time, we asked for 500 at the time but only got 450. The next day we asked for 500 more.

Q. Did you at any time ask him in less specific terms?
A. We told him we could use all the clean blankets he could supply, Sir.

Q. That was verbal?
A. Yes.

Q. How many had he sent you before the 5th?
A. On the third 450, and 500 on the fourth.

Q. Are you sure it was 500?
A. Yes, I am pretty sure.

Q. About how many did you need?
A. We expected a draft of 150 men in with a supply of 3 to each, and then we wanted a bank supply.

Q. Did you get receipts for any of these blankets?
A. We sign a receipt book, yes.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

THE DEFENCE IS CLOSED

STATEMENT BY THE DEF OFFR ON THE FINDING
MAJOR FELLOWS
(NOTE ATT)

STATEMENT BY THE DEF OFFR ON THE FINDING
LT WILDING - WHITE
(NOTE ATT)

STATEMENT BY THE PROSECUTOR ON THE FINDING
(NOTE ATT)

UNSWORN STATEMENT BY
ACCUSED
(NOTE ATT)

REBUTTAL BY THE DEF OFFR ON THE FINDING
MAJ FELLOWS
(NOTE ATT)

CHARACTER WITNESS
(NOTE ATT)

PLEA IN MITIGATION
(NOTE ATT)

STATEMENT BY THE DEF OFFR ON THE FINDING

(MAJ FELLOWS)

I would like to start as the Def Offr my address with the evidence of detectives Cook and Webb. There evidence was clear and fair but they did not definitely identify the tickets. Again there was no evidence that blankets were sold or pawned in London, nor did they identify the blankets which they found in the truck as those that were supposed to have been taken from the Accn Stores. I come next to the statement which was filed by S/Sjt Nelson. In that statement there are several quotations, in one place the accused is alleged to have said that he did not know the road, he told me where to go, and in another place he states he was lost. I submit to the Court that this is not the statement of a planner or schemer or robber. Another statement is that I did not see any civilians. If this soldier was disposing of blankets he would certainly have contacted somebody. Another statement reads I was just driving the truck and did not know where the stuff was going. I submit that these are not the statements of a stealer. Next I would like to go to the question of blankets and stores. At the stores the evidence goes to show that the CQMS ordered 700 blankets loaded on a truck. To steal blankets according to MML the example shown there is a very good one. It mentions boxes, the box belonging to the original owner. To steal you must go into the box and grasp the contents and carry away is the original movement from the box, out. That is the law. To steal and carry away is the original movement from that box. In this case it was not a box but the Blanket Stores or Accn Stores. The Accn Stores represent the box in this case. The blankets were picked up and loaded by 2 soldiers and put on the truck on the instrs of the QMS. According to the evidence the accused remained on the truck. We now go to the Recep Coy. From the evidence obtained so far, from the QM, there was at this time no proper records kept at the Recep Coy, no definite system of ordering blankets and there appeared to be no definite check on blankets arriving at the Recep Coy. The QM said in his evidence that he had 9000 blankets and could not begin to recognize each one of those blankets. On the evidence of one of the loaders it has been established that the blankets were ordered from the Accn Stores to the Recep Coy. When they got there, there appears to be no definite method of establishing the actual number available. We have evidence to show that there seemed to be a continuous order on hand to build up a bank. Further down the line a load of blankets was found in London, but there is no evidence so far that the blankets found in London were the same blankets that were taken from the Accn Stores. I submit that there is enough evidence to show that the original blankets might have been moved from the Accn Stores to the Recep Centre and might have been delivered in the Recep Centre and other blankets removed from the Recep Centre or another loca to London When the blankets got to London I would like to remind the Court again that according to the evidence the accused stayed in the truck until asked to leave by the police. He did not try to sell or pawn the blankets or try to unload his truck. I submit in closing that in the actual charge of stealing the Prosecutor must prove definitely that the blankets were stolen in accordance with the rules of MML and I submit to the Court that the proof so far is not forthcoming. As a final sum up I would like to have the accused read to you his statement, not on oath. One last thing Sir, about the present shorthand writer, is he the one that was here yesterday?

PRESIDENT: No, this stenographer, Sjt Sinclair, should have been sworn this morning. I am quite prepared, if you wish to, to take over again all of the evidence we have taken today, or I will swear the stenographer now if you will agree that you will regard his swearing now to be the same as though he had been sworn this morning, and if you will agree that you have no complaint respecting it and that the accused has suffered no injustic, and if you will agree that you would rather do this than take the evidence over again.

THE DEF OFFRS THEN SAID THAT THEY DID AGREE TO THE SWEARING OF THE STENOGRAPHER NOW ON THE ABOVE CONDITIONS.

PRESIDENT TO ACCUSED: Do you object to P.28126 Sjt SINCLAIR A.H., being sworn as shorthand writer?

ACCUSED: No, Sir.

THE SHORTHAND WRITER WAS THEN SWORN.

STATEMENT BY THE DEF OFFR ON THE FINDING

(LT WILDING-WHITE)

With regard to the inspectors Cook and Webb when they questioned the accused in London, they had not cautioned him. The first of these that appeared as a witness stated that he had not made up his mind to arrest him, nor does the second. I therefore submit that the statement of Dudley in respect to their questioning should be struck out. There are two essentials of stealing, one is intention to deprive the owner permanently thereof and the other is to carry away. At the Accn Stores if the CQMS stole the blankets and ordered his men to put them on the truck, the carrying away was complete before Dudley recd the blankets. There was once upon a time a case where a man moved some good from one end of a warehouse to the other end and then tried to sell them to the owner. Dudley may have recd the stolen goods, but he is not charged with that, and for the purposes of arguing he may have been an accessory but he is not charged with that either. In addition to that it has not been proved that they were stolen when they left the Accn Stores. The Recep Coy was ordering blankets at that time by all possible means, and Sjt Becher has stated that he said verbally to a CQMS that he would take all the clean blankets he could get and he explained the reasons why. We have also seen that this Coy kept no record of the blankets recd or that went out. The blankets could perfectly well have gone to the Recep Coy and then have been stolen from there or in some other manner. How can you have improper possession if you haven't got possession at all. In London he was sitting in a truck for a very long time and was completely subject to the orders of this Sjt and if anybody had possession of the blankets, it was the Sjt. It is quite impossible to say that the dvr of the truck had possession of these blankets. For these legal reasons and also for the substantial ones stated by Maj Fellows my friend here, I think the accused should be found not guilty of the first and second charges.

STATEMENT BY THE PROSECUTOR ON THE FINDING

The case of the accused, Pte Dudley, is a very simple one. We have the evidence of the two constables that on the night of 5 Oct he was discovered in London in a truck in the back of which were 700 blankets. That is the first fact, but there is the accused in a truck with 700 blankets. We have the evidence of the Tpt Offr and his Assistant that this was Dudley's truck. We have the evidence of the same two police offrs who asked the accused what he was doing there and the accused answered that he was waiting for his Sjt. When asked where he was going he says that he is going to Watford, in spite of the fact that he is in the Elephant & Caste district which is miles from Watford. He later said to the police offrs, "I will tell the truth, the blankets are stolen". Looking into this matter further we find the accused taken into custody by a S/Sjt of the SIS, and we find that the accused makes 2 statements to the S/Sjt which the Defence has contested bitterly but which the Court has seen fit to admit as being voluntary statements. The first statement agrees that he, Dudley, entered into an agreement with another man to take his truck and pick up a load of blankets and drive it to London and it contains a further statement that he was to receive a sum of money for doing this. His second statement agrees once more that the accused took his truck freely of his own will, picked up the 700 blankets, which he took to London in return for which he was to receive a sum of money. The accused knows perfectly well that no dvr in the Cdn Army will be paid sums of money for carrying legitimate goods on legitimate business, and therefore the accused knew these blankets were stolen. Dudley I don't say planned this, nor do I say that he sold or attempted to sell the blankets. All he did was to enter into an agreement with another person, and the law says at this point that an accomplice is as guilty as the principal. There is no doubt from the evidence of Capt Lake that there are approx 800 missing, there is no doubt that they are public property and that Dudley drove them to London. There has been absolutely nothing presented by anyone that 700 blankets arrived at the Recep Coy on the 7 Oct. On the instrs of CQMS Miskimmons two fatigue men loaded these on to the truck. The accused got into the back of the truck and stacked them. He stole them because he is the man who removed the blankets from public possession. The moment that he drove them out of the lines of 1 CGRU he removed them from the possession of the public and the essense of theft is that it should be an illegal removal. He removed them by means of false work tickets, in company with another man, and takes them not to WATFORD, but to the Elephant and Castle district in London. He admits that the blankets were stolen, admits that he drove the truck to London in the hope of receiving a reward, tells 3 diff people that the blankets are stolen and yet he comes and asks this Court to find him not guilty of stealing them! About the blankets themselves, I myself don't know whether they are army blankets, but being a person of some common sense, if I find that 700 blankets have been loaded into a certain truck and later I find that the same truck with the same dvr is some 35 miles away from that place with 700 blankets, and I find that the dvr has no lawful reason or excuse for being where he is, and if I find that he is equipped with false documents, my natural assumption is that they are the same 700 blankets. The accused also admits it, and how can the Court find otherwise? I submit the Prosecution has amply proved the guilt of the accused on the first charge, and if he is found not guilty of that charge then he is definitely guilty of the alt charge.

Possible STATEMENT by accused 15'
(Not a oath)

I did not help plan the alledged Theft.

I did not go into the warehouse and Lift any blankets and Put them in the Truck.

I did not Try to Sell any blankets to any individual

I did not discuss the disposal of Blankets with any civilians.

I did not unload the blankets from the Truck (except at the request of the police.

In fact I did not intend to dispose the Goverment of the Blankets.

I admit that I used the vehicle - but I am not guilty of Theft or improper possession. I was merely the driver and THAT IS ALL.

Blankets From London Ohio.
But For witness Tres Say
that He Loaded a Blanket
for the reafter Cabin, —

Miss Jones had right as
CQMS To order Blankets
from Blanket Stores under
existing system

MUST Prove Steady

① AT Blanket Stores -
ordered by CQMS

② AT Receipts Cary
No Records
No Method of Order [are Blank
No Cheques

③ AQM also [illegible] Cannot [illegible]

③ AT London a Load of
Blankets

~~No Proof~~ No Proof that the Blankets
in London were those [illegible]
To be Stolen

REBUTTAL BY THE DEF OFFR ON THE FINDING

(MAJ FELLOWS)

I would like to say in connection with the last statement by the Prosecutor on the Finding, one or two points.

In connection with the actual definition that the Prosecution has made concerning the stealing of blankets. The Prosecutor has said that once they left public property the stealing is complete. If that is so, that the blankets stayed in the truck, then they were always public property, and were always on public property because the public property is the veh owned by the Dept of Nat Defence and they are always on public rds, and in a public country. Again I submit Sir, that the second charge in this case have not been proven for the simple fact that the accused is a Pte soldier and was really acting on instrs of more senior soldiers than himself. It shows in his own statement that he was under the orders of his superiors at all times. In London he was told, "wait here" and he waited.

THE COURT IS CLOSED TO CONSIDER THE FINDING

THE COURT IS RECPENED AND THE PRESIDENT ANNOUNCES THAT THE COURT FINDS THE ACCUSED NOT GUILTY ON THE FIRST CHARGE.

CHARACTER WITNESS

Capt RN KEENE, 1 CGRU, having been duly sworn, states:

Q. Would you tell the Court what you have to say about the accused up to the time of this occurrence?
A. I've been the accused's CO for over a year and his conduct has always been good, he has been a good worker, has worked hard, and I had no reason to be after him all the time.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RF 83(E

PLEA IN MITIGATION

Sir, the accused joined the Army at the age of 17, has been in the Army since 1940 and has only 2 very minor crimes on his MFM 6. I submit that his record in the Army up to this time has been very good. The accused himself, previous to joining the Army, belonged to a good Canadian christian family in Canada, and he has a Father and Mother and two sisters at home. He was active in church circles, boys clubs, and has a background of not a street corner hanger but of a very good solid Cdn family. I do wish that the Court would take this very fact into consideration when inflicting any punishment, and I do wish that the family of this boy be considered and his general background. It would be s shame to society to have a young clean cut boy like the accused sent to a prison where he might learn bad habits which he has not now. The worst thing that has happened to him in the Army is that he got browned off and into bad company. For these reasons I would ask the Court to consider the length of time he has already spent in custody and also to consider his parents and family and the accused himself who is now actually only 22 yrs of age and who has been 4 yrs in the Army.

THE COURT IS CLOSED

The defense has objected to the admissibility of three statements on the grounds that they were obtained under duress. This duress is said to have consisted of a threat by Sgt Nelson the man who took the statements that unless [redacted] the accused made a statement he would be charged with offenses alleged to have been committed by accused and a promise of Sgt Nelson that if accused made a statement he would not be charged with offenses alleged to have been committed by accused.

The accused Buddy has stated in substance that the threat was made to him on 6 Oct 44 by Sgt Nelson but denies that he heard the promise of Sgt Nelson. Buddy has admitted in substance that Nelson found the weapon in his personal possession but denies that he told Nelson that he had found it. It is undisputed that Buddy was taken from the stockade to the office where Nelson was and that Nelson was present when Buddy signed the statement. Buddy testified that the guard escorted him to the office and that Nelson was present when he

Dudley

Admission of Statement

I suggest to the court that he together with the remainder of the accused realising the dangerous position in which they are placed by reason of the existence of these statements have agreed together to concoct a story by which they have already deceived their defending officers and now hope to deceive the court.

In an effort to buttress Dudley's story the defence has called the remainder of the accused in an effort to show that their statements were extorted from them in the same manner as Dudley. The first witness called is Gratrix who also admits that the story he told the court was one he wrote out and memorized; that he also showed it to the remainder of the accused and to all the defending officers and that he attempted to interview some at least of the accused about it no longer ago than Monday of this week. He also tells a most circumstantial story but equally fails on the stand to remember what happened first or what was said first. Unlike Dudley who claims that S/Sgt Nelson treated him decently and tried to woo him with soft words he claims that he was told "not to be a damn fool," that he was in a bad jam" that there were two ways to do everything the hard way and the easy way". He also claims that on discovering the blackjack he was told this was going to make things bad, that he was liable to very heavy penalties and that if he made a statement it would be easier for him. He then says that his statement was dictated to him and that he typed it out on the type writer. The court will note that Gratrix does not deny that this was apparently the first time Nelson had seen the blackjack. The court will also note that Nelson denies completely each of the allegations of Gratrix and must ask themselves whether a man who has risen to the highest possible non commissioned rank in the S.I.S. and of whose experience, judgment and skill his superiors think highly enough of to employ at the H.Q. of the Canadian army would adopt a course which must inevitably defeat its presumed object. The court should also consider that Gratrix admitted he was properly cautioned, that he understood the caution and admits that he signed a statement that his statement was voluntary, made without fear of threat or hope of favour and true. It is for the court to determine on which occasion the witness lied for that he was lying on one occasion or the other is obvious. Attention is also called to the fact that though Gratrix alleges he told Nelson he would make no statement to anyone except his commanding officer yet he made no complaint to his commanding officer of his treatment, that further he made no complaint on hearing his statement read at the Summary of Evidence.

Dy

Admission of Statements

The next witness to appear is Gemmel and his story is of particular interest for ~~one~~ one thing which he swears on oath ~~is~~ is true. He says that at noon on Friday 6 Oct 44 the day after the offence he heard a rumour from a Sapper Forman now unfortunately in France that Hardy and Gratrix had been arrested in London and that Gratrix was in possession of a ~~[illegible]~~ blackjack. The point is this (a) the accused were only arrested at 0.15 hrs the previous night. They were not taken to Carter St Police station until 2230 hrs. They were taken to No 6 Provost Coy later still, they were searched not by Nelson but according to Gratrix by a L/Cpl and that not until then was the blackjack found. News of their arrest was phoned to No 1 C & R U at 0020 hrs the following morning to Capt Ellis who was merely told that the two men had been arrested and a truck and blankets found. No mention of any blackjack was made by Nelson who certainly was not then aware of its existence. The only person from C & R U who went near the prisoners was Sgt Childs who did not get to London until 1400 hrs the 6 Oct. How then could Gemmel have heard about this on Fri 6 Oct at noon or indeed at any later time that day from Sapper Forman? It is obvious then that this part of his statement at least is a lie. I suggest that what really happened is that since Gemmel was a friend of Gratrix having known him for two years he knew that he was in the habit of carrying a blackjack and when he heard he had been arrested he summoned himself that he had it with him and that Gemmel himself is the originator of this rumour. Clearly his statement that he heard it on 6 Oct cannot be believed.

If now the first part of his statement is not true what faith can be put in the remainder of his evidence. He tells the same old tale of the threats offered him by Nelson over this mysterious blackjack as a result of which he made and signed a statement in spite of the fact that he had been cautioned in front of Major McKean on being arrested and cautioned again before he made the statement - he himself admits receiving and understanding both cautions - and in spite of the fact that he also signed a statement, ~~[illegible]~~ which he now asks the court to believe was a lie, to the effect that the statement was voluntary, made without fear of threat or hope of favour and truth. He also took no advantage of his opportunity to complain to his commanding officer or on hearing his statement read at the summary of evidence. His evidence I submit must be disregarded by the court.

my

Admission of Statements

Let us now consider the evidence of the next witness Davies. He states he was interviewed by Nelson at Aldershot Police Station on 11 Oct. He states that the same threats in regard to the blackpack were made to him as to the others but with the further addition that Nelson now became violently abusive and said he Davies had better funking well do as he was told and threatening that if he didn't it would be the worse not only for him but also for his friend Cestrick. He further claims that Nelson not satisfied actually dictated his statement and made him type it out. The evidence of two independent witnesses Det Cons Kidd and Burns directly contradicts him.

Kidd who sat not three feet from him says that he volunteered his entire information, that he volunteered to do the typing because he as an expert typist was not satisfied with the efforts of Sgt Nelson. He also says that this sight surprised and amazed him that Nelson neither threatened him nor promised him anything that he did not cause it him and that Nelson could not have done so out of his hearing. Kidds evidence is also confirmed by that of Burns. I feel that the only conclusion the court can come to is that the evidence given by Sgt Davies is not true and since it is substantially the same as that of the other accused who were consulted about it it casts a grave doubt as to whether their evidence can be accepted at its face value.

The next witness called is Mackinnons. His story is that he was taken to the Aldershot police station and there asked by Nelson to come clean on the blackpack deal and that told that unless he did his girl friend would be dealt with on a unclean charge of receiving rations. Finally he drags in by the hind leg as it were the blackpack story of which he also has heard the most claiming memories. Now let us hear what Nelson has to say. He declares that Mackinnons statement was taken immediately after a statement by the accused on another matter made to the civilian police and that the accused himself volunteered the statement. His evidence is confirmed by Det Cons Burns who during the taking of the statement was sitting beside Nelson and the accused. It is evident from Burns statement that Nelson did not offer Mackinnons any violence, threat, or make him any promise. Mackinnons says the statement made to the civil police immediately prior to that made to the Civil Police was a purely voluntary one. He admits that two former statements made to Nelson was purely voluntary. I suggest that the court will find it difficult to believe that the third statement was not equally voluntary.

Dudley

The evidence given by the accused Johns is equally open to doubt. He mentions the blackjack rumour and says Nelson told him he was sorry he had not been in time to stop it which any reasonable man would take to be a denial of the rumour. He tells the same tale of abusive language which has been disproved in the case of Davies. He admits that he made no statement and denies that he ever had any intention of doing so. The only new evidence he gives is that he was locked up in a cell and kept there. It is surely in the discretion of A.C.O. to keep any one he has reason to suspect of a crime in such custody as he pleases.

The court should also consider whether it is likely that S/Sgt. Nelson the man who took these statements would have acted in the manner described by the accused. He is as has appeared in evidence a man of considerable experience both in civil and military police work. He is evidently well regarded by his superiors as is demonstrated by the fact that he has been promoted to the highest non-commissioned rank possible in his particular section of the service and by the fact that he is employed at the H.Q. of the Canadian Army.

Even if these facts were disregarded the court cannot in my opinion disregard the fact that whenever witnesses happened to be present when he took any of these statements they corroborate his statements as to what occurred and positively deny the statements made to this court by the accused. This in itself seems to me to be a reason for the court to consider whether the statements of the remainder of the accused can be believed particularly when it is pointed out that the statements of all the accused made before this court are ~~[illegible]~~ very similar to one another.

The defence throughout has taken the attitude that S/Sgt. Nelson is a man determined to complete a case against the accused ~~no matter what~~ without regard to the means he ~~[illegible]~~ adopted to that end. This does not seem logical. If he sincerely desired to make a case against the accused why should he adopt methods which a police officer of his ~~[illegible]~~ experience would know must in the end defeat his own object. Nothing that he has stated has been refuted by any evidence other than that of the various accused and much of it has been confirmed by independent evidence.

It seems to me therefore that the defence has failed in its contention that the statement of the accused Dudley was obtained under duress and that therefore his statement should be admitted in evidence.

MM

LT WILDING-WHITE

Summing up on Admissibility of Confession

I would like to start by asking the court a question: If the accused had all been kept separate from the time of their arrest and given the same evidence, would not the Court believe them? It seems unfair to the accused to allow any doubt to creep in merely because they were imprisoned together – not at their own request. But Sgt. Johns does appear to have been kept separate. Moreover since he made no statement there is no advantage at all to him to come here and give this evidence to-day, unless it is true.

A day has gone by since the cross-examination of Staff Sergeant Nelson. I ask the Court therefore to cast there minds back to yesterday and in reaching their decision not to forget the effect which Staff Sergeant Nelson had on them yesterday

while being cross examined by his contradictions inconsistencies in the main cross examination & in others, his very excuses and his absolute inability to explain why he took the blackjack into his own possession and kept it there throughout his investigation and after.

For attempting to discredit the witnesses for the defence the prosecuting officer has had to rely in almost every case on pure technicalities - details which no one after 6 weeks could remember. He pretends to expect each witness to remember in exact order the first question the investigator asked him, the second question, the third, etc.; and his whole attempt to discredit is based on such meaningless details. He did produce witnesses in an attempt to discredit the witness Davies. The first - said yesterday that he heard every word of the conversation between Staff Nelson and Davies, though he admitted he was typing something throughout and that it was most important to type it accurately. Recalled today he said: "I took no particular

heed of the conversation." 10

Yesterday he stated he was sitting 3 feet away from Staff Nelson throughout their conversation. Today he admits that he left his desk several times and that Nelson could have said things to Davies, ~~other than at lunch time~~, which he (Detective Kidd) did not hear. And today he admits that Staff Nelson and Davies could have have been together, though not during the lunch hour, when he (Detective Kidd) was not there.

Detective Burns admitted unwillingly that he was working throughout "practically" the whole examination and that he heard none of the conversation

I first heard of the allegation by the accused about the manner in which the admissions were obtained last Thursday night when one of the depending officers came to my room and told me. We had supper immediatly and went straight to the Guard Room put all the accused together in our presence and cross examined them very severely each one in turn. ~~Later~~ Next day all, or almost all, the depending

officers went to the guard room again cross examined each one the accused in turn very severely. Their stories have not varied since Thursday except for the removal of considerable irrelevant detail.

I would like to mention in concluding that where anyone has broken the law it is fair and just that he should be tried and if found guilty punished. But there is another rule of law just as important which is made for the protection of innocent persons from the results of improper methods of questioning - and that is that the questioner or investigator must not induce anyone to make any statement by promises of benefit if he speaks, or threat of greater penalty in the case if he does not. It is just as important to see that this type of questioning does not occur and that all persons - presumed to be innocent until proven guilty, or actually innocent - be protected from unfair and even

(over)

Dudley

13

I Sgt Child while employed in No 1 CGRU as Transp Sgt had Rfn Dudley R.D.D. under my direct supervision and control, for almost a year. Up to the time of this Offence which Rfn Dudley is now charged with, I found him to be good hard and willing worker, and quite capable of carrying out any detail that he was asked to do.

During this time I found him to be honest and sincere in every respect, and caused me very little trouble of any sort.

C-1

Sgt Child M.C.
Transp Sgt.

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my

(over)

one might say rather gestapo like
methods of getting information.

In closing I would like to
remind the Court again of the
testimony of Sgt Johns, from which
he could derive no possible benefit,
but only possibly harm.

Dudley

13

I Sgt Childs while employed in No 1 CGRU as Transp Sgt, had Rfn Dudley R.D.L. under my direct supervision and control, for almost a year. Up to the time of this Offence which Rfn Dudley is now charged with, I found him to be good hard and willing worker, and quite capable of carrying out any detail that he was asked to do.

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E-1

Sgt Childs R.C.
Transp Sgt.

CANADIAN PROVOST CORPS

LONDON AREA

Quote No. 815/T-1-3/4

CANADA

TELEPHONE: TEMPLE BAR 2815.

A. P. M.'s OFFICE,
30, HENRIETTA STREET,
COVENT GARDEN,
LONDON, W.C.2.

EX 4

111

SPECIAL INVESTIGATION SECTION

Statement of:

6 OCT 44

Regt. No. B-64113, Rfn. DUDLEY, R.D.C.
"A" Wing, M.T. Sect., No 1 CPRU, CRU Command.

Begins:

I have been cautioned by S/Sgt. Nelson of S.I.S. that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence.

To show that I understand this Caution, I sign my name here. R. Dudley

States:

On 4 OCT 44 around dinner-time I was working on my truck No A-762820 in the workshops at my Unit when one of the other men in the M.T. Section came to me and asked me if I would like to make myself some extra money. He is a friend of mine and I don't want to say his name and maybe get him into trouble. I was broke and wanted to get some money so as to be able to go on leave, so I said "Yes I would" and asked him how it could be done. He told me there was some stuff to go to London next day and if I would take it in my truck I'd get a cut out of the deal. I said I'd do it and he told me that if I'd take the truck round to the Blanket Hut sometime during the afternoon next day the Staff-Sergeant in charge of Q.M. Stores would get the fatigue men to put on a load of Blankets. All I had to do then was drive up to the Canadian Theatre where somebody would be waiting to go up to London with me and look after things from there on. My friend also told me I'd better make out a Work Ticket showing a load of Hospital Blankets for WATFORD. R.D.

I had two trips next morning — one to the Pool Siding in ALDERSHOT at 01:30 hrs. and one from 11:30 hrs to 13:30 hrs. to ALTON and return. When I got back I was detailed by Cpl. JEYNES for a journey to FARNHAM and FARNBOROUGH. He made out my Work Ticket for 15:30 signing it "Keen Capt." and initialling it "J.J." as the M.C.O. Dispatcher usually does.

After lunch I didn't go to FARNHAM but took my truck round to the Blanket Store at about 15:30 hrs. and backed up to the door. S/Sgt. FITZGIBBONS (I think that's his name — he is i/c Mob. Stores) came out, I opened up the back of the truck and got in. The S/Sgt. told the fatigue men to start loading blankets. I only said 'Hallo' to him and nothing much more was said. He told the men to count out so many blankets for Dispatch Coy. and so many for other Coys. in the Unit. They were all in bundles of 10 and I'm sure the fatigue men didn't know anything about the deal. They only obeyed orders. I stacked the blankets inside my truck.

During the Break period that morning from 10:00 to 10:30 hrs. I went into the M.T. Office while no-one was in there and took a Work Ticket which I made out as instructed, signing it "Keen Capt." I kept it with me for the trip to LONDON in the afternoon.

I didn't know how many blankets I had in the truck, but when the S/Sgt. said "OK, that's the lot", or words to that effect, I tied up the tarpaulin and drove up to the Pavilion Theatre as arranged. I stopped there and another Staff-Sergeant I didn't know came up and got in the truck. I know now his name is S/Sgt. GRATRIX. He told me where to go from there on, as I didn't know the road past GUILDFORD. We headed straight for LONDON. I know we went through STAINES and KINGSTON, according to the road signs, but I don't remember much about the route. I think we were pretty well into LONDON when he said to turn off and after a lot of turns round fair-sized roads he said to pull up in a street where there were car tracks.

R.D.

Quote No. S15/T-1-314

CANADIAN PROVOST CORPS
LONDON AREA

III

TELEPHONE: TEMPLE BAR 3615.
A. P. M.'s OFFICE,
30, HENRIETTA STREET,
COVENT GARDEN,
LONDON, W.C.2.

CANADA

Statement of:

Regt. No. B-64113, Rfn. DUDLEY, R.D.C.

(Contd. from PAGE TWO)

Continues.

He said "Wait here", and got out for 5 or 10 minutes. I don't know where he went. After that we did a lot more turns, and I was completely lost. ~~Had a street Map and kept looking at it.~~ Once we passed a place where he said: "I was pinched over in there once". He didn't stop any more until we got to the place where the Police found us. I guess it was about 9.30 hrs. when we got there. I knew it was getting dark. S/Sgt. GRATRIX got out and told me to wait. About half-an-hour later another soldier got into the cab with me and gave me 5/- and said "We'll be a little while yet. You'd better go and get something to eat." I couldn't see his face in the dark and wouldn't recognize him again. I couldn't tell from the way he spoke whether he was Canadian or not. I didn't notice what sort of uniform he was wearing. I went to a snack bar a little way down the street and when I came back a few minutes later the soldier got out of the cab and said: "We'll be back".

I waited a long time and then both doors of the cab opened, somebody grabbed me by the arm and asked me what I was doing. I said I was waiting for my chum and he'd gone to get something to eat. They said they were Police Officers and that they'd wait too. After a while S/Sgt. GRATRIX came back and the Police grabbed him too. I didn't see any other civilians and didn't know who was supposed to get the blankets. The Police told me to drive to a Police Station nearby, which I did. One of them drove with me. They took S/Sgt. GRATRIX in their car. R.D.

1557

- PAGE FOUR -

I can honestly say that I have never been mixed up in anything like this before in the Army or in civil life, and my crimes in the Army have all been trivial. I only agreed to do it on a sudden impulse because I wanted to make a little money to go on Leave, as I'd lost a bit over being 5 days AWL a little while ago. I was only in ALDERSHOT with a girl. Nobody talked me into taking blankets to LONDON I just didn't stop to think how serious a thing it was. I figured it was safe enough, too, because somebody else was doing the job and I was just driving my truck and didn't even know where the stuff was going. I'm sorry now I had anything to do with the business.

I have read over the above statement, which has been made voluntarily, without fear of any threat or hope of favour to come, and it is true.

R. Dudley 6/10/44

(Witnessed) Fredk R. Nelson S/Sgt.
S.I.S.

SECOND STATEMENT of:

Regt. No. B-64113, Rfn. DUDLEY, R.D.C.,
"A" Wing, M.T. Sect., No.1 C.G.R.U., C.R.U. Command.

V

STATES:

I have read over the statement made by L-1161, S/Sgt. GRATRIX, R.J., dated 7 OCT 44, and having been again cautioned by S/Sgt. NELSON as before I wish to state that everything in it concerning our journey to LONDON, as far as I was concerned, is true. I don't know anything about the other things that happened.

EX
MM

R. Dudley 7/10/44

(Witnessed) Fredk R. Nelson S/Sgt.
U-1889, F.R.NELSON,
S.I.S., Cdn. Provost Corps, CMHQ.

LONDON
7 OCT 44

Quote No. SIS/T-1-314

CANADIAN PROVOST CORPS

LONDON AREA

XX III

TELEPHONE: TEMPLE BAR 2615.

A. P. M.'s OFFICE,
80, HENRIETTA STREET,
COVENT GARDEN,
LONDON, W.C.2.

CANADA

SPECIAL INVESTIGATION SECTION

19 OCT 44

EX 5

THIRD STATEMENT of:

Regt. No. B-64113, Rfm. DUDLEY, R.D.C.

M. T. Sect., "A" Wing, No. 1 CSAU, CRC Command.

Begins:

I have been cautioned by SSgt NELSON of SIS, that I do not have to say anything unless I wish to do so but that whatever I do say will be taken down in writing and may be given in evidence.

To show that I understand this caution, I sign my name here A Dudley.

States:

I have read over the statement of B-76927, Cpl. JEYNES, J.C.T., dated 13 OCT 44, and wish to state: The man who asked me if I wanted to take the blankets to LONDON, and arranged it all for me was Cpl. JEYNES. I was willing to take the rap myself, and the only reason for not saying who he was at first was to keep him out of trouble if I could. I'm no squealer.

All I said in my other statement is true, except that I didn't steal the Work Ticket during the afternoon after he spoke to me about the job. Cpl. JEYNES came to me and gave me two Work Tickets. One he had made out as a sample for me to copy, and the other, which is the one you have, was blank. He told me to fill it in like the one he made out and to destroy the sample for his protection. I did this that afternoon and put the one he made out down the toilet in the Provost Lines opposite the Garage.

Cpl. JEYNES also told me I'd get about $15

[illegible]

for the job, and I figured he'd get a good cut out of it as well. He said: "You know who's running this, don't you?" and I said: "I have a pretty good idea" and left it at that. I figured it was CQMS MISKIMMINS and I'm sure that's who he meant. Next day he told me to pass up my trucks and make sure I had enough.

I was busy that day like I said on a draft job. The first idea was to get the blankets from the laundry at FARNHAM, but when I didn't get back till 16:00 hrs. he said: "Never mind, you can pick them up at the Blanket Store" and made out my Work Ticket for 15:30 hrs. He knew I had the other one to cover me for the LONDON trip.

I never asked Pte. EVANS for the job – he asked me in the first place and fixed it all up himself. I never did any jobs before for CQMS MISKIMMINS (taking stuff out, I mean) but I kind of figure others have, and I know Sgt. WOODS got caught over him once on a Quebec run when they got him drunk and he got back late.

I have read over the above statement which I have made of my own accord, without fear of any threat or hope of favour to come, and it is the truth. R. Dudley 19/10/44.

(Witnessed) Fredk R Wilson 3/Sgt.
S. I. S.

DATE	BANK	DRAWN	ISSUED	BANK
11 Oct				
12 Oct		100		320
13 Oct	322		217	105
14 Oct	105	1250	33	1322
15 Oct	1322		76	1246
16 Oct	1246		215	1031
17 Oct	1031		491	540
18 Oct	540		18	522
19 Oct	522		96	426
20 Oct	426	900	49	1277
21 Oct	1277		699	578
22 Oct	578		87	491
23 Oct	491		90	401
24 Oct	401		206	195
25 Oct	195	500	76	619
26 Oct	619		37	582
27 Oct	582		239	343
28 Oct	343		40	303
29 Oct	303		13	290
30 Oct	290		81	209
1 Nov	789	800	726	872
2 Nov	283	500	48	735
3 Nov	735		64	671
4 Nov	671		45	626
5 Nov	626		102	524
6 Nov	524		93	431
7 Nov	431		60	371
8 Nov	371		40	331
9 Nov	331		42	289
10 Nov	289		15	274
11 Nov	274		38	236
12 Nov	236		30	206
13 Nov	206	500	75	631
14 Nov	631		66	565
15 Nov	565		33	532
16 Nov	532			

CERTIFIED TRUE COPY

EX 8

.....
(FA Itter) Capt.,
Offr i/c Records,
Reception Wing,
RB & DM Coy #1 CGRU

-djf

Dudley - (1) -

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

EX # 1A

MM

S/Sgt. Nelson took me alone to a room at Headquarters. He asked me if I knew S/Sgt. Gratrix well. I said no. He said; well I do, and he told me that he was a bad character and he said he had a blackjack which he took from S/Sgt. Gratrix.

He also said that S/Sgt. Gratrix had used the blackjack to beat up some police officers and that I would be as much to blame for carrying that blackjack as was S/Sgt. Gratrix himself because

4/71 CFA 170

PLEASE WRITE ON BOTH SIDES

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

-EY #1A

2

I was alleged to be with him
He said if I did not make a
statement that I might be charged
with reference to the blackjack.
He said that if I made a statement
and got in ahead of Gatis
before he tried to blame me that
I would get off a lot lighter.
He used softwards to the effect
that I was a real bad chap and
thereby gained my confidence.
I had no intention of making my
statement but I was never in a jam
before and I was afraid of another

4/71 CFA 170

PLEASE WRITE ON BOTH SIDES

charge concerning the blackjack and Sgt. Nelson had me scared. The above is the solemn truth. I swear that Sgt. Nelson by clever words used influence to get my first statement on which this case is based.

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

S/Sgt Gratis, R.J.
ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

Lt 18

Sir:

On Saturday, October 2nd, I was interviewed by S/Sgt Nelson, S.I.S. He cautioned me and asked if I wanted to make a statement. I replied I'll make a statement to my Commanding Officer. He told me not to be a damned fool and that I was in a fine jam and I could take it the easy way or the hard way and if I didn't want to play hard with him he'd see that it was the hard way. He had a log with my personal belongings, which had been taken from me by the Provost on 5 October. He produced a blackjack I had been carrying and said it was up to him to see that I was charged with carrying a concealed weapon and that it was a serious charge and in this country penalties were heavy. He asked me where it came from and if the person who owned it wanted it back and I told him "No".

OA 175

PLEASE WRITE ON BOTH SIDES

he then said " if you are smart you'll do this the easy way and tell me the whole story and let me take care of the Black Jack. I then started to type a statement for him and he said " before lunch we will get a rough idea of what this is all about and then we will see any need for mentioning the Black Jack, if you give me the whole story. After lunch under his supervision I typed a statement. while typing this statement he repeatedly said. " put some of this in your own words or it will be obvious that I told you what to write." I signed that statement the same afternoon with the understanding that the Black Jack would not again be mentioned and no charge laid for carrying a concealed weapon.

On arrival at No 1 C & R V I heard the rumour that I had supposedly beat up two C.I.D. a day or so later Sgt Hamill was brought in and put in my cell

(iii)

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CANADIAN KNIGHTS OG COLUMBUS WAR SERVICES

Ex 1B

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

he told me that S/Sgt Nelson had told him that if he made a statement he would make it easier for me and that he, Sgt Gemmell, could be held as responsible as I for carrying the Blackjack. Gemmell also told me that Nelson informed him if he made a statement he would forget about the Blackjack. Sgt Gemmell informed me about a week or so later that Nelson had told him that the Blackjack was at the Bottom of the Thames.

when Sgt Davies was brought into the Guard Room he asked me if I had beat anyone up. I told him no. He then informed me that S/Sgt Nelson had told him he would be held exist as responsible as myself and that carrying a concealed weapon was a very serious charge and to make it easier for all concerned he had better make a statement and that if he, Nelson, got a complete statement he would forget about the Blackjack.

CFA 170

PLEASE WRITE ON BOTH SIDES

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CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

L 18134 Pte Gemmell N.A.

Statement No 3

Ex 1 c

My

Sir,

On Fri the 6th of Oct 1944 ~~during the morning~~ I heard a rumour that S/Sgt Gratrix and a driver from No 1 CGRU had been arrested in London, ~~[illegible]~~ and that they had beaten up some police officers. The same rumour also had it that Gratrix was carrying a blackjack. I heard this rumour repeated often during the next three or four days and had come to believe that there must be some truth in it.

I was arrested by S/Sgt Nelson on 10th Oct 44 and taken to No 9 Prov. Coy. I was cautioned at time of arrest. After lunch I was taken by S/Sgt Nelson into a

CFA 170

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CANADIAN LEGION WAR SERVICES Inc.

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ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

room, cautioned, and asked what I knew of the affair concerning Gratrix. I told him I knew nothing. He then told me Gratrix was in arrest in London and charged with a serious offence. ~~He then~~ and told me that Gratrix was carrying a concealed weapon, and he said "I have proof that you are implicated with Gratrix and unless you make a statement it will go hard with you too. I know you had very little to do with this and you can get off very lightly if you make a statement." Finally I agreed to sign a statement. S/Sgt Nelson wrote out a statement which I signed.

Ex
1 c
m

CFA 170

PLEASE WRITE ON BOTH SIDES

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

Davies J.C. (4)

On the 11th Oct 44 I was interviewed by S/Sgt Nelson at Aldershot Police Station. I had no intention of making any statement concerning ~~the~~ alleged theft. ~~of blackets~~. I so informed S/Sgt Nelson. I had been worried by persistent reports that bodily harm had been caused by S/Sgt Gratrix using a blackjack on civilian police officers, and ~~[illegible]~~ hoped that S/Sgt

PLEASE WRITE ON BOTH SIDES

CFA 170

is in a serious jam and if you want to help him and yourself you will do as I fucking well say. He then related to me a resume of the statements made by S/Sgt Gratrix, Sgt Cammelle and Rfmn Dudley. I then typed a statement which S/Sgt Nelson dictated but as he was referring to the other statements he frequently stressed that I put the phrasing into my own language.

Nelson would volunteer either a denial or confirmation of the rumours which were rife in the Mess and elsewhere. A direct enquiry from me produced a ~~shrug of the shoulders and~~ the question "So you know how serious this affair can be." I said I could not say as I did not know just what had occurred in London. He continued "Your friend Gratrix is in a serious jam and if you want to help him and yourself, you will do as I fucking-well

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

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CPA 170 PLEASE WRITE ON BOTH SIDES

CERTIFIED TRUE COPY

EXIE

G-18/DAPM/44

20

M-1161 S/Sgt. Gratix R.J. C.G.R.U.	2305 hrs. 5-10-44 (A36)	M.B.M.1-2-3 field dressing, nail file, 11/9-2½D postage stamps, 1-2D stamp, 1-1D stamp 1-21D stamp- in safe. wallet, correspondence, braces, web belt, anklets beret & badge weights, pencil, 1 key, 4/silver 10D bronze. 1 torn £ note No.(042) 5 razor blades 1 black jack, indent discs, ½D bronze. Signed R.R.Thaxter.	Signed: R.J.Gratrix. Initialed: J.A.C. Signed: R.J.Gratrix.

1. The above is a Certified True Copy of the entry of the property of S/Sgt.Gratrix R.J. in the property book No. 19 belonging to the Detention Office of No. 6 (Area) Provost Coy.,Cdn. Provost Corps.

2. In reference to the signatures and initials in the extreme right hand column, when a soldier is escorted into the detention office after his property is taken away from him, he is requested to sign his name in this column to certify that all his property was entered in the book. When the escort arrives from No. 9 Provost Coy. the book is initialed by the N.C.O. i/c of the escort after which the S.U.E. again signs the book to certify that the escort has taken into his possession all of the property of the S.U.E.

London
20 Nov 44

R.R. Holmes
.....Maj.
(R.R.Holmes)
A.P.M. C.M.H.Q.

ARMY FORM B 206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-64113	Rfn	DUDLEY R.D.C.	#1 C.G.R.U.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—If a trial by field general court martial the summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishments being given in the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for "drunkenness" the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For Sec. 15(1) A.A.	2 times	2 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, Nil

2. [redacted]

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or [redacted]

4. The accused has been in confinement awaiting trial on the present charges, for — days in civil custody, and 47-48 days in military custody, making a total of 47-48 days, of which — days were spent in hospital.

5. The present age of the accused according to his M.F.M. 4 [redacted] is 24 years.

6. The date of his [redacted] attestation specified in his M.F.M. 4 [redacted] is 20 June 40

7. [redacted]

8. [redacted]

9. [redacted]

10. The accused is in possession of, or entitled to [redacted] C.V.S.M. & Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N.A.

12. (*In the case of an officer.*) The accused holds in the army the rank of N.A. dated N.A. and in his regiment (or corps or department) the rank of N.A. dated N.A.

EX B

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-64113 Rank Rfn Name DUDLEY R.D.C. of #1 C.G.R.U. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~7th~~ day of November 1944

~~[illegible]~~ 22 Nov 44

[illegible] Capt. & Adj.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of N.A. years.

In the rank of N.A. years.

In the rank of n.a. years.

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

MFM 6
(AFB 122)
40/P&S/126 (3438)

[illegible] or Company | Corps CIC | Date of enlistment 20/6/40 | GC Badges Nil | Service or Proficiency Pay NA

[illegible] Entry in Company Conduct Sheet NA | No and date of last drunk NA | Period not reckoning towards freedom from extra fine NA | Sheet No 1 | Signature OC Company, etc (SGD) (I. MacLean) | Character Major

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed - 20 Jul 43 (Incorrect Entries) Last Entry 24/12/42 Cases of drunkenness - Nil.									
Field	30 May 44	Rfn		A.A. Sec 15(1) from 2400 hrs 29 May 44 to 2245 hrs 3 Jun 44 Total absence 4 days 22 hrs and 45 mins)	Documentary	Forfs 21 days pay FR&I 149 (2)	5 Jun 44	Major J.R. Barber (1)(2)	forfs 5 days pay FR&I 149
Field	20 Aug 44	Rfn		A.A. Sec 15(1) AWL. Being 8 mins late in appearing at a parade called for 2115 hrs 20 Aug 44	Capt Keen Cpl Evans Cpl Jeynes	7 days C.B.	21 Aug 44		
Original sheet destroyed - 22 Aug 44 - Certified true copy of the original (Sgd) I. MacLean) Major									

(OVER)

Ex C
MY

(PTO)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5 Oct 44	Rfn		1. Sec. 40 A A. Improper possession 2. Sec. 40 A A. Improper use of W.D. vehicle.	Documentary	6 months detention	22 Nov 44	F.G.C.M.	Total forfeiture 229 days pay

Certified true copy of document
in my possession

(W.E. McNaughton) Capt
Adj. No. 1 Cdn Gen Rft Unit

DUDLEY

SUMMARY OF EVIDENCE

In the case of:-
L 1161 S/Sgt Greatrix, R.J. - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
B 86451 Cpl Hutchmons, W. - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
L 18134 Sgt Cornwell, W.A. - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
D 91032 Sgt Davies, J.C. - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
A 9243 Sgt Johns, P.T. - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
B 96927 Cpl Jaynes, J.C. - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
B 64113 Rifleman Dudley, R.D.C. - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit.

By direction of the Commanding Officer this summary is taken on oath

W 11436 S/Sgt Elliott, F.T., is sworn as shorthand writer

First Witness - Prosecution

Ernest Cook, Detective Sergeant, New Scotland Yard

I certify that owing to the loss of time and expense involved the attendance of this witness is not readily procurable and a statement of his evidence purporting to have been signed by him has been read to the accused, marked by me as Exhibit "A" for the prosecution and attached to the summary.

[signature] a/Capt
Officer detailed to take summary of evidence

The accused states he does not require the attendance of this witness for the purpose of cross examination

[signature]
L 1161 S/Sgt Greatrix, R.J.

[signature]
B 86451 Cpl Hutchmons, W.

[signature]
L 18134 Sgt Cornwell, W.A.

[signature]
D 91032 Sgt Davies, J.C.

[signature]
A 9243 Sgt Johns, P.T.

[signature]
B 96927 Cpl Jaynes, J.C.

[signature]
B 64113 Rfn Dudley, R.D.C.

Second Witness - Prosecution

Albert Webb, Detective Sergeant, New Scotland Yard

I certify that due to the loss of time and expense involved the attendance of this witness is not readily procurable and a statement of his evidence purporting to be signed by him has been read to the accused and marked by me as Exhibit "B" for the prosecution and attached to the summary

[signature] A/Capt
(M.L. Legill) A/Capt
Officer detailed to take summary of evidence

We the accused persons do not require the attendance of this witness for the purpose of cross examination

[signature]
L 1161 S/Sgt Greatrix, R.J.

[signature]
B 88451 CSM Miskimmons, W.

[signature]
L 18134 Sgt Gemmell, N.A.

[signature]
D 91032 Sgt Davies, J.C.

[signature]
A 9234 Sgt Johns, R.T.

[signature]
B 96927 Cpl Joynes, J.W.M.

[signature]
B 64113 Rfn Dudley, R.C.C.

Third Witness - Prosecution

U 1869 S/Sgt Nelson, F.R., Cdn Provost Corps, STS CMHQ having beenduly sworn states that:-

On the 5th of October sir, at about 2220 hrs at the Special Investigation Section office in London a telephone message was received from Detective Sergeant Cook of the Flying Squad, Metropolitan Police, New Scotland Yard, to the effect that he had detained at Carter Street Police Station London, South East 17, a Canadian Staff Sergeant and a driver in possession of a Canadian Army lorry containing a large quantity of War Department blankets. Acting on the instructions of Major R.R. Holmes, Assistant Provost Marshall, Canadian Military Headquarters, I proceeded immediately to Carter Street Police Station where I saw Detective Sergeant E Cook and Detective Sergeant Albert Webb, both of the Flying Squad, New Scotland Yard. In the station yard I saw a Canadian Army Vehicle Ford 60 cwt No L 762620 bearing the unit sign of No 1 Canadian General Reinforcement Unit. I looked in the rear of this vehicle which was covered by a tarpaulin secured at the rear with ropes and saw a large number of army blankets which I later counted and found 700 in bundles of ten. Detained in the police station I saw S/Sgt Greatrix, whom I now recognize as one of the accused, and Rifleman Dudley, whom I also recognize as one of the accused. I said to Dudley, are you the driver of the truck outside and he said yes. I said to S/Sgt Greatrix are you with the truck and he said yes. I said to them, had you any authority to bring the truck load of blankets to London. Both soldiers answered no. At about 2245 hrs I place S/Sgt Greatrix and Rifleman Dudley under close arrest and escorted them together with the War Department vehicle

and contents to No 6 Area Provost Coy Detachment office, where I handed both soldiers over to the N.C.C. in charge to be detained. Detective Sergeant Cook handed to me a work ticket which I have present

The work ticket produced by the witness is shown to the accused, marked by me as exhibit "C" for the prosecution and attached to the summary.

In the possession of Rifleman Dudley I also found a work ticket No 820 which I now produce

The work ticket produced by the witness is shown to the accused, marked by me as exhibit "D" and attached to the summary.

In the possession of S/Sgt Greatrix I found a letter dated 5 October 1944 and signed L. Skinner for B.R. Kerr, Colonel, RCA, Commander 1 Canadian General Reinforcement Unit

This letter has been read to the accused marked by me as Exhibit "E" for the prosecution and attached to the summary

On 6 Oct 44 at about 0020 hrs I informed Capt Itter, duty officer No 1 Canadian General Reinforcement Unit of my actions and findings and about 1400 hrs on the authority of Lieutenant [illegible], acting adjutant No 1 Canadian General Reinforcement Unit, the [illegible] vehicle No L 762620 was released to Sgt Chiles, R.C. of No 1 Canadian General Reinforcement Unit. The 700 blankets which I found in the rear of the vehicle, I have retained at Special Investigation Section office at Canadian Military Headquarters for safekeeping. On 6 Oct 44 at about 1400 hours in the Special Investigation Section office Canadian Military Headquarters I saw Rifleman Dudley. I cautioned him and he made to me a voluntary statement which I took down in writing and which he signed in my presence, a copy of which I here produce.

This statement having been read to the accused Rifleman Dudley is marked by me as Exhibit "F" for the prosecution and attached to the summary

At about 1900 hrs on 6 Oct 44 I telephoned Lieutenant [illegible] Murray, acting adjutant No 1 Canadian General Reinforcement Unit and informed him of the contents of the statement made by Rifleman Dudley and requested the immediate arrest of C.S. Miskimmons. At about 1320 hrs on the 7th of October, 1944 at the Special Investigation Section office, Canadian Military Headquarters I saw S/Sgt Greatrix. I cautioned him and he made to me a voluntary statement which he typed out himself and which he signed in my presence. I now produce a copy of this statement.

This statement consisting of two pages has been read to the accused S/Sgt Greatrix, marked by me as Exhibit "G" for the prosecution and attached to the summary

At 1645 hours on 7 Oct 44 I again interviewed Rifleman Dudley. I confronted him with the statement of S/Sgt Greatrix, Exhibit "G". I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence and which I here produce.

This statement has been read to the accused marked by me as Exhibit "H" for the prosecution and attached to the summary.

I then submitted the statement of Rifleman Dudley, exhibit "F" to S/Sgt Greatrix. I cautioned him and he made a voluntary statement in writing which he signed in my presence a copy of which I produce here.

This statement has been read to the accused S/Sgt Greatrix, marked by me as exhibit "I" for the prosecution and attached to the summary.

On 10 Oct 44 at about 1050 hrs I place Sgt Johns, whom I recognize as one of the accused under close arrest and handed him over to the N.C.O. in charge of the guard room No 1 Canadian General Reinforcement Unit. At about 1120 hrs I placed Sgts Gemmell and Davies, whom I now recognize as two of the accused under close arrest and escorted them together with CQMS Miskimmons, whom I also recognize as one of the accused to No 9 Provost Company Detachment, where at about 1300 hrs I interviewed Sgt Gemmell. I cautioned him and he made to me a voluntary statement which I took down in writing and which he signed in my presence, a copy of which I here produce.

This statement having been read to the accused Sgt Gemmell is marked by me as Exhibit "J" and attached to the summary.

I then confronted Sgt Gemmell with the statement of S/Sgt Greatrix, Exhibit "G". I cautioned him and he made to me a voluntary statement which I took down in writing and which he signed in my presence a copy of which I here produce

This statement having been read to the accused Sgt Gemmell is marked by me as Exhibit "K" for the prosecution and attached to the summary.

I then escorted Sgt Gemmell to the guard room of No 1 Canadian General Reinforcement Unit and handed him over to the N.C.O. in charge to be detained.

I escorted Sgt Davies and CQMS Miskimmons to the Central Police Station Aldershot, where with the approval of the Superintendent of the police, I lodged them in police custody. On the 11th of October, 1944 at about 1000 hrs at the police station I interviewed Sgt Davies. I cautioned him and he typed out in my presence a voluntary statement which he signed in my presence. I hereby submit a copy of this statement.

On hearing the above statement read the accused Sgt Davies requested that the word "declined" line 17 page 2 of his statement be changed to the word "demurred"

W.L. Magill A/Capt
Officer detailed to take summary of evidence

This statement has been read to the accused Sgt Davies, marked by me as exhibit "L" and attached to the summary

I then confronted Sgt Davies with the statements of S/Sgt Greatrix, Exhibit "G", and Sgt Gammell, Exhibit "J". I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence, a copy of which I here produce.

This statement having been read to the accused is marked by me as Exhibit "M" and attached to the summary.

On 12 Oct 44 at about 1000 hrs in the guard room at No 1 Canadian General Reinforcement Unit I interviewed Sgt Johns when I also recognized as one of the accused. I cautioned him and confronted him with the statements of S/Sgt Greatrix, Sgt Gammell and Sgt Davies, Exhibits "G" "J" and "L" respectively. He stated when the trouble broke he was advised by an officer who was a friend of his not to make any statement and therefore he did not wish to do so. He did not state who this officer was and he was not urged to make any statement, but he did say certain things to me which I noted down roughly at the time. I produce a copy of these notes made at the time. I wrote out the formal caution and Sgt Johns said he did not wish to make a statement and did not sign the caution.

The copy of the notes having been read to the accused Sgt Johns is marked by me as Exhibit "N" and attached to the summary

At about 1400 hrs at the Central Police station, Aldershot, I interviewed CQMS Miskimmons. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence.

This statement having been read to CQMS Miskimmons is marked by me as Exhibit "O" and attached to the summary

I then confronted CQMS Miskimmons with the statements of S/Sgt Greatrix, Sgt Gammell and Sgt Davies. I cautioned him and he made a voluntary signed statement in writing a copy of which I here produce.

This statement having been read to the accused CQMS Miskimmons is marked by me as exhibit "P" and attached to the summary

On 13 Oct 44 I obtained a formal release from civil custody of CQMS Miskimmons and Sgt Davies and escorted them to the guard room of No 1 Canadian General Reinforcement Unit and handed them over to the N.C.O. in charge to be detained. Here I again interviewed S/Sgt Greatrix and confronted him with the statements of Sgt Gammell, Sgt Davies and CQMS Miskimmons. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence a copy of which I here produce

This statement having been read to the accused S/Sgt Greatrix is marked by me as exhibit "Q" and attached to the summary.

my

At about 1100 hrs in his quarters I saw Sgt Gemmell. I confronted him with the statements of Sgt Davies and CQMS Miskimmons. I cautioned him and he made a voluntary statement which I took down in writing and he signed it in my presence, a copy of which I here submit.

This statement having been read to the accused Sgt Gemmell is marked by me as Exhibit "R" and attached to the summary

At about 1400 hrs at the Motor Transport Office No 1 Canadian General Reinforcement Unit, I saw Captain R.M. Keene, officer commanding Motor Transport Section and he handed to me a drivers call sheet for 5 Oct 44 and also Work Ticket No. 5783 which I now produce

The call sheet and work ticket having been shown th the accused is marked by me as Exhibit "S" and attached to the summary

In the presence of Capt Keene I interviewed H 59092 rte Olsen, C.R. Motor Transport Section, A.Wing. He gave me a statement which I took down in writing and which he signed in my presence and in the presence of Capt Keene

This statement having been read to the accused is marked by me as exhibit "T" and attached to the summary

In the presence of Capt Keene I then interviewed B 96927 Cpl Jeynes, whom I now recognize as one of the accused. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence and in the presence of Capt Keene.

This statement having been read to the accused Cpl Jeynes is marked by me as exhibit "U" and attached to the summary.

About 1630 hrs I proceeded to the orderly room of No 1 Administrative Transport Company, Royal Canadian Army Service Corps, where I saw D 91040 MSM Ennor, C. I questioned him and he gave me certain information which I noted. On 18 Oct 44 as the result of inquiries on my part Major McLean, Officer Commanding A Wing, No 1 Canadian General Reinforcement Unit, handed to me an original statement made in writing on 6 Oct 44 in connection with disciplinary action taken in another case against B 112533 Gnr Wood, A.C. of No 1 Canadian General Reinforcement Unit., I present this statement.

This statement having been read to the accused is marked by me as exhibit "V" and attached to the summary

I thereupon interviewed Gnr Wood. I cautioned him and he made to me a statement which I took down in writing and which he signed in my presence and which I here submit.

This statement having been read to the accused is marked by me as exhibit "W" and attached to the summary.

At about 1100 hrs the same date in the presence of Capt Lake, Quartermaster, No 1 CanadianGeneral Reinforcement Unit, I interviewed L 414 Gnr Gould, E.G., storeman. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence and in the presence of Capt Lake.

This statement having been read to the accused is marked by me as exhibit "X" and attached to the summary

At about 1400 hrs on 18 Oct 44 I interviewed Lieutenant J.G. Dunlap, officer in charge Reception Wing, RS & Dd Coy, and questioned him concerning blankets. He gave me certain information which I noted. On 20 Oct 44 in the presence of Capt Lake quartermaster, I questioned Lieutenant J. Sinister on the same matter and he gave me information corroborating that of Lieutenant Dunlap which I noted. On 19 Oct 44 at about 1000 hrs in the guard room of No 1 C.G.R.U. in General Reinforcement Unit I again interviewed Rifleman Dudley. I confronted him with the statement of Cpl Joynes, exhibit "Y", and he gave me a voluntary statement which I took down in writing and which he signed in my presence.

This statement having been read to the accused Rifleman Dudley is marked by me as exhibit "Y" and attached to the summary

At about 1330 hrs in the Motor Transport Office I placed Cpl Joynes under close arrest and charged him to the effect that he, Cpl Joynes, at Canadian Reinforcement units Spec'l Investigation Officer, Canadian Reinforcement units where I confronted him with the statement of Rifleman Dudley exhibit "Y". I cautioned him as follows: I presume a copy of this statement.

This statement having been read to the accused Cpl Joynes is marked by me as exhibit "Z" and attached to the summary

I then escorted Cpl Joynes to the guard room No 1 C.G.R.U. and handed him over to the N.C.O. in charge to be detained. On the 20th of October, 1944, at about 1020 hrs in the presence of Capt Lake, quartermaster, I interviewed H 102547 Pte Trowse, D. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence and in the presence of Capt Lake. I present a copy of this statement.

This statement having been read to the accused is marked by me as Exhibit "Z1" and attached to the summary

I then questioned Capt Lake concerning the movement of blankets within unit lines on or about 5 Oct 44. He gave me certain information which I noted. On the 6th at the Central Police station, Aldershot, I again saw Cpl Miskimmons. He said to me, I want to tell you the truth and make a complete statement about the blankets. I cautioned him as to the statement which I took down in writing and which he signed in my presence. I present a copy of this statement.

This statement having been read to the accused Cpl Miskimmons is marked by me as exhibit Z2 and attached to the summary.

117

I then confronted Sgt Gammell with the statement exhibit Z2" of CQMS Miskimmons. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence. I submit a copy of this statement

This statement having been read to the accused Sgt Gammell is marked exhibit "Z2" by me and attached to the summary

At about

At about 1600 hrs I escorted CQMS Miskimmons and Sgt Gammell to the guard room No 1 Canadian General Reinforcement Unit handing them over to the N.C.O. in charge to be detained. I made several inquiries to substantiate the statement of CQMS Miskimmons, who informed me that D 96310 Sgt Beecher, E., might remember his visit to reception on 5 Oct 44 after Rifleman Dudley had left the blanket stores with the blankets. At about 1100 hrs on 28 Oct 44 in response to a telephone inquiry I was informed by Sgt Beecher that he had no recollection of the appearance at Reception Company of CQMS Miskimmons on the specific date and time mentioned by CQMS Miskimmons. At about 1600 hrs on 24 Oct 44 at the guard room I again interviewed Sgt Johns. I confronted him with the statements of Cpl Jaynes and CQMS Miskimmons. I cautioned him and he said, I have got a chance of beating this rap and if I don't make any statement it will give my defending officer a chance. I am in possession of all original exhibits of which I have presented copies.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness.
The accused B 88451 CQMS Miskimmons, W. declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies, J.C. declines to cross examine this witness
The accused [illegible] 9243 Sgt Johns, R.T. declines to cross examine this witness
The accused B 96927 Cpl Jaynes, J.C.M. declines to cross examine this witness
The accused B 64113 Rifleman Dudley declines to cross examine this witness

Fredk R. Nelson

U 1869 S/Sgt Nelson, F.R.

Fourth Witness - Prosecution

B 51699 Sgt Childs, W.S. a soldier of the Canadian Corps of Signals of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I am employed as transport sergeant in the motor transport section of No 1 Canadian General Reinforcement Unit. On Friday 6 Oct 44 I was instructed by the Assistant Adjutant No 1 Canadian General Reinforcement Unit to go to London to pick up truck No. L 762820 which was being held by the Provost in London. I reported in to the Provost Headquarters and gave them my authority for picking up the vehicle and brought the vehicle back to the unit. The vehicle was empty at the time.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness

I then confronted Sgt Gemmell with the statement exhibit Z2" of CQMS Miskimmons. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence. I submit a copy of this statement

> This statement having been read to the accused Sgt Gemmell is marked exhibit "Z2" by me and attached to the summary

At about

At about 1600 hrs I escorted CQMS Miskimmons and Sgt Gemmell to the guard room No 1 Canadian General Reinforcement Unit handing them over to the N.C.O. in charge to be detained. I made several inquiries to substantiate the statement of CQMS Miskimmons, who informed me that D 96310 Sgt Beecher, E., might remember his visit to reception on 5 Oct 44 after Rifleman Dudley had left the blanket stores with the blankets. At about 1100 hrs on 28 Oct 44 in response to a telephone inquiry I was informed by Sgt Beecher that he had no recollection of the appearance at Reception Company of CQMS Miskimmons on the specific date and time mentioned by CQMS Miskimmons. At about 1800 hrs on 24 Oct 44 at the guard room I again interviewed Sgt Johns. I confronted him with the statements of Cpl Joynes and CQMS Miskimmons. I cautioned him and he said, I have got a chance of beating this rap and if I don't make any statement it will give my defending officer a chance. I am in possession of all original exhibits of which I have presented copies.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness.
The accused B 88451 CQMS Miskimmons, W. declines to cross examine this witness
The accused L 18134 Sgt Gemmell declines to cross examine this witness
The accused D 91032 Sgt Davies, J.G. declines to cross examine this witness
The accused A 9243 Sgt Johns, R.T. declines to cross examine this witness
The accused B 96927 Cpl Joynes, J.C.M. declines to cross examine this witness
The accused B 64113 Rifleman Dudley declines to cross examine this witness

Fredk R. Nelson

U 1669 S/Sgt Nelson, F.M.

Fourth Witness - Prosecution

B 51699 Sgt Childs, W.C. a soldier of the Cdn Army Overseas on Strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I am employed as transport sergeant in the motor transport section of No 1 Canadian General Reinforcement Unit. On Friday 6 Oct 44 I was instructed by the Assistant Adjutant No 1 Canadian General Reinforcement Unit to go to London to pick up truck No. L 762820 which was being held by the Provost in London. I reported in to the Provost Headquarters and gave them my authority for picking up the vehicle and brought the vehicle back to the unit. The vehicle was empty at the time.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gemmell declines to cross examine this witness

The accused D 91032 Pte Davies declines to cross examine this witness
The accused [illegible] 9243 Sgt Johns R.T. declines to cross examine this witness
The accused B 96927 Cpl Joynes, declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

W.C. Childs
B 51699 Sgt Childs, R.C.

Fifth Witness - Prosecution

Captain R.N. Koono, an officer of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit, having been duly sworn states that:- I am the transport officer No 1 Canadian General Reinforcement Unit. On 6 Oct 44 I was recalled from a twenty four hour pass and told that truck No L 762620 had been stolen and was in London. I was told also that the permanent driver of the vehicle, Rifleman Dudley, whom I now recognize as one of the accused, was detained in London. I questioned my despatching staff as to what duties the vehicle had been on. The only permanent persons on that staff are L/Cpl Warren, R.C. and Cpl Joynes, whom I now recognize as one of the accused. I found that the vehicle had been detailed to go to Aldershot stores. That evening I brought to the attention of Cpl Joynes there was a letter written by the quartermaster to the effect that vehicles would not be despatched on the request item stores unless a chit, signed by an officer had been presented. [illegible] that the vehicle had been detailed [illegible] stores. He informed me that [illegible] him, who I now recognize as one of the accused. I was present when Cpl Joynes was interviewed by the Provost Marshal from the Special Investigation Section and I was present when Pte Olsen was brought in and interviewed, and I was present when L/Cpl Warren was interviewed. These people denied any knowledge of the circumstances.

The witness is shown exhibit "C"

That is a transport work ticket, army form 3518 made out from Aldershot to Watford and return detailed for the purpose of taking hospital blankets authorized by C.R.U. and it is alleged to have been signed by yourself. It is not my signature and I did not sign it. I did not know of any authority for this trip as I was on a 24 hr pass. The only authority received would be communicated direct to my second in command Lieut Drake, by the adjutant.

The witness is shown Exhibit "D"

That is a transport work ticket army form 3518. To all intents and purposes as far as I am concerned it is made out correctly. The last trip is authorized by Sgt Strauss Farnham and Farnborough with my signature made by Cpl Joynes with his initials above it.

The witness is shown exhibit "E"

One is a transport work ticket army form 3518 and the other sheets are what I call driver's call sheets on which all vehicles despatched by the despatching office are supposed to be entered or with the exception of staff cars

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 8451 OCDS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell, N. . declines to cross examine this witness
The accused D 91032 Sgt Davies, declines to cross examine this witness
The accused A 9843 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jeynes declines to cross exeamine this witness
The accused B 64113 Rfn Dudley, declines to cross examine this witness

R Keen
N.F. Keen, Capt

Sixth Witness - Prosecution

Lieutenant J.C. Dreger, an officer of the Canadian Army Overseas on strenght of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I am second in command of the Motor Transport Company No 1 Canadian General Reinforcement Unit. On 5 Oct 44 Capt Keene who is officer commanding Motor Transport Section was away on a 24 hr pass.

Witness is shown Exhibit "C"

I have never seen this work ticket before. I did not sign it nor did I authorize anyone else to sign it.

Witness is shown exhibit "_"

I have never seen this letter before nor do I know any Lieutenant Skinner in this unit. In any event I would not have acted on this letter because it is neither signed nor initialled by the Adjutant of No 1 Canadian General Reinforcement unit. No authority for the movement of vehicles outside the twenty mile area is valid in this unit unless it is signedor initialled by the Unit Adjutant or the Commanding Officer. I recognize Cpl Jeynes who is one of the accused as being the Cpl despatcher in the Motor Transport Section.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 8451 OCDS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9843 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jeynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

J.C. Dreger Lt
J.C. Dreger, Lieut
1117

Seventh Witness - Prosecution

H 59092 Pte Olsen, C.R., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- On the 5th of October, 1944 I was driving a truck for the accomodation stores. The forenoon is very hazy to me but in the afternoon the main detail was down to the Hale Laundry near Farnham to pick up blankets, I believe it was seven or eight hundred. They were taken to the accomodation store-room at Corunna Barracks and unloaded there. After that I took S/Sgt Miskimmons over to the accomodation stores. After that he told me I was not needed any more with the exception of picking up another S/Sgt at Group Headquarters. The S/Sgt Miskimmons I speak of is one of the accused, whom I now recognize. I was told shortly after three o'clock I was not needed any more. That was early and I waited around for a while then went down to pick up this S/Sgt and took him up to the accomodation stores and then returned to the garage. Formally I would be dismissed from the accomodation stores between 4:30 and 5 o'clock.

The accused L 1161 S/Sgt Grentrix declines to cross examine this witness
The accused B 88451 CSMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gemmell declines to cross examine this witness
The accusedD 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused H 96927 Cpl Jeynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

C. R. Olsen
H 59092 Pte Olsen, C.R.

Eighth Witness - Prosecution

D 91040 WSW Ennor, C., a soldier of the Canadian Army Overseas on strength of No 1 Administrative Transport Company having been duly sworn states that:- I am a mechanist sergeant major on strength of No 1 Administrative Transport Company. Around the end of September I came into the mess one night at Administrative Transport Company and found Sgt Davies, whom I now recognize as one of the accused waiting for me. He had another Sgt with him who I would not recognize again. I knew Sgt Davies and had not seen him for some time, although I had met him in Aldershot a month or so previously. We had a drink together and he then asked me if there was any possibility of getting a truck and mentioned there would be twenty or twenty five pounds in it for me if I could do so. I told him that I had nothing to do with the transport and was not interested in the matter. We talked for a while then left the mess. There was some talk about blankets but I don't know who brought it up or the exact details.

The accused L 1161 S/Sgt Grentrix declines to cross examine this witness
The accused B 88451 CSMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gemmell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness

The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jaynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

C E Enner
D 91640 WSM Enner, C.

Ninth Witness - Prosecution

B 112588 Gnr Wood, A.C., a Soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Units having been duly sworn states that:- I am a driver for the Motor Transport Section, No 1 Canadian General Reinforcement Unit. 1 8 Aug 44 I was detailed to drive for the Pob stores. In the course of the day I drove S/Sgt Miskimmons, whom I now recognize as one of the accused, to various places. Some of these trips were authorized but after the authorized trips I drove him to various places including Camberley, in the afternoon and evening. We had a good many drinks and eventually I fell asleep in the vehicle and did not get back to camp until around midnight. I was arrested on a charge of drunken driving and improper use of the vehicle. During the course of our driving S/Sgt Miskimmons said we could make some money sometime by some blankets. I did not pay much attention to this remark

The witness is shown Exhibit "W"

This is a statement made by me on the 6 Aug 44 and signed by me. Everything contained in it is true to the best of my knowledge

The accused B 96927 Cpl Jaynes, JAG cross examines the witness
Q.1 That trip you went on that day was legitimate from the office?
A.1 Yes
The accused L 1191 S/Sgt Gristrix declines to cross examine this witness
The accused B 88481 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused D 91082 Sgt Davies declines to cross examine this witness
The accused A 9242 Sgt Johns declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

A.C. Wood
B 112588 Gnr Wood A.C.

Tenth Witness - Prosecution

L 414 Gnr Gould, E.G., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I am employed in the accomodation stores No 1 Canadian General Reinforcement Unit. I do all manner of jobs, anything that is to be done, including the loading and unloading of blankets. On 5 Oct 44 we went to the laundry at Hale and brought back a truck load of blankets. There were eight hundred blankets in this load. About 1600 hrs the same day I was told by S/Sgt miskimmons, whom I now recognize as one of the accused, to

help Pte Toews load seven hundred blankets on a truck to go to Reception Company. Pte Toews, myself and S/Sgt Miskimmons loaded these blankets. There were seven hundred in all. S/Sgt Miskimmons then told the driver to take them to Reception Company. The driver drove off and I did not see the blankets again. This truck was not then driven by Pte Olsen, which was the truck we had used to get the blankets from Hale. It was a different truck but belonged to No 1 Canadian General Reinforcement Unit

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns R. declines to cross examine this witness
The accused B 96927 Cpl Jeynes declines to cross examine this witness
The aaccused B 64113 Rfn Dudley declines to cross examine this witness.

E G Gould
L 414 Gnr Gould, E.G.

Eleventh Witness - Prosecution

H 88347 Pte Toews, D., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit, having been duly sworn states that:- I work in the accommodation stores at No 1 Canadian General Reinforcement Unit. I was working there on the 5th of October, 1944. Among other things it is my duty to help load and unload blankets. On the afternoon of that day I went with Gnr Gould and S/Sgt Miskimmons to the laundry at Hale and brought back a load of eight hundred blankets, which were brought back to the unit. The truck in which we went to Hale was driven by Pte Olsen. About 1600 hrs we were told to load seven hundred blankets in a truck driven by Pte Dudley, whom I now recognize as one of the accused. We were told to do this by S/Sgt Miskimmons, whom I also recognize as one of the accused. We were told that these blankets were for reception company, we were told this by S/Sgt Miskimmons. Gnr Gould and I loaded the blankets and the truck was driven away by Pte Dudley. I have not seen the blankets from that day to this, nor do I know what has become of them.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jeynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

D Toews

Twelth Witness - Prosecution

Lieut J Simister, an officer of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- On or about the 1st of October, 1944 the Officer Commanding asked me to assist in organizing a Reception office to the new Reception Basic DM Coy. On 3 Oct 44 I started to set up the office in Corunna Lines and we were advised on the afternoon of that day to expect a draft in from Canada on the night of the fourth. Myself, Lieut Dunlap, and one of the Sgts went to the accomodation stores and told the CQMS in charge we needed four hundred and fifty blankets. He told us to go along to the storeman and we could draw the blankets we wanted. We went along and saw the storeman and drew I believe four hundred blankets. That was sufficient for the draft we expected and I ceased my connection with the company on the afternoon of 5 Oct 44 and at the time we did not order any more blankets nor did anyone else in the company. I know nothing of any seven hundred blankets ordered for the Reception Company on the afternoon of 5 Oct 44

The accused L 1161 S/Sgt Greetrix declines to cross examine this witness
The accused B 98481 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Bennell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Joynes declines to cross examine this witness
The accused B 64113 Rft Dudley declines to cross examine this witness

J. Simister, Lieut

Thirteenth Witness - Prosecution

Capt C.E. Lake., and officer of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states:- I am the quartermaster at No 1 Canadian General Reinforcement Unit and as such I am in charge of all stores in Maida and Corunna barracks where No 1 Canadian General Reinforcement unit is located. Blankets are kept in the blanket stores in Corunna barracks. This blanket stores is in charge of the Assistent quartermaster who is also in charge of the accomodation stores. CQMS Miskimmons, whom I now recognize as one of the accused is the senior N.C.O. in the accomodation stores and has been for some considerable time. As senior N.C.O. he would have access to the blankets in the blanket stores. In the absence of the assistent quartermaster he would have authority to issue blankets to any coy authorized to receive them. Having heard that blankets belonging to this unit had been found in a truck in London the Commanding Officer ordered me to have the blankets counted in this unit. Canadian Barracks services performed this duty and on the 11 Oct 44 the count was duly made. A discrepancy was discovered of between seven and eight hundred blankets.

The accused L 1161 S/Sgt Greetrix declines to cross examine this witness

The accused B 88451 COMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Joynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

C.E. Lake, Capt

Fourteenth Witness - Prosecution

M 7113 Sgt Brooks, A.E., a soldier of the Canadian Army Overseas on the strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I know Sgt Johns, whom I now recognize as one of the accused. He has been in the habit of borrowing money from me which he usually pays back at the end of the month. He has been borrowing money in this fashion off and on for the last three years during which time I have known him. He has owed me at various times sums as large as £8-0-0 or occasionally larger. He paid me around seven or eight pounds at the end of September. He is said to receive money from such sources as the Canadian Legion for his services as an instructor.

The accused I 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 COMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Joynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

Alfred E. Brooks
M 7113 Sgt Brooks, A.E.

Fifteenth Witness - Prosecution

M 27256 Tpr Richardson, H., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I am the Regimental Barber of No 1 Canadian General Reinforcement Unit. I often lend money to various people around the unit and among other people I have loaned money to Sgt Johns who I now recognize as one of the accused. At the present time he owes me £5-0-0 and has owed it to me since the end of September. He borrowed this money while he was on leave and has not since been in a position to repay me. None of other accused here present owe me any money.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gemmell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jeynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

Sixteenth itness - Prosecution

H Richardson
L 27236 Tpr Richardson, H.

D 93614 Sgt Beecher, E., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I am the senior N.C.O. in the Reception Company. This company started to operate on 4 Oct 44. We got in a large number of blankets that day. I went with the truck to get these blankets. On the 5th of October 44 more blankets came in in the afternoon. S/Sgt Miskimmons whom I now recognize as one of the accused was over at the reception company several times that day. I do not recall him being there between 1600 hrs and 1700 hrs.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accuse L18134 Sgt Gemmell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jeynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

Eric Beecher
D 96314 Sgt Beecher, E.

The officer detailed to take the summary of evidence recalls a witness for the purpose of clearing up an ambiguity in the evidence given by this witness.

Capt C E Lake

Examined by the officer detailed to take the summary

Q.1 You have been recalled to clear up an ambiguity in your evidence in regard to the shortage in blankets. You stated in your evidence that a blanket check showed there were seven to eight hundred short. It is not clear to me whether you mean that there are seven to eight hundred blankets short including the blankets alleged to have been discovered in London, or whether you mean there are an additional seven to eight hundred missing.

A.1. I have here a recapitulation of the blanket check taken by Canadian Barrack Services, submitted to me by Lieut Fraser, Assistant Quartermaster. The actual amount of blankets checked totals 8900 even. There were approximately 50 blankets that were not checked in the pioneers quarters and 50 blankets with the medical company which they had out on a scheme that day. That makes a grand total of 9000 checked

The unit long roll figures were 8824 as of that date. This left a surplus of of 176 blankets. Taking into consideration the 700 already in London not checked by the Canadian Barrack Services makes a total SURPLUS of 876 blankets. Mr Fraser and I calculated as closely as possible the numb r of G 1098 blankets belonging to individuals on unit strength all of whose G 1098 blanket were counted in the check. Taking the units strength as of that date less the incoming drafts in Reception Company we calculated that there were approximately 966 G 1098 blankets in possession of the individuals. This can only be approximate as in the length of time that the check was made it was impossible to get the exact figure. The surplus of 876 blankets against our approximation of 966 G 1098 blankets showed an apparent shortage of 90. This figure could of course be wrong to the extent of 90 either way, depending upon how accurate our estimation was of G 1098 blankets. When I speak of this day I mean Oct 11th, 1944, the day of the check.

The accused L 1161 C/Sgt Greatrix declines to cross examine this witness

The accused B 66431 CQMS Hiskinsons declines to cross examine this witness

The accused L 16134 Sgt Gemmell declines to cross examine this witness

The accused D 91032 Sgt Davies declines to cross examine this witness

The accused A 9863 Sgt Johns declines to cross examine this witness

The accused B 90927 Cpl Jeynes declines to cross examine this witness

The accused B 94113 Pte Dudley declines to cross examine this witness

Lt. Col., Capt

The accused B 94113 Rfn Dudley, R.D.C. is cautioned as follows:-

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence upon oath.

The accused does not wish to call any witnesses.

The accused B 90927 Cpl Jeynes, R.C.D. is cautioned as follows:-

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence upon oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused elects to give evidence upon oath.

The accused B 96927 Cpl Joynes, J.C.M., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:-

"On the morning of the 5th of October, 1944, at about 0930 hrs, Sgt Johns, whom I now recognize, came to me in the motor transport office and asked me if he could get a vehicle to handle some blankets going up to London. These blankets were to be delivered in London at exactly 1630 hrs. I understood that these blankets were to be sold to someone in London. Sgt Johns told me that if I would arrange the vehicle, the driver and I would get approximately £15-0-0 each, depending upon the price received for the blankets. I said that I would do so provided I could get a driver and provided that an emergency demanding the use of a lot of transport did not come up during the day. I had in mind Rifleman Dudley as the driver of the vehicle. Sgt Johns said he would have to know by 1400 hrs that day and was not satisfied unless I could tell him right away, so I said I would let him have the vehicle, intending that if anything came up that I could not use it, not to bother letting him know differently. Sgt Johns told me to have the vehicle just below the stop-lights on the Upper Hale road at exactly 1655 hrs, where it would pick up another Sgt. I understood that the blankets were to be obtained from the Hale laundry. I went out into the yard, met Dudley and asked him if he would do this. He agreed to do so. I then made out a ticket for the trip, filling it out, and then stamping it several times with the unit motor transport stamp, so that that particular ticket could not be used. I then gave Dudley a blank work ticket already stamped and told him to copy on it exactly what I had written on the first ticket. He was then to destroy the first ticket, the reason for this was so that if he was stopped or anything went wrong, my handwriting would not show up on the work ticket. I also told Dudley that once he set out he was strictly on his own and that I had no knowledge of the deal whatsoever. I also told him to make sure his tanks were full so that he would have enough gas to get to London and back, and so that he would not have to draw any anywhere. About 1500 hrs I got Dudley's genuine work ticket on which he had been operating on legitimate business, and made an entry on it for a journey via Farnham and Farnborough. The purpose of this was to protect him until he met the Sgt at the stop-lights in Hale, pick up the blankets, and was out of the immediate area of Aldershot. Once out of the immediate area of Aldershot his London ticket would protect him. As far as I know Dudley has never been mixed up in any illegal involving transport before. The only reason I approached him was I knew he was broke and going on leave soon. I have never been mixed up myself in anything like this before either.

EX 3

J. R. Joynes

B 96927 Cpl Joynes, J.C.M.

The accused does not wish tocall any witnesses.

The accused L 11el S/Sgt Greatrix, R.J. is cautioned as follows:-

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence upon oath.

Theaccused does not wish to call any witnesses

The accused D 91032 Sgt Davies, J.C. is cautioned as follows:-

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence upon oath.
The accused does not wish to call any witnesses.

The accused L 18134 Sgt Gemmell, N.A. is cautioned as follows:

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence on oath.
The accused does not wish to call any witnesses.

The accused A 9243 Sgt Johns, R.T. is cautioned as follows:-

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence upon oath.
The accused does not wish to call any witnesses

The accused B 88451 CQMS Miskimmons, R.J. is cautioned as follows:-

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence upon oath.
The accused does not wish to call any witnesses.

I certify that the foregoing summary of evidence consisting of nineteen pages was taken down by me in the presence and hearing of the accused persons on the First and Second days of November, 1944, and that R.P. 4 (C)(D)(E)(F) and (G) have been complied with.

(N.L. Magill) Lt/Capt
Officer detailed to take the summary of evidence

In the Field
3 Nov 44

This is Exhibit " A " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gemmell, M.A.
Sgt Johns, R.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

Officer taking Summary

A (~~[illegible]~~)

515-e-4-44

New Scotland Yard. I

9th. October, 1944.

STATEMENT of Ernest Cook, Detective Sergeant, New Scotland Yard, who saith:-

At about 8.15pm., on 5th, October, 1944, I received information that a soldier in the Canadian Army had been endeavouring to dispose of a load of blankets which he had brought on a lorry to Walworth. With Detective Sergeant Webb and other Officers I went to Walworth Road, Walworth, S.E., and after searching the vicinity saw an Army lorry Index No. CL 762820 parked by the side of the road about 100 yards from the Elephant and Castle and facing South. The lorry was covered with a tarpaulin sheet secured by ropes.

We went up to the lorry and saw DUDLEY who was in the drivers seat. I said to him, " We are Police Officers. What are you doing here?". He said " I am waiting for my Sergeant who has gone to get something to eat". I said to him " Where are you from. Where are you going and what load have you got on?". DUDLEY replied, " I'm from Aldershot and I am taking a load of blankets to Watford". I said " What are you doing here, you are miles off your route". He said " I am only acting on instructions". I then asked him where his Sergeant had gone to and he said " I haven't any idea".

I looked under the tarpaulin covering and ascertained that there ~~were~~ in fact a large quantity of blankets on the lorry. I told DUDLEY that I was not satisfied with his explanation and that I was going to make enquiries with a view to verify his statements. He then handed me a printed form showing particulars of a load of blankets to be taken from Aldershot to Watford, saying, " This is my authority". I told him that I was still not satisfied and that enquiries would be made. DUDLEY then said " I will tell you the truth. The blankets are stolen. I made the particulars out myself and my Sergeant told me what to do and where to go".

We then left an Officer in the lorry with DUDLEY whilst we kept observation in the vicinity. At

At/

about 10.15pm., I saw GRATRIX, who had come from the direction of the Elephant and Castle, endeavouring to climb into the cabin of the lorry. We went up to him and Sergeant Webb said " We are Police Officers, are you in charge of this lorry?". He said " Yes". Sergeant Webb said " Can you explain what you are doing with it". GRATRIX said " I am taking a load of blankets to Watford". He was then asked if he would care to say where he had been to during the past two hours and he replied " I have been drinking with some friends". Sergeant Webb asked him who his friends were and GRATRIX said " I don't know. I have only met them casually to-night". He paused and then added " As a matter of fact I have been with another soldier from my Unit but I am not saying who he is". Sergeant Webb then said " I have reason to believe that the blankets are stolen". GRATRIX said " I don't think so".

I then said to DUDLEY and GRATRIX " I am not satisfied with your explanations, you are going to be arrested and taken to the Police Station where you will be detained pending enquiries". I cautioned them. GRATRIX said " I don't know what it is all about". DUDLEY did not reply. They and the lorry were taken to Carter Street Police Station.

The Canadian Military Police Headquarters were then informed of the detention of DUDLEY and GRATRIX and later Staff Sergeant Nelson, S.I.B. Canadian Military Police attended and took both men into his custody. I handed to Staff Sergeant Nelson the printed form obtained from DUDLEY.

This statement is true.

(Sgd) Det. Sergt.

This is Exhibit " B " referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.T.
CQMS Miskimmon, [illegible]
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

[illegible] A/Capt
Officer taking summary

B (23/24)

S15/C-4-44

Flying Squad Office,
New Scotland Yard.
9th October, 1944.

II

STATEMENT of Albert WEBB, Detective Sergeant, New Scotland Yard, who saith:-

At 8-15 p.m., 5th October, 1944, I went with Detective Sergeant Cook and other officers to Walworth Road, S.E., where I saw an Army lorry Index No. CL-762820.

We approached the lorry and saw Dudley in the driver's seat. Sergeant Cook told him we were police officers and said, "What are you doing here." Dudley said, "I am waiting for my sergeant. He has gone to get something to eat." Sergeant Cook said, "Where are you from, where are you going, and what load have you got?" Dudley replied, "I've come from Aldershot and I'm taking blankets to Watford." Sergeant Cook pointed out that Dudley was miles out of his route and Dudley said, "I am only acting on instructions." Asked where his sergeant had gone to he said, "I haven't any idea."

We looked under the tarpaulin covering of the lorry and saw piles of blankets. Sergeant Cook told Dudley he was not satisfied with his story and that he would have to verify his statements. Dudley then handed Sergeant Cook an Army Form giving particulars of a load of blankets to be taken from Aldershot to Watford. Dudley said, "This is my authority." Sergeant Cook told him that further enquiries would have to be made and Dudley said, "I will tell the truth. The blankets are stolen. I made the particulars out myself. My sergeant told me what to do and where to go."

Leaving an officer in charge of the lorry we kept observation in the vicinity and at about 10-15 p.m. Gratrix came from the direction of the Elephant & Castle and endeavoured to climb into the lorry. We approached him and I said to him, "We are police officers. Are you in charge of this lorry?" He said, "Yes." I asked him to explain what he was doing with it and he said, "I am taking a load of blankets to Watford." I then asked Gratrix if he would give an explanation as to where he had been during the previous two hours and he said, "I have been drinking with some friends." I asked who his friends were and Gratrix said, "I don't know. I have only met them casually to-night." He then added, "As a matter of fact I have been with another soldier from my Unit. I am not saying who he is." I then said to him, "I

have reason to believe that the blankets are stolen," and Gratrix replied, "I dont think so."

Sergeant Cook then said to Dudley and Gratrix, "I am not satisfied with your explanations. You are going to be arrested and detained pending enquiries." He cautioned them and Gratrix said, "I dont know what it is all about." Dudley made no reply.

They were both then taken to Carter Street Police Station with the lorry and later Staff Sergeant Nelson, S.I.B., Canadian Military Police, attended and took both men into custody.

Edward Webb

Sergeant.

This is Exhibit " C " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gammell, R.A.
Sgt Johns, R.T.
Rifleman Dudley, R.D.C.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.

taken before me this First and Second day of November, 1944

W.H. Thomas A/Capt
Officer taking Summary

O.G. 3518 (Revised 1941)
O.G.S./400 (2749)

No. 1 Gen. Reinf. Unit O. R.
Despatched
OCT 5 1944
Canadian Army Overseas

TRANSPORT WORK TICKET

"C" [illegible] No.

MAKE OF VEHICLE	CLASS	UNIT	SECTION	DRIVER'S NAME	W.D. No.	MONTH & YEAR
Ford.	60 Cwt.	#1 C.G.R.U.	M.T.	B64113 Rfn. R. Dudley	162820	Oct. 44

DATE (1)		FOR WHOM JOURNEY IS PERFORMED	DETAILS OF LOAD	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Run (17)	SPEEDOMETER Day (18)
	A			Brought forward from Work Ticket No.														
	B	Authority	Hospital	Aldershot														
	C	C.R.U.	Blankets		Watford	Return	Kent Capt.							1600				
	D																	
	E																	
	F																	
	G																	
	H																	
	J																	
	K																	
	L																	
	M																	

M.P.G. for week ..... or totals carried over.

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	Tons Out (14)	Tons In (15)	SPEEDOMETER In (16)	SPEEDOMETER [illegible]	SPEEDOMETER Day (18)
N			Brought forward from Reverse				—						—	—			
O																	
P																	
Q																	
R																	
S																	
T																	
U																	
V																	
W																	
X																	
Y	M.P.G. for week	or totals carried to Work Ticket No.					—						—	—			

Seized from B-64113, Rfn DUDLEY, R.P.C.
5 OCT 44, 23:50 hrs. at 4/6 Pres. Coy.
Detention Office
Fred R. Nelson 8/Sgt.
9.15.

LINE	SPECIAL INSTRUCTIONS TO DRIVER	DATE	DRIVER'S REPORT OF BREAKDOWNS, ACCIDENTS AND DEFECTS	SIGNATURE OF DRIVER	COUNTERSIGNATURE
				R. Dudley	Rank

This is Exhibit " D " referred to in the summary of evidence in the case of:-

S/Sgt Crestrix, R.J. CQMS Miskimmons, W.
Sgt Gemmell, E.A. Sgt Davies, J.C.
Sgt Johns, R.T. Cpl Jaynes, J.C.M.
Rifleman Dudley R.D.C.

taken before me this first and Second day of November, 1944

Officer taking summary

This is Exhibit " D " referred to in the

summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gammell, N.A.
Sgt Johns, R.F.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jaynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of

November, 1944

Officer taking summary

P.G. 3118 (Revised 1942)
P&S 40(1740)

TRANSPORT WORK TICKET

"D" 3-5-44
3-5-43.
Dudley.

No. 820

WA[illegible] Retail Unit Q. C. CLASS: 60 cwt

UNIT: 1 C4R J

SECTION: MT

DRIVER'S NAME: Pte Raamsman

W.D. No. 762820

MONTH & YEAR: Oct 44

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To Canadian Army Overseas (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	GALLONS At Start (10)	GALLONS Drawn (11)	GALLONS At End (12)	GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Run (17)	SPEEDOMETER Day (18)
	Canadian Army Overseas																
			Brought forward from Work Ticket No.			A	—						—	—	20176		
1.	B Base Unit	Records	Aldd	Aldd	Return	Kearn Capt							1400				
2.	C Base Unit C.T.U.		Aldd	Bamburgh	Return	Capt Liddle							2300				
3	Base Unit Ed Coy		Aldd	Guildford	"	Capt Smith							0815				
3	Base Unit	Records	Aldd	Aldd	"	Capt Smith							1800				
3	D Base Unit	Pte Coy	Aldd	Guildford	Return	Capt Smith							1600		20748	20	
3	E Base Unit	Parcels	Aldd	Aldd	Ringstead	Kearn Capt							1600		20768	20	
5	H Base Unit	Records	Aldd	Aldd	Return	Kearn Capt							1600		20788	20	
5	I Base Unit	Mobiles	Aldd	Fordham	Fordham	Kearn Capt							1030				
	K					K											
	L					L											
	M					M											

DOUBLED 3 TIMES

M.P.G. for week ____ or totals carried over.

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER [illegible]	SPEEDOMETER Day (18)
	N			Brought forward from Reverse													
	O																
	P																
	Q																
	R																
	S																
	T																
	U																
	V																
	W																
	X																
	Y	M.P.G. for week ..... or totally carried to Work Ticket No.															

Signed from B-64113, Rfn DUPLEY, RDC
5 Oct 44 23:50 hrs. at 1/6 Prov. Coy.
Detention Office
Frederick Nelson S/Sgt.
S.I.S.

LINE	SPECIAL INSTRUCTIONS TO DRIVER	DATE	DRIVER'S REPORT OF BREAKDOWNS, ACCIDENTS AND DEFECTS	SIGNATURE OF DRIVER	COUNTERSIGNATURE
					Rank

This is Exhibit " E " referred to in the

summary of evidence in the case of:-

S/Sgt Greatrix, R.J. CQMS Miskimmons, W.
Sgt Gemmell, N.A. Sgt Davies, J.C.
Sgt Johns, R.F. Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of

November, 1944

Officer taking summary

"E"

1 CGRU/9-4
5 Oct 44

Commanding Hospital,
No 23 Cdn Gen Hosp RCAMC
WATFORD

DESPATCH OF BLANKETS

1. Ref CRU/911/BLANKETS/14 dated 3 Oct 44.

2. In accordance with the instructions outlined in the above mentioned letter, arrangements have been made to supply to your Unit one thousand (1000) blankets.

3. This consignment will be picked up from the Laundry 5 Oct 44 and will be delivered to your Unit by tpt supplied by 1 CGRU.

4. As the blankets will be delivered direct from the Laundry, it is not considered necessary that the certificate stipulated in CRU Instructions be supplied, as the methods of cleansing automatically free the blankets of the possibility of lice or other contaminations being present.

5. Issue Voucher will be forwarded through the normal channels.

(B.R. Ker) Colonel, RCA
Commander,
1 Cdn Gen Rft Unit
Cdn Army (Overseas)

I/S

Seized from K-1161. S/Sgt. BEATRIX, R.J.
5 OCT 44, 23:50 hrs. at M.6 Bow. Cay.
Detention Office Fred R Nelson S/Sgt.
S.I.S.

This is Exhibit " F " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J.	CQMS Miskimmons, W.
Sgt Gammell, N.A.	Sgt Davies, J.C.
Sgt Johns, R.T.	Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.	

taken before me this First and Second day of November, 1944

[illegible]
Officer taking summary

(COPY) F 2187 SIB/C-4-44

III

SPECIAL INVESTIGATION SECTION 6 OCT 44

STATEMENT of:

Sgt. No. B-64113, Sgt. DUDLEY, R.D.C.
"A" Wing, M.T. Sect., No.1 C.C.R.U., C.B.W. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.B., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) R. DUDLEY.

STATES:

On 4 OCT 44 around dinner-time I was working on my truck, No. L-762620 in the workshop at my Unit when one of the other men in the M.T. Section came to me and asked me if I would like to make myself some extra money. He is a friend of mine and I don't want to say his name and maybe get him into trouble. I was broke and wanted to get some money so as to be able to go on Leave, so I said "Yes I would", and asked him how it could be done. He told me there was some stuff to go to London next day and if I would take it in my truck I'd get a cut out of the deal. I said I'd do it, and he told me that if I'd take the truck round to the Blanket Hut sometime during the afternoon next day the Staff-Sergeant in charge of Mob. Stores would get the fatigue men to put on a load of blankets. All I had to do then was drive up to the Garrison Theatre where somebody would be waiting to go up to LONDON with me and look after things from there on. My friend also told me I'd better make out a Work Ticket showing a load of Hospital Blankets for WATFORD.

I had two trips next morning - one to the Gov't. Siding in ALDERSHOT at 01:30 hrs. and one from 11:30 hrs. to 13:30 hrs. to AISTON and return. When I got back I was detailed by Cpl. JAYNES for a journey to FARNHAM and FARNBOROUGH. He made out my Work Ticket for 15:30, signing it "Jones, Capt." and initialling it "J.J.", as the M.C.O. Despatcher usually does.

After lunch I didn't go to FARNHAM, but took my truck round to the Blanket Store at about 15:30 hrs. and backed up to the door. S/Sgt. WITZOWSKE (I think that's his name - he's I/c Mob. Stores) came out, I opened up the back of the truck and got in. The S/Sgt. told the fatigue men to start loading blankets. I only said "Hello" to him, and nothing much more was said. He told the men to count out so many blankets for Despatch Coy., and so many for other Coys. in the Unit. They were all in bundles of 10, and I'm sure the Fatigue men didn't know anything about the deal. They only obeyed orders. I stacked the blankets inside my truck.

During the Break Period that morning from 10:00 to 10:30 hrs. I went into the M.T. office while no-one was in there and took a Work Ticket which I made out as instructed, signing it "Green Capt.". I kept it with me for the trip to LONDON in the afternoon.

I didn't know how many blankets I had in the truck, but when the S/Sgt. said "O.K., that's the lot", or words to that

(Contd. OVER)

words to that/
effect, I tied up the tarpaulin and drove up to the Garrison Theatre as arranged. I stopped there, and another Staff-Sergeant I didn't know came up and got in the truck. I know now his name is S/Sgt. GRATRIX. He told me where to go from there on, as I didn't know the road past SUNNINGDALE. We headed straight for LONDON. I know we went through STAINES and KINGSTON, according to the road signs, but I don't remember much about the roads. I think we were pretty well into LONDON when he said to turn off and after a lot of turns round fair-sized roads he said to pull up in a street where there were car-tracks. He said "Wait here", and got out for 5 or 10 minutes. I don't know where he went. After that we did a lot more turns, and I was completely lost. Once we passed a place where he said: "I was pinched over in there once". We didn't stop any more until we got to the place where the Police found us. I guess it was about 19:30 hrs. when we got there. I know it was getting dark. S/Sgt. GRATRIX got out and told me to wait. About half-an-hour later another soldier got into the cab with me and gave me 5/- and said "We'll be a little while yet. You'd better go and get something to eat". I couldn't see his face in the dark and wouldn't recognize him again. I couldn't tell from the way he spoke whether he was Canadian or not. I didn't notice what sort of uniform he was wearing. I went to a snack-bar a little way down the street and when I came back a few minutes later the soldier got out of the cab and said: "We'll be back".

I waited a long time and then both doors of the cab opened, somebody grabbed me by the arm and asked me what I was doing. I said I was waiting for my chum and he'd gone to get something to eat. They said they were Police Officers and that they'd wait too. After a while S/Sgt. GRATRIX came back and the Police grabbed him too. I didn't see any other civilians and didn't know who was supposed to get the blankets. The Police told me to drive to a Police Station nearby, which I did. One of them drove with me. They took S/Sgt. GRATRIX in their car.

I can honestly say that I have never been mixed up in anything like this before in the Army or in civil life, and my crimes in the Army have all been trivial. I only agreed to do it on a sudden impulse because I wanted to make a little money to go on Leave, as I'd lost a bit over being 5 days A.W.L. a little while ago. I was only in ALDERSHOT with a girl. Nobody talked me into taking blankets to LONDON. I just didn't stop to think how serious a thing it was. I figured it was safe enough, too, because somebody else was doing the job and I was just driving my truck and didn't even know where the stuff was going. I'm sorry now I had anything to do with the business.

I have read over the above statement, which has been made voluntarily, without fear of any threat, or hope of favour to come, and it is true. /ENDS.

(SGD) R. DUDLEY 6/10/44.

(WITNESSED) F.R.WILSON, S/Sgt., R.C.S.

This is Exhibit " G " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

[signature] Lt A/Capt
Officer taking Summary

"G"

(COPY)

IV

SPECIAL INVESTIGATION SECTION 7 OCT 44

STATEMENT of:

Regt. No. L-1161, S/Sgt. GRATRIX, R.J.,
Clerks' Coy., No.1 C.C.R.U., C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S. that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) R. J. GRATRIX.

STATES:

One day last week, I think it was Saturday Sep 30, 1944, I was in the N.A.A.F.I., Stanhope Theatre, Aldershot, XXX at lunch time in company with, Sgt. Gemmell, N.A., Sgt. Davies, J. and Sgt. Johns, R.T. all of No 1 CCRU. Sgt. Gemmell stated that he knew of some buckshee blankets on which we could make some money if we could dispose of them.

On Sunday, 1 Oct 44, we were all in the Sgt's Mess (Maida) No 1 CCRU we again discusseddd the blanket proposition. Sgt Davies said that he might know someone in London that would take them. It was decided that Sgt Davies and I would come to London and see if arrangements could be made. We came up that night and we arrived in the Elephant and Castle district about 2030 hours. In the tube station there, Sgt Davies made inquires in the Warden's office about a man named Pop, whom he said knew of someone who would take the blankets. The warden said he would send him around to the Kings Head public house. We went from there to the Black Prince public house, where Sgt Davies went up to a man called "Ginger Mick" or "Ginger Nick" and they had a whispered conversation together, I did not overhear what was said But Sgt Davies said that he would take around 500 blankets if we could deliver them and that he would pay 7/6 a piece for them, he told me this after the conversation. We were to bring them up on Thursday Night and to meet him in the Black Prince. This Civilian would be about 40 years old, Five Feet Eight Inches, stocky build, reddish complexion, ginger stubble, thick lips , I noticed that he spoke with down cast eyes and would not look you in the face. He was wearing a grey check cap with light brown stripes running through, a cheap dirty blue suit (light) of smooth cloth, white scarf and Old brown shoes. XXXXXXXXXX

We left the Black Prince and proceeded to the King's Head where we saw the old man named "Pop" and Sgt Davies told him he had already seen the man he wanted him to locate. "Pop" is quite an old man about 5' 6" . He needed a shave and light grey stubble. He was wearing a black coat. I think he is a warden in the Elephant and Castle tube station but he said that he ahd been sick and that he expected to get discharged soon, on this account.

After a couple of drinks we went back to the Black Prince with "Pop" and Sgt Davies had a couple more words with "Ginger" there was another civilian with him but I would not recognize him again. We spent the night in XXXXXXX London and returned to Aldershot the next morning.

That morning I saw Sgt Gemmell and told him everything had been arranged. He said arrangements would have to be made for transport. Later in the day he saw me and said that arrangements were being made for the blankets to be ready on Thursday. Sgt. Gemmell, Sgt. Johns, Sgt. Davies and myself usually go into the Stanhope N.A.A.F.I. every day at lunch time and one day I think it was Wednesday Sgt. Johns said that transport had been arranged for the blankets on Thursday. We were together that day at noon, and Sgt. Gemmell went over to talk to CQMS Miskimmins. He then called us over and Miskimmins said that everythingwas all arranged. Sgt Daviss was to go to London with the truck load of blankets and Sgt Johns and I were to meet him in the Black Prince. He had a letter addressed to No 23 Cdn Gen Hosp RCAMC, Watford, covering shipment of 1000 blankets which would safeguard him on his journey. Later it was arranged that I should go to London with the truck and the letter was handed to me, I don't know where it came from. Sgts Johns and Davies would meet me on arrival at about 1830 hours in the Black Prince, I was to meet truck No L 762820 outside the Garrison Theatre, Aldershot at 1600 hours and show the driver how to get there. I didn't know where the blankets were coming from all I knew was that CQMS Miskimmins was arranging to get them. I

I met the truck at 1600 hours as arranged and proceeded via Staines, Kingston, Clapham Junction to the Elephant and Castle area where I had some difficulty in finding the Black Prince Pub, driving around for approximately half an hour in that area before finding the right pub. I stopped once at a Black Prince Pub but found it closed and decided it was the wrong one. We then drove back following the tram lines and stopped again to ask inquiries to the tube station after which I found my bearings and arrived at the proper place at about 1830. I told the driver to wait and found Sgt Davies and Sgt Johns inside the pub, they said there was nobody there yet but a civilian who knew Ginger was trying to get him on the phone. He came in about an hour later and went out again to make some arrangements but sent word back by another civilian between 20 and 2030 hours that arrangements could not be made that night. I would recognize Ginger again if I saw him but not the two other civilians.

While we were in the pub I gave Sgt Davies 5 shillings for the driver to go for supper, Sgt Davies stayed with the truck while he was away at about 1930 hours, he came back about 20 minutes time and I took him out some cigarrets and matches, I didn't know the lad and never saw him before in my life.

After we got "Ginger's" message Sgt Johns, Sgt Davies, and I went by tube to the west end to see if we could find a place to store the blankets, we tried in a pub near Oxford Circus without success and took a Taxi to some club or other that Sgt Johns knew about and left him there while Sgt Davies and I went back for the truck by Taxi, I was to follow the Taxi back in the truck. I left Sgt Davies talking to the driver and when I crossed over to the truck a couple of plain-clothes policemen stopped me and asked me what I was doing, I said I was going back to Aldershot but they said I had better come with them and took me to a police station near by. Another officer followed with the driver in the truck. Later S/Sgt Nelson of the SIS came and took me and the driver back to No 6 Provost Detention Room, he cautioned me and then asked me if I had any business in London with the truck and blankets to which I replied "No".

I have never been concerned in anything of this kind before except one case of selling 1000 cigs, but I was due to go on leave

"S" [illegible]

I.V.

STATEMENT OF:

Regt. No. L-1161, S/Sgt. GRATRIX, R.J.,
Clerks' Coy., No. 1 CORU., CRU Command.

Continued from Page 2.

and needed money, and knowing that I was not directly concerned with the taking of the blankets, and did not know the persons to whom they were going, I though I could get enough money to go on leave. It was my job to direct the driver to the correct place, the arrangements being left to the others. I did not realize how serious an offence of this kind could be, or I would not have had anything to do with it.

I have read over the above statement which has been made voluntarily without fear of any threat or hope of favour to come and it is true.

(L 1161 GRATRIX, R.J.) S sgt.,
Clerks Coy., No 1 CORU.

(U 1889 F.R. NELSON) S sgt.,
SIS Cdn Pro Corps CMHQ.

LONDON,
7 OCT 44.

This is Exhibit " H " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

Officer taking Summary

(COPY) "H" MKM.

SPECIAL INVESTIGATION SECTION

V

SECOND STATEMENT of:

Regt. No. B-64113, Rfn. DUDLEY, R.D.C.,
"A" Wing, M.T. Sect., No.1 C.G.R.U., C.R.U. Command.

STATES:

I have read over the statement made by L-1161, S/Sgt. GRATRIX, R.J., dated 7 OCT 44, and having been again cautioned by S/Sgt. NELSON as before I wish to state that everything in it concerning our journey to LONDON, as far as I was concerned, is true. I don't know anything about the other things that happened.

(SGD) R.DUDLEY 7/10/44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

LONDON
7 OCT 44

This is Exhibit " I " referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.T.
Rifleman Dudley, R.D.C.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.

taken before me this First and Second day of November, 1944

Officer taking summary

"I" [illegible]

SECOND STATEMENT OF:

Regt. No. L 1161 S Sgt GRATRIX, R.J.,
Clerks Coy., No. 1 CGRU. CRU Command.

I have read over the statement made by B 64113 Rfn DUDLEY, R.D.C., dated 6 OCT 44, and having been agiam cautioned by S Sgt NELSON as ~~xxxx~~ before ~~xxxxxxxxx~~ I wish to state that everything in it is true to the best of my knowledge.

(L 1161 GRATRIX, R.J.) S sgt.,
Clerks Coy No. 1 CGRU.

(U 1889 F.R. NELSON) S sgt.,
SIS Cdn Pro Corps CMHQ.

LONDON
7 OCT 44.

This is Exhibit " J " referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gammell, N.A.
Sgt Johns, R.F.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

[redacted] Capt.
Officer taking Summary

(COPY) "J" SIB/C-4-44

VII

SPECIAL INVESTIGATION SECTION

10 OCT 44

STATEMENT of:

Regt. No. L-16134, Sgt. GEMMELL, N.A.,
Clerks' Coy., No.1 C.G.R.U., C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) N. A. GEMMELL.

STATES:

At some time after the return of 1 CGRU to ALDERSHOT it came to my knowledge that there were in the Unit three or four thousand surplus blankets. I am not sure who first told me about it. It may have been CQMS HISKINGMING; but I was under the impression that this was common knowledge. I'd heard it mentioned several times.

Ever since last August when we were at WITLEY S/Sgt. GRATRIX, Sgt. JOHNS and I have been drinking somewhat heavily. About a month ago I asked Maj. LAWRENCE, O.C., Clerks' Coy., if he would post me to the Field. This was to get away from the associations and drinking habits I had formed, as I was afraid that sooner or later it would get me into trouble. As I was Chief Instructor he wouldn't consider this posting at that time.

On Thurs., 28 SEP 44, after 13:15 Parade, Sgt. JOHNS and I went down to the "Bellington" Public House for a quick drink as two of us had been in the habit of doing occasionally for some time. We had a few too many and didn't return to the Unit until about 18:00 hrs., when we learned that Maj. LAWRENCE had been enquiring for us and we'd be in trouble over it. Next morning Maj. LAWRENCE informed us that we were posted to Reinforcement Strength. Automatically I had to revert from A/S/Sgt. to Sgt., and commenced Basic Training on 4 OCT 44.

On Saturday, 30 SEP 44, between 15:00 and 16:00 hrs., Sgt. JOHNS and I were alone together in our quarters at MAIDA Bks. when S/Sgt. GRATRIX and Sgt. DAVIES came in. They had been drinking, but we had not had a drink all day. We were all just about broke and the question of how to raise some money cropped up. I said: "Well, there's some buckshee blankets over in the Quarters' Stores" and from there on there was just some general conversation about the possibilities, although I think no-one had any serious idea of doing anything about it. Certainly I didn't myself.

Next afternoon, Sunday, 1 OCT 44, the four of us were together drinking again in the Sergeants' Mess. JOHNS had borrowed a couple of Pounds. The subject of selling blankets cropped up again and we were discussing the possibilities of disposal. Sgt. DAVIES said he knew of a man in LONDON who might take them. Later he and S/Sgt. GRATRIX went off together to LONDON and next day in the Mess at noon they told me that the arrangement for disposing of 1000 blankets had been made in LONDON and asked

(Contd. OVER)

and asked/
me to see CQMS MISKIMMINS about it. I did not see him until next day, Tuesday, 3 OCT 44, in the NAAFI, when all I said to him was: "If you're interested in disposing of some blankets those guys over in the corner will handle it", indicating S/Sgt. GRATRIX and Sgt. DAVIES. I had not discussed the subject previously with CQMS MISKIMMINS, and that is all I said to him at the time. I had one drink with him and left the NAAFI, as I was due for Parade. Sgt. JOHNS was there with the other two. CQMS MISKIMMINS said that it was O.K. with him if they could arrange it, and that he would see them next day about it. That night in the Mess I told them what he had said when they asked me about it.

Next day, Wednesday, 4 OCT 44, I went alone to the NAAFI at noon and joined S/Sgt. GRATRIX, Sgt. JOHNS, and Sgt. DAVIES at their table for a glass of beer. Later CQMS MISKIMMINS came in and joined us. The matter of disposal of blankets was discussed and I was told when I asked that transport had been arranged. MISKIMMINS suggested that they be picked up at the laundry next day, as had been arranged, but I didn't know when I left them where they were to come from or at what time.

Next day, Thursday, 5 OCT 44, at noon in the NAAFI, I was looking over a Racing Sheet with MISKIMMINS and figuring if I could place a good bet with a Bookie who comes in there. S/Sgt. GRATRIX, Sgt. JOHNS, and Sgt. DAVIES came over and final arrangements about the blankets were made. S/Sgt. GRATRIX had a letter which I recognize as the one in your possession. I had not read it, but I knew its contents. I do not know who wrote it. A truck was to pick up the blankets that afternoon, and S/Sgt. GRATRIX or Sgt. DAVIES was to go up to LONDON with the driver. I did not know what driver or what transport would be used. Next day I learned that GRATRIX went with the truck and that Sgt. DAVIES and Sgt. JOHNS went up together by train to meet him in LONDON. I heard also that GRATRIX and the driver of the truck got pinched.

On Friday noon in our room, Sgt. JOHNS told me that the civvy in LONDON who was going to take the blankets didn't turn up. He went over to a Club in the West End to try and find some other way of disposing of them, but when he got back the truck was gone.

I did not go to LONDON and had nothing to do with the deal other than stated above. I didn't know exactly how much money was in it, or how it was to be divided. Some time during the week Sgt. DAVIES said there was 7/6 apiece coming in for the blankets, and GRATRIX said Six Shillings. To my knowledge no detailed division of the proceeds was discussed. Had they chosen to give me a cut out of the deal no doubt I would have accepted it, as I was pretty well broke. I had no doubt that they would come through with something, as I had knowledge of the project from the start, although I took no active part in the business once the others got started on it. I have been living and working with S/Sgt. GRATRIX and Sgt. JOHNS over a period of two years, and have always been on the best of terms with them. It is only natural, therefore, that I would not give them away when I knew what was in the wind. After the arrangements had been made I did not like the set-up too much, and did not myself wish to become too deeply involved. By then, however, there was little I could do about it. I am sorry now that I had anything to do with it at all, as I have never been mixed up in anything of this kind before.

I have read over the above statement, which has been made voluntarily, without fear of any threat, or hope of favour to come and it is true. (SGD) E. A. GRESSELL 10 OCT 44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is Exhibit " K " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J. — CQMS Miskimmons, W.
Sgt Gammell, N.A. — Sgt Davies, J.C.
Sgt Johns, R.T. — Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

Officer taking summary

"K" 90/M

(COPY)

SPECIAL INVESTIGATION SECTION

VIII

SECOND STATEMENT of:

L-18134, Sgt. GEMMELL, N.A.,
Clerks' Coy., No.1 C.G.R.U., C.R.U. Command.

STATES: I have read over the statement made by L-1161, S/Sgt. GRATRIX, R.J., dated 7 OCT 44, and having again been cautioned by S/Sgt. NELSON as before I wish to state that those parts referring to me or to things which I already know about are true.

(SGD) N.A.GEMMELL 10 OCT 44.

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

ALDERSHOT
10 OCT 44

This is Exhibit " J " referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.	CQMS Miskimmons, W.
Sgt Gammell, N.A.	Sgt Davies, J.C.
Sgt Johns, R.T.	Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.	

taken before me this First and Second day of November, 1944

[illegible] Officer taking summary

COUNTER NUMBER 5-5-8702

HOUR 11 5-5-

OPERATOR'S INITIALS RD

RELIEVING OPERATOR DE

On Monday or Tuesday S/Sgt Gratrix, Sgts Johns and Gemmell and I discussed the matter again and it was decided that some effort be made to obtain transport for the blankets. On Tuesday Sgt Gemmell and I went to see a friend of mine at another unit who might have been able to help but he refused to have anything to do with the transaction. The person who was eventually responsible for arranging the transport I do Not know. There was some talk about getting the blankets from a laundry.

On Thursday morning, October 5th 1944, I drafted a letter addressed to No 23 Cdn Gen Hospital concerning an imaginary shipment of blankets to that unit. I thought it would cover the load of blankets en route to London. On it I used a fictitious file number and signed it L. Skinner Lt. I know of no such Officer and used the first name that came into my head. The letter you have in your possession is the one referred to in the previous sentence. In the NAAFI at noon I saw S/Sgt Gratrix and the two Sgts other Sgts and passed round the letter for their comments. It was suggested that I accompany the load of blankets to London, but for various reasons I declined and S/Sgt Gratrix volunteered to do this, and he took the envelope (which I had addressed) and the letter. I was not aware of the final arrangements for picking up the blankets. At approximately 2.30 p.m. S/Sgt Gratrix came to my office and requested permission from SSS Martin to have me leave early as he wanted me to assist him with some clerical work he was doing at Woking. At 3.30 p.m. I left the office to go to the Clerks Training Wing and it was then arranged that I go by rail to London with Sgt Johns to meet S/Sgt Gratrix at the Black Prince. We left on the 4.16 p.m. train and met S/Sgt Gratrix, as arranged soon after opening time.

For some time we sat in the pub drinking beer, and I took five shillings from Staff Gratrix to the driver of the truck which was outside in the street to let him get some supper. Ginger came in about 7.30 p.m. and said 'hasn't he turned up' - no name was mentioned, meaning the man who was to take the blankets. He left the pub, apparently to find the man in question, but sent back a message by a stranger, that he couldn't be found. I suggested that the truck and blankets return to Aldershot where they came from, but owing to the difficulties of that procedure it was decided to explore the possibility of making other connections. We visited several pubs and finished up in the West End at some pub or other where Sgt Johns met some people who were interested. He stayed there with them while Staff Gratrix and I went back to get the truck, hiring a taxi for the journey. When we got there, S/Sgt Gratrix went over to the truck and I gave instructions to the driver of the cab to turn around so that the truck could follow us back. We went round the block to do this and when I got back the truck and Staff Gratrix had gone. I returned to Sgt Johns and told him what had happened, so we went to Streatham for the night, returning to Aldershot in the morning.

The agreed price was 7/6d each for the blankets. Transport was to have cost £40 or £50 and I understood that the remainder of the proceeds was to be split between Staff Gratrix, Sgts Gemmell and Johns, myself, and whoever supplied the blankets.

The whole plan was evolved whilst I was under the influence of liquor, and it was through my drinking activities that I had got behind financially and seized on this method of getting myself straightened out. If I had been in a sober frame of mind, I would not, under any circumstances, have considered being a party to any such undertaking, as I have never been connected with any criminal activities, and my Army Record will bear that out. I deeply regret that I have been involved and can only say that it is due to the abnormal circumstances.

I have read over the above statement which has been made voluntarily, without fear of any threat or hope of favour, and it is true

(Witnessed) (Sgd)

F. R. [illegible], S/Sgt., S.I.S. J. C. DAVIES 11 OCT 44

Aldershot, 11 Oct 44.

"L" 2.W.

(COPY)

TX

1 OF 4.

Sgt. No. [illegible], Sgt. [illegible], R.C.,
Trade test board No. 10 (C[illegible]ons), H.Q. C.M.P., Att. 1 CDN.
U.K. Command.

I have been cautioned by [illegible], of [illegible], that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

I say that [illegible] this caution, I sign my name here.

(Sgt.) J. C. DAVIES.

On Friday, 1 [illegible], during the afternoon, I was in the Sergeants' Mess, No. [illegible], in company with [illegible], Sgt. [illegible], and Sgt. [illegible]. We had all had quite a few drinks by then, and being more or less broke, the question of how to get some money became the subject of conversation. Somebody in that connection mentioned that there were [illegible],000 blankets to be sold in the area. I don't remember who said this, and I never did hear where the blankets were supposed to be. There was quite a crowd in there, and the matter was not discussed at any length. No-one else heard this conversation. I suggested that I, the 1st Lt. Black Watch who was in the Regiment on the one hand without any delay, [illegible] and myself were delighted to sound out the possibilities.

About a year ago I was in the Piedmont a [illegible] district and there was a man who had suggested that any time I had anything to sell it was possible to make connections in that locality. He was addressed by one of his friends at the time as Oliver Cook and was wearing a grey tweed cap. He would be about fifty years of age and about five foot nine inches in his bit. He had light hair and reddish complexion with a gingerish moustache (stubble). He was clean shaven and I think he had a cauliflower ear. I know he was rather smooth looking, as there was a place where it was white apart.

That evening, [illegible] and I went to the Regent and Capitol district and after having a few drinks at various pubs entered the "Black Prince" and the "Ginger Cook" (described above) was in the pub. It was suggested to him that we had a number of blankets to sell, and he replied that he was not in a position to handle them. Another man entered the pub and I would describe him as follows:- Foreign appearance but spoke with a Surrey accent, middle age, height about 5' 7", black hair smarty complexion, thin face, clean shaven, wore a trilby hat and dark overcoat. He came over to our table and commenced a conversation with [illegible]. I did not hear the drift of the conversation and once when I made a remark I was told to "shut-up" by the civilian. At this stage I was quite drunk having been drinking since 12 o'clock noon. [illegible] was comparatively sober as he had not been drinking to any extent owing to stomach trouble. We left the pub at closing time and went to Lincoln, to avoid the night, and on the way home I understood that it had been arranged that the blankets could be disposed of.

(Continued overleaf)

This is Exhibit " M " referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.	CQMS Miskimmons, W.
Sgt Gemmell, N.A.	Sgt Davies, J.C.
Sgt Johns, R.T.	Cpl Jeynes, J.C.M.

Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

[illegible] A/Capt
Officer taking summary

(COPY) "W" (W.G.) SIS/C-4-44

X

SPECIAL INVESTIGATION SECTION 11 OCT 44

SECOND STATEMENT of:

Regt. No. D-91032, Sgt. DAVIES, J.C.,
Trade Test Board No.10 (Clerks), H.Q., C.R.U., Att: 1 CGRU.
C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) J.C.DAVIES

STATES:

I have read over the statement of L-1161, S/Sgt. GRATRIX, R.J., dated 7 OCT 44. I see we don't agree about several small matters. I met the Warden named "Pop" to whom he refers about a year ago last Summer, when he found a bed for myself and a pal of mine down the "Elephant and Castle" tube station one night when we were stranded. To the best of my knowledge he has never been mixed up in anything criminal. The man named "Ginger" did not agree to take the blankets, and S/Sgt. GRATRIX is definitely wrong when he says so. Otherwise, as far as it concerns me, and to the best of my knowledge, his statement is correct.

I have also read the statement of L-18134, Sgt. GEMMELL, W.A., dated 10 OCT 44, and wish to state that apart from a few minor details the essence of his statement seems to be correct.

I have read over the above statement, which has been made voluntarily, without fear of any threat, or hope of favour to come, and it is true./ENDS

(SGD) J.C.DAVIES 11 OCT 44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is Exhibit " N " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gammell, N.A.
Sgt Johns, R.T.
COMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

[signature]
Officer taking summary

N O T E S

"I have been told by a friend of mine who is an officer at No 1 Canadian General Reinforcement unit not to make any statement and I guess I won't be making any. I owe £8-0-0 to Sgt Brooks £5-0-0 to Tpr Richardson, the barber, and £1-0-0 to Mr Lucas down in the Wellington Pub. Other guys owe me 20 Or 30 pounds and I have got plenty of money back home if I want it. I had nothing to do with the blanket deal but I knew it was coming off. I only went to London for a steak supper at Greatrix's place. I went to a club in the West End and got a girl friend of mine to phone up a garage to store the truck. When I told her there were blankets in the truck she phoned again and none of them would have no part of it. I had nothing to do with arranging transport. I have been drinking heavy for the past three or four months since leaving Witley. I remember being with the others but did not always know what they were talking about. When I am drinking I can do my job but forget what people say to me. I figure Greatrix is O.K. Gemmell is close as can be. Gemmell always talked alone to Miskimmons. Davies is O.K. I guess, he was only trying to find a place to park the truck not to sell the blankets he never tried to sell anything. I figure Gemmell was principally responsible he has done previous jobs in Aldershot.

This is Exhibit "F" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix R.F. C/MS Miskimmons, W.
Sgt Gemmell N.A. Sgt Davies, J.C.
Sgt Johns, R.T. Cpl Symes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second days of November, 1944.

[signature]
Officer taking summary

This is Exhibit " O " referred to in the

summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gammell, N.A.
Sgt Johns, R.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of

November, 1944

[signature]
Officer taking summary

(COPY) "C" SIS/C-4-44

XII

SPECIAL INVESTIGATION SECTION 12 OCT 44

STATEMENT of:

Regt. No. B-68451, CQMS MISKIMMINS, W.,
"A" Wing, No.1 C.G.R.U., C.R.U. Command.

BEGINS: I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) W. MISKIMMINS

STATES: I am C.Q.M.S. i/c Accommodation Stores, No.1 C.G.R.U., where I have been for 4 years in the same position. I have always worked hard to keep all Barrack Stores in good order, and have never at any time disposed of stores to outside individuals. Before the war I worked for 16 years for T. EATON & Co., TORONTO, in the Creamery Dept., and left there in excellent standing.

About two weeks ago a new Reception Coy. was formed in 1 CGRU and my O.C., Capt. LANE, instructed me to collect all surplus blankets throughout the Unit for the use of this Coy. These are all accounted for on the "Long Roll". We do not as yet keep Coy. Inventories. I started at the beginning of last week with Medical, General, and Despatch Coys., keeping over 1000 in the Blanket Store to be laundered. Next morning, 4 OCT 44, I took 1000 of these blankets to the Vale Laundry in FARNHAM. I don't remember which truck or driver was detailed. I made two journeys. My Storeman, Pte. GOLD, and Mr. SHORT, i/c R.C.A. Stores and his staff knew I was going to do this, and of course our M.T. Section knew what I was doing.

The following day, Thursday, 5 OCT 44, at about 13:30 hrs., I took the truck and driver I had had all morning round Unit Lines to FARNHAM, where I collected 600 clean blankets, in bundles of ten, leaving 200 to be collected later. I put these in the Blanket Store.

Upon my return Pte. GOLD told me that Reception Coy. required a lot more blankets, and as I had requested another truck at lunch-time, when I was told I could have the first one that came in, and having despatched the one I had to another job, I told Pte. GOLD to remain in the Blanket Store, where he was working, and to start loading the first truck which arrived. I went back to my office and on my return at about 15:30 hrs., I found a truck there and gave Pte. GOLD and the Driver a hand in loading on the blankets. I'm not sure how many were there, but I kept back about 150 in the hut. I distinctly remember telling the driver to take them to Reception Coy., within Unit Lines, and Pte. GOLD heard what I said. I went off then about my business, and the first I heard that anything was wrong was next morning, when Capt. LANE asked me what trucks I had had booked out to me and said that one had been found up in LONDON the night before.

(Contd. OVER)

the night before./
I had no reason to think that any blankets were missing, and the first I heard of this was when my Charge was read by Maj. MacLEAN.

I have read over the above statement, which has been made voluntarily, without fear of any threat or hope of favour to come, and it is true./ENDS

(SGD) W. MISKIMMINS 12 OCT 44

(WITNESSED) F.R.NELSON, S/Sgt., C.I.S.

This is Exhibit " P " referred to in the

summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gammell, W.A.
Sgt Johns, R.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of

November, 1944

[signature]
Officer taking Summary

"P" 1811

SIS/C-4-44

XIII

SPECIAL INVESTIGATION SECTION

12 OCT 44

SECOND STATEMENT of:

Regt. No. S-88471, COMS MICKLEBURGH, W.,
"A" Wing, No.1 C.C.R.U., C.R.U. Command.

BEGINS: I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here. (SGD) W. MICKLEBURGH.

STATES: I have read over the statements of S-64113, Wrn. DUDLEY, R.D.C., dated 6 OCT 44, L-1161, S/Sgt. GRATRIX, R.J., dated 7 OCT 44, and L-16134, Sgt. GERRELL, H.A., dated 10 OCT 44, and wish to state that I don't know Wrn. DUDLEY by name, but would no doubt recognize him as the driver who took the blankets last Tursday. I did not tell him to take the blankets anywhere but to Reception Coy. Blankets never go to Despatch Coy. in any case.

I would know S/Sgt. GRATRIX, Sgt. GERRELL, and Sgt. DAVIES if I saw them no doubt, but I do not know them by name, and have never had anything to do with them. I have known Sgt. JONES as "SMOOCH" for about a year, but have never had much to do with him. Never at any time did I even mention the subject of blankets to any of these men, much less discuss with them their disposal and sale. Neither did anyone of them ever bring up the subject to me or in my presence. It's possible that they may have mistaken someone else for me, but I don't think for a minute that could be. I have no suspicions of anyone else in my department, and can only say that the theft of the blankets was entirely an outside job, to the best of my knowledge.

I do remember being in the NAAFI last Monday or Tuesday week at noon (2 or 3 OCT 44). I had a newspaper showing the runners in a horse-race last Saturday, and went over to a table where "SMOOCH" and three or four of his friends were sitting. I sat down for a minute on the piano stool beside their table and told them I had a good thing for the third race - "CADET". I don't know what they said; but I finished my beer and went to dinner. I was only in there a few minutes. I wasn't taking any bets - just passing on a good tip. I'm interested in horses, but don't play them much - just a shilling here or there when I get hold of a good thing.

I want to repeat that this whole business has been a shock to me because never at any time have I been guilty of disposing of stores to any unauthorized person whatsoever.

I have read over the above statement, which has been made voluntarily, without fear of any threat, or hope of favour to come, and it is true. (SGD) W. MICKLEBURGH 12 OCT 44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is Exhibit "Q" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J. CQMS Miskimmons, W.
Sgt Gemmell, N.A. Sgt Davies, J.C.
Sgt Johns, R.T. Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

Officer taking summary

(COPY) 9 SIS/C-4-44

XIV

SPECIAL INVESTIGATION SECTION

13 OCT 44

THIRD STATEMENT of:

Regt. No. L-1161, S/Sgt. GRATRIX, R.J.
Clerks' Coy., No.1 C.C.R.U., C.M.U. Caommand.

BEGINS: I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here. (SGD) R.J.GRATRIX

STATES: I have read over the statements of L-18134, Sgt. GEMMELL, N.A., dated 10 OCT 44, D-91032, Sgt. DAVIES, J.C., dated 11 OCT 44, and H-88451, CQMS MISKIMMINS, W., dated 12 OCT 44, and wish to state that prior to the occasion I mentioned, lunch-time on Thursday, 5 OCT 44, I never discussed the question of blankets with CQMS MISKIMMINS, nor did he discuss it in my presence. Further, the letter which Sgt. GEMMELL says I had - the one which you took from me in LONDON - was passed round amongst the five of us. Who all read it I don't know, but it was not in my possession until later in the afternoon, when it was given to me by Sgt. DAVIES.

On the Sunday night DAVIES and I went to LONDON (1 OCT 44) I visited the Black Prince and Kings Arms Public Houses, Elephant and Castle, for the first time in my life. I had never frequented that area. To my knowledge arrangements were completed that night between "Ginger" and Sgt. DAVIES. "Ginger was certainly arranging the disposal of the blankets. The civilian described by Sgt. DAVIES whom "Ginger" called over held a short conversation with "Ginger", and when Sgt. DAVIES interrupted, this man told him to "shut up" and left. The topic of conversation I do not know. I had never seen "Ginger" before and had no part in the arrangements for disposing of the blankets.

CQMS MISKIMMINS was at the same conversation at which the letter mentioned above was produced, and certainly knew of all the arrangements as to the loading and the intended destination (LONDON) of the blankets.

I have read over the above statement, which has been made voluntarily, without fear of any threat or hope of favour, and it is true./ENDS. (SGD) R.J.GRATRIX 13 OCT 44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is Exhibit " R " referred to in the

summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.F.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of

November, 1944

Officer taking summary

(COPY) "R" [illegible]

XV

SPECIAL INVESTIGATION SECTION

13 OCT 44

THIRD STATEMENT of:

L-18134, Sgt. GEMMELL, N.A.,
Clerks' Coy., No.1 C.G.R.U., C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) N.A.GEMMELL.

STATES:

I have read over the statements of D-91032, Sgt. DAVIES, J.C., dated 11 OCT 44, and B-88451, CQMS MISKIMMINS, dated 12 OCT 44. I have no comments to make concerning the first.

Concerning the statement of CQMS MISKIMMINS I can only say that he was fully aware of the arrangements to get the blankets away from the Unit as I stated before. He was more responsible than anyone.

I have read over the above statement, which has been made voluntarily, without fear of any threat, or hope of favour to come, and it is true.

(SGD) N.A.GEMMELL 13 OCT 44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is Exhibit " S " referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gammell, N.A.
Sgt Johns, R.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, H.D.C.

taken before me this First and Second day of November, 1944

Officer taking summary

...10 (Revised 1942)
...(2749)

TRANSPORT WORK TICKET 'S' [illegible]

No. 1. - 5783

...E OF VEHICLE	CLASS	UNIT	SECTION	DRIVER'S NAME	W.D. No.	MONTH & YEAR
For [illegible]	Co Cent	No 1. C.G.R.O.	M.T.	Warden H.E.	765[illegible]	Oct. 44.

...TE		FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Rise (17)	SPEEDOMETER Day (18)
	A			Brought forward from Work Ticket No.				—						—	—	18 [illegible]		
1	B	Own Unit	R. Check	Old	[illegible]	Plat	[illegible]							11/15	13 55	18 505		6.
2	C	Own Unit	Meanor	Old	Slater	[illegible]	[illegible]								[illegible]	18 [illegible]		4
3	D	Own Unit	Mob Stores	Old	Tongham	Farnham	[illegible]							[illegible]	[illegible]	18 [illegible]		1[illegible]
4	E	Own Unit	Mob Stores	Old	Tongham	Farnham	[illegible]							[illegible]	[illegible]	18 [illegible]		16
5	F	Own Unit	Mob Stores	Old	[illegible]	[illegible]	[illegible]							[illegible]	6 53	18 583		23
5	G	Own Unit	Remnor	Old	Aldershot	[illegible]	[illegible]							1[illegible]	[illegible]	18 [illegible]		2
6	H	Own Unit	Beard	Old	Alton	Bramhall	[illegible]				13			1[illegible]	[illegible]	18 [illegible]		4[illegible]
7	I	Own Unit	Messing	Old	Bordon	[illegible]	[illegible]	50	1					1[illegible]	[illegible]	18 [illegible]		3
	K										6							
	L																	
	M																	120
			7	or totals carried over.				40 30	1		19			—	—			

Canadian Dispatched 2 1944 No. 1 Gen Relief Unit O.R.

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Starts (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDS In (16)	SPEEDS Ins. (17)
	N		Brought forward from Reverse			N										
	O					O										
	P					P										
	Q					Q										
	R					R										
	S					S										
	T					T										
	U					U										
	V					V										
	W					W										
	X					X										
	Y M.P.G. for week ____ or totals carried to Work Ticket No. ____					Y										

LINE	SPECIAL INSTRUCTIONS TO DRIVER	DATE	DRIVER'S REPORT OF BREAKDOWNS, ACCIDENTS AND DEFECTS	SIGNATURE OF DRIVER	COUNTERSIGNATURE
					Rank

No. 1 Gen. Reinf. Unit O.R.
Despatched
OCT 5 1944
Canadian Army Overseas

No.1. CANADIAN GENERAL REINFORCEMENT UNIT

DRIVERS CALL SHEET

MOTOR TRANSPORT SECTION

VEHICLE	TIME OUT	TIME IN	SPEEDOMETER OUT	SPEEDOMETER IN	DUTY PERFORMED AND PLACES VISITED	DRIVER SIGNATURE
4202449	1815	[illegible]	1673 22862	[illegible]	Research - Aldershot	[illegible]
4203463	1815	2130	18677	18682	" Office	[illegible]
4425354	1815	2130	7772	07797	" "	[illegible]
4204814	1815	[illegible]	26081	[illegible]	" " Sell Out	[illegible]
764196	1815	[illegible]	21012	[illegible]	" OR "	[illegible]
765812	1815	[illegible]	18405	[illegible]	" " " "	[illegible]
765783	1815	[illegible]	18583	[illegible]	" " " "	[illegible]
764666	1815	2015	19737	197.40	" " " "	[illegible]
4203169	1815	[illegible]	17598	[illegible]	" " " "	
4203095	1815	[illegible]	4449	[illegible]	" " " "	[illegible]
4972 81	1815	2000	11229	11231	" " " "	[illegible]
4203407	1815	2100	29032	29037	" " " "	[illegible]
4204813	1815	[illegible]	24796	[illegible]	" " " "	[illegible]
4206193	1815	[illegible]	12689	[illegible]	" " " "	[illegible]
4208713	1815		24999	[illegible]	" " " "	[illegible]
420481						

No. 1 Gen. Relat. Unit O. R.
Despatched
OCT 5 1944
Canadian Army Overseas

No. 1 Gen. Relat. Unit O. R.
Despatched
OCT 5 1944
Canadian Army Overseas

5 ~~Sept~~ Oct 44

A3240

NO. 1 CANADIAN [illegible] REINFORCEMENT UNIT

DRIVERS CALL SHEET

MOTOR TRANSPORT SECTION

Vehicle	Time Out	Time In	Speedometer Out	Speedometer In	Duty Performed and Places Visited		Drivers' Signature
4203463	0730	1645	18664	18677	Rations	Ald	[illegible]
4207407	0730		29017	29032	"	"	[illegible]
25132	0745	1630	11669	11691	Sick Parade	"	[illegible]
764196	0745	[illegible]	[illegible]	20889	Mail	"	[illegible]
4204814	0800	1930		26081	Chat Terrace	"	[illegible]
4208714	0815	1630	23994	24004	Sanitary	"	[illegible]
4204812	0815	1130		20414	"	"	[illegible]
4204193	0815	1630	12679	12689	Coal	"	[illegible]
4202765	0740	1120	22764	22770	CWAC	Love	[illegible]
4202849	0900	1100	16575	16611	R.C. Rodeo	Lipkoh	[illegible]
4425354	0830	1430	7251	[illegible]	[illegible] to Ottawa		[illegible]
765783	0830	1630	18562	18583	Mole Stores area		[illegible]
4204813	0815	1045	29789	29791	O.M. Stores — Ald		[illegible]
4207169	0900	1220	17560	[illegible]	[illegible] to Broadwood		[illegible]
765812	"		18332		" " "		
4402065	0900	1630	56102	56938	[illegible] to Bramshott		Borg
4208713	0900	[illegible]	25787	[illegible]	Old [illegible] Ald area		[illegible]
~~147284~~	~~0930~~		~~11229~~		~~Ald to Gordon — [illegible]~~		
4202056	0930		711		Pay office to Ald area		[illegible]
4403095	0930	1130	4294	[illegible]			[illegible]
~~4203~~							
145956	1030		15057		Ave to Broadwood		

NO. 1 CANADIAN [illegible] REINFORCEMENT UNIT

DRIVERS CALL SHEET

MOTOR TRANSPORT SECTION

Vehicle	Time Out	Time In	Speedometer Out	Speedometer In	Duty Performed and Places Visited	Drivers' Signature
4202849	1300		16611		records to Alton	
4207169	1330	1530	17578	17598	Sanitation to Tarpaulin	R. C. [illegible]
762820	1130	[illegible]	[illegible]	[illegible]	records to Alton	[illegible]
764196	"	1315	20987	21018	" "	[illegible]
4203085	"	[illegible]	[illegible]	[illegible]	" "	[illegible]
4202056	"		[illegible]	[illegible]	" "	[illegible]
195816	1245	[illegible]	150585	15097	[illegible]	[illegible]
765812	1400	1700	18352	18405	records to [illegible]	[illegible]
4208812	1330	1500	20414	20422	Boat Shop to Oxalhouse	[illegible]
762820	1530		20856		[illegible] to [illegible]	
4202849	1530	1730	16635	16673	R.C. Padre to [illegible]	[illegible]
4207812	1630	1830	20422	20459	[illegible]	[illegible]
4204813	1615	1645	24791	24947	[illegible] Cold	[illegible]
4202065	1600	1950	749	[illegible]	[illegible] - Renewed	[illegible]
764196	0930					

(COPY) "J" SIB/C-4-44

XVI

SPECIAL INVESTIGATION SECTION

13 OCT 44

STATEMENT of:

H-79092, Pte. OLSEN, C.R.,
M.T. Sect., "A" Wing, No.1 C.G.R.U.

STATES:

On 5 OCT 44, at 01:30 hrs., I was detailed for Government Siding, ALDERSHOT, but the detail was cancelled and my next detail, with Mob. Stores, at 08:30 hrs., was over-written on the same line of my Work Ticket. I was driving all morning within Unit Lines for CQMS MISKIMMINS. I was not particularly busy. I didn't handle any furniture.

After lunch at about 14:00 hrs., at the direction of CQMS MISKIMMINS, I drove him to the Male Laundry near FARNHAM and picked up 600 blankets which we brought back to Blanket Stores at 1 CGRU. Pte. Harry TIGGS went with us and also Pte. GOLD. They work in the Mob. Stores.

After I delivered the blankets, CQMS MISKIMMINS told me I would not be needed further, but to pick up another S/Sgt. near FARNHAM where he was working on stores, and bring him back to the Unit. That was around 15:00 hrs. I did this, and checked in my vehicle, No. L-765783, at 16:30 hrs. I had one more trip to ALDERSHOT Station that day.

I knew nothing of what was going on concerning theft of blankets that day, and know nothing much about it now.

I have read over the above statement, and it is true.

(SGD) C.R.OLSEN 13 of Oct. 1944

(WITNESSED) F.R.WILSON, S/Sgt., S.I.S.

This is Exhibit " T " referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.T.
COMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

[signature]
Officer taking Summary

This is Exhibit " U " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J. CQMS Miskimmons, W.
Sgt Gemmell, N.A. Sgt Davies, J.C.
Sgt Johns, R.F. Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

Lt Colonel (Capt)
Officer taking Summary

(COPY) U SIS/C-4-44

XVII

SPECIAL INVESTIGATION SECTION

13 OCT 44

STATEMENT of:

Regt. No. B-96927, Cpl. JEYNES, J.C.M.,
Trnspt. Sect., "A" Wing, No.1 C.O.R.U.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) J.C.JEYNES.

STATES:

I am Corporal Despatcher in the Transport Office, No.1 C.O.R.U. On Thursday, 5 OCT 44, just before dinner, Rfn. DUDLEY, who drives L-762820, saw me as I was leaving the office and said CQMS MISKIMMINS would be needing another truck that afternoon to get blankets from the Hale Laundry near FARNHAM and asked if he could have the detail. I had no suspicion of any ulterior motive on his part, and just said "O.K.".

At approximately 15:00 hrs. in the Despatch Office I received the request for another 60 cwt. truck for FARNHAM and FARNBOROUGH from CQMS MISKIMMINS. He already had one 60 cwt. with Pte. OLSEN at Mob. Stores. He said he wanted another one to get blankets at the Hale Laundry. He seldom uses more than one big truck at a time, but I put it down to an incoming draft. I said I'd have a truck over in about 15 minutes. He did not request any particular driver, but I had DUDLEY in mind because of his request, and despatched him at about 15:30 hrs. I made out his Work Ticket for the journey. I know nothing about the other Work Ticket you have in DUDLEY's particulars for WATFORD. It is not genuine. He must have pinched it and made it out himself. I still had no reason to suspect his actions, and the first I heard that he'd been mixed up in any trouble was next morning, when he was reported to have been picked up in LONDON. I was definitely not in on the deal, and have never at any time been mixed up intentionally in any crime where Unit transport may have been used.

I have read over the above statement, which has been made voluntarily, without fear of any threat, or hope of favour, and it is true./ENDS

(SGD) J.C.JEYNES October 13th 44.

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is Exhibit " V " referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J. CQMS Miskimmons, W.
Sgt Gemmell, N.A. Sgt Davies, J.C.
Sgt Johns, R.T. Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

[signature]
Officer taking summary

This is Exhibit " V " referred to in the

summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of

November, 1944

[signature] Capt.
Officer taking summary

6th Aug/44.

Statement by:- B-112533 Gnr.Woods.A.C.

Sir;

On the 5th of Aug/44 I was detailed to take the Mob Stores Sgt to Witley.We went to Witley and arrived there at about 0900 hrs.We did numerous Barracks duties around the Camp. [redacted] We then came back to Aldershot.We arrived back in Aldershot at about 1200 hrs.When we got back to Aldershot the Sgt said that he had to have the vehicle in the afternoon and would have to think up some way to wangle it.He then told me to report back to the garage and he would want me again at 1300 hrs.Then he said after you park the truck come to the N.A.A.F.I.and I will buy you a beer.I went to the N.A.A.F.I. and I had three (3) pints.I bought myself a pint and him.He bought the others.I then received a late meal chit from the Messing Sgt for a late lunch at Corunna Men's Mess. After lunch I picked up the Mob Stores Sgt at his quarters in Corunna Barracks.He then got in the vehicle and said take me to Camberley.I drove him to where he wanted to go.I had explained to him that my Work Ticket was not made out for Camberley.He replied;Oh that won't matter we won't be stopped anyway. The route I took to Camberley was via Cove.This brought us out by the Public House known to me now to be called by a name like Elie.The Sgt said pull in here.This I did.He then come on and have a drink.We went inside and he bought me two (2) pints of beer.The time was about 1400 hrs. We then left the Pub and said take me this way.He directed me to a Teashop near Camberley where I understand that the Mother of his girl friend lives.We went inside and had a glass of Lemonade.After this the Sgt said take me into Camberley to the Girl friends and I will only be about 10 min.After he came out from talking to the girl he directed me to return to Aldershot.We arrived back in Aldershot at about 1530 hrs. The Sgt then started to look around the Barracks for the Messing Sgt.We first wentnto Corunna Sgt's Mess.While there, the Messing Sgt bought me a half (½) [redacted] pint of beer.The Sgt then said that we had to go to Maida Sgt's Mess.When we got there he told me to come in.The Mob Stores Sgt then bought me a pint of beer and after I tasted it I noticed that there had been Gin put in it.We then left the Mess and went to the Messing Stores.The Messing Sgt then went away and got his pass.When he came back I drove the Two Sgt's to Corunna Sgt's Mess and they bought some beer. They brought this out to the truck in a box.The Mob Stores Sgt then told me to take the Messing Sgt to Witley.This I did.When we got to Witley I was directed by the Sgt to a house near the Primrose Laundery.The Sgt got out,took the box that contained the beer with him ans went in the house.He then called me.He gave me two half pints of Beer.The time was about 1630 hrs.I then returned to Aldershot and to the Mob Stores Sgt as he had directed that I do this ~~went~~ I returned.I found him at his quarters.He was just getting cleaned up.When he had finished he told me to come and have my supper.This I did in the Men's Mess Corunna.The time by now was about 1830 or 1900 hrs.The Sgt then said he wanted to go to Camberley.When we got to Camberley he took me to Pub where we had a pint of beer that he bought.He then siad take me to the Red Lion.He then directed me to it.(We had tried another one before this but it was shut) When we got to the Red Lion he bought me three Gins and Three pints of beer.I then took him to his girl friends house in Camberley.The time was about 2100 hrs. [redacted] He then said thats all I want.I then started for home.I came home via Cove.On the way to Cove I stopped the vehicle as I did not feel very well and thought I hadbetter straighten myself up.I must have gone to sleep for a short while.When woke up I started right back for Camp.I arrived back at about 2320 hrs.

A C Wood

Miles Rem 117
Two other cases
Pte Olsen.
Pte Karlson.

18 OCT 44

Handed to me by
Maj. MacLEAN, O.C. "A" Wing,
No 1 CERU 18 OCT 44
Fred R. Nelson S/Bgt.
S.C.S.

This is Exhibit " W " referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J. — CQMS Miskimmons, W.
Sgt Gemmell, N.A. — Sgt Davies, J.C.
Sgt Johns, R.T. — Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

[signature]
Officer taking summary

(COPY) SIS/C-4-44

XIX

SPECIAL INVESTIGATION SECTION

18 OCT 44

STATEMENT of:

Regt. No. B-112533, Gnr. WOOD, A.C.,
M.T. Sect., "A" Wing, No.1 CGRU, CRU Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here. (SGD) A.C.WOOD.

STATES:

I have been a driver at No.1 C.G.R.U. for over a year. I have never had much trouble in the M.T. Section, but on 5 AUG 44 I was driving CQMS MISKIMMINS who is N.C.O. i/c Mob. Stores at the Unit. He got me into trouble by taking me on a lot of unauthorized journeys and also getting me drunk. On 6 OCT 44 I was paraded before Capt. KERN, my O.C. I made to him a statement which he typed out and which I signed. It is the statement you have in your possession. The Mob. Stores Sgt. referred to is CQMS MISKIMMINS.

While I was driving him that day (I can't remember just when), CQMS MISKIMMINS said to me: "Some day when we get a chance you and I are going to make ourselves some money on some blankets. We'll get about Forty or Fifty Pounds apiece out of it". He meant that he wanted to get me to deliver some blankets for him some place where he would sell them. I didn't know what the set-up was, and made no promises. I didn't think very serious of the idea and heard no more about it from him or anybody else. He never sold anything that day when I was with him; but when I heard last week that my friend Rfn. DUDLEY was caught with a load of blankets I figured who it was who got him to take them in his truck.

I have read over the above statement, and it is true.

(SGD) A.C.WOOD. Oct. 18/44.

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is Exhibit " X " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J.	CQMS Miskimmons, W.
Sgt Gemmell, N.A.	Sgt Davies, J.C.
Sgt Johns, R.T.	Cpl Jaynes, J.C.M.
Rifleman Dudley, R.D.C.	

taken before me this First and Second day of November, 1944

Officer taking summary

(COPY) "X" [illegible]

SIS/C-4-44

XX

SPECIAL INVESTIGATION SECTION

18 OCT 44

STATEMENT of:

Regt. No. L-414, Gnr. GOULD, E.G.,
"A" Wing, 1 C.G.R.U.

BEGINS: I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) E.G.GOULD

STATES: I am attached to Accommodation Stores, 1 C.G.R.U., where, with one short ~~[illegible]~~ absence of about 5 weeks last Summer, I have been for about a year. I am a Storeman in that Department.

On Thursday, 5 OCT 44, I was working at the Accommodation Stores all day. I can't quite remember what I was doing during the morning, but after lunch I was at the Blanket Store emptying palliases in company with Pte. TOEWS, D., another Storeman. CQMS MISKIMMINS came over and told us to load 1000 dirty blankets into a 60 cwt. truck driven by Dvr. OLSEN. We had about 1200 there in bundles of 10. At about 14:00 hrs. CQMS MISKIMMINS, Pte. TOEWS and I went with the truck-load of blankets to the Hale Laundry near FARNHAM and left the blankets there to be cleaned. We then loaded 800 clean blankets for return to the Unit. We always exchange 1000 blankets at a time at the Laundry.

The reason why we did not bring the full 1000 back was that TOEWS made a bad job of loading at the start, it was raining hard, and we couldn't get more than 800 on the truck without getting the last ones wet. CQMS MISKIMMINS made arrangements to collect the remaining 200 due on the following morning.

We got back at about 16:00 hrs., and TOEWS and I unloaded the blankets into the store. Dvr. OLSEN drove his truck away. About half-an-hour later another 60 cwt. backed up to the Store. CQMS MISKIMMINS arrived on his bicycle about the same time and said we had to load 700 clean blankets for Reception Coy. TOEWS and I were a bit sore, having just unloaded them, but CQMS MISKIMMINS and the driver, to whom I paid no attention, gave us a hand, and I counted out the bundles. The driver stacked them in the truck.

I distinctly remember CQMS MISKIMMINS telling the driver: "Take that to Reception". They had a fatigue party over there, so we didn't go with the truck, but CQMS MISKIMMINS followed the truck away on his bicycle. The driver never said anything at all. We worked fast because it was getting late. I do know that Reception Coy. had been hollering for blankets for several days. TOEWS and I just went on working with the palliases, and that's all I know about it.

(Contd. OVER)

know about it./
At no time had I any reason to suppose that the blankets were to be taken elsewhere than to Reception Coy.

I have read over the above statement, and it is true./ENDS

(SGD) H.C.GOULD 18/10/44

(WITNESSED) F.H.WILSON, S/Sgt., N.I.S.

This is Exhibit " Y " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gammell, N.A.
Sgt Johns, R.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

[redacted]
Officer taking summary

(COPY) "A" SIS/C-1-44

XXIII

SPECIAL INVESTIGATION SECTION

19 OCT 44

THIRD STATEMENT of:

Regt. No. B-64113, Rfn. DUDLEY, R.D.C.,
M.T. Sect., "A" Wing, No.1 CORU, CRU Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S.: that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here. (SGD) R.DUDLEY

STATES:

I have read over the statement of B-06927, Cpl. JEYNES, J.C.M., dated 13 OCT 44, and wish to state:

The man who asked me if I wanted to take the blankets to LONDON, and arranged it all for me was Cpl. JEYNES. I was willing to take the rap myself, and the only reason for not saying who he was at first was to keep him out of trouble if I could. I'm no squealer.

All I said in my other statement is true, except that I didn't steal the Work Ticket. During the afternoon after he spoke to me about the job Cpl. JEYNES came to me and gave me two Work Tickets. One he had made out as a sample for me to copy, and the other, which is the one you have, was blank. He told me to fill it in like the one he made out, and to destroy the sample for his protection. I did this that afternoon, and put the one he made out down the toilet in the Provost Lines opposite the Garage.

Cpl. JEYNES also told me I'd get about £15 for the job, and I figured he'd get a good cut out of it as well. He said: "You know who's running this, don't you?", and I said: "I have a pretty good idea" and left it at that. I figured it was CQMS MISKIMMINS, and I'm sure that's who he meant. Next day he told me to gas up my truck and make sure I had enough.

I was busy that day like I said on a draft job. The first idea was to get the blankets from the laundry at FARNHAM, but when I didn't get back till 14:00 hrs. he said: "Never mind, you can pick them up at the Blanket Store", and made out my Work Ticket for 15:30 hrs. He knew I had the other one to cover me for the LONDON trip.

I never asked Cpl. JEYNES for the job - he asked me in the first place and fixed it all up himself. I never did any jobs before for CQMS MISKIMMINS (taking stuff out, I mean) but I kind of figure others have, and I know Cpl. WOODS got caught over him once on a backshee run when they got him drunk and he got back late.

I have read over the above statement, which I

(Contd. OVER)

which I/
have made of my own accord, without fear of any threat or
hope of favour to come, and it is the truth./ENDS

(SGD) R.DUDLEY 19/10/44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is Exhibit " Z " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, E.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

[signature] Capt
Officer taking summary

This is Exhibit " Z " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

[signature] 11/9/Capt
Officer taking summary

(COPY) "Z" SIS/C-6-44

XXIV

SPECIAL INVESTIGATION SECTION

19 OCT 44

SECOND STATEMENT of:

Regt. No. B-86927, Cpl. JEYNES, J.C.M.,
Trnspt. Sect., "A" Wing, No.1 C.C.R.U.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) J.C.JEYNES.

STATES:

On Thursday, 5 OCT 44, at about 09:30 hrs., Sgt. JOHNS, of Clerks' Coy., 1 CCRU, came to me in the Despatch office, M.T. Section, where I am in charge, and asked me if I could fix him with a big truck to take some blankets to LONDON. I asked him how long it would be needed and he said from about 16:00 hrs to 19:30 hrs. I said I'd let him know later, but he said he'd have to know before 2 o'clock. He said there would be about 700 blankets and that the driver and I would receive about £40 between us, depending on what they got for them. He didn't say who else was in the deal, but as the blankets were coming from Hob. Stores, I concluded that COMB MISCHIEVOUS was in it. I told him I'd fix it for him unless some emergency arose and I'd have to cancel it. He gave instructions that the truck was to be at the stop-lights in FARNHAM just below the Male Laundry at exactly 15:55 hrs., when a Sergeant would be there to direct the driver. He didn't say what Sergeant. I stipulated that there was to be no drinking on the trip. I told Sgt. JOHNS to expect No. L-762620, as that was the logical vehicle for the job. He said "O.K.", and left the office.

I immediately left the office to contact Rfn. DUDLEY, the driver of the 60 cwt. L-762620, and met him outside the office. I asked him if he wanted to take a buckshee trip up to LONDON, and mentioned that there would be roughly £15 in it for each of us. He agreed to take the trip, and I told him I'd fix up a sample of a work-ticket for him to make out to cover his journey. I gave him his directions as instructed, warning him also against drinking, and to be careful with his driving. I picked DUDLEY because I knew him and knew I could trust him. He doesn't know LONDON, but I figured somebody would show him the way.

I returned to the office, and when I was alone I stamped two blank Work Tickets, making one out for DUDLEY to copy. I stamped it several times so that it would be unusable. At about 10:00 hrs. I met Rfn. DUDLEY at the Workshop door and gave him the two work-tickets with the warning that the sample work-ticket must be destroyed after he had copied it. He agreed to do this, and I told him that he was on his own hook once he was on the road with his vehicle. I later advised him to see he had enough gas. He did a trip to ALTON, and I gave him his Work Ticket for

(Contd. over)

Work Ticket for/
FARNHAM and FARNBOROUGH to cover him through the area at 15:20 hrs. I can remember no change of plan, and he must have received instructions elsewhere to go to Blanket Stores.

The driver for Mob. Stores that day was Pte. OLSEN, who w was on that job the day before, and was warned that night that he would be needed again at 08:30 hrs., 5 OCT 44. At no time during that day was any call received at the Transport Office from Mob. Stores for another vehicle. Rfn. DUDLEY was sent solely in consequence of the request of Sgt. JOHNS that morning. I knew nothing of any further arrangements connected with the deal.

When I made my first statement on 13 OCT 44 I figured that to tell all I knew would do nobody any good. Now I feel it isn't fair for Rfn. DUDLEY to take all the blame. I have read his statements, dated 6 OCT 44 and 19 OCT 44, and with the exception of the differences I have pointed out above, his statement is correct to the best of my knowledge. I am quite sure that he has never been mixed up in anything of this kind before. Neither have I.

I have read over the above statement, which has been made voluntarily, without fear of any threat or hope of favour to come, and it is xxxx the truth./ENDS

(SGD) J.C.JAYNES, Oct.19/44.

(WITNESSED) F.P.NELSON, S/Sgt., R.A.F.

This is Exhibit "Z1" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

W. Magill Q/Capt
Officer taking Summary

(COPY) SIB/C-4-44

Z. (SIB)

XXV

SPECIAL INVESTIGATION SECTION

20 OCT 44

STATEMENT of:

Regt. No. H-102347. Pte. TOEWS, D.,
"A" Wing, No.1 C.C.R.U.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) D. TOEWS.

STATES:

I am attached to Accommodation Stores, 1 CCRU, where I have been working since JUNE, 1944.

On Thursday, 5 OCT 44, I was working in connection with Accommodation Stores all day. I was with Gnr. GOULD all morning at the Blanket Store emptying palliases. At noon CQMS MISKIMMINS, who was i/c Accommodation Stores, told us to be at the Blanket Store at about 14:00 hrs., as we were going to get blankets from the Male Laundry, FARNHAM, having taken a thousand there to be cleaned a couple of days before. When the truck arrived, driven by Pte. OLSEN, CQMS MISKIMMINS, Gnr. GOULD and I went with it to the laundry at FARNHAM, where we started to load clean blankets in bundles of ten. C.Q.M.S. MISKIMMINS said we were going to take 700, so I wasn't too fussy how I started loading. When I had loaded about 300 he said we'd better take 1000, but I hadn't piled them very tightly in the 60 cwt. we had, and could only get 800 on. I'd have had to empty the truck again to have taken the full thousand, but he said not to bother. It was raining that day, and if I'd put on more than 800 they'd have got wet at the back of the truck.

We brought the 800 blankets and unloaded them into the Blanket Store, and the truck went away. Gnr. GOULD and I went on working on the palliases for a half-hour or so, when another 60 cwt. truck, driven by Pte. DUDLEY, pulled up. I asked him what he wanted, but he didn't seem to know, and said CQMS MISKIMMINS wanted him to report there. A minute or two afterwards CQMS MISKIMMINS came up on his bicycle and told us to load up 700 blankets for Reception Coy. We thought that kind of funny because we could have taken them straight over in the first place; but he said that's what they wanted now, so we just got busy and loaded them and the driver stacked them in the back of his truck. Gnr. GOULD counted them, on CQMS MISKIMMINS's instructions. I didn't hear any instructions given to the driver, but when we had finished loading at about 16:30 hrs. the truck pulled away with the blankets, and that's the last I saw of them. I figured they were for Reception Coy., and CQMS MISKIMMINS said we didn't have to go with the truck because there was a Fatigue down there to unload it. I had no reason at all to suspect that there was anything wrong, and just went on with my work.

(Contd. OVER)

with my work./
I didn't know anything had happened until next day, when I heard some talk around the Camp that the truck-load of blankets had been picked up in LONDON.

I have read over the above statement, and it is correct./ENDS

(SGD) D. TOEWS 20-1-144

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is Exhibit "Z 2" referred to in the

summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gammell, M.A.
Sgt Johns, R.T.
CQMS Miskimmens, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of

November, 1944

Officer taking summary

Z 2 7614

XXVII

Special Investigation Section

STATEMENT OF:

Sgt. No. [illegible], C.I.D., M.P. [illegible]
Pte. King, W.A.C.(C.), C.M.P. Corporal.

I have been cautioned by S/Sgt. [illegible], of C.M.P., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

Having made a true statement to Civil Police concerning some chairs, tables, and sheets which I disposed of from Unit Stores through Sgt. [illegible], to a civilian in [illegible] last August, I want to tell you the truth and make a complete statement about the seven hundred blankets which S/Sgt. [illegible], Sgts. [illegible], [illegible] and [illegible], Cpl. [illegible], and Pte. [illegible], the driver, arranged to sell in [illegible], and which I gave them out of the Unit Blanket Store on 5 Oct 44.

About a week after Sgt. [illegible] had sold the chairs, tables and sheets referred to [illegible] the Unit [illegible] C.M.P., and since as far as I had any more chairs to sell. I was anxious that the 12 chairs, one, tables, writing, and 20 sheets, were not in charge [illegible] I had previously returned their equivalent to the [illegible] [illegible] [illegible], several weeks previously, and they were then surplus. I sent this furniture for several weeks in store. [illegible] was all the [illegible] I had, and I told Sgt. [illegible], this when he [illegible]. I remember telling him, though, that I had a lot of surplus blankets. He asked me how many, and I asked [illegible] about a thousand". As a matter of fact, I had about 800 surplus blankets which I had carefully collected over a long period of time in order to make good any shortages which might at some time occur.

A day or two later Sgt. [illegible] came to me again in the M.T.C.M.P. and told me that he had arrangements made to dispose of seven hundred blankets. He didn't tell me any of the details. I asked him what he would be worth to me, and he said $50. I then agreed to let him have the 700 blankets when it could be arranged. That was early in the first week of October, 1944. I saw Sgt. [illegible] each day that week in the M.T.C.M.P. and he told me the names of three who were arranging the deal when I asked him. I never had anything to do with this part of the deal, and don't recall discussing it the matter with anyone save Sgt. [illegible]. He told me that he had fixed it for a truck to pick up the blankets on Thursday, 5 Oct 44. I don't know who was arranging the transport, but I knew there had been a truck about it earlier in the week. At that time I had 1000 blankets at the Dale Laundry, [illegible], and as I thought that that would be a good place to pick them up from I told Sgt. [illegible] to have a truck there at 15:30 hrs. that Thursday. I changed my mind about this, however, because they only wanted 700, so I brought 300 back from there to the Unit Blanket Store right after dinner that day. I was going to take the whole 1000, but couldn't get any more on the truck. I previously told Sgt. [illegible] to have his truck sent to the Blanket Store instead at 16:00 hrs. I saw it pull in and there, went over on my bike, and told my storeman, Cpl. [illegible] and [illegible] to load 700 blankets. I gave them a hand. Then the truck was

When the truck was/
loaded I began to feel a bit guilty and said to the driver, Pte. [illegible]
"Bill, take them to Reception Coy. To Hell with it!" He said: "O.K., Bill",
and drove off. He looked a bit scared, too. I thought he was going to do as
I said, and even went down to Reception Coy. on my bike to see if he was
there. I would have had them unloaded right there, the way I was feeling,
honest to God, but he didn't show up. Neither Ptes. [illegible] or [illegible] knew
what was going on, and I really meant what I said to the driver. I know
something had gone wrong next morning when Capt. [illegible] called me into his
office to ask me about the truck which was missing. That is all I had to
do with the deal, and I'm sorry now that I ever had any part in it. I was
not short of money, and I honestly don't know whatever made me consent to it.

It is true that Reception Coy. needed more blankets, as those I
had previously sent were dirty, and had to be replaced by clean ones. Some
fellow I don't know tipped me off a few days previously that the police in
[illegible] were watching for a blanket deal that was supposed to be coming
off, and that is why I was getting a bit scared about the whole thing.

The statements I previously made are partly untrue, because I
knew I had a surplus to cover the loss and I thought that I might be
relieved of blame.

I admit that for a long time past I have been scrounging stuff
to make good deficiencies in the Unit, but I can truthfully say that apart
from the above two instances, when I disposed of stores to Sgt. [illegible], I
have never sent anything to unauthorized persons, or sold or disposed of
stores to civilians. I don't think that a complete Unit inventory would
show any shortages in my department. It might even show a surplus.

I have read over the above statement, which has been made
voluntarily, of my own free will, without fear of any threat, or hope of
favour from any person or persons, and it is all true.

(SGD)

[illegible], [illegible],
"A" Wing, No.1 [illegible]

(SIGNED)

[illegible], [illegible],
D.I.C., Cdn. Provost Corps, [illegible]

[illegible]
[illegible]

This is Exhibit "Z 3" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.T.
COMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

Officer taking summary

XXVIII

SPECIAL INVESTIGATION SECTION

25 OCT 44

STATEMENT of:

Regt. No. [illegible], Sgt. [illegible], N.A.,
Clerks' Cny., No.1 C.G.R.U., C.R.U. Command.

MAKING:

I have been cautioned by S/Sgt. [illegible], of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

STATES:

I have read over the statement of [illegible], dated 24 OCT 44. There is one thing I want to say, and that is that I was never concerned at any time with anyone in disposing of tables or a leather-backed chair which I saw yesterday in the Police Station at [illegible]. At the present time I have no comments to make on the remainder of his statement.

I have read over the above statement, which has been made voluntarily, and it is true.

(SIGN) _____ Sgt.
[illegible], N.A.[illegible],
Clerks' Cny., No.1 C.G.R.U.

(WITNESSED) _____ S/Sgt.
[illegible], W.R.[illegible],
S.I.S., Cdn. Provost Corps, CMHQ.

[illegible]
25 OCT 44

SUMMARY OF EVIDENCE

In the case of:-
L 1161 S/Sgt Greatrix, R.J. - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
B 88451 CQMS Miskimmons, W., - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
L 18134 Sgt Gammell, N.A. - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
D 91032 Sgt Davies, J.C., - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
A 9243 Sgt Johns, R.T. - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
B 96927 Cpl Jaynes, J.C.M - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
B 64113 Rifleman Dudley, R.D.C. - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit.

By direction of the Commanding Officer this summary is taken on oath

M 11436 S/Sgt Elliott, F.W., is sworn as shorthand writer

First Witness - Prosecution

Ernest Cook, Detective Sergeant, New Scotland Yard

I certify that owing to the loss of time and expense involved the attendance of this witness is not readily procurable and a statement of his evidence purporting to have been signed by him has been read to the accused, marked by me as Exhibit "A" for the prosecution and attached to the summary.

(M.L. Wagill) A/Capt
Officer detailed to take summary of evidence

We the accused persons do not require the attendance of this witness for the purpose of cross examination

L 1161 S/Sgt Greatrix, R.J.

B 88451 CQMS Miskimmons, W.

L 18134 Sgt Gammell, N.A.

D 91032 Sgt Davies, J.C.

A 9243 Sgt Johns, R.T.

B 96927 Cpl Jaynes, J.C.M.

B 64113 Rfn Dudley, R.D.C.

my

Second Witness - Prosecution

Albert Webb, Detective Sergeant, New Scotland Yard

I certify that due to the loss of time and expense involved the attendance of this witness is not readily procurable and a statement of his evidence purporting to be signed by him has been read to the accused and marked by me as Exhibit "B" for the prosecution and attached to the summary

(M.L. Magill) A/Capt
Officer detailed to take summary of evidence

We the accused persons do not require the attendance of this witness for the purpose of cross examination

L 1161 S/Sgt Greatrix, R.R.

B 88451 CQMS Wiskimmons, W.

L 18134 Sgt Gemmell, R.A.

D 91032 Sgt Davies, J.C.

A 9234 Sgt Johns, R.T.

B 96927 Cpl Jaynes, J.C.R. B 64113 Rfn Dudley, R.D.C.

Third Witness - Prosecution

U 1889 S/Sgt Nelson, F.R., Can Provost Corps, BIS CMHQ having beenduly sworn states that:-

On the 5th of October sir, at about 2220 hrs at the Special Investigation Section office in London a telephone message was received from Detective Sergeant Cook of the Flying Squad, Metropolitan Police, New Scotland Yard, to the effect that he had detained at Carter Street Police Station London, South East 17, a Canadian Staff Sergeant and a driver in possession of a Canadian Army lorry containing a large quantity of War Department blankets. Acting on the instructions of Major R.R. Holmes, Assistant Provost Marshall, Canadian Military Headquarters, I proceeded immediately to Carter Street Police Station where I saw Detective Sergeant E Cook and Detective Sergeant Albert Webb, both of the Flying Squad, New Scotland Yard. In the station yard I saw a Canadian Army Vehicle Ford 60 cwt No L 762620 bearing the unit sign of No 1 Canadian General Reinforcement Unit. I looked in the rear of this vehicle which was covered by a tarpaulin secured at the rear with ropes and saw a large number of army blankets which I later counted and found 700 in bundles of ten. Detained in the police station I saw S/Sgt Greatrix, whom I now recognize as one of the accused, and Rifleman Dudley, whom I also recognize as one of the accused. I said to Dudley, are you the driver of the truck outside and he said yes. I said to S/Sgt Greatrix are you with the truck and he said yes. I said to them, had you any authority to bring the truck load of blankets to London. Both soldiers answered no. At about 2245 hrs I place S/Sgt Greatrix and Rifleman Dudley under close arrest and escorted them together with the War Department vehicle

A

At 1645 hours on 7 Oct 44 I [illegible] in [illegible] Rifleman Dudley. I confronted him with the statement of S/Sgt Greatrix, Exhibit "C". I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence and which I here produce.

This statement has been read to the accused marked by me as Exhibit [illegible] for the prosecution and attached to the summary.

I then submitted the statement [illegible] Dudley, exhibit "F" to S/Sgt Gr[illegible] and he made a voluntary statement [illegible] he signed in my presence a copy of [illegible]

This statement [illegible] to the accused S/Sgt Greatrix, marked by me as exhibit "[illegible]" for the prosecution and attached to the summary.

On 10 Oct 44 at about 1050 hrs I place Sgt Johns, whom I recognize as one of the accused under close arrest and handed him over to the N.C.O. in charge of the guard room No 1 Canadian General Reinforcement Unit. At about 1120 hrs I placed Sgts Gemmell and Davies, whom I now recognize as two of the accused under close arrest and escorted them together with CQMS [illegible], whom I also recognize as one of the accused [illegible] Provost Company Detachment, where at about [illegible] interviewed Sgt Gemmell. I cautioned him [illegible] a voluntary statement which I took down [illegible] which he signed in my presence, a copy of [illegible]

This statement having been [illegible] to the accused Sgt Gemmell is marked [illegible] "J" and attached to the summary.

I then confronted Sgt Gemmell with [illegible] statement of S/Sgt Greatrix, Exhibit "C". I cautioned him and he made to me a voluntary statement which I took down in writing and which he signed in my presence [illegible] which I here produce

This statement having been read to the accused Sgt Gemmell is marked by me as exhibit "K" for the prosecution and attached to the summary.

I then escorted Sgt Gemmell to the guard room of No 1 Canadian General Reinforcement Unit and handed him over to the N.C.O. in charge to be detained.

I escorted Sgt Davies and CQMS [illegible] to the Central Police Station Aldershot, where with the approval of the Superintendent of the police, I lodged them in police custody. On the 11th of October, 1944 at about 1000 hrs at the police station I interviewed Sgt Davies. I cautioned him and he typed out in my presence a voluntary statement which he signed in [illegible] I hereby submit a copy of this statement.

On hearing the above statement [illegible] the accused Sgt Davies requested that the word "declined" line 17 page 2 of his statement be changed to the word "demurred"

[illegible]
Officer detailed to take summary of evidence

This statement has been read to the accused Sgt Davies, marked by me as exhibit "L" and attached to the summary

I then confronted Sgt Davies with the statements of S/Sgt Greatrix, Exhibit "G", and Sgt Gammell, Exhibit "J". I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence, a copy of which I here produce.

This statement having been read to the accused is marked by me as Exhibit "M" and attached to the summary.

On 12 Oct 44 at about 1000 hrs in the guard room at No 1 Canadian General Reinforcement Unit I interviewed Sgt Johns when I also recognized as one of the accused. I cautioned him and confronted him with the statements of S/Sgt Greatrix, Sgt Gammell and Sgt Davies, Exhibits "G" "J" and "L" respectively. He stated when the trouble broke he was advised by an officer who was a friend of his not to make any statement and therefore he did not wish to do so. He did not state who this officer was and he was not urged to make any statement, but he did say certain things to me which I noted down roughly at the time. I produce a copy of these notes made at the time. I wrote out the formal caution and Sgt Johns said he did not wish to make a statement and did not sign the caution.

The copy of the notes having been read to the accused Sgt Johns is marked by me as Exhibit "N" and attached to the summary

At about 1400 hrs at the Central Police station, Aldershot, I interviewed CQMS Miskimmons. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence.

This statement having been read to CQMS Miskimmons is marked by me as Exhibit "O" and attached to the summary

I then confronted CQMS Miskimmons with the statements of S/Sgt Greatrix, Sgt Gammell and Sgt Davies. I cautioned him and he made a voluntary signed statement in writing a copy of which I here produce.

This statement having been read to the accused CQMS Miskimmons is marked by me as exhibit "P" and attached to the summary

On 13 Oct 44 I obtained a formal release from civil custody of CQMS Miskimmons and Sgt Davies and escorted them to the guard room of No 1 Canadian General Reinforcement Unit and handed them over to the N.C.O. in charge to be detained. Here I again interviewed S/Sgt Greatrix and confronted him with the statements of Sgt Gammell, Sgt Davies and CQMS Miskimmons. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence a copy of which I here produce

This statement having been read to the accused S/Sgt Greatrix is marked by me as exhibit "Q" and attached to the summary.

my

At about 1100 hrs in his quarters I saw Sgt Gemmell. I confronted him with the statements of Sgt Davies and CQMS Miskimmons. I cautioned him and he made a voluntary statement which I took down in writing and he signed it in my presence, a copy of which I here submit.

This statement having been read to the accused Sgt Gemmell is marked by me as Exhibit "R" and attached to the summary

At about 1400 hrs at the Motor Transport Office No 1 Canadian General Reinforcement Unit, I saw Captain R.M. Keene, officer commanding Motor Transport Section and he handed to me a drivers call sheet for 5 Oct 44 and also Work Ticket No. 5783 which I now produce

The call sheet and work ticket having been shown to the accused is marked by me as Exhibit "S" and attached to the summary

In the presence of Capt Keene I interviewed B 59092 Pte Olsen, C.R. Motor Transport Section, A.Wing. He gave me a statement which I took down in writing and which he signed in my presence and in the presence of Capt Keene

This statement having been read to the accused is marked by me as exhibit "T" and attached to the summary

In the presence of Capt Keene I then interviewed B 96927 Cpl Jaynes, whom I now recognize as one of the accused. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence and in the presence of Capt Keene.

This statement having been read to the accused Cpl Jaynes is marked by me as exhibit "U" and attached to the summary.

About 1630 hrs I proceeded to the orderly room of No 1 Administrative Transport Company, Royal Canadian Army Service Corps, where I saw D 91040 MSM Ramer, C. I questioned him and he gave me certain information which I noted. On 18 Oct 44 as the result of inquiries on my part Major McLean, Officer Commanding A Wing, No 1 Canadian General Reinforcement Unit, handed to me an original statement made in writing on 6 Oct 44 in connection with disciplinary action taken in another case against B 112535 Gnr Wood, A.C. of No 1 Canadian General Reinforcement Unit., I present this statement.

This statement having been read to the accused is marked by me as exhibit "V" and attached to the summary

I thereupon interviewed Gnr Wood. I cautioned him and he made to me a statement which I took down in writing and which he signed in my presence and which I here submit.

This statement having been read to the accused is marked by me as exhibit "W" and attached to the summary.

At about 1100 hrs the same date in the presence of Capt Lake, Quartermaster, No 1 Canadian General Reinforcement Unit, I interviewed L 414 Gnr Gould, E.G., storeman. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence and in the presence of Capt Lake.

This statement having been read to the accused is marked by me as exhibit "X" and attached to the summary

At about 1400 hrs on 18 Oct 44 I interviewed Lieutenant J.G. Dunlap, officer in charge Reception Wing, RB & DM Coy, and questioned him concerning demands for blankets. He gave me certain information which I noted. On 20 Oct 44 in the presence of Capt Lake Quartermaster, I questioned Lieutenant J. Sinister on the same matter and he gave me information corroborating that of Lieutenant Dunlap which I noted. On 19 Oct 44 at about 1000 hrs in the guard room of No 1 Canadian General Reinforcement Unit I again interviewed Rifleman Dudley. I confronted him with the statement of Cpl Joynes, exhibit "U", and he gave me a voluntary statement which I took down in writing and which he signed in my presence.

This statement having been read to the accused Rifleman Dudley is marked by me as exhibit "Y" and attached to the summary

At about 1350 hrs in the Motor Transport Office I placed Cpl Joynes under close arrest and escorted him to the Special Investigation Office, Canadian Reinforcement units where I confronted him with the statement of Rifleman Dudley exhibit "Y". I cautioned him and he made a voluntary statement and which he signed in my presence. I produce a copy of this statement.

This statement having been read to the accused Cpl Joynes is marked by me as exhibit "Z" and attached to the summary

I then escorted Cpl Joynes to the guard room No 1 C.G.R.U. and handed him over to the N.C.O. in charge to be detained. On the 20th of October, 1944, at about 1020 hrs in the presence of Capt Lake, Quartermaster, I interviewed H 102347 Pte Toewes, D. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence and in the presence of Capt Lake. I submit a copy of this statement.

This statement having been read to the accused is marked by me as exhibit "Z1" and attached to the summary.

I then questioned Capt Lake concerning the movement of blankets within unit lines as of about 5 Oct 44 and he gave me certain information which I noted. On 24 Oct 44 at the Central Police station, Aldershot, I again saw CQMS Miskimmons. He said to me, I want to tell you the truth and make a complete statement about the blankets. I cautioned him and he made to me a statement which I took down in writing and which he signed in my presence. I present a copy of this statement.

This statement having been read to the accused CQMS Miskimmons is marked by me as exhibit Z2 and attached to the summary.

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I then confronted Sgt Gornall with the statement exhibit Z2" of CQMS Miskimmons. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence. I submit a copy of this statement

This statement having been read to the accused Sgt Gornall is marked exhibit "Z" by me and attached to the summary

At about

At about 1600 hrs I escorted CQMS Miskimmons and Sgt Gornall to the guard room No 1 Canadian General Transport Unit handing them over to the R.S.M. on charges to be tabled. I made several inquiries to substantiate the statements of CQMS Miskimmons, who had reported the theft of two blankets, E., might remember his visits to certain billets and in particular Rifleman Dudley had left the blankets about 1100 hrs on the blankets. At about 1100 hrs on 26 Oct 44 in response to a telephone inquiry I was informed by Sgt Beecher that he had no recollection of the appearance at Reception Company of CQMS Miskimmons on the specific date and time mentioned by CQMS Miskimmons. At about 1800 hrs on 26 Oct 44 at the guard room I again interviewed Sgt Johns. I confronted him with the statements of Cpl Joynes and CQMS Miskimmons. I cautioned him and he said, I have got a chance of beating this rap and if I don't make any statement it will give my defending officer a chance. I am in possession of all original exhibits of which I have presented copies.

The accused L 1161 S/Sgt Grant declines to cross examine this witness.
The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gornall declines to cross examine this witness
The accused D 91032 Sgt Davies, J.C. declines to cross examine this witness
The accused A 9243 Sgt Johns, R.T. declines to cross examine this witness
The accused B 96927 Cpl Joynes, E.G. declines to cross examine this witness
The accused B 64113 Rifleman Dudley declines to cross examine this witness

Lieut'y S/Sgt Nelson, T.R.

Fourth Witness - Prosecution

B 51699 Sgt Childs, W.C having been duly sworn states that:- I am employed as transport assistant in the motor transport section of No 1 Canadian General Reinforcement Unit. On Friday 6 Oct 44 I was instructed by the Assistant Adjutant No 1 Canadian General Reinforcement Unit to go to London to pick up truck No. L 10[illegible] being held by the Provost in London. I proceeded to Provost Headquarters and gave them my authority to take over the vehicle and brought the vehicle back to the unit. The vehicle was empty at the time.

The accused L 1161 S/Sgt Grantrix declines to cross examine this witness
The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gornall declines to cross examine this witness

The accused D 91032 Sgt Davies declines to cross examine this witness
The accused . 9243 Sgt Johns R.T. declines to cross examine this witness
The accused B 96927 Cpl Joynes, declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

B 51699 S.S.M. CHILDS, W.C.

Fifth Witness - Prosecution

Captain R.N. Kerne, an officer of the Canadian Army overseas on strength of No 1 Canadian General Reinforcement Unit, having been duly sworn states that: I am the transport officer of No 1 Canadian General Reinforcement Unit. On 6 Oct 44 I was recalled from a twenty four hour pass and told that truck B 96927 had been stolen and was in London. I was told that the permanent driver of the vehicle, Rifleman Dudley, who I now recognize as one of the accused, was detained in London. I questioned my despatching staff as to what duties the vehicle had been on. The only permanent personnel on that staff are Cpl Warren, W.C. and Cpl Joynes, whom I now recognize as one of the accused. I found that my vehicle had been detailed to the reception stores. That evening I received a telephone call from Cpl Joynes to the effect that vehicles would not be dispatched to the reception stores unless a note signed by an officer had been presented on its inforce a telephone call from Cpl Joynes and said that the vehicle be returned to the reception stores. As before, it was Cpl Joynes who presented him, who I now recognize as one of the accused. I was present when Cpl Joynes was interviewed by the S/Sgt Police from the Special Investigation Section and I was present when Pte Olson was brought in and interviewed, and I was present when L/Cpl Warren was interviewed. These people denied any knowledge of the circumstances.

The witness is shown exhibit 'C'

That is a transport work ticket, army form 3518 made out from Aldershot to Watford in return detailed for the purpose of taking hospital patients authorized by O.R.U. and it is alleged to have been signed by myself. It is not my signature and I did not sign it. I did not use of any authority for this trip as I was on a 24 hr pass. The only authority received would be communicated direct to my second in command Lieut Driver, by the Adjutant.

The witness is shown Exhibit 'D'

That is a transport work ticket army form 3518. To all intents and purposes as far as I am concerned it is made out correctly. The last trip is Aldershot via stops Farnham and Farnborough which I signature are by Cpl Joynes with his initials above it.

The witness is shown Exhibit 'E'

She is a transport work ticket army form 3518 and the other sheets are what I call drivers call sheets on which all vehicles despatched by the despatching office are supposed to be entered on with the exception of staff cars

my

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 68451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gemmell, N. , declines to cross examine this witness
The accused D 91032 Sgt Davies, declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jeynes declines to cross examine this witness
The accused B 64113 Rfn Dudley, declines to cross examine this witness

R.N. Keane, Capt

Sixth Witness - Prosecution

Lieutenant J.C. Draper, an officer of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I am second in command of the Motor Transport Company No 1 Canadian General Reinforcement Unit. On 5 Oct 44 Capt Keane who is officer commanding Motor Transport Section was away on a 24 hr pass.

Witness is shown Exhibit "C"

I have never seen this work ticket Before. I did not sign it nor did I authorize anyone else to sign it.

Witness is shown exhibit "J"

I have never seen this letter before nor do I know any Lieutenant Skinner in this unit. In any event I would not have acted on this letter because it is neither signed nor initialled by the Adjutant of No 1 Canadian General Reinforcement unit. No authority for the movement of vehicles outside the twenty mile area is valid in this unit unless it is signed or initialled by the Unit Adjutant or the Commanding Officer. I recognize Cpl Jeynes who is one of the accused as being the Cpl despatcher in the Motor Transport Section.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 68451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gemmell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jeynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine thiw witness

J.C. Draper, Lieut

Seventh Witness - Prosecution

H 59092 Pte Olsen, C.R., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- On the 5th of October, 1944 I was driving a truck for the accomodation stores. The forenoon is very hazy to me but in the afternoon the main detail was down to the Hale Lowery near Farnham to pick up blankets, I believe it was seven or eight hundred. They were taken to the accomodation store-room at Corunna Barracks and unloaded there. After that I took S/Sgt Miskimmons over to the accomodation stores. After that he told me I was not needed any more with the exception of picking up another S/Sgt at Group Headquarters. The S/Sgt Miskimmons I speak of is one of the accused, whom I now recognize. I was told shortly after three o'clock I was not needed any more. That was early and I waited around for a while then went down to pick up this S/Sgt and took him up to the accomodation stores and then returned to the garage. Normally I would be dismissed from the accomodation stores between [illegible] and [illegible] o'clock.

The accused L 1161 S/Sgt Orestrix declines to cross examine this witness
The accused B [illegible] CONS Miskimmons declines to cross examine this witness
The accused L 18124 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A [illegible] Sgt [illegible] declines to cross examine this witness
The accused B [illegible] Cpl [illegible] declines to cross examine this witness
The accused B [illegible] Rfn [illegible] declines to cross examine this witness

[illegible] C.R.

Eighth Witness - Prosecution

D 91040 [illegible] Kamer, [illegible] Canadian Army Overseas on strength of No 1 Administrative Transport Company having been duly sworn states that:- I am a mechanist sergeant major on strength of No 1 Administrative Transport Company. Around the end of [illegible] I came into the mess one night at the Administrative Transport Company and found Sgt Davies, whom I now recognize as one of the accused waiting for me. He had another Sgt with him who I would not recognize again. I knew Sgt Davies and had not seen him for some time, although I had met him in Aldershot a month or so previously. He had a drink to [illegible] and he then asked me if there was any possibility of getting a truck and mentioned there would be twenty or twenty five pounds in it for me if I could do so. I told him that I had nothing to do with the transport and was not interested in the matter. We talked for a while then left the mess. There was some talk about blankets but I could know who brought it up or the exact details.

The accused L 1161 S/Sgt Orestrix declines to cross examine this witness
The accused B [illegible] CONS Miskimmons declines to cross examine this witness
The accused L 18124 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness

The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 90987 Cpl Jaynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

D 91040 WSM Ennor, C.

Ninth Witness - Prosecution

B 112865 Gnr Wood, A.C., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Units having been duly sworn states that:- I am a driver for the Motor Transport Section, No 1 Canadian General Reinforcement Unit. On 5 Aug 44 I was detailed to drive for the Pob stores. In the course of the day I drove S/Sgt Miskimmons, whom I now recognize as one of the accused, to various places. Some of these trips were authorized but after the authorized trips I drove him to various places including Comberley, in the afternoon and evening. We had a good many drinks and eventually I fell asleep in the vehicle and did not get back to camp until around midnight. I was arrested on a charge of drunken driving and improper use of the vehicle. During the course of our driving S/Sgt Miskimmons said we could make some money sometime on some blankets. I did not pay much attention to this remark.

The witness is shown Exhibit "Y"

This is a statement made by me on the 6 Aug 44 and signed by me. Everything contained in it is true to the best of my knowledge.

The accused B 90987 Cpl Jaynes, JCM cross examines the witness
Q.1 That trip you went on that day was legitimate from the office?
A.1 Yes
The accused L 11691 S/Sgt Orsetrix declines to cross examine this witness
The accused B 89151 CSMJ Miskimmons declines to cross examine this witness
The accused L 87134 Sgt Bramwell declines to cross examine this witness
Theaccused D 91040 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

B 112865 Gnr Wood A.C.

Tenth Witness - Prosecution

L 414 Gnr Gould, R.C., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I am employed in the accomodation stores No 1 Canadian General Reinforcement Unit. I do all manner of jobs, anything that is to be done, including the loading and unloading of blankets. On 5 Oct 44 we went to the laundry at Hale and brought back a truck load of blankets. There were eight hundred blankets in this load. About 1600 hrs the same day I was told by S/Sgt Miskimmons, whom I now recognize as one of the accused, to

help Pte Toews load seven hundred blankets on a truck to go to Reception Company. Pte Toews, myself and S/Sgt Miskimmons loaded these blankets. There were seven hundred in all. S/Sgt Miskimmons then told the driver to take them to Reception Company. The driver drove off and I did not see the blankets again. This truck was not then driven by Pte Olsen, which was the truck we had used to get the blankets from Hale. It was a different truck but belonged to No 1 Canadian General Reinforcement Unit

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 CQ S Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns R. declines to cross examine this witness
The accused B 96927 Cpl Jaynes declines to cross examine this witness
The aaccused B 64113 Rfn Dudley declines to cross examine this witness.

L 614 Gnr Gould, E.G.

Eleventh Witness - Prosecution

H 12347 Pte Toews, D., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit, having been duly sworn states that:- I work in the accommodation stores at No 1 Canadian General Reinforcement Unit. I was working there on the 8th of October, 1944. Among other things it is my duty to help load and unload blankets. On the afternoon of that day I went with Gnr Gould and S/Sgt Miskimmons to the laundry at Hale and brought back a load of eight hundred blankets, which were brought back to the unit. The truck in which we went to Hale was driven by Pte Olsen. About 1600 hrs we were told to load seven hundred blankets in a truck driven by Pte Dudley, whom I now recognize as one of the accused. We were told to do this by S/Sgt Miskimmons, whom I also recognize as one of the accused. We were told that these blankets were for reception company, we were told this by S/Sgt Miskimmons. Gnr Gould and I loaded the blankets and the truck was driven away by Pte Dudley. I have not seen the blankets from that day to this, nor do I know what has become of them.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jaynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

H 12347 Pte Toews D

Twelfth Witness - Prosecution

Lieut J Sinister, an officer of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- On or about the 1st of October, 1944 the Officer Commanding asked me to assist in organizing a Reception office to the new Reception Basic DM Coy. On 3 Oct 44 I started to set up the office in Corunna Lines and we were advised on the afternoon of that day to expect a draft in from Canada on the night of the fourth. Myself, Lieut Dunlap, and one of the Sgts went to the accomodation stores and told the CQMS in charge we needed four hundred and fifty blankets. He told us to go along to the storeman and we could draw the blankets we wanted. We went along and saw the storeman and drew I believe four hundred blankets. That was sufficient for the draft we expected and I ceased my connection with the company on the afternoon of 5 Oct 44 and at the time we did not order any more blankets nor did anyone else in the company. I know nothing of any seven hundred blankets ordered for the Reception Company on the afternoon of 5 Oct 44.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 86481 CQMS Miskimmons declines to cross examine this witness
The accused L 16184 Sgt Bramell declines to cross examine this witness
The accused D 91082 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96879 Cpl Jaynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

J. Sinister, Lieut

Thirteenth Witness - Prosecution

Capt C.B. Lake., and officer of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states:- I am the Quartermaster at No 1 Canadian General Reinforcement Unit and as such I am in charge of all stores in Keida and Corunna barracks where No 1 Canadian General Reinforcement Unit is located. Blankets are kept in the blanket stores in Corunna Barracks. This blanket stores is in charge of the Assistant quartermaster who is also in charge of the accomodation stores. CQMS Miskimmons, whom I now recognize as one of the accused is the senior R.C.O. in the accomodation stores and had been for some considerable time. As senior R.C.O. he would have access to the blankets in the blanket stores. In the absence of the assistant quartermaster he would have authority to issue blankets to any coy authorized to receive them. Having heard that blankets belonging to this unit had been found in a truck in London the Commanding Officer ordered me to have the blankets counted in this unit. Canadian Barracks services performed this duty and on the 11 Oct 44 the count was duly made. A discrepancy was discovered of between seven and eight hundred blankets.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness

The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gemmell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jeynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

C.E. Lake, Capt

Fourteenth Witness - Prosecution

M 7113 Sgt Brooks, A.E., a soldier of the Canadian Army Overseas on the strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I know Sgt Johns, whom I now recognize as one of the accused. He has been in the habit of borrowing money from me which he usually pays back at the end of the month. He has been borrowing money in this fashion off and on for the last three years during which time I have known him. He has owed me at various times sums as large as £8-0-0 or occasionally larger.

. He paid me around seven or eight pounds at the end of September. He is said to receive money from such sources as the Canadian Legion for his services as an instructor.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gemmell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jeynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

M 7113 Sgt Brooks, A.E.

Fifteenth Witness - Prosecution

M 27236 Tpr Richardson, H., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I am the Regimental Barber of No 1 Canadian General Reinforcement Unit. I often lend money to various people around the unit and among other people I have loaned money to Sgt Johns who I now recognize as one of the accused. At the present time he owes me £5-0-0 and has owed it to me since the end of September. He borrowed this money while he was on leave and has not since been in a position to repay me. None of other accused here present owe me any money

my

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accused L 16124 Sgt Gemmell declines to cross examine this witness
The accused D 91022 Sgt Davies declines to cross examine this witness
The accused A 9242 Sgt Johns declines to cross examine this witness
The accused B 90427 Cpl Joynes declines to cross examine this witness
The accused B 94113 Rfn Dudley declines to cross examine this witness

Sixteenth witness - Prosecution — D 87238 Tpr Richardson, H.

D 93614 Sgt Beecher, E., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I am the senior N.C.O. in the Reception Company. This company started to operate on 4 Oct 44. We got in a large number of blankets that day. I went with the truck to get these blankets. On the 5th of October 44 more blankets came in in the afternoon. S/Sgt Miskimmons whom I now recognise as one of the accused was over at the reception company several times that day. I do not recall him being there between 1600 hrs and 1900 hrs.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accuse L16124 Sgt Gemmell declines to cross examine this witness
The accused D 91022 Sgt Davies declines to cross examine this witness
The accused A 9242 Sgt Johns declines to cross examine this witness
The accused B 90427 Cpl Joynes declines to cross examine this witness
The accused B 94113 Rfn Dudley declines to cross examine this witness

D 93614 Sgt Beecher, E.

The officer detailed to take the summary of evidence recalls a witness for the purpose of clearing up an ambiguity in the evidence given by this witness.

Examined by the officer detailed to take the summary

Q.1 You have been recalled to clear up an ambiguity in your evidence in regard to the shortage in blankets. You stated in your evidence that a blanket check showed there were seven to eight hundred short. It is not clear to me whether you mean that there are seven to eight hundred blankets short including the blankets alleged to have been discovered in London, or whether you mean there are an additional seven to eight hundred missing.

A.1. I have here a recapitulation of the blanket check taken by Canadian Barrack Services, submitted to me by Lieut Fraser, Assistant Quartermaster. The actual amount of blankets checked totals 8900 even. There were approximately 50 blankets that were not checked in the pioneers quarters and 50 blankets with the medical company which they had out on a scheme that day. That makes a grand total of 9000 checked

The unit long roll figures were 8824 as of that date. This left a surplus of of 176 blankets. Taking into consideration the 700 already in London not checked by the Canadian Barrack Services makes a total SURPLUS of 876 blankets. Mr Fraser and I calculated as closely as possible the number of G 1098 blankets belonging to individuals on unit strength all of whose G 1098 blanket were counted in the check. Taking the units strength as of that date less the incoming drafts in Reception Company we calculated that there were approximately 966 G 1098 blankets in possession of the individuals. This can only be approximate as in the length of time that the check was made it was impossible to get the exact figure. The surplus of 876 blankets against our approximation of 966 G 1098 blankets showed an apparent shortage of 90. This figure could of course be wrong to the extent of 200 either way, depending upon how accurate our estimation was of G 1098 blankets. When I speak of this day I mean Oct 11th, 1944, the day of the check.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 86431 CQ'S Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gemmell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jeynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

C.E. Lake, Capt

The accused B 64113 Rfn Dudley, R.D.C. is cautioned as follows:-
"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence upon oath.
The accused does not wish to call any witnesses.

The accused B 96927 Cpl Jeynes, J.C.M. is cautioned as follows:-
"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence upon oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused elects to give evidence upon oath:

my

The accused B 96927 Cpl Joynes, J.C.M., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:-

"On the morning of the 5th of October, 1944, at about 0930 hrs, Sgt Johns, whom I now recognize, came to me in the motor transport office and asked me if he could get a vehicle to handle some blankets going up to London. These blankets were to be delivered in London at exactly 1830 hrs. I understood that these blankets were to be sold to someone in London. Sgt Johns told me that if I would arrange the vehicle, the driver and I would get approximately £15-0-0 each, depending upon the price received for the blankets. I said that I would do so provided I could get a driver and provided that an emergency demanding the use of a lot of transport did not come up during the day. I had in mind Rifleman Dudley as the driver of the vehicle. Sgt Johns said he would have to know by 1400 hrs that day and was not satisfied unless I could tell him right away, so I said I would let him have the vehicle, intending that if anything came up that I could not use it, not to bother letting him know differently. Sgt Johns told me to have the vehicle just below the stop-lights on the Upper Hale road at exactly 1655 hrs, where it would pick up another Sgt. I understood that the blankets were to be obtained from the Hale laundry. I went out into the yard, met Dudley and asked him if he would do this. He agreed to do so. I then made out a ticket for the trip, filling it out, and then stamping it several times with the unit motor transport stamp, so that that particular ticket could not be used. I then gave Dudley a blank work ticket already stamped and told him to copy on it exactly what I had written on the first ticket. He was then to destroy the first ticket, the reason for this was so that if he was stopped or anything went wrong, my handwriting would not show up on the work ticket. I also told Dudley that once he set out he was strictly on his own and that I had no knowledge of the deal whatsoever. I also told him to make sure his tanks were full so that he would have enough gas to get to London and back, and so that he would not have to buy any anywhere. About 1500 hrs I got Dudley's genuine work ticket on which he had been operating on legitimate business, and made an entry on it for a journey via Farnham and Farnborough. The purpose of this was to protect him until he met the Sgt at the stop-lights in Hale, pick up the blankets, and was out of the immediate area of Aldershot. Once out of the immediate area of Aldershot his London ticket would protect him. As far as I know Dudley has never been mixed up in any illegal involving transport before. The only reason I approached him was I knew he was broke and going on leave soon. I have never been mixed up myself in anything like this before either.

B 96927 Cpl Joynes, J.C.M.

The accused does not wish to call any witnesses.

The accused L 11el S/Sgt Greatrix, R.J. is cautioned as follows:-

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence upon oath.

The accused does not wish to call any witnesses

The accused D 91632 Sgt Davies, J.C. is cautioned as follows:-

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence upon oath.
The accused does not wish to call any witnesses.

The accused L 18134 Sgt Gemmell, N.A. is cautioned as follows:

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence on oath.
The accused does not wish to call any witnesses.

The accused A 9243 Sgt Johns, R.T. is cautioned as follows:-

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence upon oath.
The accused does not wish to call any witnesses.

The accused B 86181 CQMS Miskimmons, R.J. is cautioned as follows:-

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence upon oath.
The accused does not wish to call any witnesses.

I certify that the foregoing summary of evidence consisting of nineteen pages was taken down by me in the presence and hearing of the accused persons on the First and Second days of November, 1944, and that R.P. 4 (C)(D)(E)(F) and (G) have been complied with.

(M.I. Magill) A/Capt
Officer detailed to take the summary of evidence

In the Field
3 Nov 44

New Scotland Yard.
9th. October, 1944.

STATEMENT of Arnest Cook, Detective Sergeant, New Scotland Yard, who saith:-

At about 5.15 pm., on 5th, October, 1944, I received information that a soldier in the Canadian Army had been endeavouring to dispose of a load of blankets which he had brought on a lorry to Aldworth, With Detective Sergeant Webb and other Officers I went to Aldworth Road, Aldworth, S.E., and after searching the vicinity saw an Army lorry Index No. CL 7628830 parked by the side of the road about 100 yards from the Elephant and Castle and facing South. The lorry was covered with a tarpaulin sheet secured by ropes.

We went up to the lorry and saw DUDLEY who was in the drivers seat. I said to him, "We are police officers. What are you doing here?". He said "I am waiting for my Sergeant who has gone to get something to eat". I said to him "Where are you from. Where are you going and what load have you got on?". DUDLEY replied, "I'm from Aldershot and I am taking a load of blankets to Catford". I said "What are you doing here, you are miles off your route". He said "I am only acting on instructions". I then asked him where his Sergeant had gone to and he said "I haven't any idea".

I looked under the tarpaulin covering and saw enough that there was in fact a large quantity of blankets on the lorry. I told DUDLEY that I was not satisfied with his explanation and that I was going to make enquiries with a view to verify his statements. He then handed me a printed form showing particulars of a load of blankets to be taken from Aldershot to Catford, saying, "This is my authority". I told him that I was still not satisfied and that enquiries would be made. DUDLEY then said "I will tell you the truth. The blankets are stolen. I made the particulars out myself and my Sergeant told me what to do when to go".

I then took DUDLEY in the lorry with me whilst we kept observation on the vicinity. Sergeant Webb, I saw, was walking from the direction of the Elephant and Castle, endeavouring to climb into the cabin of the lorry. We went up to him and Webb said "We are Police Officers, are you in charge of this lorry?". He said Yes. Sergeant Webb said "Can you explain what you are doing with it". GRAVES said "I am taking a load of blankets to Catford". The two Sergeants then spoke together and Sergeant Webb said to Graves "I have been drinking with some friends". Sergeant Webb asked him who his friends were and GRAVES said "I don't know. I have only met them casually to-night". He paused and then added "As a matter of fact I have been with another soldier from my Unit but I am not saying who he is". Sergeant Webb then said "I have reason to believe that the blankets are stolen". GRAVES said "I don't think so".

I then said to DUDLEY and GRAVES "I am not satisfied with your explanations, you are going to be arrested and taken to the Police Station where you will be detained pending enquiries". I cautioned them. GRAVES said "I don't know what it is all about". DUDLEY did not reply. They and the lorry were taken to Carter Street Police Station.

The Canadian Military Police Headquarters were then informed of the detention of DUDLEY and GRAVES and later Staff Sergeant Major, R.C.M.P. Canadian Military Police attended and took both men into his custody. I handed to Staff Sergeant Major the print I had obtained from DUDLEY.

This statement is true.

(signed) A. Cook Det.Sgt.

This is exhibit " B " referred to in the summary of evidence in the case of :-

S/Sgt Greatrix, R.J.
Sgt Gammell, N.A.
Sgt Johns R T
Rifleman Dudley R.D.C.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M

taken before me this First and second days of November, 1944

Officer taking summary

Flying Squad Office,
New Scotland Yard.
9th October, 1944.

STATEMENT of Albert WEBB, Detective Sergeant, New Scotland Yard, who saith:-

At 8-15 p.m., 5th October, 1944, I went with Detective Sergeant Cook and other officers to Walworth Road, S.E., where I saw an Army lorry Index No. CL-762820.

We approached the lorry and saw Dudley in the driver's seat. Sergeant Cook told him we were police officers and said, What are you doing here?" Dudley said, "I am waiting for my sergeant. He has gone to get something to eat." Sergeant Cook said, "Where are you from, where are you going, and what load have you got?" Dudley replied, "I've come from Aldershot and I'm taking blankets to Watford." Sergeant Cook pointed out that Dudley was miles out of his route and Dudley said, "I am only acting on instructions." Asked where his sergeant had gone to he said, "I haven't any idea."

We looked under the tarpaulin covering of the lorry and saw piles of blankets. Sergeant Cook told Dudley he was not satisfied with his story and that he would have to verify his statements. Dudley then handed Sergeant Cook an Army form giving particulars of a load of blankets to be taken from Aldershot to Watford. Dudley said, "This is my authority. Sergeant Cook told him that further enquiries would have to be made and Dudley said, "I will tell the truth. The blankets are stolen. I made the particulars out myself. My sergeant told me what to do and where to go."

Leaving an officer in charge of the lorry we kept observation in the vicinity and at about 10-15 p.m. Gratrix came from the direction of the Elephant & Castle and endeavoured to climb into the lorry. We approached him and I said to him, "We are police officers. Are you in charge of this lorry?" He said, "Yes." I asked him to explain what he was doing with it and he said, "I am taking a load of blankets to Watford." I then asked Gratrix if he would give an explanation as to where he had been during the previous two hours and he said, "I have been drinking with some friends." I asked who his friends were and Gratrix said, "I don't know. I have only met them casually to-night." He then added, "As a matter of fact I have been with another soldier from my Unit. I am not saying who he is." I then said to him, "I have reason to believe that the blankets are stolen," and Gratrix replied, "I dont think so."

Sergeant Cook then said to Dudley and Gratrix, "I am not satisfied with your explanations. You are going to be arrested and detained pending enquiries." He cautioned them and Gratrix said, "I dont know what it is all about." Dudley made no reply.

They were both then taken to Carter Street Police Station with the lorry and later Staff Sergeant Nelson, S.I.B., Canadian Military Police, attended and took both men into custody.

SIGNED "ALBERT WEBB"

Sergeant.

MM

This is exhibit "C" referred to in the summary of evidence in the case of :-

S/Sgt Greatrix, R.J. — Sgt Nicholsons, W.
Sgt Gemmell, N. — Sgt Davies, J.C.
Sgt Johns R.T — Cpl Jaynes, J.C.M
Rifleman Dudley R.D.C.

taken before me this First and second days of November, 1944

Officer taking summary

A.P.G. 3518 (Revised 1942)
[illegible]/P&S/400(2749)

TRANSPORT WORK TICKET

No.

MAKE OF VEHICLE	CLASS	UNIT	SECTION	DRIVER'S NAME	W.D. No.	MONTH & YEAR
Ford	60cwt	1 C.G.R.U.	[illegible]	[illegible].64113 Rfn. Dudley	762020	Oct 4[illegible]

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Run (17)	SPEEDOMETER Day (18)
	A		Brought forward from Work Ticket No.			A	—						—	—			
	B	Authority Hospital	Aldershot			B											
	C	C.R.U. blankets		Watford	Return	Mean Capt							1600				
	D					D											
	E					E											
	F					F											
	G					G											
	H					H											
	J					J											
	K					K											
	L					L											
	M					M											

M.P.G. for week ..... or totals carried over

(COPY)

This is exhibit D referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gummell, N.A.
Sgt Johns, R.T.
Rifleman Dudley, R.D.C.
C&W Hiskinsons W
Sgt Davies, J.C.
Cpl. Jeynes, J.C.M.

taken before me this First and Second days of November, 1944.

Officer taking summary

A.F.G. 3518 (Revised 1942)
40/P&S/400(2749)

TRANSPORT WORK TICKET

No. 0.64113

MAKE OF VEHICLE	CLASS	UNIT	SECTION	DRIVER'S NAME	W.D. No.	MONTH & YEAR
Ford	60cwt	1 C.D.R.H.	MT	Pte Mackinnon	762820	Oct 44

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Run (17)	SPEEDOMETER Day (18)
	A		Brought forward from Work Ticket No.			A	—						—	—	20776		
1.	Bwn Unit	Records	Ald	Ash	Return	Mech Capt B							14001515		20791		15
2.	Cwn Unit	C.T.R.	Ald	Farnborough	Return	Cpl Guods. C							00001530		20808		14
3.	Dwn Unit	Ed Coy	Ald	Guildford	"	Cpl Bauer D							00150930		20828		20
3.	Ewn Unit	Records	Ald	Old Stn	"	Cpl Bauer E											
3.	Fwn Unit	Ed Coy	Ald	Guildford	Return	Mech Capt F							16151730		20848		20
5.	Gwn Unit	Records	Ald	as directed		Mech Capt G							01300200		20831		3
5.	Hwn Unit	Records	Ald	Alton	Return	Mech Capt H							11301330		20856		25
5.	Jwn Unit	Vob Stores	Ald	Farnham	Farnborough	Mech Capt J							1230				
	K					K											
	L					L											
	M					M											

M.F.G. for week ..... or totals carried over

1 CGRU/9-4
5 Oct 44

Commanding Hospital,
No 23 Cdn Gen Hosp RCAMC
WATFORD

DESPATCH OF BLANKETS

1. Ref CRU/911/BLANKETS/14 dated 3 Oct 44.

2. In accordance with the instructions outlined in the above mentioned letter, arrangements have been made to supply to your Unit one thousand (1000) blankets.

3. This consignment will be picked up from the Laundry 5 Oct 44 and will be delivered to your Unit by tpt supplied by 1 CGRU.

4. As the blankets will be delivered direct from the Laundry, it is not considered necessary that the certificate stipulated in CRU instructions be supplied, as the methods of cleansing automatically free the blankets of the possibility of lice or other contaminations being present.

5. Issue Voucher will be forwarded through the normal channels.

Sgd. L. Skinner Lt.
for (S.R. Ker) Colonel, RCA
Commander,
1 Cdn Gen Rft Unit
Cdn Army (Overseas)

L/S

This is Exhibit "E" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gemmell, R.A.
Sgt Johns, R.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Riflemand Dudley, R.D.C.

taken before me this First and Second days of November, 1944

Officer taking summary

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(COPY) SIB/C-4-44

SPECIAL INVESTIGATION SECTION

6 OCT 44

STATEMENT of:

Regt. No. R-64118, Rfn. DUDLEY, R.D.C.
"A" Wing, M.T. Sect., No.1 C.G.R.W., C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. WILSON, of S.I.S. that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) R. DUDLEY

STATES:

On 4 OCT 44 around dinner-time I was working on my truck, No. L-969820 in the workshop at my Unit when one of the other men in the M.T. Section came to me and asked me if I would like to make myself some extra money. He is a friend of mine and I don't want to say his name and maybe get him into trouble. I was broke and wanted to get some money so he has to be able to go on leave, so I said "Yes I would", and asked him how it could be done. He told me there was some stuff to go to London next day and if I would take it in my truck I'd get a cut out of the deal. I said I'll do it, and he told me that if I'd take the truck round to the Blanket Hut sometime during the afternoon next day the Staff-Sergeant in charge of Mob. Stores would get the fatigue men to put on a load of blankets. All I had to do then was drive up to the Garrison Theatre where somebody would be waiting to go on to LONDON with me and look after things from there on. My friend also told me I'd better come out of Work Ticket showing a load of Hospital Blankets for LONDON.

I had two trips that morning - one to the Govt. Siding in ALDERSHOT at 01:30 hrs. and one from 11:30 hrs. to 13:30 hrs. to PITCH and return. When I got back I was installed by Cpl. JEFFS for journey to FARNHAM and FARNBOROUGH. He made out my Work Ticket for 15:30, signing it "Keen, Capt." and initialling it "F.J.", as the N.C.O. Despatcher usually does.

After lunch I didn't go to FARNHAM, but took my truck round to the Blanket Store at about 15:30 hrs. as backed up to the door. S/Sgt. FITZSIMMONS (I think that's his name - he's i/c Mob. Stores) came out, I opened up the back of the truck and got in. The S/Sgt. told the fatigue men to start loading blankets. I only said 'Hello' to him, and nothing much more was said. He told the men to count out so many blankets for Despatch Coy., and so many for other Coys. in the Unit. They were all in bundles of 10, and I'm sure the fatigue men didn't know anything about the load. They only obeyed orders. I stacked the blankets inside my truck.

During the Brew Period that morning from 10:00 to 10:30 hrs. I went into the M.T. office while no-one was in there and took a Work Ticket which I made out as instructed, signing it "Keen Capt.". I kept it with me for the trip to LONDON in the afternoon.

I didn't know how many blankets I had in the truck, but when the S/Sgt. said "O.K., that's the lot", or words to that

(Contd. OVER)

words to that/
effect, I tied up the tarpaulin and drove up to the Garrison
Theatre as arranged. I stopped there, and another Staff-Sergeant
I didn't know came up and got in the truck. I know now his name
is S/Sgt. GAUTRIX. He told me where to go from there on, as I
didn't know the road past SUTTON BUNDELL. We headed straight for
LONDON. I know we went through STEINES and KINGSTON, according
to the road signs, but I don't remember much about the roads.
I think we were pretty well into LONDON when he said to turn off
and after a lot of turns round fair-sized roads he said to pull
up in a street where there were one-wrecks. He said "wait here",
and got out for 5 or 10 minutes. I don't know where he went.
After that we did a lot more turns, and I was completely lost.
Once we passed a place where he said: "I was pinched over in there
once". We didn't stop any more until we got to the place where
the Police found us. I guess it was about 19:30 hrs. when we got
there. I knew it was getting dark. S/Sgt. GAUTRIX got out and
told me to wait. About half-an-hour later another soldier got
into the cab with me and we (S/-) - he said we'll be a little
while yet. You'd better get some sort of something to eat. I couldn't
see his face in the dark and wouldn't recognize his voice. I
couldn't tell from the way he spoke whether he was Canadian or not.
I didn't notice what sort of uniform he was wearing. I went to
a snack-bar a little way down the street and when I came back a
few minutes later the soldier got out of the cab and said: "We'll
be back".

I waited a long time and then both doors of the cab
opened, somebody got in the one and said to me what I was
doing. I said I was waiting for my chum and he'd gone to get
something to eat. They said they were Police Officers and that
they'd wait too. After a while S/Sgt. GAUTRIX came back and the
Police got out too. I didn't see any other civilians and
Police got out too. I didn't know who was supposed to be the bloods. The police
told us to drive to a Police Station nearby, which I did. One
of them drove with us. They took S/Sgt. GAUTRIX in their car.

I can honestly say that I have never been mixed up in
anything like this before in the Army or in civil life, and my
crimes in the Army have all been trivial. I only agreed to go
it on a sudden impulse because I wanted to make a little money
to go on leave, as I'd lost a bit over being 2 days A.W.L. a
little while ago. I was only in ALDERSHOT with a girl. Nobody
talked me into taking blankets to LONDON. I just didn't stop to
think how serious a thing it was. I figured it was safe enough,
too, because somebody else was doing the job and I was just
driving my truck and didn't even know where the stuff was going.
I'm sorry now I had anything to do with the business.

I have read over the above statement, which has been made
voluntarily, without fear of any threat, or hope of reward to come,
and it is true. /END.

(SGD) R. DUDLEY 6/10/44

(WITNESS ED) F.H.NELSON, S/Sgt., S.I.S..

This is exhibit "F" referred to in the summary of evidence in
the case of S/Sgt GAUTRIX, L.T. - CSMS L'Ecuyer, A. - Sgt
Gemmell, W.... - Cpl Levis, J.C. - Sgt Johns, L.T. - Cpl Jeynes
J.C.M. - Fusilier Ludley, L.M.C. taken before me this First and
Second days of November, 1944.

Officer taking summary

(COPY)

SPECIAL INVESTIGATION SECTION 7 OCT 44

STATEMENT of:

Regt. No. I-1161, S/Sgt. GRATTAN, R.J.,
Clerks' Coy., No.1 C.S.R.W., C.R.W. Ottawa

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S. that I do not have to say anything unless I wish to do so, but that whatever I may say will be taken down in writing, and may be given in evidence. To show that I understand this caution, I sign my name here.

(SGD) R. J. GRATTAN

STATES:

One day last week, I think it was Saturday Sep 30, 1944, I was in the L[illegible], Stonehope Theatre, Aberdeen, at lunch time in company with, Sgt. Gemmell, N.F., Cpl. Davies, J. and S[illegible] Johns, R.T. all of No.1 CSRW. Sgt. Gemmell stated that he knew of some blankets on which we could make some money if we could dispose of them.

On Sunday, 1 Oct 44, we were all in the Sgt's Mess (Block) No.1 CSRW we again discussed the blanket proposition. Cpl Davies said that he might be able to get rid of them. It was decided that Sgt Davies would contact him in order to see if arrangements could be made. It was decided that when we arrive in the Elephant and Castle district that 1900 hours. In the taxi station there, Sgt Davies made inquiries in the vicinity about a place to go, where Davies knew we would take the blankets. The taxi man told us of one and we went to the Black Prince public house. We went for there to the Black Prince public house, where Sgt Davies went up to some fellow [illegible] Fisher Black and they had a whispered conversation together, I did not overhear what was said but Sgt Davies said that he would take around 500 blankets if we could deliver them and that he would pay 7/6 a piece for them. He told us this after the conversation. We were to bring them up on Thursday Night and to meet him in the Black Prince. This Civilian would be about 40 years old, Five Feet Eight Inches, stocky build, reddish complexion, finger stubble, thick lips, I noticed the necks with brown coat over the waistcoat look you in the face. He was wearing a grey check cap with light brown stripes running through, a cheap dirty blue suit (light) of serge cloth, white socks and tan brown shoes.

We left the Black Prince and proceeded to the King's Head where we saw the [illegible] "Pop" as Sgt Davies told us he had already seen the man he wanted. He is quite [illegible] about 5' 6". He needed a shave as he had light grey stubble. He was wearing a black coat. I think he is employed in the Elephant and Castle tube station but he said that he had been sick and that he expected to get discharged soon, on this account.

RMG

After a couple of drinks we went back to the flat to [illegible] with "Pop" and Sgt Davies had a couple more words with [illegible] there was another civilian with him but I would not recognise him again. We spent the night in London and returned to Aldershot the next morning.

That morning I saw Sgt Gerrell and told him everything had been arranged. He said arrangements would have to be made for transport. Later in the day he saw us and said that arrangements were being made for the blankets to be ready on Thursday. Sgt. Gerrell, Sgt Johns, Sgt Davies and myself usually go into the Stenhope N. ..P.I. every day at lunch time and one day I think it was Wednesday Sgt. Johns said that transport had been arranged for the blankets on Thursday. We were together that day at noon, and Sgt Gerrell went over to talk to Capt Hicks. He then called us over and Wiskinskins said that everything was all arranged. Sgt Davies was to go to London with the truck load of blankets and Sgt Johns and I were to get him in the Black Prince. He had a letter addressed to Mr Ed Con Sen Kapp of Watford, covering shipment of 1000 blankets which would accompany him on his journey. Later it was arranged that I should go to London with the truck and the letter was handed to me so I should know where it was from. Sgt Johns and Davies would meet us on arrival at about 1630 hours in the Black Prince. We left in truck No 1 7ton GS outside the Garrison Theatre, Aldershot at 1600 hours and Wiskinskins was there to show the driver how and where the blankets were coming from. All I knew was that Wiskinskins was arranging to get them.

I met the truck at 1600 hours as arranged and we passed through Strins, Kingston, Clapham Junction to the Elephant and Castle where I had some difficulty in finding the Black Prince. We had to cruise for approximately half an hour in the area before I found the right pub. I stopped once at a Black Prince but it was closed and decided it was the wrong one. We then proceeded along the tram lines and stopped again in front of a public house station after which I found my bearings and knew where the Black Prince was situated. I parked the truck in a side street near the pub and left the driver in the cab. I went into the pub, Sgt Davies and Sgt Johns [illegible] there yet but a civilian who knew Wiskinskins was there answered the phone. We came in about an hour later and I received some arrangements but went back by another [illegible] between 20 and 2030 hours to [illegible] I would recognise Wiskinskins again if I saw him but not the other civilians.

While we were in the pub I gave Sgt Davies 6 shillings for the driver to go for supper. Sgt Davies stayed with the truck while he was away at about 1930 hours, he came back about 20 minutes [illegible] and I took him out some cigarettes and oranges. I don't know the lad and never saw him before in my life.

After we got [illegible] Sgt Johns, Sgt Davies, and I went by tube to the west end to see if we could get [illegible] store the blankets, we tried in a pub near Oxford Circus without success and took a Taxi to some club or other that [illegible] about one left him there while Sgt Davies and I went back to the truck by Taxi. I was to follow the Taxi back in the truck. Sgt Davies talking to the driver and when I pressed [illegible] truck a couple of plain-clothes police officers stopped me and asked what I was doing. I said I was going back to Aldershot and said I had better come with them and I went with them to a police post near by. Another officer followed with the driver in the truck. Later S/Sgt Nelson of the CIS came and took me and the driver back to No 6 Provost Detention Room, he questioned me for some time as to if I had any business in London with the truck and blankets which I replied "No".

I have never been concerned in anything of this kind before except for one case of selling 1000 cigs. But I was [illegible]

STATEMENT OF:

Regt. No. L-1161, S/Sgt. GRATRIX, R.J.,
Clerks' Coy., No. 1 CGRU., CRU Command.

Continued from Page 2.

and needed money, and knowing that I was not directly concerned with the taking of the blankets, and did not know the persons to whom they were going, I thought I could get enough money to go on leave. It was my job to direct the driver to the correct place, the arrangements being left to the others. I did not realize how serious an offence of this kind could be, or I would not have had anything to do with it.

I have read over the above statement which has been made voluntarily without fear of any threat or hope of favour to come and it is true.

(L 1161 GRATRIX, R.J.) S Sgt.,
Clerks Coy., No 1 CGRU

(L 1[illegible] [illegible]) S Sgt.,
BIS Can Pro Corps CKHQ.

LONDON
7 OCT 44.

This is exhibit "G" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gemmell, R.A.
Sgt Johns, R.T.
Liflamen Ludley, R.D.C.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jaynes J.C.M.

taken before me this First and Second day of November, 1944

Officer taking summary

MY

This is Exhibit " H " referred to in the

summary of evidence in the case of:-

S/Sgt Greetrix, R.J.	CQMS Miskimmons, W.
Sgt Gammell, N.A.	Sgt Davies, J.C.
Sgt Johns, R.F.	Cpl Jaynes, J.C.M.
Rifleman Dudley, R.D.C.	

taken before me this First and Second day of

November, 1944

Officer taking Summary

(COPY) STS/

SPECIAL INVESTIGATION SECTION

10 Oct 44.

STATEMENT OF:

Regt. No. L-16134, Sgt. GRAHELL, M.A.,
Clerks' Coy., No. 1 C.G.R.U., C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence.

To show that I understand this caution, I sign my name here

(SGD) M.A. GRAHELL.

STATES:

At some time after the return of 1 CGRU to ALDERSHOT it came to my knowledge that there were in the Unit three or four thousand surplus blankets. I am not sure who first told me about it. It may have been CQMS MISKIMMINS: but I was under the impression that this was common knowledge. It was mentioned several times.

Ever since last August when we were at Witley Camp, GRATRIX, Sgt JOHNS and I have been drinking somewhat heavily. About a month ago I asked Maj. LAWRENCE, O.C., Clerks' Coy., if he would post me to the Field. This was to get away from the associations and drinking habits I had formed. I was afraid that sooner or later it would get me into trouble. As I was Chief Instructor he wouldn't consider this posting at that time.

On Thurs., 28 SEP 44, after 13:15 Parade, [illegible] and I went down to the "Wellington" Public House for a drink. We had been in the habit of doing this for some time. We had a few too many and didn't get back to the Unit until about 18:30 hrs., when we learned that Maj. LAWRENCE had been enquiring for us and we'd be in trouble. Next morning Maj. LAWRENCE informed us that we were to be Reinforcement Strength. Automatically I had to revert to A/S/Sgt. to Sgt., and commenced Basic Training [illegible]

On Saturday, 30 SEP 44, between 15:00 and 17:00 hrs., Sgt. JOHNS and I were alone together in our quarters at Bks. Bks. when S/Sgt. GRATRIX and Sgt. DAVIES came in. They had been drinking, but we had not had a drink all day. We were all just about broke and the question of how to raise some money cropped up. I said: "Well, there's some buckshee blankets over in the Quartermasters' Stores" and from there on there was just some general conversation about the possibilities, although I think no-one had any serious idea of doing anything about it. Certainly I didn't myself.

Next afternoon, Sunday, 1 OCT 44, the four of us were together drinking again in the Sergeants' Mess. JOHNS had borrowed a couple of Pounds. The subject of selling blankets cropped up again and we were discussing the possibilities of disposal. Sgt. DAVIES said he knew of a man in LONDON who might take them. Later he and S/Sgt. GRATRIX went off together to LONDON and next day in the Mess at noon they told me that the arrangement for disposing of 1000 blankets had been made in LONDON and asked me to see CQMS MISKIMMINS about it.

(cont'd)

STATEMENT OF: (cont'd)
Regt. No. L-16134, Sgt GEMMELL, R.A.
Clerks' Coy., No. 1 S.G.R.U., S.E.D. Command.

see Him until next day, Tuesday, 3 OCT 44, in the NAAFI, when all I said to him was: " If you're interested in disposing of some blankets those guys over in the corner will handle it", indicating S/Sgt. GRATRIX and Sgt. DAVIES. I had not discussed the subject previously with CQMS MISKIMMINS, and that is all I said to him at the time. I had one drink with him and left the NAAFI, as I was due for Parade. Sgt JOHNS was there with the other two. CQMS MISKIMMINS said that it was OK with him if they could arrange it, and that he would see them next day about it. That night in the Mess I told them what he had said when they asked me about it.

Next day Wednesday, 4 OCT 44, I went along to the NAAFI at noon and joined S/Sgt GRATRIX, Sgt. JOHNS, and Sgt DAVIES at their table for a glass of beer. Later CQMS MISKIMMINS came in and joined us. The matter of disposal of blankets was discussed and I was told when I asked that transport had been arranged. MISKIMMINS suggested that they be picked up at the laundry next day, as had been arranged, but I didn't know when I left them where they were to come from or at what time.

Next day, Thursday, 5 OCT 44, at noon in the NAAFI, I was looking over a Racing Sheet with MISKIMMINS and figuring if I could place a good bet with a Bookie who comes in there. S/Sgt GRATRIX, Sgt. JOHNS, and Sgt. DAVIES came over and final arrangements about the blankets were made. S/Sgt. GRATRIX had a letter which I recognize as the one in your possession. I had not read it, but I knew its contents. I do not know who wrote it. A truck was to pick up the blankets that afternoon, and S/Sgt. GRATRIX or Sgt. DAVIES was to go up to LONDON with the driver. I did not know what driver or what transport would be used. Next day I learned that GRATRIX went with the truck and that Sgt. DAVIES and Sgt. JOHNS went up together by train to meet him in LONDON. I heard also that GRATRIX and the driver of the truck got pinched.

On Friday noon in our room, Sgt. JOHNS told me that the givvy in LONDON who was going to take the blankets didn't turn up. He went over to a Club in the West End to try and find some other way of disposing of them, but when he got back the truck was gone.

I did not go to LONDON and had nothing to do with the deal other than as the above. I didn't know exactly how much money was in it, or how it was to be divided. Some time during the week Sgt. DAVIES said there was 7/6 apiece coming in for the blankets, and GRATRIX said Six Shillings. To my knowledge no detailed division of the proceeds was discussed. Had they chosen to give me a cut out of the deal no doubt I would have accepted it, as I was pretty well broke. I had no doubt that they would come through with something, as I had knowledge of the project from the start, although I took no active part in the business once the others got started on it. I have been living and working with S/ Sgt. GRATRIX and Sgt. JOHNS over a period of two years, and have always been on the best of terms with them. It is only natural, therefore, that I would not give them away when I knew what was in the wind. After the arrangements had been made I did not like the set-up too much, and did not myself wish to become too deeply involved. By then, however, there was little I could do about it. I am sorry now that I had anything to do with it at all, as I have never been mixed up in anything of this kind before.

I have read over the above statement, which has been made voluntarily, without fear of any threat, or hope of favour to some and it is true. (SGD) R.A. GEMMELL 10 OCT 44

(WITNESSED) F.R. WELSON, S/Sgt, S.I.S.

This is Exhibit " *I* " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J. — CQMS Miskimmons, W.
Sgt Gemmell, R.A. — Sgt Davies, J.C.
Sgt Johns, R.F. — Cpl Jaynes, J.C.M.
Rifleman Dudley, P.D.C.

taken before me this First and Second day of November, 1954

Officer taking summary

(COPY)

SPECIAL INVESTIGATION SECTION

SECOND STATEMENT of:

Rogt. No. B-64113, Rfm. DUDLEY, R.D.C.,
"A" Wing, H.T. Sect., No.1 C.G.R.U., C.R.U. Command.

STATES:

I have read over the statement made by L-1161, S/Sgt. GRATRIX, R.J., dated 7 OCT 44, and having been again cautioned by S/Sgt. NELSON as before I wish to state that everything in it concerning our journey to LONDON, as far as I was concerned, is true. I don't know anything about the other things that happened.

(SGD) R.DUDLEY 7/10/44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

LONDON
7 OCT 44

This is Exhibit " J " referred to in the summary of evidence in the case of:-

S/Sgt Orsetrix, R.J.
Sgt Gemmell, M.A.
Sgt Johns, R.T.
Rifleman Dudley, K.D.C.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.

taken before me this First and Second day of November, 1944

Officer taking summary

SECOND STATEMENT OF:

Rank. No. L 1161 S Sgt CRUTCH, R.J.,
Clerks Coy., No. 1 CCRU, C&U Command.

I have read over the statement made by B 64113 Rfn [illegible]YDLEY, R.D.C., dated 6 OCT 44, and having been again cautioned by a Sgt NELSON as before I make to state that everything in it is true to the best of my knowledge.

(L 1161 CRUTCH, R.J.) S Sgt.,
Clerks Coy No. 1 CCRU.

(W 1889 F.J. NELSON) S Sgt.,
SIB Cdn Pr Corps CCRU.

LONDON
7 OCT 44

This is Exhibit " K " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gemmell, T.A.
Sgt Johns, R.T.
CSMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jaynes, J.C.W.
Rfn Dudley, R.D.C.

taken before me this First and Second day of November, 1944.

Officer taking summary

(COPY)

SPECIAL INVESTIGATION SECTION

SECOND STATEMENT of:

L-16134, Sgt. GRESELL, N.A.,
Clerks' Coy., No.1 C.G.R.U., C.R.T. Command.

STATES:

I have read over the statement made by L-1161, S/Sgt. GRATRIX, R.J., dated 7 OCT 44, and having again been cautioned by S/Sgt. NELSON as before I wish to state that those parts referring to me or to things which I already know about are true.

(SGD) N.A.GRESELL 10 OCT 44.

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

ALDERSHOT
10 OCT 44

STATEMENT OF:

Regt. No. D-91032, Sgt. DAVIES, J.C.,
Trade Test Board No. 10 (Clerks), H.Q. C.R.U., Att: 1 CCRU.
C.R.U. Command. (cont'd)

On Monday or Tuesday S/Sgt Gratrix, Sgts Johns and Gemmell and I discussed the matter again and it was decided that some effort be made to obtain transport for the blankets. On Tuesday Sgt Gemmell and I went to see a friend of mine at another unit who might have been able to help but he refused to have anything to do with the transaction. The person who was eventually responsible for arranging the transport I do Not know. There was some talk about getting the blankets from a laundry.

On Thursday morning, October 5th, 1944, I drafted a letter addressed to No 23 Cdn Gen Hospital concerning an imaginary shipment of blankets to that Unit. I thought it would cover the load of blankets en route to London. On it I used a fictitious file number and signed it L. Skinner Lt. I know of no such Officer and used the first name that came into my head. The letter you have in your possession is the one referred to in the previous sentence. In the NAAFI at noon I saw S/Sgt Gratrix and the two other Sgts and passed round the letter for their comments. It was suggested that I accompany the load of blankets to London, but for various reasons I declined and S/Sgt Gratrix volunteered to do this, and he took the envelope (which I had addressed) and the letter. I was not aware of the final arrangements for picking up the blankets. At approximately 2.30 p.m. S/Sgt Gratrix came to my office and requested permission from QMS Martin to have me leave early as he wanted me to assist him with some clerical work he was doing at Woking. At 3.30 p.m. I left the office to go to the Clerks Training Wing and it was then arranged that I go by rail to London with Sgt Johns to meet S/Sgt Gratrix at the Black Prince. We left on the 4.16 p.m. train and met S/Sgt Gratrix, as arranged soon after opening time.

For some time we sat in the pub drinking beer, and I took five shillings from Staff Gratrix to the driver of the truck which was outside in the street to let him get some supper. Ginger came in about 7.30 p.m. and said 'hasn't he turned up' - no name was mentioned, meaning the man who was to take the blankets. He left the pub, apparently to find the man in question, but sent back a message by a stranger, that he couldn't be found. I suggested that the truck and blankets return to Aldershot where they came from, but owing to the difficulties of that procedure it was decided to explore the possibility of making other connections. We visited several pubs and finished up in the West End at some pub or other where Sgt Johns met some people who were interested. He stayed there with them while Staff Gratrix and I went back to get the truck, hiring a taxi for the journey. When we got there, S/Sgt Gratrix went over to the truck and I gave instructions to the driver of the cab to turn around so that the truck could follow us back. We went round the block to do this and when I got back the truck and Staff Gratrix had gone. I returned to Sgt Johns and told him what had happened, so we went to Streatham for the night, returning to Aldershot in the morning.

The agreed price was 7/6d each for the blankets. Transport was to have cost £40 or £50 and I understood that the remainder of the proceeds was to be split between Staff Gratrix, Sgts Gemmell and Johns, myself, and whoever supplied the blankets.

The whole plan was evolved whilst I was under the influence of liquor, and it was through drinking activities that I had got behind financially and seized on this method of getting myself straightened out. If I had been in a sober frame of mind, I would not, under any circumstances, have considered being a party to any such undertaking, as I have never been connected

(cont'd)

(COPY)

SPECIAL INVESTIGATION SECTION

11 OCT 44

STATEMENT of:

Regt. No. D-91032, Sgt. DAVIES, J.C.,
Trade Test Board No. 10 (Clerks), H.Q. C.R.U., Att: 1 CCRU.
C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.C., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(Sgd) J.C. DAVIES

STATES:

On Sunday, 1 OCT 44, during the afternoon, I was in the Sergeants' Mess, No. 1 C.G.R.U., in company with S/Sgt. GRATRIX, Sgt. JOHNS, and Sgt. GEMMELL. We had all had quite a few drinks by then, and being more or less broke, the question of how to get some money became the subject of conversation. I remember that someone mentioned that there were 4,000 puckahas blankets to be had in the area. I don't remember who said this, and I never did hear where the blankets were supposed to be. There was quite a crowd in there, and the matter was not discussed at any length. No-one else heard this conversation. I suggested that I thought the Black Market was rife around the Elephant & Castle and so without any delay, S/Sgt Gratrix and myself were delegated to sound out the possibilities.

About a year ago I was in the Elephant & Castle district and there was a man who had suggested that any time I had anything to sell it was possible to make connections in that locality. He was addressed by one of his friends at the time as Ginger Cheek and was wearing a grey check cap. He would be about fifty years of age and about five foot nine inches in height. He had light hair and reddish complexion with a ginger/ish whiskers (stubble). He was clean shaven and I think he had a cauliflower ear. I know he was rather uncouth looking and wore a blue suit with a white scarf.

That evening S/Sgt Gratrix and I went to the Elephant and Castle district and after having a few drinks at various pubs entered the "Black Prince" and the "Ginger Cheek" (described above) was in the pub. It was suggested to him that we had a number of blankets to sell, and he replied that he was not in a position to handle them. Another man entered the pub and I would describe him as follows:-

Foreign appearance but spoke with a Cockney accent, middle age, height about 5' 9", black hair swarthy complexion, thin face, clean shaven, wearing trilby hat and dark overcoat. He came over to our table and commenced a conversation with S/Sgt Gratrix. I did not hear the topic of the conversation and once when I made a remark I was told to "shut-up" by the civilian. At this stage I was quite drunk having been drinking since 12 o'clock noon. Gratrix was comparatively sober as he had not been drinking to any extent owing to stomach trouble. We left the pub at closing time and went to Streatham, to spend the night, and on the way home I understood that it had been arranged that the blankets could be disposed of.

(cont'd)

STATEMENT OF:

Regt. No. D-91032, Sgt. DAVIES, J.C.,
Trade Test Board No. 10 (Clerks), H.Q. C.R.U., Att: 1 CGRU.
C.R.U. Command. (cont'd)

as I have never been connected/

with any criminal activities, and may Army Record will bear that out. I deeply regret that I have been involved and can only say that it is due to the abnormal circumstances.

I have read over the above statement which has been made voluntarily, without fear of any threat or hope of favour, and it is true.

(Witnessed) (Sgd)

F.R. NELSON, S/Sgt., S.I.S. J.C. DAVIES 11 OCT 44

Aldershot, 11 Oct 44

This is exhibit "L" referred to in the summary of evidence in the case of:-

L/Sgt Crestrix, R.J.	CQMS Diskimmons, W.
Sgt Cammell, H.A.	Sgt Davies, J.C.
Sgt Johns, L.T.	Col Jaynes, J.C.L.

Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

Officer taking summary

(COPY) SIS/C-4-44

SPECIAL INVESTIGATION SECTION 11 OCT 44

SECOND STATEMENT of:

Regt. No. D-91032, Sgt. DAVIES, J.C.,
Trade Test Board No.10 (Clerks), H.Q., C.R.U., Att: 1 CGRU.
C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) J.C.DAVIES

STATES:

I have read over the statement of L-1161, S/Sgt. GRATRIX, R.J., dated 7 OCT 44. I see we don't agree about several small matters. I met the Warden named "Pop" to whom he refers about a year ago last Summer, when he found a bed for myself and a pal of mine down the "Elephant and Castle" tube station one night when we were stranded. To the best of my knowledge he has never been mixed up in anything criminal. The man named "Ginger" did not agree to take the blankets, and S/Sgt. GRATRIX is definitely wrong when he says so. Otherwise, as far as it concerns me, and to the best of my knowledge, his statement is correct.

I have also read the statement of L-18134, Sgt. GEMMELL, N.A., dated 10 OCT 44, and wish to state that apart from a few minor details the essence of his statement seems to be correct.

I have read over the above statement, which has been made voluntarily, without fear of any threat, or hope of favour to come, and it is true./ENDS

(SGD) J.C.DAVIES 11 OCT 44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is exhibit "M" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, L.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Lifleman Dudley, R.D.C.

taken before me this First and Second days of November, 1944

Officer taking summary

N O T E S

"I have been told by a friend of mine who is an officer at No 1 Canadian General Reinforcement unit not to make any statement and I guess I won't be making any. I owe £8-0-0 to Sgt Brooks £5-0-0 to Tpr Richardson, the barber, and £1-0-0 to Mr Lucas down in the Wellington Pub. Other guys owe me 20 Or 30 pounds and I have got plenty of money back home if I want it. I had nothing to do with the blanket deal but I knew it was coming off. I only went to London for a steak supper at Greatrix's place. I went to a club in the West End and got a girl friend of mine to phone up a garage to store the truck. When I told her there were blankets in the truck she phoned again and none of them would have no part of it. I had nothing to do with arranging transport. I have been drinking heavy for the past three or four months since leaving Witley. I remember being with the others but did not always know what they were talking about. When I am drinking I can do my job but forget what people say to me. I figure Greatrix is O.K. Gemmell is close as can be. Gemmell always talked alone to Miskimmons. Davies is O.K. I guess, he was only trying to find a place to park the truck not to sell the blankets he never tried to sell anything. I figure Gemmell was principally responsible he has done previous jobs in Aldershot.

This is Exhibit "K" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix R.J.
Sgt Gemmell R.A.
Sgt Johns, R.T.
CSMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jaynes, J.C.M.
Rifleman Dudley, R.D.S.

taken before me this First and Second days of November, 1944.

Officer taking summary

MY

(COPY) SIS/C-4-44

SPECIAL INVESTIGATION SECTION

12 OCT 44

STATEMENT of:

Rgt. No. B-88451, CSMS MILKMANS, W.,
"A" Wing, No.1 C.G.R.U., C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) W.MILKMANS

STATES:

I am C.S.M.S. I/C Accommodation Stores, No.1 C.G.R.U., where I have been for 4 years in the same position. I have always worked hard to keep all Barrack Stores in good order, and have never at any time disposed of stores to outside individuals. Before the war I worked for 16 years for T. EATON & Co., TORONTO, in the Creamery Dept., and left there in excellent standing.

About two weeks ago a new Reception Coy. was formed in 1 CGRU and my O.C., Capt. LAKE, instructed me to collect all surplus blankets throughout the Unit for the use of this Coy. These are all accounted for on the "Long Roll". We do not as yet keep Coy. Inventories. I started at the beginning of last week with Medical, General, and Despatch Coys., keeping over 1000 in the Blanket Store to be laundered. Next morning, 4 OCT 44, I took 1000 of these blankets to the Hale Laundry in FARNHAM. I don't remember which truck or driver was detailed. I made two journeys. My Storeman, Pte. GOLD, and Mr. SHOWS, i/c R.S.A. Stores and his staff knew I was going to do this, and of course our M.T. Section knew what I was doing.

The following day, Thursday, 5 OCT 44, at about 13:30 hrs., I took the truck and driver I had all morning round Unit Lines to FARNHAM, where I collected 800 clean blankets, in bundles of ten, leaving 200 to be collected later. I put them in the Blanket Store.

Upon my return Pte. GOLD told me that Reception Coy. required a lot more blankets, and as I had requested another truck at lunch-time, when I was told I could have the first one that came in, and having despatched the one I had to another job, I told Pte. GOLD to remain in the Blanket Store, where he was working, and to start loading the first truck which arrived. I went back to my office and on my return at about 15:30 hrs., I found a truck there and gave Pte. GOLD and the Driver a hand in loading on the blankets. I'm not sure how many were there, but I kept back about 150 in the hut. I distinctly remember telling the driver to take them to Reception Coy., within Unit Lines, and Pte. GOLD heard what I said. I went off then about my business, and the first I heard that anything was wrong was next morning, when Capt. LAKE asked me what trucks I had had booked out to me and said that one had been found up in LONDON the night before. I had no reason to think that any blankets were missing, and the first I heard of this was when my Charge was read by Maj. MacLEAN.

Contd.

I have read over the above statement, which has been made voluntarily, without fear of any threat or hope of favour to come, and it is true./ENDS

(SGD) W.WILSKINSONS 12 OCT 44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is exhibit "C" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J. CQMS Wilkinsons, W.
Sgt Gemmell, R.A. Sgt Davies, J.C.
Sgt Johns, A.T. Cpl Jewnes, J.C.M.
Rifleman Dudley, J.C.M.

taken before me this First and second day of November, 1944

Officer taking summary

This is Exhibit " P " referred to in the

summary of evidence in the case of:-

S/Sgt Crentrix, R.J.
Sgt Gemmell, E.A.
Sgt Johns, R.T.
Rifleman Dudley, R.D.C.
CSMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Joynes, J.C.F.

taken before me this First and Second day of

November, 1944.

Officer taking summary

SPECIAL INVESTIGATION SECTION

10 OCT 44

SECOND STATEMENT of:

Sgt. No. B-88151, CHARLES HISKENSENS, W.
RAF Wing, No.1 C.G.R.U., C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGT) W. HISKENSENS.

STATES:

I have read over the statements of B-88151 Sgt. HISKENSENS, W., DUDLEY, R.D.F., dated 6 OCT 44, LeClei, S/Sgt. CHARLES, R.A.F., dated 7 OCT 44, and Lelelas, Sgt. [illegible], dated 10 OCT 44, and wish to state that I didn't mention anyone by name, but would no doubt recognise the man or men who took the blankets last Thursday. I did not take him to where the blankets are anywhere but to Reception Hut, although I never go to Reception Guy. In any case.

I would know S/Sgt. DAVIES, Sgt. [illegible], Cpl. DAVIES if I saw them in Rouen, but I do not know their names, and have never had anything to do with them. I have known Sgt. JOHNS as "SMOOKE" for about a year, but have never had much to do with him. Never at any time, in a section the subject of blankets to any of them, nor discussed with them their disposal nor sale. I have no reason why they should ever bring up the subject to me, or to anyone. It is possible that they may have mistaken [illegible] for me, but I don't think for a minute they would be [illegible] of anyone else in my [illegible], and I have told the best of my knowledge.

I do remember being in the NAAFI last Monday or Thursday week at noon (2 or 3 OCT 44), and a newspaper showing the runners in a horse race last Saturday, and went over to a table where SMOOKE and three or four of his friends were sitting. I sat down for a minute on the [illegible] beside their table and told them I had a good thing for the Third Race - "CALYP". I don't know what they made; but I finished my beer and went to dinner. I was only in there a few minutes. I wasn't taking any bets - just passing on a good tip. I'm interested in horses, but don't play them much just a shilling here or there when I get hold of a good thing.

I want to repeat that this whole business has been a shock to me because, never at any time have I been guilty of disposing of stores to any unauthorised person whatsoever.

I have read over the above statement, which was made voluntarily, without fear of any threats or hope of reward to come, and it is true.

(SGT) W. HISKENSENS. 10 OCT 44

(WITNESSED) W.A. NELSON, S/Sgt., S.I.S.

(W)

(COPY) SIS/C-44-44

SPECIAL INVESTIGATION SECTION

13 OCT 44

THIRD STATEMENT OF:

Sgt. No. L-11161, S/Sgt. GRATRIX, R.J.
Clerks' Coy., No. 1 C.S.R.U., C.A.U. Command.

BEGINS:

I hav been cautioned by S/Sgt. WILSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here. (SGD) R.J. GRATRIX

STATES:

I have read over the statements of L-16134, Sgt. CARROLL, J.C., dated 10 OCT 44, D-91078, Sgt. DAVIES, J.C., dated 11 OCT 44, and S-68481, CQMS MISKIMMINS, W., dated 12 OCT 44, and wish to state that prior to the occasion I mentioned, lunch-time on Thursday, 5 OCT 44, I never discussed the question of blankets with CQMS MISKIMMINS, nor did he discuss it in my presence. Further, the letter which Sgt. CARROLL says I had - the one which you took from me in LONDON - was passed round amongst the five of us. Who all read it I don't know, but it was not in my possession until later in the afternoon, when it was given to me by Sgt. DAVIES.

On the Sunday night DAVIES and I went to LONDON (1 OCT 44) I visited the Black Prince and Kings Arms Public Houses, Chobham and Castle, for the first time in my life. I had never frequented that area. To my knowledge no arrangements were completed that night between "Ginger" and Sgt. DAVIES. "Ginger" was certainly arranged the disposal of the blankets. The civilian described by Sgt. DAVIES whom "Ginger" called over had a short conversation with "Ginger", but when Sgt. DAVIES interrupted, this man told him to "shut up" and left. The topic of conversation I do not know. I had never seen "Ginger" before and had no part in the arrangements for disposing of the blankets.

CQMS MISKIMMINS was at the same conversation at which the letter mentioned above was produced, and certainly knew of all the arrangements as to the loading and the intended destination (LONDON) of the blankets.

I have read over the above statement, which has been made voluntarily, without fear of any threat or hope of favour, and it is true./ HMM.

(SGD) R.J. GRATRIX 13 OCT 44
(Witnessed) F.A. WILSON, S/Sgt., S.I.S.

This is exhibit "C" referred to in the summary of evidence in the case of :- S/Sgt Gratrix, R.J. - Sgt Carroll, J.C. - CQMS Miskimmons, W.- Sgt Davies, J.C. - Sgt Johns, J.T. - Lieutenant Dudley, J.C.M. Cpl Symons, R.M.C. taken before me this first and second day of November, 1944

Officer taking summary

(COPY)

SIS/C-4-44

SPECIAL INVESTIGATION SECTION

13 OCT 44

THIRD STATEMENT of:

L-18134, Sgt. GEMMELL, N.A.,
Clerks' Coy., No.1 C.G.R.U., C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) N.A.GEMMELL.

STATES:

I have read over the statements of D-91032, Sgt. DAVIES, J.C., dated 11 OCT 44, and B-88451, CQMS MISKIMMONS, dated 12 OCT 44. I have no comments to make concerning the first.

Concerning the statement of CQMS MISKIMMONS I can only say that he was fully aware of the arrangements to get the blankets away from the Unit as I stated before. He was more responsible than anyone.

I have read over the above statement, which has been made voluntarily, without fear of any threat, or hope of favour to come, and it is true.

(SGD) N.A.GEMMELL 13 OCT 44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is exhibit "B" referred to in the summary of evidence in the case of :-

S/Sgt Greatrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.T.
CQMS Miskimmons, E.
Sgt Davies, J.C.
Cpl Jeynes, J.C.H.
Rifleman Dudley, R.D.C.

taken before me this First and second day of November, 1944.

Officer taking summary

my

This is Exhibit "S" referred to in the

summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.E.
Rifleman Dudley, R.D.C.
COMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.O.M.

taken before me this First and Second day of

November, 1944

Officer taking summary

A.F.G. 351F (Revised 1942)
40/P&S/400(2749)

TRANSPORT WORK TICKET

No. 1 - 5783

MAKE OF VEHICLE	CLASS	UNIT	SECTION	DRIVER'S NAME	W.D. No.	MONTH & YEAR
Ford	60cwt	No. 1 C.G.R.U.	.7.	Watson, H. A.	765903	Oct 44

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Run (17)	SPEEDOMETER Day (18)
	A		Brought forward from Work Ticket No.				—						—	—	10499		
2	B Own Unit	R. check	Ald	Ald rea	Fleet	Keen Capt						11	1515	55	10505		6
2	C Own Unit	Records	Ald	Station	Return	Keen Capt							1600		10509		4
3	D Own Unit	Mob Stores	Ald	Tongham	Farnham	C L Bauer						08	3016	00	10534		15
4	E Own Unit	Mob Stores	Ald	Tongham	Farnham	Keen Capt						08	3017	15	10560		16
5	F Own Unit	Mob Stores	Ald	as directed		Keen Capt						08	3016	30	10585		25
5	G Own Unit	Records	Ald	Aldershot	Return	Keen Capt						18	1520	15	10585		2
6	H Own Unit	Records	Ald	Alton	Bramshott	Keen Capt				13		14	0016	00	10631		46
7	J Own Unit	Messing	Ald	Bordon	???????	Keen Capt	1					08	3016	00	10636		5
	K																
	L																
	M																
							1			19			—	—			133

M.P.G. for week 7 or totals carried over

No 1 Can Inf Unit C.D.
Dispatched
Oct 5 1944

Canadian Army Overseas

	TIME OUT	TO	SERIAL NUMBER OUT	IN	
4202849	1815	2000	1673	16673	??????????
[illegible]3463	1815	2130	18677	18677	??????????
4425354	1815	2130	7792	07797	??????????
4204814	1815	2130	26031	26031	Dunn
4206193	1815	2015	21012	21013	Tyldell
764196	1815	2030	18405	18405	C Olsen
765812	1815	2015	18583	18585	F Hay
765783	1815	2015	19777	19778	
7o4664	1815	2000	17590	17597	Latte
4203169	1815	2000	4449	4454	Forsyth
4203095	1815	2000	11429	11431	L Jeffray
427201	1815	2100	29032	29037	????????
[illegible]09407	1815	2000	24795	24797	????????
4204813	1815	2000	12669	12692	Wood J C
4206193	1815	2015	20009	29795	A Smith
4206713	1815		10664	10677	L Jeffray
4203463	0750	1645	29017	29032	????????
4203407	0750		11691	11691	Dunn
4513[illegible]	0745	1630	20969	20969	Olsen
764196	0915	0045	26031	26031	??????????
4204814	0800	1930	24[illegible]	24[illegible]	??????????
4206[illegible]	0815	1630	23994	24011	??????????
4204812	0815	1130	12679	12669	??????????
4206193	0815	1630	28734	28770	Arnett, T.
4202763	0740	1130	16575	16617	Livert C
4202849	0900	1100	2251	7792	C Olsen
4425[illegible]4	0720	1430	18564	18569	Anderson ?
765783	0830	1630	27749	29721	??????????
4207813	0815	2015	17560	17578	
4203169	0900	1220	18332		Dorg
765812	0900		56802	56935	Wood J C
4402065	0900	1630	25707	25791	[illegible] Anderson 4402095
4208713	0900	1000	711		?????????
4204056	0900		4395	4284	
4402095	0930	1130	5053		
193756	1030				

Records - Aftershot
" " Officer
" " " still out
" " GR
" " "
" " "
" " "
" " "
" " "
" " "
" " "
" " "
" " "
" " "
" " "
" " "
Actions " "
" " "
Slok parade " "
Mail " "
Chat Terrace " "
Sanitary " "
" " "
Coal " "
C.O.C Cove
R.C. Padre Lipkook
??????????
Neb stores area
" " stores "
" " to ??????
" " "
Capt to Brewhette
Crd to old area
??? office to old area
??????????????????

Larson
??????????
??????????
??????????
??????????
Arnett, T.
Livert C
C Olsen
Anderson ?
??????????
Dorg
Wood J C
[illegible] Anderson 4402095
?????????

[illegible] GENERAL [illegible] UNIT

DRIVERS CALL [illegible]				MOTOR [illegible] SECTION		
Vehicle	Time Out	Time In	Speedometer Out	Speedometer In	Duty performed and places visited	Drivers Signature
[illegible]201644	1300		16611		Records to Alton	
4207169	1230	1530	17576	17593	??????????	??????????
762820	1130	1330	[illegible]	20856	Records to Alton	??????????
764196	"	1315	[illegible]	21012	" "	Dunn
[illegible]202095	1130	1330	[illegible]	[illegible]	"	???????
[illegible]202056	"	15[illegible]5	717	749	"	[illegible] Anderson
195916	1[illegible]5	[illegible]00	[illegible]	15097	???????	??????
765812	1[illegible]00	1700	[illegible]	[illegible]	Records to ???????	[illegible]ddell
[illegible]208[illegible]12	1320	1500	[illegible]	[illegible]	Boot shop to Coolham	??????????
[illegible]22020	1530		[illegible]		[illegible] to Farnham [illegible] Farnborough	Dudley
[illegible]02049	1520	1730	[illegible]	[illegible]	[illegible] Padre to Lipbook	[illegible]
[illegible]04012	1630	1830	[illegible]	[illegible]	Gen Ocy ?????	??????????
[illegible]04813	1615	16[illegible]5	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]02065	1[illegible]0	1950	[illegible]	[illegible]	[illegible]	[illegible] Anderson
964196	0930					

(COPY)

SIS/C-4-44

SPECIAL INVESTIGATION SECTION

13 Oct 44

STATEMENT of:

H-59092, Pte. OLSEN, C.R.,
M.T. Sect., "A" Wing, [illegible] 1 C.G.T.U.

STATES:

On 5 Oct 44, at 01:30 hrs., I was detailed for Government Siding, ALDERSHOT, but the detail was cancelled and my next detail, with Mob. Stores, at 08:30 hrs., was over-written on the same line of my Work Ticket. I was driving all morning within Unit Lines for CQMS MISKIMMINS. I was not particularly busy. I didn't handle any furniture.

After lunch at about 14:00 hrs., at the direction of CQMS MISKIMMINS, I drove him to the Hale Laundry near FARNHAM and picked up 500 blankets which we brought back to Blanket Stores at 1 C.G.T.U. Pte Harry TROSS went with us and also Pte. GOLD. They work in the Mob. Stores.

After I delivered the blankets, CQMS MISKIMMINS told me I would not be needed further, but to pick up another S/Sgt near FARNHAM where he was working on stores, and bring him back to the Unit. That was around 15:00 hrs. I did this, and checked in my vehicle, No. L-765783, at 16:30 hrs. I had one more trip to ALDERSHOT Station that day.

I know nothing of what was going to concerning theft of blankets that day, and know nothing much about it now.

I have read over the above statement, and it is true.

(SGD) C.R. OLSEN 13 of Oct 1944.

(WITNESSED) F.E. [illegible], S/Sgt., S.I.S.

This is Exhibit "T" referred to in the summary of evidence in the case of :-

S/Sgt Greatrix R.J.
Sgt Gemmell [illegible]
Sgt Johns, [illegible]
CQMS Miskimmons, W.
Sgt Davies, J.S.
Cpl. Jeynes, J.S.M.
Rifleman Dudley, [illegible]

taken before me this First and Second days of November, 1944.

Officer taking summary

PM

(COPY) SIS/C-4-44

SPECIAL INVESTIGATION SECTION

13 OCT 44

STATEMENT of:

Regt. No. B-96927, Cpl. JEYNES, J.C.M.,
Trnspt. Sect., "A" Wing, No. 1 C.G.R.U.

BEGINS: I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) J.C. JEYNES.

STATES: I am Corporal Despatcher in the Transport Office, No. 1 C.G.R.U. On Thursday, 5 OCT 44, just before dinner, Rfn. DUDLEY, who drives L-762820, saw me as I was leaving the office and said CQMS MISKIMMINS would be needing another truck that afternoon to get blankets from the Hale Laundry near Farnham and asked if he could have the detail. I had no suspicion of any ulterior motive on his part, and just said "OK".

At approximately 15:00 hrs. in the Despatch Office I received the request for another 60 cwt. truck for FARNHAM and FARNBOROUGH from CQMS MISKIMMINS. He already had one 60 cwt. with Pte. CLEEN at Mob. Stores. He said he wanted another one to get blankets at the Hale Laundry. He seldom uses more than one big truck at a time, but I put it down to an incoming draft. I said I'd have a truck over in about 15 minutes. He did not request any particular driver, but I had DUDLEY in mind because of his request, and despatched him at about 15:30 hrs. I made out his Work Ticket for the journey. I know nothing about the other Work Ticket you have in DUDLEY's particulars for WATFORD. It is not genuine. He must have pinched it and made it out himself. I still had no reason to suspect his actions, and the first I heard that he'd been mixed up in any trouble was next morning, when he was reported to have been picked up in LONDON. I was definitely not in on the deal, and have never at any time been mixed up intentionally in any crime where Unit transport may have been used.

I have read over the above statement, which has been made voluntarily, without fear of any threat, or hope of favour, and it is true./ENDS

(SGD) J.C. JEYNES October 13th 44.
(WITNESSED) F.R. NELSON, S/Sgt., S.I.S.

This is exhibit "U" referred to in the summary of evidence in the case of :-

S/Sgt Greatrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, A.T.
CQMS Miskimmons, E.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

Officer taking summary

MY

This is Exhibit " V " referred to in the

summary of evidence in the case of:-

S/Sgt Grentrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.T.
CWM3 Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of

November, 1944.

Officer taking summary

6th Aug/44.

Statement by:- B-11[illegible], Gnr Woods, A.C.

Sir:-

On the 5th of Aug/44 I was detailed to take the Lob. Stores Sgt to Witley. We went to Witley and arrived there about 0900 hrs. We did numerous Barracks duties around the Camp. We then came back to Aldershot. We arrived back at Aldershot at about 1200 hrs. When we got back to Aldershot the Sgt said that he had to have the vehicle in the afternoon and would have to think up some way to wangle it. He then told me to report back to the garage and he would want me again at 1300 hrs. Then he said after you park the truck come to the N.A.A.F.I. and I will buy you a beer. I went to the N.A.A.F.I. and I had three (3) pints. I bought myself a pint and him. He bought the others. I then received a late meal unit from the Messing Set for a late lunch at Gorrunn Man's Mess. After lunch I picked up the Lob. Stores Sgt at his quarters in Gorrunn Barracks. He then got in the vehicle and said take me to Camberly. I drove him to where he wanted to go. I had explained to him that my work Ticket was not made out for Camberly. He replied; Oh that won't matter we won't be stopped anyway. The route I took to Camberly was via Cove. This brought us out by the Public House known to me now to be called by a male likeness. The Sgt said pull in here. This I did. He then said you can have a drink. I went inside and he bought me two (2) pints of beer. The time was about 1400 hrs. He then left the Public House and told me this way. He directed me to a Fish shop near Camberly where I was to stand. He went inside and had a glass of Pottney of his girlfriend lived. He then said take me into Camberly to the girlfriends and I will only be about 10 mins. After he came out from talking to the girl he directed me to return to Aldershot. We arrived back in Aldershot at about 1530 hrs. The Sgt then started to look around the Barracks for the Messing Set. We first went into Gorrunn Set's Mess. While there, the Messing Set bought me a half (½) pint of beer. The Set then said that we had to go to Maida Sgt's Mess. When we got there he told me to come in. The Lob. Stores Sgt then bought me a pint of beer and after I had it I noticed that there had been oil put in it. We then left the Mess and went to the Messing Stores. Unloading a tank went away and collected. Then we had tea. I drove the two Sgts to Gorrunn Set's Mess and they bought some beer. They brought this out to the truck in a box. The Lob. Stores Sgt then told me to get in the truck and take the Messing Set to Witley. This I did. When we got to Witley I was directed by the Sgt to a house near the Princess Laundry. The Sgt got out; took the box that contained the beer with him and went in the house. He was called me. He gave me two half pints of beer. The time was about 1630 hrs. I then returned to Aldershot and the Lob. Stores Sgt as he had directed that I do this when I returned. I found him at his quarters. He was just getting cleaned up. When he had finished I was told me to come and have my supper. This I did in the Sgt's Mess Gorrunn. The time by now was about 1830 or 1900 hrs. The Sgt then said he wanted to go to Camberly. Then we got to Camberly he took me to Pub where we had a pint of beer that he bought. He then said take me to the Red Lion. We then directed me to it. (We had tried another one before this but it was shut). When we got to the Red Lion he bought me three Gins and Three pints of beer. I then took him to his girl friend's house in Camberly. The time was about 2130 hrs. He then said thats all I want. I then started for home. I came home via Cove. On the way to Cove I stopped the vehicle as I did not feel very well and thought I had better straighten myself up. I must have gone to sleep for a short while. When woke up I started right back for Camp. I arrived back at about 2340 hrs.

Signed A.C. WOOD

(COPY) SIS/C-4-44

SPECIAL INVESTIGATION SECTION 18 OCT 44

STATEMENT of:

Regt. No. B-112533, Gnr. WOOD, A.C.,
M.T. Sect., "A" Wing, No.1 CGRU, CRU Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, any may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) A.C.WOOD

STATES:

I have been a driver at No.1 C.G.R.U. for over a year. I have never had much trouble in the M.T. Section, but on 6 AUG 44 I was driving CQMS MISKIMMINS who is N.C.O. i/c Mob. Stores at the Unit. He got me into trouble by taking me on a lot of unauthorized journeys and also getting me drunk. On 6 OCT 44 I was paraded before Capt. KEEN, my O.C. I made to him a statement which he typed out and which I signed. It is the statement you have in your possession. The Mob. Stores Sgt. referred to is CQMS MISKIMMINS.

While I was driving him that day (I can't remember just when), CQMS MISKIMMINS said to me: "Some day when we get a chance you and I are going to make ourselves some money on some blankets. We'll get about Forty or Fifty Pounds apiece out of it". He meant that he wanted to get me to deliver some blankets for him some place where he would sell them. I didn't know what the set-up was, and made no promises. I didn't think very serious of the idea and heard no more about it from him or anybody else. He never sold anything that day when I was with him; but when I heard last week that my friend Rfn. DUDLEY was caught with a load of blankets I figured who it was who got him to take them in his truck.

I have read over the above statement, and it is true.

(SGD) A.C.WOOD. Oct. 18/44.

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is exhibit "W" referred to in the summary of evidence in the case of :-

S/Sgt Greatrix, R.J.	CQMS Miskimmons, W.
Sgt Cammell, N.A.	Sgt Davies, J.C.
Sgt Johns, E.T.	Cpl Joynes, J.C.M.

Lifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

Officer taking summary

My

This is Exhibit " X " referred to in the

summary of evidence in the case of:-

S/Sgt Crestrix, R.J.	CSMS Miskimmons, W.
Sgt Gemmell, N.A.	Sgt Davies, J.C.
Sgt Johns, R.T.	Cpl Joynes, J.C.M.
Rifleman Dudley, R.D.C.	

taken before me this First and Second day of

November, 1944.

Officer taking summary

(SIS) SIS/C-4-44

SPECIAL INVESTIGATION SECTION

18 OCT 44

STATEMENT of:

Regt. No. L-414, Gnr. GOULD, E.G.,
"A" Wing, 1 C.G.R.U.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) E.G.GOULD

STATES:

I am attached to Accomodation Stores, 1 C.G.R.U., where, with one short absence of about 5 weeks last Summer I have been for about a year. I am a Storeman in that Department.

On Thursday, 5 OCT 44, I was working at the Accomodation Stores all day. I can't quite remember what I was doing during the morning, but after lunch I was at the Blanket Store emptying palliases in company with Pte. TOEWS, D., another Storeman. CQMS MISKIMMINS came over and told us to load 1000 dirty blankets into a 60cwt. truck driven by Dvr. OLSEN. We had about 1200 there in bundles of 10. At about 14:00 hrs. CQMS MISKIMMINS, Pte. TOEWS and I went with the truck-load of blankets to the Male Laundry near FARNHAM and left the blankets there to be cleaned. We then loaded 800 clean blankets for return to the Unit. We always exchange 1000 blankets at a time at the Laundry.

The reason why we did not bring the full 1000 back was that TOEWS made a bad job of loading at the start, it was raining hard, and we couldn't get more than 800 on the truck without getting the last ones wet. CQMS MISKIMMINS made arrangements to collect the remaining 200 and on the following morning.

We got back at about 16:00 hrs., and TOEWS and I unloaded the blankets into the store. Dvr OLSEN drove his truck away. About half-an-hour later another 60cwt. backed up to the store. CQMS MISKIMMINS arrived on his bicycle about the same time and said we had to load 700 clean blankets for Reception Coy. TOEWS and I were a bit sore, having just unloaded them, but CQMS MISKIMMINS and the driver, to whom I paid no attention, gave us a hand, and I counted out the bundles. The driver stocked them in the truck.

I distinctly remember CQMS MISKIMMINS telling the driver: "Take that to Reception". They had a fatigue party over there, so we didn't go with the truck, but CQMS MISKIMMINS followed the truck away on his bicycle. The driver never said anything at all. We worked fast because it was getting late. I do know that Reception Coy. had been hollering for blankets for several days. TOEWS and I just went on working with the palliases, and that's all I know about it.

At no time had I any reason to suppose that the blankets were to be taken elsewhere than to Reception Coy.

I have read over the above statement, and it is true.

(SGD) E.G.GOULD 18/10/44

(WITNESSED) F.R.NELSON, S/Sgt., SIS

MY

This is Exhibit " Y " referred to in the

summary of evidence in the case of:-

S/Sgt Greatrix, R.J.	CQMS Miskimmons, W.
Sgt Gammell, N.A.	Sgt Davies, J.C.
Sgt Johns, R.F.	Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.	

taken before me this First and Second day of

November, 1944

Officer taking summary

(COPY) SIS/C-44-44

SPECIAL INVESTIGATION SECTION

19 OCT 44

THIRD STATEMENT of:

Regt. No. B-64113, Rfn. DUDLEY, R.D.C.
M.T. Sect., "A" Wing, No. 1 C.G.R.U., CRU Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) R. DUDLEY

STATES:

I have read over the statement of B-96927, Cpl JEYNES, J.C.M., dated 13 OCT 44, and wish to state:

The man who asked me if I wanted to take the blankets to LONDON, and arranged it all for me was Cpl. JEYNES. I was willing to take the rap myself, and the only reason for not saying who he was at first was to keep him out of trouble if I could. I'm no squealer.

All I said in my other statement is true, except that I didn't steal the Work Ticket. During the afternoon after he spoke to me about the job Cpl. JEYNES came to me and gave me two work tickets. One he had made out as a sample for me to copy, and the other, which is the one you have, was blank. He told me to fill it in like the one he made out, and to destroy the sample for his protection. I did this that afternoon, and put the one he made out down the toilet in the Provost Lines opposite the Garage.

Cpl. JEYNES also told me I'd get about £15 for the job, and I figured he'd get a good cut out of it as well. He said: "You know who's running this, don't you?", and I said: "I have a pretty good idea" and left it at that. I figured it was CQMS MISKIMMINS, and I'm sure that's who he meant. That day he told me to use his truck and make sure I had enough.

I was busy that day like I said on a draft job. The first item was to get the blankets from the laundry at FARNHAM, but when I didn't get back till 14:00 hrs, he said: "Never mind, you can pick them up at the Blanket Store", and made out my Work Ticket for 15:30 hrs. He knew I had the other one to cover me for the LONDON trip.

I never asked Cpl. JEYNES for the job - he asked me in the first place and fixed it all up himself. I never did any jobs before for CQMS MISKIMMINS (taking stuff out, I mean) but I kind of figure others have, and I know Gnr. WOODS got caught over him once on a buckshee run when they got him drunk and he got back late.

I have read over the above statement, which I have made of my own accord, without fear of any threat or hope of favour to come, and it is the truth./ENDS

(SGD) R. DUDLEY 19/10/44

(WITNESSED) F.P. NELSON, S/Sgt., S.I.S.

(COPY)

SPECIAL INVESTIGATION SECTION

SIS/C-4-44

SECOND STATEMENT of:

19 OCT 44

Regt. No. B-96927, Cpl. JEYNES, J.C.M.,
Trnspt. Sect., "A" Wing, No. 1 C.G.H.U.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) J.C. JEYNES.

STATES:

On Thursday, 5 OCT 44, at about 09:30 hrs., Sgt. JOHNS, of Clerks' Coy., 1 CCPU, came to me in the Despatch Office, M.T. Section, where I am in charge, and asked me if I could fix him with a big truck to take some blankets to LONDON. I asked him how long it would be needed and he said from about 16:00 hrs to 19:30 hrs. I said I'd let him know later, but he said he'd have to know before 2 o'clock. He said there would be about 700 blankets and that the driver and I would receive about £40 between us, depending on what they got itr them. He didn't say who else was in the deal, but as the blankets were coming from Mob. Stores, I concluded that CQMS MISKIMMINS was in it. I told him I'd fix it for him unless some emergency arose and I'd have to cancel it. He gave instructions that the truck was to be at the stop-lights in FARNHAM just below the Sale Laundry at exactly 15:55 hrs., when a Sergeant would be there to direct the driver. He didn't say what Sergeant. I stipulated that there was to be no drinking on the trip. I told Sgt. JOHNS to expect No. L-762820, as that was the logical vehicle for the job. He said "O.K.", and left the office.

I immediately left the office to contact Rfn. DUDLEY, the driver of the 60 cwt. L-762820, and met him outside the office. I asked him if he wanted to take a buckshee trip to LONDON, and mentioned that there would be roughly £15 in it for each of us. He agreed to take the trip, and I told him I'd fix up a sample of a work-ticket for him to make out to cover his journey. I gave him his directions as instructed, warning him also against drinking, and be careful with his driving. I picked DUDLEY because I knew him and knew I could trust him. He doesn't know LONDON, but I figured somebody would show him the way.

I returned to the office, and when I was alone I stamped two blank Work Tickets, making one out for DUDLEY to copy. I stamped it several times so that it would be unusable. At about 10:00 hrs. I met Rfn. DUDLEY at the Workshop door and gave him the two work-tickets with the warning that the sample work-ticket must be destroyed after he had copied it. He agreed to do this, and I told him that he was on his own hook once he was on the road with his vehicle. I later advised him to see he had enough gas. He did a trip to ALTON, and I gave him his Work Ticket for FARNHAM and FARNBOROUGH to cover his through the area at 15:20 hrs. I can remember no change of plan, and he must have received instructions elsewhere to go to Blanket Stores.

The driver for Mob. Stores that day was Pte. [illegible], who was on that job the day before, and was warned last night

(cont'd)

(COPY) SIS/C-4-44

SPECIAL INVESTIGATION SECTION

19 OCT 44

SECOND STATEMENT of:

Regt. No. B-96927, Cpl. JEYNES, J.C.M.,
Trnspt. Sect., "A" Wing, No. 1 C.C.R.U.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) J.C. JEYNES.

STATES:

On Thursday, 5 OCT 44, at about 09:30 hrs., Sgt. JOHNS, of Clerks' Coy., 1 CCRU, came to me in the Despatch Office, M.T. Section, where I am in charge, and asked me if I could fix him with a big truck to take some blankets to LONDON. I asked him how long it would be needed and he said from about 16:00 hrs to 19:30 hrs. I said I'd let him know later, but he said he'd have to know before 2 o'clock. He said there would be about 700 blankets and that the driver and I would receive about £40 between us, depending on what they got for them. He didn't say who else was in the deal, but as the blankets were coming from Mob. Stores, I concluded that CQMS MISKIMMINS was in it. I told him I'd fix it for him unless some emergency arose and I'd have to cancel it. He gave instructions that the truck was to be at the stop-lights in FARNHAM just below the Hale Laundry at exactly 15:55 hrs., when a Sergeant would be there to direct the driver. He didn't say what Sergeant. I stipulated that there was to be no drinking on the trip. I told Sgt. JOHNS to expect No. L-762820, as that was the logical vehicle for the job. He said "O.K.", and left the office.

I immediately left the office to contact Rfn. DUDLEY, the driver of the 60 cwt. L-762820, and met him outside the office. I asked him if he wanted to take a buckshee trip to LONDON, and mentioned that there would be roughly £15 in it for each of us. He agreed to take the trip, and I told him I'd fix up a sample of a work-ticket for him to make out to cover his journey. I gave him his directions as instructed, warning him also against drinking, and be careful with his driving. I picked DUDLEY because I knew him and knew I could trust him. He doesn't know LONDON, but I figured somebody would show him the way.

I returned to the office, and when I was alone I stamped two blank Work Tickets, making one out for DUDLEY to copy. I stamped it several times so that it would be unusable. At about 10:00 hrs. I met Rfn. DUDLEY at the Workshop door and gave him the two work-tickets with the warning that the sample work-ticket must be destroyed after he had copied it. He agreed to do this, and I told him that he was on his own hook once he was on the road with his vehicle. I later advised him to see he had enough gas. He did a trip to ALTON, and I gave him his Work Ticket for FARNHAM and FARNBOROUGH to cover him through the area at 15:20 hrs. I can remember no change of plan, and he must have received instructions elsewhere to go to Blanket Stores.

The driver for Mob. Stores that day was Pte. OLSEN, who was on that job the day before, and was warned that night

(cont'd)

SECOND STATEMENT of:

Regt. No. B-96927, Cpl. JEYNES, J.C.M.,
Trnspt. Sect., "A" Wing, No. 1 C.G.R.U. (cont'd)

and was warned that night/

that he would be needed again at 08:30 hrs., 5 OCT 44. At no time during that day was any call received at the Transport Office from Mob. Stores for another vehicle. Rfn DUDLEY was sent solely in consequence of the request of Sgt JOHNS that morning. I knew nothing of any further arrangements connected with the deal.

When I made my first statement on 13 OCT 44 I figured that to tell all I knew would do nobody any good. Now I feel it isn't fair for Rfn. DUDLEY to take all the blame. I have read his statements, dated 6 OCT 44 and 19 OCT 44, and with the exception of the differences I have pointed out above, his statement is correct to the best of my knowledge. I am quite sure that he has never been mixed up in anything of this kind before. Neither have I.

I have read over the above statement, which has been made voluntarily, without fear of any threat or hope of favour to come, and it is the truth./ENDS

(SGD) J.C. JEYNES, Oct. 19/44.

(WITNESSED) F.R. NELSON, S/Sgt S.I.S.

This is Exhibit "K" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix R.J.	C.S.S. Nicklemans, W.
Sgt Cornwall N.A.	Sgt Davies, J.C.
Sgt. Johns, R.T.	Cpl Jeynes, J.C.M.

Rifleman Dudley, R.D.C.

taken before me this First and Second days of November, 1944.

Officer taking summary

(COPY) SIS/C-4-44

SPECIAL INVESTIGATION SECTION

20 OCT 44

STATEMENT of:

Regt. No. H-102347, Pte. TOEWS, D.,
"A" Wing, No.1 C.G.R.U.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) D. TOEWS.

STATES:

I am attached to Reception Stores, 1 COMD, where I have been working since JUNE, 1944.

On Thursday, 5 OCT 44, I was working in connection with Reception Stores all day. I was with Mr. DONALD ELLINGSEN at the Blanket Store emptying palliasses. At noon CPRL MISKIMMINS, who was i/c Reception Stores, told us to be at the Blanket Store at about 14:00 hrs., as we were going to get blankets for the Base Laundry. PARNHAM, having taken a shower there the day before. When the truck arrived driven by Pte. CPRL MISKIMMINS, Gnr. DOYLE and I went with it to the laundry at DUNDAS, where we started to load clean blankets in bundles of ten. CPRL MISKIMMINS said we were going to take 700, so I presume that's how I started loading. When I had loaded 400 he said we better stop loading. But I hadn't piled them very thickly on the truck, so I was but I hadn't piled them very thickly on the truck, so I was only at 800 or 900. I have no idea exactly how many I was taking the full thousand, but he said that is enough. I was thinking that any, and if I'd put on more than 800 they'd have got wet at the back of the truck.

We brought the 800 blankets and unloaded them into the Blanket Store, and the truck went away. Gnr. DOYLE and I went on working on the palliasses for a half-hour or so, when another 30 cwt. truck, driven by Pte. DUDLEY, pulled up. I asked him what he wanted, but he didn't seem to know, and said CPRL MISKIMMINS wanted him to report there. A minute or two afterwards CPRL MISKIMMINS came up on his bicycle and told us to load up 700 blankets for Reception Coy. We thought that kind of funny because we could have taken them straight over in the first place, but he said that's what they wanted now, so we just got busy and loaded them and the driver stowed them in the back of his truck. Gnr. DOYLE counted them as CPRL MISKIMMINS's instructions. I didn't hear any instructions given to the driver, but when we had finished loading at about 16:30 hrs. the truck pulled away with the blankets, and that's the last I saw of them. I figured they were for Reception Coy., and CPRL MISKIMMINS told us we didn't have to go with the truck because there was a Petligne down there to unload it. I had no reason at all to suspect that there was anything wrong, and just went on with my work.

(Cont'd OVER)

with my work/.

I didn't know anything had happened until next day, when I heard some talk around the Camp that the truck-load of blankets had been picked up in LONDON.

I have read over the above statement, and it is correct./ENDS

(SGD) D. BOEWS 20-10-44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is Exhibit "Z 1" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix R.J.
Sgt Gemmell H.A.
Sgt Johns, R.T.
Cpl Minkimmons, W.
Sgt Davies, J.C.
Cpl Haynes, J.C.M.
Rifleman Dudley, [illegible]

taken before me this First and Second days of November, 1944.

Officer taking summary

SPECIAL INVESTIGATION SECTION 24 OCT 44

STATEMENT of:

Rest. No. B-86481 C.W.N.W. WISKIMMINS, W.,
W/M Wing, No. 1 C.G.W.U., C.W.N. Canada.

BEGINS:

I have been cautioned by S/Sgt. NUTSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

STATES:

Kevin [illegible] statement to Civil Police concerning [illegible] through [illegible] sheets which I have from Unit across [illegible] sheets, tells, in effect that I want to tell Sgt. CHUTILL [illegible] civilian in charge of that Unit, I want to tell you the truth [illegible] blankets which [illegible] JEYNES, and Pte. DUDLEY, the latter [illegible] which I have that [illegible] sheets [illegible] sheets refers to the [illegible] sheets, [illegible] easy, to [illegible] writing, [illegible] I have previously returned their equivalent to the R.A.O.C. Salvage Dump at TORNHILL, never I write previously, [illegible] I kept this furniture for several weeks [illegible] furniture parties [illegible] speaker telling him, [illegible] at [illegible] over [illegible] night after the [illegible] court.

[illegible] day or two later Sgt. CHUTILL went [illegible] and told me that he [illegible] blankets. He didn't tell [illegible] it would be worth [illegible] the 700 blankets when it [illegible] first week of October, 1944. I saw Sgt. CHUTILL each week that week in the [illegible] the cell when I [illegible] of the cell, and [illegible] Sgt. CHUTILL. He told me that he [illegible] the blankets on Thursday, 5 OCT 44. I don't know what was carrying transport, but I know there [illegible] week. At that time I had 1000 blankets at the Male Laundry, FARNHILL, and as I thought that would be [illegible] I told Sgt. CHUTILL to have truck there at 13:00 hrs., but [illegible] day. I changed my mind [illegible] 700, so I brought [illegible] after dinner that day. I was [illegible] didn't get [illegible] his truck went [illegible] pull in there, went over [illegible] SHOULD not TOUCH [illegible] truck was [illegible]

[illegible] [illegible] [illegible] [

When the truck was/
loaded I began to feel a bit guilty and said to the driver, Pte.
DUDLEY: "Slim, take them to Reception Coy. To Hell with it!" He said:
"O.K., Bill", and drove off. He looked a bit scared, too. I thought he
was going to do as I said, and even went down to Reception Coy. on
my bike to see if he was there. I would have had them unloaded right
there, the way I was feeling, honest to God, but he didn't show up.
Neither Ptes. GOULD or TOBWS knew what was going on, and I really
meant what I said to the driver. I knew something had gone wrong
next morning when Capt. LANE called me into his office to ask me
about the truck which was missing. That is all I had to do with the
deal, and I'm sorry now that I ever had any part in it. I was not
short of money, and I honestly don't know whatever made me consent to
it.

It is true that Reception Coy. needed more blankets, as those I
had previously sent were dirty, and had to be replaced by clean ones.
Some fellow I don't know tipped me off a few days previously that the
police in ALDERSHOT were watching for a blanket deal that was supposed
to be coming off, and that is why I was getting a bit scared about
the whole thing.

The statements I previously made are partly untrue, because I
know I had a surplus to cover the loss and I thought that I might be
relieved of blame.

I admit that for a long time past I have been scrounging stuff
to make good deficiencies in the Unit, but I can truthfully say that
apart from the above two instances, when I disposed of stores to Sgt.
GEMMELL, I have never sent anything to unauthorized persons, or sold or
disposed of stores to civilians. I don't think that a complete Unit
inventory would show any shortages in my department. It might even show
a surplus.

I have read over the above statement, which has been made
voluntarily, of my own free will, without fear of any threat, or hope
of favour from any person or persons, and it is all true.

(SGD) _____ C.Q.M.S.,
B-88451, W. MISKIMMONS,
"A" Wing, No.1 C.G.R.U.

(WITNESSED) _____ S/Sgt.
T-1889, F.N.NELSON
S.I.S., Con. Provost Corps, CMHQ.

ALDERSHOT
24 OCT 44

This is Exhibit "Z2" referred to in the summary of evidence in
the case of:-

S/Sgt Greatrix R.J.
Sgt Gemmell N.A.
Sgt Johns, R.T.
Riflemen Dudley, R.D.C.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Joynes, J.C.M.

taken before me this First and Second days of November, 1944.

_____
Officer taking summary

SIS/ C-4-44

SPECIAL INVESTIGATION SECTION

25 OCT 44

STATEMENT of:

Regt. No. L-18134, Sgt. GEMMEL, N.A.
Clerks' Coy., No. 1 C.G.R.U., C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understant this caution, I sign my name here.

STATES:

I have read over the statement of CQMS MISKIMMINS, dated 24 OCT 44. There is one thing I want to say, and that is that I was never concerned at any time with anyone in disposing of tables or a leather-backed chair which I saw yesterday in the Police Station at ALDERSHOT. At the present time I have no comments to make on the remainder of his statement.

I have read over the above statement, which has been made voluntarily, and it is true.

(SGD) SGT.
L-18134, N.A. GEMMELL,
Clerks' Coy., No. 1 C.G.R.U.

(WITNESSED)
S/SGT.
[illegible], F.R. NELSON,
S.I.S., Con. Provost Corps, CNHQ.

ALDERSHOT
29 OCT 44

This is Exhibit "23" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix R.J.	CQMS Miskimmons, W.
Sgt Gemmell N.A.	Sgt Davies, J.C.
Sgt Johns, D.T.	Cpl Jaynes, J.C.M.

Rifleman Dudley, R.D.C.

taken before me this First and Second days of November, 1944.

Officer taking summary

my

COPY

27 Nov 44

c Col D.L. Redman,
PERMANENT PRESIDENT, Courts Martial
HQ CRU.

G.C.M. - Tpr Dudley

1. At the recent Court Martial of the m/n OR, he declar that he had been threatened by myself, as officer taking the Summary of Evidence. He called, as witnesses, six ORs on whom a Summary was also being taken.

2. I feel that in view of his evidence, an explanation is required.

3. The nature of this threat was that I had stated that I would make a pitchfork out of the evidence against them by laying a great number of charges.

4. The facts are: when Dudley and the remainder of the accused appeared before me 1 Nov 44 for the purpose of taking a Summary of Evidence, I carefully explained to them their rights at the Summary; told them that if they had witnesses for the defence they could call them or not as they pleased; told them that in due course they would be given an opportunity of making a statement in regard to the charges but that they did not have to do this and also advised them as to their rights in cross-examining the witnesses. I then read the charge sheets to them; explained to them that the charges now laid against them were not necessarily the charges which would finally be laid; explained also that it was quite probable that more than one charge would be laid against them depending upon the evidence brought out at the summary.

5. At this point Dudley himself asked me why more than one charge would be laid and whether it was legal to do this. I told him that it was and in order to make the position clearer to him I stated that Law was like a pitchfork, that in committing a crime a man frequently runs afoul of one tine of the fork and at the same time runs xfxxx into another, pointing out to him that he was charged with stealing blankets, that apparently his share in the crime was to drive a veh to London and that in doing so he laid himself open to a possible charge of illegal use of the veh. This is an explanation of the 'pitchfork' phrase, about which the accused talked at Dudley's trial.

6. I have taken a great many Summaries of Evidence and have always been particularly careful to explain the exact position of the accused. In this case I was even more careful than usual because of the serious nature of the charges. I took the greatest pains to see that all the accused thoroughly understood what was going on. Whenever any witnesses referred to any of the accused by name or when any evidence was brought out mentioning any of the accused, or in any way affected them, I invariably called the attention of the man concerned to the fact and once more explained to him that at the end of the witnesses' evidence, he had the right to cross-examine him. I was particularly careful to do this in the case of Tpr Dudley, who obviously had only a vague idea of what was going on, and in the case of Sgt Johns, against whom the evidence was not particularly strong, but who was affected because all the witnesses mentioned his name and all of the accused, except himself, had made statements involving him. None of the accused were in any way prejudiced in their defence by anything stated or done at the Summary. All of them were treated with great fairness and consideration and the entire Summary was taken in the strictest accord with the Rules of Procedure.

7. For your information, please.

(Signed) M.L. Magill, Capt
J C.A.C.R.U.

27 Nov 44

Lt Col D.L. Redman
Permanent President Courts Martial
Hq, CRU

F.C.C.M. - Tpr. Dudley

1. At the recent Court Martial of the m/n OR, he declared that he had been threatened by myself, as officer taking the Summary of Evidence. He called, as witnesses, six ORs on whom a Summary was also being taken.

2. I feel that in view of his evidence, an explanation is required.

3. The nature of this threat was that I had stated that I would make a pitchfork out of the evidence against them by laying a great number of charges.

4. The facts are: when Dudley and the remainder of the accused appeared before me on 1 Nov 44 for the purpose of taking a Summary of Evidence, I carefully explained to them their rights at the Summary; told them that if they had witnesses for the defence they could call them or not as they pleased; told them that in due course they would be given an opportunity of making a statement in regard to the charges but that they did not have to do this and also advised them as to their rights in cross-examining the witnesses. I then read the charge sheets to them; explained to them that the charges now laid against them were not necessarily the charges which would finally be laid; explained also that it was quite probable that more then one charge would be laid against them depending upon the evidence brought out at the Summary.

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(over)

7. For your information, please.

(M.L. Magill) Capt
3 C.A.C.R.U.

LIST OF EXHIBITS FOR THE PROSECUTION

A - Statement of Det Sgt E. Cook New Scotland Yard d/9 Oct 44

B - Statement of Det Sgt A. Webb New Scotland Yard d/9 Oct 44

C - Transport Ticket

D - Transport Ticket

E - Copy of letter d/5 Oct 44 re despatch of blankets

F - Statement of B64113 Rfn Dudley, R.D.C. No. 1 C.G.R.U. d/6 Oct 44

G - Statement of L1161 S/Sgt Gratrix R.J. No. 1 C.G.R.U. d/7 Oct 44

H - Statement of L18134 Sgt Gemmell N.A. No. 1 C.G.R.U. d/10 Oct 44

I - Second Statement of B64113 Rfn Dudley R.D.C. No. 1 C.G.R.U. d/

J - Second Statement of L1161 S/Sgt Gratrix R.J. No. 1 C.G.R.U.

K - Second Statement of L18134 Sgt Gemmell N.A. No. 1 C.G.R.U. d/11 Oct 44

L - Statement of D91032 Sgt Davies J.C. No. 1 C.G.R.U. d/11 Oct 44

M - Second Statement of D91032 Sgt Davies J.C. No. 1 C.G.R.U. d/11 Oct 44

N - NOTES of S/Sgt NELSON

O - Statement of C&MS Miskimmins W. No. 1 C.G.R.U. d/12 Oct 44

P - Second Statement of B88451 C&MS Miskimmins W. No. 1 C.G.R.U. d/12 Oct 44

Q - Third Statement of L1161 S/Sgt Gratrix No. 1 C.G.R.U. d/13 Oct 44

R - Third Statement of Sgt Gemmell N.A. No. 1 C.G.R.U. d/13 Oct 44

S - Transport Work Ticket, Drivers Call Sheet

T - Statement of H59092 Pte Olsen C.R. No. 1 C.G.R.U. d/13 Oct 44

U - Statement of B96927 Cpl Jeynes J.C.M. No. 1 C.G.R.U. d/13 Oct 44

V - Statement of B112533 Gnr Woods A.C. No. 1 C.G.R.U. d/6 Aug 44

W - Statement of B112533 Gnr Woods A.C. No. 1 C.G.R.U. d/18 Oct 44

X - Statement of L414 Gnr Gould R.G. No. 1 C.G.R.U. d/18 Oct 44

Y - Third Statement of B64113 Rfn Dudley R.D.C. No. 1 C.G.R.U. d/19 Oct 44

Z - Second Statement of B96927 Cpl Jeynes J.C.M. No. 1 C.G.R.U. d/19 Oct 44

Z1- Statement of H102347 Pte Toews D. No. 1 C.G.R.U. d/20 Oct 44

Z2- Statement of B88451 C&MS Miskimmins W. No. 1 C.G.R.U. d/24 Oct 44

Z3- Statement of L18134 Sgt Gemmel N.A. No. 1 C.G.R.U. d/25 Oct 44

--- 700 blankets

LIST OF WITNESSES FOR THE PROSECUTION

Det. Sgt	E. Cook	New Scotland Yard
Det. Sgt	A. Webb	New Scotland Yard
✓ U1889	S/Sgt Nelson	S.I.S. CMHQ ✓
B51699	Sgt Childs W.C.	No. 1 C.G.R.U.
Capt.	R.N. Keen	No. 1 C.G.R.U.
Lieut.	J.C. Drager	No. 1 C.G.R.U.
H59092	Pte Olsen C.R.	No. 1 C.G.R.U.
D91040	MSM Ennor C.	No. 1 Adm Tpt Coy
B112533	Gnr Wood A.C.	No.1 C.G.R.U.
L414	Gnr Gould E.G.	No. 1 C.G.R.U.
H12347	Pte Toews D.	No. 1 C.G.R.U.
Lieut	J. Simister	No. 1 C.G.R.U.
✓ Capt.	C.E. Lake ✓	No. 1 C.G.R.U.
M7113	Sgt Brooks A.E.	No. 1 C.G.R.U.
✓ M27236	Tpr Richardson H.	No. 1 C.G.R.U.
D93614	Sgt Beecher E.	No. 1 C.G.R.U.

Gemmel

Gratrix

Jeynes

Davies

LIST OF EXHIBITS FOR THE PROSECUTION

A - Statement of Det Sgt E. Cook New Scotland Yard d/9 Oct 44

B - Statement of Det Sgt A. Webb New Scotland Yard d/9 Oct 44

C - Transport Ticket

D - Transport Ticket

E - Copy of letter d/5 Oct 44 re despatch of blankets

F - Statement of B64113 Rfn Dudley R.B.C. No. 1 C.G.R.V. d/6 Oct 44

G - Statement of L1161 S/Sgt Gratrix R.J. No. 1 C.G.R.V. d/7 Oct 44

H - Statement of L18134 Sgt Gemmell N.A. No. 1 C.G.R.V. d/10 Oct 44

I - Second Statement of B64113 Rfn Dudley R.B.C. No. 1 C.G.R.V. d/

J - Second Statement of L1161 S/Sgt Gratrix R.J. No. 1 C.G.R.V.

K - Second Statement of L18134 Sgt Gemmell N.A. No. 1 C.G.R.V. d/11 Oct 44

L - Statement of D91032 Sgt Davies J.C. No. 1 C.G.R.V. d/11 Oct 44

M - Second Statement of D91032 Sgt Davies J.C. No. 1 C.G.R.V. d/11 Oct 44

N - NOTES of S/Sgt NELSON

O - Statement of C MS Miskimmins W. No. 1 C.G.R.V. d/12 Oct 44

P - Second Statement of B88431 C MS Miskimmins W. No. 1 C.G.R.V. d/12 Oct 44

Q - Third Statement of L1161 S/Sgt Gratrix No. 1 C.G.R.V. d/13 Oct 44

R - Third Statement of Sgt Gemmell N.A. No. 1 C.G.R.V. d/13 Oct 44

S - Transport Work Ticket, Drivers Call Sheet

T - Statement of H59098 Pte Olsen C.R. No. 1 C.G.R.V. d/13 Oct 44

U - Statement of B96927 Cpl Jeynes J.C.M. No. 1 C.G.R.V. d/13 Oct 44

V - Statement of B112533 Gnr Woods A.C. No. 1 C.G.R.V. d/6 Aug 44

W - Statement of B112533 Gnr Woods A.C. No. 1 C.G.R.V. d/18 Oct 44

X - Statement of L414 Gnr Gould A.G. No. 1 C.G.R.V. d/18 Oct 44

Y - Third Statement of B64113 Rfn Dudley R.B.C. No. 1 C.G.R.V. d/19 Oct 44

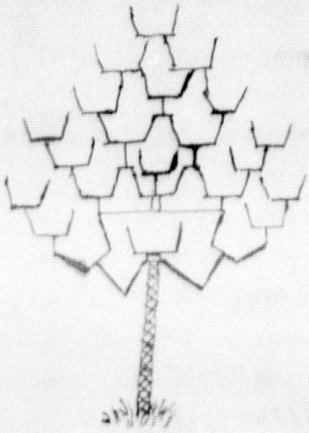
Z - Second Statement of B96927 Cpl Jeynes J.C.M. No. 1 C.G.R.V. d/19 Oct 44

Z1- Statement of H102347 Pte Toews D. No. 1 C.G.R.V. d/20 Oct 44

Z2- Statement of B88431 C MS Miskimmins W. No. 1 C.G.R.V. d/24 Oct 44

Z3- Statement of L18134 Sgt Gemmel N.A. No. 1 C.G.R.V. d/25 Oct 44

--- 700 blankets



4B-7

SM Dudley W.S.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-12524 CSM William George DUDLEY 1 CASCRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A.19	NOT GUILTY	GUILTY	
2nd A.A.9(2)	NOT GUILTY	GUILTY	
3rd A.A.40	NOT GUILTY	GUILTY	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence of~~ ~~imprisonment~~ beginning on ~~(date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be Reduced to the Rank of Corporal.

(Sgd) [signature] 18 Oct/44 [signature]

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(2), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 23 Oct 44 (Sgd) [signature] Brig

Commanding B Group CRU

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
C-12524 CSM DUDLEY W.G.	26 Oct 44	(W.H. Copeland) Lt-col A/Comd No 1 Hold Wing
Part II Order 254 dated 27 Oct 44		1 Can. A.S.C. Rft Unit

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

1 Can. A.S.C. Reinf. Unit

IN REPLY PLEASE QUOTE RECORDED AT CMHQ IN AB 160, 48-7

RECEIVED APR 1944 JAG BRANCH

FIELD GENERAL COURT-MARTIAL

(CPA86 (In lieu of AFA3) 40/P.A.B.(1808 (2864))

Convened by (Name) Brig A.B. Connelly Comd "B" Gp CRU dated 16 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C-12524	CSM	William George	DUDLEY	1 CASCRU

PROCEEDINGS REVIEWED 4 Nov 44

[signature]

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Held in the Fd in (country) England on (date(s)) 18 OCT 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~was~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~was~~ brought before the Court. At 1700 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused ~~Do you object to~~ P 38776 ~~as interpreter? Ans~~

~~The interpreter is sworn.~~(1) Do you object to S.G.T. J.H. M.C.T.C. J.E. as shorthand writer? Ans N.O.S.I.R.

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans N.O.S.I.R.

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-col	D.L. Redman, V.D. A.C.	HQ CRU
Member	CAPT	W.M. RICE	1 CERU
Member	LT	L.V. BUSCH	1 CSRU
~~Judge Advocate~~			
Prosecutor	LT	W.D. FALLAFER	1 CASCRU
Defending Offr	LT	J.H. RESTALL	1 CASCRU

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans YES(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DII p 3.)

A8. The accused before arraignment make(s) (no) ~~a~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 6.2(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~was~~ arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does ~~does not~~ object to the charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. SCENOTE-ALL

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is sworn and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO - SIR (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (his) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(Q).*)

D3. The evidence for the Prosecution is taken.(1) NOTE-MADE
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 2nd and 3rd charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 2nd and 3rd charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty on the latter charge(s)~~.(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans WITH CR - SIR Do you intend to call witnesses on your behalf ?
Ans YES SIR Are they witnesses as to character only ? Ans YES SIR
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 3.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTE-MADE
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 895. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(as).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

~~1a. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)~~
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is ordered and signed.(2)~~
(*1. AA 54(2) (d), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D8. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO - SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 253 or MFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES AND WE'RE NOTE-MADE (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried separately see RP 26(b). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, (16)(A), KR Con 308, 330, 563-566, Overseas RO 309, 2123, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused. C.12524 Company Sergeant Major William George DUDLEY, RCASC, on strength of 1 Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas, is charged with, When On Active Service:-

1st Charge
Sec 1c
Army Act

DRUNKENESS

in that he

IN THE FIELD, at approximately 2130 hours 6 October 1944 in the Sergeant's Mess at 1 Cdn ASC Rft Unit was drunk.

2nd Charge
Sec 3 (2)
Army Act

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

IN THE FIELD, at approximately 2215 hours 6 October 1944, DID NOT LEAVE the Sergeant's Mess of 1 Cdn ASC Rft Unit when ordered to do so by C.30123 RSM Shaw, C.G., of 1 Cdn ASC Rft Unit.

3rd Charge
Sec 40
Army Act

AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

IN THE FIELD, between 2100 hours and 2230 hours on 6 October 1944, in the Sergeant's Mess, 1 Cdn ASC Rft Unit, did constitute a nuisance and use abusive language and become quarrelsome by gripping U.1692 CSM Comley, A.J. in an attempt to drag him outside the Sergeant's Mess, during which time the accused said, "Come on outside and fight" or words to that effect.

(H.P. Bonnick)Col.,
Comd.,
1 Cdn ASC Rft Unit

IN THE FIELD
11 OCTOBER 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(A.B. Connelly) Brig
Comd "B" Gp
Cdn Rft Units.

16 Oct 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (1868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-12524		CSM	William George	DUDLEY	1 CASCRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 15 Oct 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint an Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D.L. Redmon, V.D.	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by	1 CSRU
Lieutenant	to be detailed by	1 CSRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any? RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(A.B. Connelly) (Signed personally. RP 105 fn 2.) (Rank.)

Date 16 Oct 44

Commanding
(A.B. Connelly) Brig Convening Officer.
Cord "D" Gp CRU

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

18 October 1940.

I hereby certify that I have medically examined C-1252, Cpl Dudley, W.G. of 1 Cdn ASC Rft Unit and find him fit ~~unfit~~ to undergo Trial by Field General Court Martial.

M. Frankelstein Capt
(Medical Officer)
1 Cdn ASC Rft Unit
Cdn Army England

F.G.C.M. IN THE CASE OF

C 12524 CSM DUDLEY, W.G., 1 CASCRU

18 OCT 1944

OBJECTION BY THE DEF OFFR (to 3rd Charge) Note A-9

Sir,

Before the accused is asked to plead to the 3rd Charge I wish to object to it on the ground that the charge is not in accordance with RP, and in fact the accused is being asked to plead to two charges arising from a single transaction. In this regard I refer the Court to MML, Page 624, Sub note 3. I refer the Court further to MML, Chapter 3, para 47; taking into consideration the 1st Charge which I have not objected to. I submit for the consideration of the Court that in this case any evidence which might be advanced by the Prosecution in order to prove that the accused did, in the words of the 3rd Charge, "consititute a nuisance" or that he did use abusive language, or that he did become quarrelsome, all of which I do not admit but deny. I say it is merely a repitition of any evidence which might be adduced to prove the charge of drunkenness. Therefore I submit that in effect what the charge sheet discloses are two charges arising from one single transaction. I raise this point under RP 32.

REPLY BY THE PROSECUTOR

Sir,

I leave this legal question to the Court.

COURT IS CLOSED TO CONSIDER THE OBJECTION

COURT IS RE OPENED AND THE PRESIDENT ANNOUNCES THAT THE OBJECTION IS OVERRULED.

The accused was then arraigned on the 3rd Charge.

EVIDENCE FOR THE PROSECUTION D-3

1st WITNESS FOR THE PROSECUTION

Capt R.H. TURNBULL, on strength No 1 CASCRU, having been duly sworn states:

Q 1 Will you tell the Court what took place on the 6 Oct 44 in connection with CSM Dudley?

A 1 On the 6 Oct I was unit field offr and during my tour of duty at about 2215 hours I was visiting the guard room where I signed the visitors book when a runner came in and said the RSM requested an escort to remove the accused, CSM Dudley, whom I see here, from the sgts mess. I sent the runner back to the mess to tell RSM Shaw that the CSM should be removed to his quarters with an escort of equivalent rank. In a few minutes the runner returned with a message and as a result of it I proceeded to the sgts mess accompanied by the camp Sgt Major for the day and two L/Cpls who were members of the RP. When I arrived there I had conversation with the RSM concerning the removal of the accused. I proceeded into the sgts mess and into the bar where I found the accused leaning against a mess table. I could see that he had been drinking but he was leaning against the table and I could not judge as to what extent. I informed him that I was the field offr of the day and he replied "I am very pleased to meet you, will you have a drink with me" I informed him that I was there on duty and at the request of the RSM I was going to remove him to the guard room, to which he replied "being a WO I am entitled to an escort of my own rank and to be placed in my own quarters."

I explained that I was quite within my rights placing him in the guard room for his own protection. I then instructed the escorts, the L/Cpls of the RP to remove the accused to the guard room. In doing so one L/Cpl took hold of the CSM's arm which he resented very much, and pulled his arm away saying he was quite able to walk. I then instructed the escort to remove him immediately. I remained for a few minutes in conversation with the RSM, then I proceeded to the guard room. At the guard room the accused again brought up the question of his rank and asked if he could have the CO's decision. I went into detail and explained that it was laid down that any rank in the army, commissioned or otherwise could be placed in the gard room if he became boisterous or intoxicated. I took a great deal of time to explain the situation to him and told him it was for his own protection that he was being placed in the cells. When he got away from the table in the mess I saw that he was very drunk. After explaining to him and he still wished the CO's decision I went to the CO's residence and explained the circumstances as I knew them, I was instructed by the CO to place CSM Dudley in a separate cell. I returned to the guard room and gave the CO's instructions to the NCO IC the guard, the accused appeared to be satisfied with the decision and was placed in a cell.

Q2 You mentioned that the accused was in a very intoxicated conditio did you see the accused in any other capacity as being quarrelsome?

A2 I walked into the ante room and he was standing peacefully leaning on the table. I believe it was a card table. He was talking to no one. He was not quarrelling with anyone.

CROSS EXAMINATION BY THE DEP OVTR

Q3 In your evidence you stated that at approx 2215 hours you first received word that the RSM requested two RP?

A3 Yes.

Q4 Approx how long elapsed from the time you first received word from the RSM until you acutally saw the accused?

A 4 I would say it would not be more than at the very outside 5 or 6 minutes from the time I first received the request until I arrived personally at the ante room of the mess. It is a very short distance from the guard room, I would say 200 yards.

Q5 Taking a fair estimate you then saw the accused at no later than 2220 hours, is that correct?

A5 Yes.

Q6 At no time prior to 2220 hours had you seen the accused that evening?

A6 No.

Q7 When you arrived at the mess was there a great crowd?

A7 There was no one in the front of the mess, I walked into the hallway and asked for RSM who appeared at that moment. I went straight into the ante room after a bit of talk with the RSM and asked him if he could handle it himself, I went straight into the ante room. There were three CSMs, the RSM, and seven or eight s/sgts and sgts in the mess at the time. I am sure there were three CSMs.

Q8 Did you at any time arrest the accused or did you place him under protective custody?

A8 I did not arrest him, I understood that the accused had been placed under arrest by the RSM, I merely removed him from the mess and placed him in the guard room. I did not place him under arrest. I had no reason to place the accused under arrest he had done nothing to warrant it as far as I was concerned.

Q9 Did you see the accused walk out of the mess?
A9 Yes, he left walking with the two L/Cpls, RPs following him and followed by Camp Sgt Major, S/Sgt Kemp. The escorts did not place their hands on him again except as the accused was going through the door one of the cpls put his hand on the accused shoulder, the accused said "I am not going to run away" and the three went out the door.

Q10 you are acquainted with the road on which they would follow towards the guard room xxxxxxxx from the mess, are there any trees along it?
A10 Yes there are xx large trees on either side.

Q11 Was it a dark night?
A11 Yes it was very dark and we had no flashlight, it was very dark.

In the opinion of the court it is unnecessary to comply with RP 83(B)

2nd WITNESS FOR THE PROSECUTION
G 30123 RSM C.G. SHAW, on strength No 1 CASCRU, having been duly sworn states?

Q12 Will you tell the Court what happened on the night of 6 Oct 44?
A12 On the evening of Friday 6 Oct 44, I was present in the bar of the s ts mess of 1 CASCRU. At approx 2100 hours the accused, whom I see here CSM Dudley, entered the room and came over to me where I was sitting in the corner of the room, and asked me if I would have a drink which I declined, with thanks as I had a drink before me at the time and did not care to have another. It appeared to me from the actions and manner of the accused that he had been drinking, but he was quiet and told me he thought he would go to bed early. The accused left me and went over to the bar and down to the far end of the room to where CSM Comely, whom at that time was president of the mess, Comley was playing cribbage with another member and there were two or three others looking on. The accused interferred with the playing of the game which finally broke up, the accused then directed his attention to CSM Comley, it seemed to be unwelcome. I noticed the accused putting his arm around Comley's shoulder and appeared to become abusive. CSM Comley tried to break away and I heard the accused ask Comley to leave the room and fight him. I left my position in the corner and went to the bar and suggested to the accused that he go to his room as he had mentioned to me previously that he intended to do. He ageed but failed to act. At approx 2125 hours I left the bar and went into the ante room to see how preparations for tea were progressing. At approx 2130 hours I again went into the bar to try and get the attention of the accused and induce him to go into the ante room and have some tea, he said he would but still did not do so. I returned to the ante room and had some tea, I sat down and saw shortly afterwards the accused dragging CSM Comley into the ante room. CSM Comley managed to get free in the vicinity of the door and I sent for CSM Guerin who rooms with the accused, to see if he could induce the accused to go to his room, Gurin was unable to do so and I then tried to persuade the accused to go to his room and he told me that he wanted some tea, I suggested th t if he would go to his room I would arrange to have tea and sandwiches sent to him, in fact I did arrange to have it taken to his room, but I was unable to have the accused go to his room. My efforts continued and the accused became abusive to me he said, in fact, "I don't give a fuck for you or Col Bonnick" I placed the accused in open arrest and sent for CSM Guerin t see if he could get the accused to go to his room. This Guerin was still unable to do. At approx 2215 hours the accused was still in the ante room and I gave him, before witnesses, a direct order, having told him that I was going to give him a direct order to go to his room. To this he replied that he would not go until he was ready or words to that effect.

I then sent for the RP as it appeared to me that I was unable to find two CSMs who were able to control him. Word came from the guard room that the fd offr Capt Turnbull was there and that I was to find two WOs of the rank of the accused to attend to the matter, I sent work back to the Guard room that I was unable to do so and I still requested the RPs, then the fd offr Capt Turnbull with the Camp Sgt Major and two of the RP arrived at the mess. Capt Turnbull placed the accused under close arrest and directed him to go with ~~him~~ two WOs of his own to the guard room, the accused refused and was taken to the guard room by the RP accompanied by the fd offr and the Camp Sgt Major

CROSS EXAMINATION BY THE DEF OFFR

Q13 The accused was a member of the Sgt Mess at the date in question
A13 Yes Sir.

Q14 When was the last time you had seen the accused before the night in question?
A14 At lunch the previous day.

Q15 Before that?
A15 The accused had been on leave in Ireland I understood, and I had not seen him recently.

Q16 Was he still on leave?
A16 Yes Sir, but if he stayed around camp very long it would be cancelled, however at the time he was on leave and had no duties to perform.

Q17 You stated in your evidence that the first time he walked into the mess at 2100 hours the accused appeared to be quiet.
A17 Yes Sir.

Q18 Have you ever seen any kibitzing in any mess, which might be termed as interferring with the game?
A18 Yes Sir.

Q19 The first time you saw the accused was at 2100 hours I presume and you did not think he was drunk?
A19 I have said in my evidence that I thought he had been drinking.

Q20 But I sugrest to you that at that time even though you knew or suspected him to have been drink you did not honestly think he was drunk?
A20 He appeared to have been drinking considerably, it is sometimes hard to tell when a man is drunk.

Q21 When approx was the first time you tried to induce the accused to leave the mess?
A21 About 2115 hours.

Q22 That was before tea?
A22 Yes Sir.

Q23 And the second time you tried to induce him to leave the messwas when?
A23 At approx 2130 hours, I re-entered the bar and tried to induce the accused to leave the bar and go into the ante room and have tea.

Q24 You did not place him under arrest at 2100 hours?
A24 No Sir.

Q25 Then subsequently a 3rd time you tried to induce him to leave the mess?
A25 Yes Sir, that would be between 2145 and 2200 hours.

Q26 At 2215 hours, according to your evidence, you gave the accused a direct order, did you not?
A26 I said approx 2215 hours, it may have been before that.

Q27 What order did you give him?
A27 I warned the accused that I was going to give him a direct order, and I said to him, "go to your room" and the accused replied that he would not go to his room until he was ready, or words to that effect.

Q28 Would you swear to that, that he said "I will not go to my room until I am ready" or did he say "I will go to my room when I am ready"?
A28 I will not swear to it, to the best of my belief it was "I will not go to my room until I am ready".

Q29 You say in your evidence that Capt Turnbul arrived in the mess and placed the accused under arrest, did you place the accused under open or close arrest?
A29 I placed him under open arrest previously to Capt Turnbull's arrival. Capt Turnbull placed him under close arrest.

Q30 You placed the accused under open arrest and Capt Turnbull placed him under close arrest?
A30 It was my intention to place him under close arrest when I had the means to do it, it was not my intention to call in the fd offr.

Q31 How long have known the accused?
A31 Approx 4½ years, since Jul 1940.

Q32 Before arriving at 1 CASCRU did you ever soldier together?
A32 Yes Sir.

Q33 That was when you first knew the accused?
A33 Yes Sir.

Q34 At the time you first met the accused what was your rank and what was his?
A34 I was a pte and the accused a sgt.

Q35 While the accused was confined to his quarters did he have any visitors?
A35 ~~[illegible]~~ the fd offr and the camp sgt major visted him each day and to my knowledge he did not have any other visitors.

Q35 In other words you would not have objected to him having visitors?
A35 I would have objected.

Q36 Is it in fact possible that the accused did have visitors and you subsequently called CSM Dusgaut up before you and instructed him that the accused was not to have visitors?
A36 That is right.

Q37 What authority did you have for that order?
A37 My own authority, I considered that CSM Dudley should not have any visitors and I issued the order accordingly.

Q38 Have there been any previous cases of misconduct in the sgts mess at 1 CASCRU?
A38 This is the first charge that I recall, but at a unit dance a sgt became boisterous just after the dance while the unit was up north.

Q39 Was subsequent action taken?
A39 There was, he was called before a meeting of Wing SMs and CSMs and suspended from the privileges of the bar for one week.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

3rd WITNESS FOR THE PROSECUTION

F 27755 CSM GUERIN, M.D. on strength No 1 CASCRU having been duly sworn states:

Q40 Will you tell the Court just what happened on the 6 Oct 44 in connection with this case?
A40 On the 6 Oct 44 at about 2150 hours I arrived in the sgts mess ante room. On my arrival there I was immediately approached by the RSM with the request to take the accused CSM Dudley, whom I see here, to his room. I endeavoured to do so but the accused was not in the mood to come with me and go to his room. I reported this to the RSM and then went to my room hoping that the accused would follow me down as he shares the room with me. I was not there ten minutes when RSM Shaw sent for me with the request that I take the accused to his room. I tried again and got no response, I then informed the RSM that it was hopeless. Later on at about 2210 hours I was in the ante room where the RSM and the accused were the RSM ordered the accused to go to his room, he failed to do so, and later on the fd offr came in and he spoke to the accused and then called two RPs who were outside the mess to come in and take the accused away.

Q41 In your opinion would you consider the accused drunk?
A41 He was certainly under the influence of liquor, he was unsteady on his feet, he spoke with a slur, but he understood me when I asked him to come to his room. I would not say he was terribly drunk.

Q42 Did you have any connection or see any scuffle going on in the mess?
A42 He raised his voice several times, he seemed to be making the usual noises that a drunk man makes. I did not pay any attention to him as I have seen many a man in the same state and have paid no attention to them whatever. I saw no actual quarrelling going on.

CROSS EXAMINATION BY THE DEF OFFR

Q43 What time was it when you arrived in the mess?
A43 About 2150 hours, which was the first time that I saw the accused.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

CASE FOR THE PROSECUTION IS CLOSED.

SUBMISSION BY THE DEF OFFR NOTE D-4

Sir, I would like to move that the Prosecution has failed to provide a prima facie case on either the 2nd or the 3rd charges. On the 2nd Charge, under Sec 9(2) AA, stating "disobeying a lawful command given by his superior officer" in that he did not leave the sgts mess when ordered to do so by CM Shaw." The time stated is approx 2215 hours. In order to est a prima facie case in these particular circumstances the Prosecution has to prove

(1) That a command was given.
(2) That it was a lawful command.
(3) That he was a superior officer that gave it.
(4) The Prosecution must est disobedience.

The question is, therefore, did the accused refuse to obey a lawful command?

I submit the only way the Court can arrive at a decision is by examining the evidence of the witnesses. The only evidence worthy of consideration by the Court on this charge is the evidence of RSM Shaw. On examining his evidence what do we find? We find an RSM making three separate and individual attempts to induce, and I repeat, induce, the accused to go to his room. The fourth time the RSM stated he gave him a direct order, on cross examination we find that the order was given in this way "go to your room" it was not "go to your room at once" or "go to your room immediately" as anyone can reasonably expect after three attempts trying to induce him to leave. It was just "go to your room", that was the command and what is the response? did the accused say "no I will not" according to the evidence of the RSM the accused either said "I will not go to my room until I am ready" or "I will go to my room when I am ready" In any event there was not a direct refusal by the accused as is required by Sec 9(2) of the AA. Immediate ~~dix~~obedience to the original command was not demanded by the RSM and immediate obedience was not given. In this respect I would like to refer the Court to P 434 MML, under Not (1) which deals with Sec 9 AA. I submit that at 2215 hours or there abouts when RSM Shaw states he gave the accused an order, when taking into consideration the three previous times trying to induce the accused, he was labouring under a mis-apprhension and for that reason I submit that no prima facie case on the 2nd Charge has been established.

On the 3rd Charge, i.e. An act to the prejudice of good order and mil discipline, etc. The charge is that the accused did consititute a nuisance, where a man consititutes a nuisance is always a matter of opinion. If we are going to place very strick interpretation on the term "nuisance" I suggest many an efficient NCO and many an efficient officer in the army would be considered a nuisance by his men. Coupled with the accusation of being a nuisance we have CSM Dudley accused of using abusive language, looking at the evidence, what abusive language have the Prosecution proved that the accused used. The accused expressed a certain opinion, but he was not abusive to the RSM. According to the RSM's evidence he says, and I do not like to repeat the term, he said the accused said "he did not give a fuck for me". He did not call the RSM any names, he merely said the equivalent of "I donot give a dam for you". He did not abuse the RSM or degrade the RSM's ancestors. As a mat er of fact there was only one course and abusive word used by the accused, according to RSM Shaw's evidence.

And now we have a further charge that the accused became quarrelsome. And the Prosecution is again forced to rely on the evidence of one witness, once again RSM Shaw. I do not believe and I submit that there is not a prima facie case made against the accused, to show that he became quarrelsome. I submit that there might have been a bit of horse play, but that is usual in messes, and if charges must be backed by evidence and in this particular case there should be more evidence to back one than has been produced in this Court today. RSM Shaw states that Capt Turnbull placed the accused under arrest Capt Turnbull says that he did not, therefore I submit that the accused was actually illegally detained since night in question, he has never been placed under arrest. RSM states he was unable to have an escort yet Capt Turnbull swears he saw three CSMs in the mess. RSM Shaw said further that Capt Turnbull ordered the accused to leave with two CSMs, Capt Turnbull says he did not. Further you have the evidence to the fact that the RSM objected to the accused having visitors in his room. He objected to the accused having visitors!!! I submit that you can thumb your way through MML until you are black in the face and you will not find any provision for such an order, that a CSM can not have visitors while undergoing or rather while under close arrest, even if he had been under close arrest. That is the kind of evidence that the Prosecution unfortunately have to rely on to

establish a prima facie case against CSM Dudley. And I submit that in view of the fact that the only substantial evidence that might have gone part way to proving or establishing a case on the 2nd and 3rd Charges is the evidence by one man, and his evidence has been impeached by the other witnesses of the Prosecution. I say it is the duty of this Court to uphold the motion that no prima facie case has been est on the 2nd and 3rd charges and dismiss them.

REPLY BY THE PROSECUTOR

Sir,

It is very seldom that we have such a case as is presented by our learned friend, the Def Offr, but I am sure that the Court will not be carried away by such an eloquent speech.

With regards to the 2nd Charge, disobedience to a lawful command, I contend that the RSM did give a lawful command, and that it was not obeyed. The RSM's evidence is before the Court, there is no possible reason for disbelieving it.

The language used by the accused was abusive, it was abusive both to the RSM and to the CO. I don't intend to answer the long and tiresome motion by the Def Offr as I am sure that the Court have the answers to his points before now. I leave the decision in the hands of the Court feeling that the accused should be called upon to answer to the charges against him.

COURT IS CLOSED TO CONSIDER THE SUBMISSION

COURT IS RE OPENED AND THE PRESIDENT ANNOUNCES THAT THE SUBMISSION HAS BEEN DISALLOWED ON BOTH CHARGES.

EVIDENCE AS TO CHARACTER BEFORE THE FINDING Note D-6

1st WITNESS AS TO CHARACTER

Major A.C. MORRIS, on strength No 1 CASCRU, having been duly sworn states:

I am OC "F" Coy, 1 CASCRU, I know the accused, he is CSM Dudley. On Apr of this year I took over "F" Coy and the accused was the CSM of that coy. I have known CSM Dudley all the time and have found him most reliable and a very efficient worker at all times. I have seen nothing detrimental to his character. Other officers I know that have known him speak very highly of him, he appeared to get along well with those under him.

Prosecutor declines to cross examine this witness

In the opinion of the Court it is unnecessary to comply with RP 83(B)

PROSECUTOR ADDRESSES THE COURT ON THE FINDING:

Sir,

On the three charges that the accused is on I think I have produced sufficient evidence to show that he is guilty as charged. The witnesses evidence is before the Court and I don't believe I have anything to add to their evidence. I am quite sure that the accused was drunk, and the evidence I produced has proven it.

~~DEFENDING OFFICER ADDRESSES THE COURT ON THE FINDING:~~

~~Sir,~~

~~I am going to ask the Court to listen to~~

DEF OFFICER ADDRESSES THE COURT ON THE FINDING

Sir,

I am going to ask the Court to listen to the argument on the 1st Charge and couple that with and reconsider my former argument on the 2nd and 3rd Charges. The first charge is one of drunkenness. Drunkennes in mil law must of necessity be a question of opinion. There are two methods by which a mil court can judge drunkenness (1) is by evidence opinionated evidence by witnesses:and (2) is by the actual actions of the accused. In this particular case we have the RSM's statement that in his opinion the accused was drunk. On the other hand we have CSM Guerin, who was deliberately called in by RSM Shaw stating that although the accused had been drinking, a fact which at no time in this trial we have tried to deny, nevertheless the accused was not drunk. Capt Turnbull said that in his opinion the accused had been drinking, then turned around and under cross examination gave very valuable evidence to contradict his own statement, there, I submit that one method of forming an opinion is by listening and judging the evidence of the witnesses. We have the main witness for the prosecution, RSM Shaw, who the Defence has attempted to prove has been vindictive in this case, given the most damning evidence against the accused, therefore, I submit that the Court, when considering the opinion given by that RSM should couple with it the consideration that facts brought out by the cross examination. And in rebutal of the RSM's evidence we have CSM Guerin which would leave a question of doubt in the mind of the Court, but we can go further than that, we can use our own senses to judge for ourselves, the accused can be proven drunk in, I would suggest two ways (1) that his physical incapability of doing certain things and (2) that he was not in full possession of his mental faculties. Dealing first with the physical incapability we have definite evidence before the Court that the accused actually walked out of the sgts mess into a pitch black night and proceeded down the dark road unaided. I submit that if the accused had been drunk he could not possibly have down that without help. Regards to his mental faculties, I submit that any man who is in such possession of his faculties that he can bring up the definite points of mil law and custom of service to his advantage is not drunk. I refer to his telling the escorts to keep their hands off him, I also refer to his calling to the attention of the fd offr of the day that he was entitled to be placed in his own quarters. A drunk man, I submit would not have the mantal faculties necessary to make such a statement.

So much for the charges individually.

If the Court does not wish to find the accused guilty on the three charges I have a further submission to make. And this submission is to the effect that if the Court find the accused guilty on the fist charge, namely drunkenness they would and are estopped from finding the accused guilty of the 2nd and 3rd charges. Assuming for the purpose of argument and for this purpose only, that the accused was drunk, when we look at the 2nd charge we discover that in order to know exactly what was going on the accused would have to be sober and under a misapprehension of a command is grounds for finding the accused not guilty, I submit that if the accused was drunk he could not possibly have refused to obey a command.

Likewise if the accused was drunk, he could not have intentionally constituted a nuisance and any abusive language which he might have used could not be taken into consideration against him on a different charge. In other words any evidence that the prosecution have brought out to prove the 3rd charge is merely evidence as to his drunkenness. Drunkenness is a continuing offence and I would respectfully call the Court's

attention to the time factor which is xxxx very important in this case, you will notice that the accused is charged with being drunk at approx 2130 hours, and then he is charged with disobeying a command at 2115, four to five minutes later and charged with an act to the prejudice etc, between 2100 and 2230 hours. I submit that if the accused were drunk at 2130 hours he could not be h ld responsible and charged with an offence or offences that occur subsequent to that. Equity will not allow the prosecution to xxxxxxxxxx profit by a deliberate laxity of an RSM. In other words the RSM states that the accused was drunk at 2130 hours, assuming he is right, it is the duty xx to take steps immediately instead no such thing was done, if there was personal vindictiveness certainly there was a opportunity for it, sitting by the side lines letting the accused get in deeper and deeper . If the affair had been conducted correctly the accused would have been sent out at 2130 hours and the fact that he might have disobeyed the command he might have been a nuisance and become quarrelsome is due entirely to the laxity on the part of his superior, and therefore I submit in due fairness the Court cannot possibly hold the accused responsible and xxxxxx find him guilty on all three charges. They have to decide on whether or not the accused was guilty on the first charge, if the accused was guilty of the 1st charge he is automatically not guilty on the other two. And the same applies in the other respect, the only way that the accused can be found guilty on the 2nd and 3rd charges is to find him not guilty on the 1st charge. It is for the Court to make up their minds in the light of the evidence adduced.

COURT IS CLOSED TO CONSIDER THE FINDING

COURT IS RE OPENED

PLEA IN MITIGATION

E-3

Sir,

I do not think I would be required to make a plea in mitigation so I made no preparations therefor, But I wish to say -

The accused CSM Dudley, joined the Cdn Army on the 8 Sep 39. But to do justice to the accused I will have to go back further than that. We have at the bar today as the accused a very exceptional man, exceptional in many ways. Firstly and I believe that I am the only one who realizes this, the accused is actually the youngest allied soldier to come under shell fire in the last way. I do not propose to use R Ripley as a legal authority but Ripley has made that contention. The accused enlisted in the Cdn Army (active) at the age of 13 and he proceeded overseas with the Royal Cdn Horse Arty, and was actually under shell fire at the age of 14. Undoubtedly his experiences in the last war left an indelible impression on his mind. On his return to civil life he tried various jobs and businesses and ended up at deep sea diving. Therefore you can see the accused is a very exceptional man. He is exceptional also because immediately before joining the army his job was deep sea diving and was paying him something like $20.00 a day, however he left that willingly and joined His Majesty's Service to fight along with everyone else. From 1939 to 1941 he soldiered in Canada, then he came overseas and has been serving here continuously ever since. As to the man's capabilities .I need go nother further than refer you to his Coy Comd's character evidence. It is a well known fact that being CSM in "x" Coy is no small task, their job often and usually takes them far into the night and early morning, and they must be back on the job next day.

Immediately prior to this unfortunate incident, the accused was given a very well deserved leave. He returned to camp to

to collect some money. He was drinking as most of us do on leave and then got mixed up in this incident. The accused is only human, possibly he was drunk on the night in question maybe he was not, but if the accused was drunk I would just like to ask this Court before condemning him to remember that a greater man than any sitting here once said "he, among you who is without sin, let him cast the first stone". And I submit that in view of the accused past record both in the last war and in this that if ever there was a case in which the utmost leniency was not only deserved by actuall demanded, then this surely is the case.

COURT IS CLOSED TO CONSIDER THE SENTENCE

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
C-12524	Gnr	DUDLEY, W.O.	1 Cdn AGC Rft Unit

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For ...Nil... ...Nil... times.

For .... times.

For .... times.

For .... times.

Date of first entry in Field Conduct Sheet ...N/A...

Date of last entry in Field Conduct Sheet ...N/A...

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. ~~The accused at the present time is under sentence for~~ ..... ~~beginning on the~~ ..... ~~day of~~ .....

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 11 days in military custody, i.e., Nil days in open arrest, 11 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 43 years.

6. The date of his attestation / ~~calling up for military service~~ is 8 Sept 39.

7. The service which the accused is allowed to reckon is Nil.

†State the military decorations (if any) held by accused.

8. The accused is in possession of † G.V.S.M. wef 15 Jan 44.

9. (If the accused is a warrant officer or N.C.O.). The accused has served continously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of G.S.M. (WO II)	20 Jun 44
~~In the substantive rank of~~	.....
~~In the acting rank of~~	.....

E x B

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Wt. 13479/3857 30,000 5/44 H.&S. 47/1 T.Ltd. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended
		NIL		

Officer having custody of Regimental Books

J M Stewart, Capt
(Offr i/c Regtl Books)
1 Can A B C Rft Unit
Canadian Army Overseas
18 October 1944

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 18th day of October 44

MFM 6
(AFB 122)
10/PAS/136 (3458)

No C-12521 Name DUDLEY, W.G. Sqn, Battery, or Company — Corps R.C.A.S.C. — Date of enlistment 8 Sept 39 — GC Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet: NIL — No and date of last drunk: NIL — Period not reckoning towards freedom from extra fine: NIL — Sheet No 1 — Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Awarded the Cdn Volunteer Service Medal and Clasp wef 15 Jan 44 appx to 1 CASCRU DO 13 d/17 Jan 44. W.H. Copeland Lt-col									
CERTIFIED TRUE COPY COMPILED FROM THE ORIGINAL MFM 6 IN MY POSSESSION (W.H. Copeland) Lt-col A/Comd No 1 Holding Wing 1 Cdn A S C Rft Unit									

(PTO)

SUMMARY OF EVIDENCE

IN THE CASE OF C-12524 Company Sergeant-Major William George DUDLEY, RCASC, on strength of 1 Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st WITNESS (For the Prosecution) Capt R.H. Turnbull, RCASC, on strength of 1 Cdn ASC Rft Unit, having been duly sworn states:-

I am Capt R.H. Turnbull, RCASC, on strength of 1 Cdn ASC Rft Unit. At approximately 2215 hours 6 October 1944 I was Field Officer of the day and was visiting No 1 Guard Room. A Runner came to the Guard Room with a message from R.S.M. Shaw that he wanted two Regimental Police as escorts to remove C.S.M. Dudley from the Sgt's Mess to the Guard Room in close arrest. I sent the runner back to the R.S.M. with instructions that C.S.M. Dudley should be placed in close arrest in his quarters with an escort of equal rank. The runner returned in a few minutes stating that R.S.M. Shaw required the Regimental Police as he was unable to provide an escort from persons present in the Mess. Accompanied by Camp Sgt Major of the day and two Regimental Police I proceeded to the Sgt's Mess. I left the Regimental Police with the Camp Sgt Major outside and went into the hallway and met R.S.M. Shaw, he informed me that C.S.M. Dudley was in a boisterous and intoxicated condition and wished to have him removed to the Guard Room. I then took the Regimental Police into the ante-room of the Sgt's Mess where I met C.S.M. Dudley who appeared to be very drunk and was leaning on a table. I informed him I was Field Officer of the day to which he replied, "Very pleased to know you, will you have a drink with me ?" I replied by stating that I was there at the request of the R.S.M. Shaw to remove him to the Guard Room. This he agreed to without any argument other than stating that as a Warrant Officer he was entitled to be taken to his quarters. I then informed him that it was laid down that he could be placed in the Guard Room for his own protection. I then instructed the two Regimental Police to take him to the Guard Room and place him in a seperate cell. While asking C.S.M. Dudley to accompany the two Regimental Police to the Guard Room one escort took hold of his arm, he pulled his arm away stating, "Keep your hands off me I am quite capable of walking." I then instructed the Regimental Police to remove him to the Guard Room at once which they did. On arriving at the Guard Room myself I found C.S.M. Dudley very upset about being locked up in the Guard Room owing to his rank. I again explained to him this was being done for his own protection owing to his drunken condition. He then requested the Commanding Officer's decision. I went to the Commanding Officer's residence, explained what I knew of the case, and was instructed by the Commanding Officer to place C.S.M. Dudley in a cell by himself. I accordingly informed the N.C.O. in charge of the Guard Room of the Commanding Officer's wishes.

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS

R.H. Turnbull

(R.H. Turnbull) Capt

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.....(Cont'd)

2nd WITNESS (For the Prosecution) C-30123 RSM Shaw, C.G., RCASC, on strength of 1 Cdn ASC Rft Unit, having been duly sworn states:-

I am C-30123 RSM Shaw, C.G., RCASC, on strength of 1 Cdn ASC Rft Unit. I was present in the Blenheim Sgt's Mess Bar of the 1 Cdn ASC Rft Unit at approximately 2100 hours on the night of Friday 6 October 1944 when C-12524 CSM Dudley, W.G., hereinafter referred to as the "accused" entered the bar.

The accused by his manner of speech and actions made it quite apparent to me that he had been drinking. He was however quiet, and came over to me and invited me to have a drink, which I declined with thanks as I had a drink at the time and did not care to have another. The accused said he thought he would go to bed early. The accused then left me where I was sitting at the end and side of the bar itself and began to molest CSM Comley, our Mess President and two other members of the Mess who were playing a game of cribbage. His interference was not welcome and it resulted in the game breaking up and the members who happened to be in the room with the exception of CSM Comley, the accused and myself leaving the bar room and going into the ante-room. I retained my seat in a corner of the room. From my position I was able to judge that the conversation the accused was directing to CSM Comley was becoming abusive and very unwelcome to the latter. From time to time the accused place his arm around CSM Comley and became objectionable. I heard the accused try and induce CSM Comley to go outside and fight him. At approximately 2125 hours I went from the bar to the ante-room to see how the preparations for tea were progressing (tea is served nightly at 2130 hrs) At approximately 2130 hours I returned to the bar and tried to induce the accused to leave the bar and have some tea and go to his room quietly. He promised to go but did not act, and continued to abuse CSM Comley. I again left the barroom and had some tea in the ante-room (because the dining room was being painted, the tea was served in the ante-room). Within a few minutes I observed the accused dragging CSM Comley from the bar into the ante-room. CSM Comley then managed to get free. I again tried to induce the accused to go to his room peaceably. He said he wanted to have some tea. I arranged for tea and sandwiches to be sent to his room and told him to go to his room and that the tea would be right down. I sent for CSM Guerin who is room mate to the accused in the hope that CSM Guerin might be able to induce the accused to go to his room. This, CSM Guerin was unable to do. Again I urged the accused to go to his room peacefully, and when he became abusive I gave him a direct order to go to his room. The accused told me he didnt give a fuck for me or for Colonel Bonnick. I placed him under open arrest and again sent for CSM Guerin to try and get him taken quietly to his room. CSM Guerin was still unable to do so. At approximately 2215 hours the accused was still in the ante-room, and I repeated my direct order to him, "Go to your room." before a number of witnesses. I warned the accused that it was a direct order. The witnesses were:- CSM Comley, CSM Guerin. The accused replied that he would not go to his room till he was ready, or words to that effect. I then sent a runner for the Regimental Police as I realized the Guard Room was the only secure place to put the accused, as I could not find any other Warrant Officers of his own rank to control him. The runner returned and said the Field Officer suggested that I find Warrant Officers of his own rank to deal with the matter. I replied that I was unable to do so and still required the Regimental Police. At 2230 hours, Capt R.M. Turnbull, the Field Officer of the day, the Camp Sgt Major and two Regimental Police arrived at the Sgt's Mess.

.....(Cont'd)

Capt Turnbull placed the accused under close arrest and directed him to go with two Warrant Officers of his own rank to the Guard Room. This the accused refused to do and was subsequently taken away by the two Regimental Police accompanied by Capt Turnbull and the Camp Sgt Major to the Guard Room.

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS

C.G. Shaw.
(C-30123 RSM Shaw, C.G.)

3rd WITNESS (For the Prosecution)

P-27755 CSM Guerin, M.D., RCASC, on strength of 1 Cdn ASC Rft Unit, having been duly sworn states:-

I am P-27755 CSM Guerin, M.D., RCASC, on strength of 1 Cdn ASC Rft Unit, at approximately 2130 hours 6 October 1944 I arrived at Blenheim Sergeant's Mess and immediately upon my arrival I was requested by RSM Shaw to take the accused to his room which I endeavoured to do, the accused did not comply with my request, being unable to get him to accompany me I reported same to the RSM. I went to my room and was sent for by the RSM who again asked me to get the accused to his room, the time being approximately 2210 hours to 2230 hours. I was unable to do so and the RSM then gave the accused an order to go to his quarters and upon this order not being complied with the accused was placed in open arrest. The Field Officer then came into the Sgt's Mess and placed the accused under close arrest. The reason I was ordered to take the accused to his room was on account of him causing a disturbance by his conduct to the other members of the mess. In my opinion the accused was under the influence of liquor.

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS

(P-27755 CSM Guerin, M.D.)

4th WITNESS (For the Prosecution)

U-1692 CSM Comley, A.J., RCASC, on strength of 1 Cdn ASC Rft Unit, having been duly sworn states:-

I am U-1692 CSM Comley, A.J., RCASC, on strength of 1 Cdn ASC Rft Unit. On the evening of 6 October 1944 at approximately 2100 hours I was playing cribbage in the bar of the Blenheim Sgt's Mess. The accused, CSM Dudley, was at the bar at the time. It was apparent that he had been drinking. He was somewhat noisy and obnoxious and kept interfering while I was playing cribbage. He finally succeeded in breaking up the game. At approximately 2130 hours the RSM attempted to get the accused to go for tea. He did not go but insisted on taking me outside. On reaching the door to the lounge we separated. Soon after this had occurred I went in for tea. The RSM and the accused were engaged in conversation just inside the mess hall. After having my supper I went and sat down in the lounge. The accused then came into the lounge and went over and talked to the RSM. I heard the RSM request CSM Dudley to go to his room. The RSM then gave him a direct order to go to his room which he refused to do. Shortly after that Capt Turnbull came in accompanied by the Regimental Police and took the accused away.

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS

A.J. Comley
(U-1692 CSM Comley, A.J.)

.....(Cont'd)

The accused was cautioned as follows, "Do you wish to make a statement or give evidence on oath ? You are not obliged to say anything orgive evidence unless you wish to do so, but, whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

THE ACCUSED DECLINED TO MAKE A STATEMENT AT THIS TIME

I hereby certify that the foregoing Summary of Evidence consisting of four (4) pages was taken down by me In The Field in writing on this 10th day of October 1944 in the presence and hearing of the accused and that R.P. 4 (c) (d) (e) (f) and (g) have been complied with.

W.D. Faulafer Lt

(W.D. Faulafer) Lieut RCASC
Officer taking the
Summary of Evidence.

IN THE FIELD.
10 OCTOBER 1944.

I, the accused, C-12524 CSM Dudley, W.G., RCASC, on strength of 1 Cdn ASC Rft Unit, desire the services of Lieut J.H. Reistall to defend me at my forthcoming Trial by Field General Court Martial.

(C-12524 CSM Dudley, W.G.)

TO WHOM IT MAY CONCERN

This is to certify that I, the accused, C-12524 C.S.M. Dudley, W.G. have received one (1) copy of Summary of Evidence and Charge Sheet in connection with my forthcoming Trial by Field General Court Martial.

(C-12524 CSM Dudley, W.G.)

OFFRS UNDER INSTRUCTION

Lt	L.B. Smithen	1 CSRU
Lt	F.J. Hastie	1 CERU
Lt	J.E. Beamish	1 CERU
Lt	C.N. Cook	1 CASCRU

IN THE CASE OF

C-12524 CSM DUDLEY, W.G., R.C.A.S.C.

LIST OF WITNESSES FOR THE PROSECUTION

Capt R.H. Turnbull	1 Cdn ASC Rft Unit
C-30123 RSM Shaw, C.G.	1 Cdn ASC Rft Unit
P-27755 CSM Guerin, M.D.	1 Cdn ASC Rft Unit
U-1692 CSM Comely, A.J.	1 Cdn ASC Rft Unit

LIST OF EXHIBITS

NIL

LIST OF WITNESSES FOR THE DEFENCE

NIL

PROMULGATION

C-12524 CSM DUDLEY, W.G.

Having been tried by Field General Court Martial in the Field on 13 Oct 44

Chgs

1. AA Sec 19 - DRUNKENNESS in that he in the Field at approx 2130 hrs 6 Oct 44 was drunk.

2. AA Sec 9(2) - DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER in that he in the Field at approx 2215 hrs 6 Oct 44 did not leave the Sgt's Mess at 1 Cdn AGC Rft Unit when ordered to do so by RSM Shaw, C.G. of 1 Cdn AGC Rft Unit

3. A.A. Sec 40 - ANACT TO THE PREJ etc in that he in the Field between 2100 hrs and 2230 hrs on 6 October 1944 in the Sgt's Mess, 1 Cdn AGC Rft Unit did constitute a nuisance and use abusive language and become quarrelsome by gripping D-1692 CSM Cooley, A.J. in an attempt to drag him outside the Sgt's Mess during which time the accused said, "Come on outside and fight" or words to that effect.

Findings

1st Charge - GUILTY
2nd Charge - GUILTY
3rd Charge - GUILTY

Sentence

To be reduced to the rank of Corporal.

Confirmation

Findings and Sentence confirmed by Brigadier A.B. Connolly, Comdr "B" Group, Cdn Rft Units on 23 Oct 44.

In Custody

Under close arrest from 2230 hrs 6 Oct 44 till 1700 hrs 18 Oct 44.

Forfeitures

~~XXX~~ Forf 12 days pay Art 149(1)(c)(i)FRAI

Promulgation

Promulgated in the Field on 26 October 1944.

D'O. 254 d/27 Oct 44.

JE-121

Ph. Duff. D.S.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G.45117 Lte Donald Sheldon DUFF, 4 VRD 1 Cdn COD RCOC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	NotGuilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for Not beginning on (date) (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which —— days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for Thirty (30) days and to forfeit ~~seniority~~ as ordinary pay for a period of Sixty (60) days.

(Sgd) Judge Advocate, if any. 10 Apr 45 Date awarded. (Sgd) E.S.H. Mussen President. (RP 45, 50.) Major

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further ordered. (1. AA 57A. Delete if not used.)

Date 13 Apr 45 (Sgd) J.E. Sager brigadier
Commanding F Sp CRU
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
G.45117 Lte Duff D. S.	16 April 1945	D.D. Kirkwood Lt

1 COD Part II D.O. No. 51 d/18 Apr 45. N VRD ICCRD RCOC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5E-121

27 APR 1945

FIELD GENERAL COURT-MARTIAL CFA96 (To lieu of AFA83) 40/P & R/1698 (5144) 4/38B

Convened by Order of Brigadier J.E. Sager, E.D. Comd F Sp CRU dated 10 Apr 45

PROCEEDINGS REVIEWED 27 Apr 45

Lt. Commander RCN
REVIEWING OFFICER, JAG BRANCH

ACCUSED.

(Where on the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank or appmt, A/rank or A/appmts, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G.45117	Lt(N)(R)	Donald Sheldon	DUFF	4 VRD 1 Cdn COD RCOC

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 10 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AFS, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0830 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to as Interpreter?~~ Ans ——
The Interpreter is sworn.(1) Do you object to Capt H.H. Bowditch as shorthand writer? Ans No
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Captain	E.S.H. Mussen EDRE	HQ CRU
Member	Capt	L.C. Wells	10 BdS
Member	Lieut	J.R. Punnett	7 CA WC
~~Judge Advocate~~			
Prosecutor	Lieut	H.E. Curtis	4 VRD
Defending Offr	Lieut	A.W. Willis	4 VRD

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans Yes (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 2.)

A8. The accused —— before arraignment make(s) (no) (a) plea ——(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or as bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB note and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AF6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decisvn. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of J A see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of J A or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No .(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Neither. Do you intend to call witnesses on your behalf? Ans. No. Are they witnesses as to character only? Ans. No
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1) ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is amended accordingly.~~
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (extract) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A.A 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(1. *MFB 335 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 158. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes. Very little only.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~.
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 336, 343-344, Overseas RO 309, 1323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 40 (2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 58(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, G 45117, Pte. Donald Sheldon Duff, of 4 V.R.D., 1 C.C.O.D. (R.C.E.M.E.), a soldier of the Canadian Army Overseas, is charged with:

While on Active Service

1ST CHARGE
Army Act
Sec 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, on the afternoon of 24 FEB 45, was improperly in possession of Canadian Military Vehicle CZ-4205993, thereby occasioning damage to said Canadian Military Vehicle CZ-4205993 to the extent of £14-12-0.

R C Kelly

(R.C.Kelly) Lt-Col.,
O.C. Depot Battalion,
H.Q., 1 Cdn C.O.D., RCOC

Peper Harrow
6 MAR 45

To be tried by Field General Court Martial.

BORDEN, Hants,
10 Apr 45

J.L. Sage
(J.L. SAGE) Brigadier,
Comd 1st Gp, C.R.U.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G.45117	Private		Donald Sheldon	DUFF	4 VRD 1 Cdn COD RCOC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 10 Apr 45 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	E.M. Miller, E.D., K.C., RCOC	HQ CRU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	L.C. Wells, RCEME	1 Cdn Base Wksp RCEME
Lieut	T.R. Punnett, RCE	7 Cdn Art Wks Coy RCE
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England	J.E. Sager (J.E. SAGER)	Brigadier
(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)

Date 10 Apr 45 Commanding "F" Gp, C.R.U.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/F & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
KR(Can) para 557

I certify that I have this morning examined No. G-45117.....
Rank. Pte.....Name. Duff. D.S.....of. 4 VRD NO.1 CCOD.(Unit)
and in my opinion he is ~~unfit~~ fit* to undergo trial by Court
Martial.

.....Capt;.(Rank)
Unit
Medical Offr., RCAMC

Station. .E.A.P....
Date..10.April.1945....
(of Court Martial)

* Cross out one N/A and initial

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

Received from Exhibits H and B
Two jerkins Leather H - light Brown
B - Dark Brown

These were produced on the Court
Martial held against Pte Huff 19 S
21-45117

A.W. Coulter Lieut
Presiding Officer

PLEASE WRITE ON BOTH SIDES

CFA 170
40/P&S/2064(3693)

CASE OF

D-3 C-45117 Private DUFF, D.S., No.4 VRD, 1 CCOD (RCMC)

FIRST WITNESS

A-17212, Pte ARCHER, M.N., 4 VRD, 1 CCOD, RCOC, sworn, states:-

Q. Will you tell the Court in your own words what you know about this case?
A. Sir, on Mar 12 45, I asked the accused whom I recognize if he would drive my vehicle and return it to the vehicle park for me. The number of my vehicle is CZ-4808693, a 15-cwt. I turned it over to him at the end of the hut at our billets at No. 4 VRD, and he then drove to Farnham where I left him at the station. He left to return the vehicle to the park at No. 4 VRD. I never saw the vehicle till about Tue and this happened on Sat.

Q. Was this trip to Farnham authorized?
A. I had a work ticket.

Q. How long ago was it?
A. About 7 or 8 weeks ago.

Q. What was the occasion?
A. Just a week-end, Sir.

Q. When did you have this week-end?
A. I have had three or four since then. I just said Mar 12 but I am not sure about it.

Q. Did you give evidence on the taking of the summary?
A. Yes, Sir.

Q. When you got out of the vehicle at Farnham, who drove the truck?
A. The accused, Sir.

CROSS-EXAMINED

Q. Is it true that you had a work ticket signed by an officer?
A. Yes, Sir.

Q. Did this offr lay on that if you were using a vehicle on a Sat afternoon that you would get a further signature?
A. No, Sir.

Q. Your ticket was legitimate?
A. Yes, Sir.

Q. Was the accused aware of the fact that you had a work ticket when you turned the vehicle over to him?
A. I told him that my work ticket and log book were right in front of the truck on the windshield.

QUESTIONS BY THE COURT

Q. What date did you say this was?
A. I wouldn't swear to the date, Sir.

Q. Do you remember giving evidence on the taking of the summary?
A. Yes, Sir.

Q. Did you give a date when you gave evidence?
A. I don't think I did, Sir, but they told me the date of the accident on the taking of the summary.

Q. Was that date correct?
A. I wouldn't swear to that, Sir. It was on a Sat about seven weeks ago.

Q. You say you told the accused to drive you to the sta?
A. I asked him, Sir.

Q. Where is the work ticket?
A. I don't know, Sir, it was turned in.

Q. Have you seen the work ticket since it was turned in?
A. No, Sir.

Q. Do you know whether it was turned into the office or not?
A. When I went in on Mon morning, my log book and the work ticket were in the office. It must have been turned in.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

SECOND WITNESS

Lt G.E. ALGAR, No. 4 VRD, No. 1 CCCD, RCOC, sworn, states:-

Q. Would you tell the Court in your own words what you know about this accident?
A. On 20 Feb, as result of infm received, I went down to my despatch office to check on a 15-cwt that had been driven by Pte Archer. In the office, I found his log book and his work ticket. This was at about 1920 hrs. This was the vehicle usually driven by Pte Archer I went down to Petersfield's Police Sta. From there I went to Burton Cross-Road, 1 6/10 miles from Petersfield on the road to Horndean. I found Archer's vehicle in the ditch. We claimed it and brought it back to camp.

Q. In what condition was it?
A. It had been damaged considerably; the bumper was bumped up into the wheel, the radiator was smashed, the frame was bent, the vehicle was full of twigs. There was nobody with the vehicle.

Q. When was it?
A. The last Sat in Feb 45, Sir.

CROSS-EXAMINED

Q. In your evidence you said that after checking your record, you noticed that this particular vehicle was out without a work ticket and log-book?
A. I didn't check my unit lines but as result of infn, I went down to Petersfield.

Q. Did you enquire as to when this log book might have been brought in your office?
A. Yes, I asked the despatch that question. He answered that he didn't know.

Q. Is there any system of checking log books in when they are turned in?
A. No, Sir.

Q. Then the log-book could have come in at any time during the afternoon?
A. Yes, Sir.

Q. How far exactly from the accident is No. 4 VRD?
A. Approx 11 miles, Sir.

Q. Would it take approx half an hour for a vehicle of this kind to cover this distance?
A. No, it would not take that long; it all depends on the speed at which it would be driven.

Q. If this ticket was made out for the Aldershot Area, would it authorise the car to be in Petersfield?
A. No, Sir.

Q. Could the vehicle have been taken out of the lines without the log-book?
A. No, it should have been checked through the guards whose duty it is to see that no vehicle leave without authorization. They are at each gate.

IN OUR OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (3).

THIRD WITNESS

W-95694, Cpl HODGINS, G.S., 4 VRD, 1 CCOD, RCOC, sworn, states:-

Q. What is your job at No. 4 VRD?
A. I am Dvr Mech at No. 4 VRD.

Q. Did you at any time check the damage done to vehicle CZ-4205993, a 15-cwt?
A. Yes, Sir, on 1 Mar. I found the extent of the damage to be to the amount of £14-12-00. The fender was smashed; there was some damage done to the side of the cab and of the body, to the doors and windshields. I just made an estimate.

Q. Do you know how it was caused?
A. It was through an accident as far as I know.

Q. At one time?
A. Yes, Sir.

IN OUR OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (3).

FOURTH WITNESS

Mr. Wm DAINTREY, Causeway, Hornedean, Portsmouth, Hants, sworn, states:-

Q. What are you employed at?
A. I am employed by the Automobile Association as a scout patrol.

Q. Will you tell the Court what you know about this accident?
A. On 24 Feb 45 I was standing at the bottom of Hulses Hill near the telephone box at [illegible]. I heard a crash and looked [illegible] was in time to see a vehicle leave the road, saw a cloud of dust and the vehicle crashed through a hedge into a field on the right hand side of the road. On seeing what I presumed to be smoke, I jumped on my bicycle and went to the scene of the accident. On arriving there, I saw the vehicle in the field and the dvr was trying to start the engine. He was sitting in the cab. I stood there a second or two realizing that the dvr and the occupants were not injured I just left the vehicle and proceeded back to my point of duty and notified the civilian police.

Q. Did you go down to the side of the bank?
A. No, I didn't leave the road.

Q. What was the distance separating you and the dvr?
A. 8 to 10 feet.

Q. Who was the dvr?
A. I couldn't identify him, Sir. I just had a fleeting glance at his face and he turned his head towards the vehicle. I had only a back-view of him. There were one soldier and two sailors [illegible] the vehicle. Mr Treasus and a boy were with the dvr.

CROSS-EXAMINED

Q. Did the boy come to the scene after you had arrived?
A. Yes. After I saw the dvr was not hurt, I went with Mr Treasus to see the damage to the telephone pole.

Q. Were the occupants in the vehicle?
A. No, Sir. The dvr was looking at his car, down by the side of the vehicle, turned around and faced his vehicle with his back to me.

Q. Where were the otheroccupants during that time?
A. Over in the field, Sir.

Q. Would you be able to recognize what the dvr was wearing?
A. Ordinary battle-dress without anklets, brown shoes and a brown jerkin.

Q. I show you two jerkins, a brown and a black one, which one would you say it was?
A. (Witness points at the brown one)and says, "This is theone".
EX.
(A BROWN AND A BLACK JERKIN MARKED "A" AND "B" FOR IDENTIFICATION)

Q. HOW FAR were you when you saw the crash?
A. 500 yds.

Q. How long would it take you to get down there on your cycle?
A. 3 minutes.

Q. Were you the first witness to arrive on the scene?
A. Yes, Sir.

QUESTIONS BY THE COURT

Q. How long did the soldier and the two sailors stay there?
A. They either caught a bus or a lorry fifteen minutes later. I never say where the dvr went.

Q. Was the accused wearing high or low shoes?
Brown low shoes, Sir.

Q. Did you notice the socks?
A. He was wearing dark socks.

Q. When did you see them?
A. When he got down from his vehicle, Sir; they were dark-brown socks.

Q. Was he wearing a hat?
A. I can't say definitely, Sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 86 (3).

FIFTH WITNESS

Mr. Wilfred ALDRED, Laycock & Garrett, Peterefield, sworn, states:-

Q. What is your occupation?
A. I work athedge trimming.

Q. Will you tell the Court just what you know about this accident?
A. Well, I was hedge trimming with my father at about 4 PM on the last Sat in Feb when I heard a crash from Butser Hill. I went over to a vehicle which I saw. I saw it was a Cdn truck driven by a Cdn soldier with two sailors. They were outside the truck.

Q. How do you know he was a Cdn soldier?
A. Well, it was a Cdn truck. The British sailors also told me. The sailors went away. Myself and the Cdn endeavoured to start the truck but to no avail and the Cdn said he had to catch the bus back to Bordon. I saw him signal a private car and got a lift.

Q. Who was this Cdn?
A. He is sitting there (pointing at the accused).

Q. How do you recognize him?
A. From his features. I talked to him.

Q. How long were you with him?
A. From 15 to 30 minutes.

Q. Was anybody hurt in this accident?
A. No, but the dvr had a scratch on the nose and at the back of his neck.

Q. How old was it?
A. It was as a result of the accident.

Q. How long was the one on his nose?
A. About an inch, Sir; just a scratch.

Q. How was he dressed?
A. He had an ordinary battle-dress and trousers on; a leather jerkin and shoes not army boots. I am not quite sure of the colour of the shoes.

CROSS-EXAMINED

Q. You say that at the time you came up to the accident the sailors were standing outside of the vehicle?
A. Yes, Sir.

Q. Where was the dvr of the vehicle?
A. He was within the vehicle.

Q. You both got in the cab and tried to start the vehicle?
A. Yes. They had tried to start it before but to no avail. I noticed Mr. Daughtry, the AA Scout and another civilian whom I don't know.

Q. You say the dvr had a leather jerkin?
A. Yes, Sir.

Q. (Pointing to EX. "A" and "B") Can you tell me which one of these he had on?
A. It was the dark one, I am not quite sure.

Q. Are you sure about the kind of shoes he had on?
A. Yes.

Q. Did you notice what kind of socks he had on?
A. No, Sir.

Q. You are sure about the scratches on his face and neck?
A. Yes, Sir.

Q. You say that you attempted to start the vehicle with the dvr?
A. Yes, by myself, with the dvr standing outside.

Q. Did the dvr take anything out of the truck when he went out to catch a ride?
A. No, I nevernoticed.

Q. What damage would you say was done to that vehicle?
A. The front bumper was bent on the right hand side. The fan was stuck in the radiator; the wing on the left hand side of the vehicle was bent and the petrol tank was hanging so the dvr pulled it off and put it in the back of the truck. The vehicle was upright.

QUESTIONS BY THE COURT

Q. Which way was the truck going before the accident?
A. I can't say but I think it was going towards Bordon.

Q. Which way did the dvr go?
A. Towards Bordon.

Q. Did he have his cap off?
A. Yes he had it at first and then he had it off and he put it on again.

Q. What kind of hair did he have?
A. Darkish-brown. He had his hair combed in an unfamiliar way to me. I think they had been cut with scissors not with clippers. It was

longer at the centre drawn to the back and close at the sides.

Q. Describe it more?
A. (Pointing to accused) Just like that, Sir. I noticed it because I hadn't seen one just like it before.'

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

DEFENCE

FIRST WITNESS

The accused, sworn, states:-

Q. Would you make a statement of exactly what you did from the time that Pte Archer asked you to drive him down to Farnham Sta up to tea-time that day?
A. At about 12 o'clock that day, Pte Archer came into the hut at 4 VRD and asked me if I would drive him and some other chaps to Farnham Sta. His vehicle was at the corner of the hut and I drove the truck to Farnham and let them off at the sta. On the way back, I had tea at Frecklesham, just off the main road. I came back to Bordon and went down to the YMCA where I had a sandwich and tea and then put the truck on the square. The guard at the gate didn't ask me to show my work ticket. They seldom do. I gave him the number of the work ticket and proceeded to park the lorry on the tpt lines at its usual place. I then put the log-book in the tpt wicket.

Q. Did you see anyone in the tpt office?
A. Yes.

Q. Did you see him?
A. No, his back was facing me. I then proceeded to the hut and then went to the mail and then proceeded to supper.

Q. You say you did go through No. 3 gate without having to sign a guard-sheet?
A. This happens practically any day, Sir.

Q. Were you well known by the guard at the gate?
A. They know us just according to the number of times we go through in a day, Sir.

Q. Is it true that RCEME personnel at 4 VRD take vehicles on tests?
A. Yes.

Q. What do the guards do in their case?
A. I cannot say. You just give them your name and number and they let you go.

Q. Why is this?
A. They see us so many times during the day. There is the odd guard who makes us sign the guard-sheet but there are not many.

Q. Have you very many times taken the log-book in the tpt office and left it there?
A. Yes, Sir, we do that every night. We just go in, fill in our log-book and leave it in the tpt office without saying anything to anyone.

Q. At approx what time did you go through the gate?
A. Between 1415 and 1445 that day; I was in the billets after that.

Q. (Pointing to Ex "A" and "B") Are either of these your jerkin?
A. Yes, Sir, Ex "B".

Q. What colour socks did you have on?
A. Khakki socks, Sir, with black shoes.

CROSS-EXAMINED

Q. Would you be authorised to take a vehicle to Farnham after duty?
A. Yes, Sir to the Aldershot Area. As far as I was concerned the trip was authorized by Lt MacFarlane.

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Q. Can you explain why your name does not appear on the guard-sheet?
A. I can't explain that, Sir.

Q. Did the guard write your name and number down?
A. I can't say for sure, Sir.

Q. Afterwards you went to your hut?
A. Yes, Sir, to the mail and after to supper.

QUESTIONS BY THE COURT

Q. At what time did you leave Archer at the sta?
A. I left camp at about 1210 hrs and it would be ½ an hr later.

Q. Where did you have tea at Wrecklesham?
A. I don't know.

Q. Was anybody in the truck with you?
A. No.

Q. Did you give anyone a lift?
A. No.

Q. What kind of shes were you wearing?
A. Black shoes.

Q. Low or army shoes?
A. Low shes, Sir.

Q. Were you wearing a jerkin?
A. Yes, Sir.

Q. You heard the evidence of Aldred that he was talking to you?
A. I was not even around the district.

Q. Who was the man at thegate when you came in with your vehicle?
A. I don't know his name but I know him by sight.

Q. Have you tried to find him?
A. I have seen him since.

Q. You know who he is?
A. Yes, Sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

SECOND WITNESS

F-5082, Cpl CAMERON, LE., No. 4 VRD, 1 CCOD, (RCEME Sec), sworn, states:-

Q. Do you remember the last Sat in Feb?
A. Yes, Sir.

Q. Did you see the accused that day?
A. Yes, Sir, I was in my quarters from approx 2 o'clock to 4 o'oclock. The accused was playing darts from 2 o'clock on.

Q. You were rooming with the accused?
A. Yes, at that time, Sir.

Q. Were you there while this dart game was going on?
A. Yes, Sir.

Q. Did the same people play all the time?
A. Yes, Sir, Cfns Chisholm, Buckingham, Duff and myself played from 3 to 4 o'clock that day.

Q. Did you all go together after that?
A. I went to tea on my own.

CROSS-EXAMINED

Q. You quite certain that Duff was there?
A. Yes, Sir.

Q. He was there all the time?
A. Yes, Sir.

Q. Was there that he could have gone out without you seeing him?
A. Yes, he could have gone to the wash-room.

Q. A man can't play darts continuously if he goes to the wash-room?
A. No, Sir. We were four men playing and one can step out for a minute while waiting for his turn to come around.

Q. Did you all continue to play from 3 o'clock until supper was ready?
A. Yes, Sir.

Q. At what time did you have supper?
A. 1630 hrs.

Q. Is it not a rather long time to keep up a dart game?
A. No, Sir.

Q. What was Duff wearing?
A. I am not sure, Sir.

Q. Did he have a scratch on his nose?
A. I never heard he had a scratch on his nose; I didn't notice any.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

THIRD WITNESS

B-2429 Cfn BUCKINGHAM, W., 4 VRD, 1 CCOD, (RCEME Sec), sworn, states:-

Q. Were you at the end of Feb 45 rooming with the accused?
A. Yes, Sir.

Q. Do you remember Feb 24?
A. Yes, Sir.

Q. Why?
A. Because shortly after that the accused asked me to give evidence for him and the date is well fixed in my mind.

Q. At what time did you see the accused on 24 Feb?
A. In the middle of the afternoon at approx 3 o'clock.

Q. What were you doing about that time?
A. I was doing my washing, playing darts while I was waiting for the water to get hot and was writing letters.

Q. Was the accused in the hut?
A. Yes, Sir, he was there through the whole afternoon.

Q. At what time did you leave the hut?
A. I was in all the time until supper time. I know the accused was there all through the afternoon.

CROSS-EXAMINED

Q. What kind of clothes did the accused have on?
A. I don't know.

Q. What kind of shoes?
A. I don't know, Sir.

Q. You are positive he was there all afternoon?
A. Yes, Sir.

Q. Were you doing anything with the accused?
A. I was playing the occasional game of darts with him. We were playing teams, Sir. We were six playing darts. We had a relay.

Q. Was there some talk of Duff going out in the evening?
A. Yes, Sir, he was driving the recreational truck.

Q. Was he dressed to go out?
A. He is a pretty natty dresser and would not need to dress any more.

Q. Did the accused go to supper with you?
A. No, I went with Cameron.

Q. At what time was supper?
A. 1630 hrs, Sir.

Q. When was it when Duff asked you if you would like to go out in the evening with him?
A. Just after tea, Sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

FOURTH WITNESS

D-129135 Cfn CHISHOLM, J., No. 4 VRD, No. 1 CCOD (RCEME Sec), sworn, states:-

Q. Do you remember the last Sat in Feb 45?
A. Yes, Sir.

Q. Why?
A. I have been thinking of it ever since then. I had a sleep after dinner till about 3 o'clock. After that we had a dart game, Cpl Cameron, Cfns Buckingham, Duff and myself.

Q. Was the accused in the billets when you awoke?
A. Yes.

Q. Did you state that you were playing darts all afternoon?
A. Till 1615 hrs until we went to mail just before supper.

Q. Was the accused there all that time?
A. Yes.

CROSS-EXAMINED

Q. Do you remember how Duff was dressed?
A. No, I can't recall.

Q. Did Duff take off his battle-dress blouse off to play darts?
A. I can't tell, Sir.

Q. Did you take your blouse off?
A. I usually do.

Q. Did anybody else except the four of you play?
A. That's all that played after I got into the game.

Q. How many dart games in the room?
A. One, Sir.

Q. Was Buckingham playing all the time?
A. Yes, Sir.

Q. How do you know it was three o'clock when you woke up?
A. I was around there an hour before themail came, that's the way I figured it out.

Q. Might this had been another Sat than the 24 Feb?
A. No because we had a Court of Inquiry a few days after the 24 Feb; it reminded me of it.

IN THE OPINION OF THE COURT IT IS NOTNECESSARY TO COMPLY WITH RP 83 (B).

REBUTTLE PROSECUTION
SECOND WITNESS
FOR THE PROS

LT G.E. ALGAR, No. 4 VRD, No. 1 CCOD, RCOC, already sworn, states:-

Q. Do you know the accused?
A. Yes.

Q. Did you see him shortly after 24 Feb this year?
A. Yes, Sir.

Q. Do you remember seeing the accused on Wed afternoon, 28 Feb 45?
A. Yes, Sir.

Q. Did you observe anything about his personal appearance?
A. I noticed a very small scratch on his nose and two scratches on the back of his neck. They were about an inch long and not deep. They showed two red distinct marks.

CROSS-EXAMINATION

Q. When did you notice these marks or scratches?
A. I first noticed them on Wed afternoon, 28 Feb, four days after the accident. They were drawn to my attention by Mr. Aldred in his identifying the accused. I asked the accused to turn around and I saw these scratches which were not fresh. They had not been done that day. It looked as though they had been washed and there was just a red scratch.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

SIXTH WITNESS

K-5384, JNS Newsted, E.S., No. 4 VRD, sworn, states:-

Q. Have you seen the accused since Feb 24?
A. Yes, Sir.

Q. Who is he?
A. He is the man sitting down near the Def Offr.

Q. Looking back to Wed Feb 28, do you recall seeing the accused at _____ Garden, Petersfield?
A. Yes, Sir.

Q. Did you notice at that time anything about his appearance?
A. I saw two scratches on the accused's face and neck. One was across his face (witness points with his finger from nose to cheek and went behind his ear); It looked like scratches from a thorn or pin. They were about four days old.

CROSS-EXAMINED

Q. Were there any sign of blood or scab?
A. Just a scratch scab over the top.

Q. They might have been done before the definite time you stated?
A. No, Sir, I think it was just a matter of three or four days.

DEFENCE

DEF OFFR TO THE COURT

Sir, I'd like to recall the accused?

PRES TO THE ACCUSED

You are already under oath.

The accused, already sworn, states:-

I got those scratches by the Isolation Hospital in Woodham-Surrey. I was with a woman/about 1130 PM Sat 24 Feb. I don't want to bring her name in this affair.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH KO 82 (3).

STATEMENT BY THE DEF OFFR ON THE FINDINGS

Sir, in view of what has been presented before the Court, the defence feels that nothing of real value has been put forth to prove that the accused was at the scene of the accident or was the dvr of the vehicle which crashed into the ditch on Feb 24 45 [redacted] the accused. Evidence has been given by two civilians who were witnesses to the accident. One of these witnesses noticed quite definitely how the dvr of that vehicle was dressed although he couldn't recognize his features. The other witness, who recognizes Pte Duff by his features and a few small scratches which would take very close observation, could not describe clearly how the dvr was clothed. The defence, on the other hand, has presented to the Court sworn statements given by three of the accused's room-mates showing conclusively that he was in his billets playing darts from the hours of approx 1445 until 1615 hrs on 24 Feb 45 at which time he and his room-mates left the billets for supper. The defence, through questioning of Alger and Pte Archer, has proven that it is possible for a dvr to be admitted by the guards at [redacted] gate without signing the guard-sheet. The prosecution could have but have not brought the guard-sheet made out by the guard. The prosecution said that everybody who entered that gate during the afternoon had signed. Yet they have no proof of that fact. How can the defendant be sure that the guard is going to write down the number of a vehicle and name of the dvr if the guard will not come out/his hut. Every vehicle entering this gate should show on the guard-sheet, with the signature of the dvr. It Alger has stated that when he first learned of the accident and checked his records, the log-book and work ticket were in their proper places. Hence, it is felt by the defence that the accused has not had a conclusive evidence brought to bear against him in this case that could be of a convicting nature.

STATEMENT BY THE PROS OFFR ON THE FINDINGS

Sir, it seems all strange that the vehicle was taken at about 1400 by the accused who is supposed to have put it back at 1445 and then at 1600 hrs the same vehicle is found washed up the road near Petersfield. A vehicle certainly cannot get down there by itself and cannot be stolen from the square and be down there by that time. There's a few points about the scratches on the accused's face. It is rather strange that he should get scratches on his that very same evening. We have had witnesses to show that he did have these scratches on his face and neck. They did not get there by chance. It is also true that we have one witness, Aldred, who was with the accused. He was with him for about half an hour and helped him start the car and I feel sure that if a man who worked with another man about half an hour upon being asked to identify that man would be able to do so. Aldred is positive that the accused is the man in question and he must be believed.

COURT CLOSES TO CONSIDER THE FINDINGS.

PLEA IN MITIGATION OF SENTENCE

I think the MFM 6 speaks for itself as to the accused's character. The character reference of the accused is given by the OC of No. 4 VRD, in applying for a Court-Martial. The OC, No. 4 VRD, mentions that the character of the accused is fair. From this documentary evidence of his character, I would like to put myself on record as saying that the defendant conducted himself in a manner satisfactory to the army standards and the fact that he was not put in arrest by his CO shows his standing in the unit; it proves that he is to be trusted.

SUMMARY OF EVIDENCE

in the Case of

G45117 Pte Duff D.S. on strength of 4 V.R.D.(R.C.E.M.E.), 1 C.C.O.D., a soldier of the Canadian Army Overseas.

By Direction of the O.C. Depot Bn., H.Q. 1 C.C.O.D., the Summary of Evidence is taken on oath.

FIRST WITNESS for the Prosecution.

A17212 Pte Archer N.M. on strength of 4 V.R.D.(R.C.E.M.E.), 1 C.C.O.D., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

"I am A17212 Pte Archer N.M. employed as a driver for M.T. Stores Section R.C.E.M.E., 4 V.R.D., 1 C.C.O.D. On the morning of 24 Feb 1945 at 0800 hrs, I drew the work ticket for vehicle CZ4205993 from the Unit Transport dispatcher. I then proceeded to carry out my daily duties of picking up and delivering stores for the M.T. Stores Section, 4 V.R.D. At 1157 hrs I checked W.D. vehicle No. CZ4205993 out at the No. 2 gate and proceeded to my quarters. I then contacted Pte Duff and asked him if he would drive the vehicle to Farnham and return it to the parking lot. He said he would so we proceeded to Farnham, with Pte Duff driving the vehicle. On arriving at Farnham Station I got out of the vehicle and Pte Duff drove off. I then caught my bus for Crookham crossroads."

The accused, Pte Duff, cross-examines this witness.

Question :- Do you always show your work ticket and sign the guard's sheet when you enter and leave the squares?
Answer :- No.

Cross-examined by Officer detailed to take the Summary of Evidence.

Question :- Was this trip to Farnham Station authorized by an Officer?
Answer :- No, sir.

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SECOND WITNESS for the Prosecution

Lieut. Algar G.E. on strength of 4 V.R.D., 1 C.C.O.D., an Officer of the Canadian Army Overseas, having been duly sworn, states as follows:-

"I am employed as Officer in charge of Unit Transport, 4 V.R.D., 1 C.C.O.D. At approximately 1900 hrs on Saturday 24 Feb 45, I received information by my dispatcher that vehicle CZ4205993 was found wrecked and abandoned 2 miles south of Petersfield along the Portsmouth road. I then went to the Transport Office and checked the log book and found this vehicle was out without authority. I then went down with Pte

SECOND WITNESS for the Prosecution (Cont'd)

Yasskin and recovered the vehicle. On Sunday, 25th February, I went back to the scene of the accident and made out the 1000/42A R.A.R. I then went to the Petersfield Civil Police, who were unable to give me any information, but stated that William Daughtry was a witness to the accident. On the morning of Feb. 26th I went to see William Daughtry, but was unable to locate him. I finally located him on Feb. 27th and he refused to make a statement. I then asked the Adjutant of 4 V.R.D. to convene a Court of Inquiry and also got permission from the Automobile Association to get a statement from William Daughtry.

On 28th of Feb. the President of the Court of Inquiry and myself, accompanied by Ptes Duff and Archer, interviewed William Daughtry. Daughtry stated that neither Duff nor Archer was the driver of the vehicle and gave us the names of two other witnesses, a Willie Treagus and a Wilfred Aldred. We then interviewed Aldred and when asked if he could identify the driver of the lorry he replied, "Yes, that's himthere," and pointed out Pte Duff. The President of the Court asked Aldred if he was certain that Pte Duff was the driver of the lorry and Aldred stated that he was."

The accused declines to cross-examine this witness.

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THIRD WITNESS for the Prosecution

H95694 Cpl Hodgins, G.S., on strength of 4 V.R.D., (R.C.E.M.E.), 1 C.C.O.D., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

"I am H95694, Cpl Hodgins, G.S., employed as a driver mechanic in the Headquarters Workshop, R.C.E.M.E., 4 V.R.D., 1 C.C.O.D. On 1st March, 1945, I checked over the damaged vehicle W.D. No. CZ 4205993 and found the estimate cost of damage and repairs sustained to this vehicle amounted to the sum of £14-12-0."

The accused declines to cross-examine this witness.

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FOURTH WITNESS for the Prosecution

B79778 Pte Daignault, N.J., attached to 4 V.R.D., 1 C.C. O.D., (Guards Section), a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

"I am employed in the Guard Section of 4 V.R.D.,1C.C.O.D. I was on duty on Saturday, Feb. 24th, 1945, from 0800 hrs to 1700 hrs, checking vehicles in at Gate No.3 entrance to the Issue Square of 4 V.R.D., 1 C.C.O.D. It is my duty to check all Work Tickets and see that all vehicle drivers sign the vehicle gate report before entering the Issue Square."

Cross-examined by Officer detailed to take Summary of Evidence.

FOURTH WITNESS for the Prosecution (Cont'd)

Question :- Do you know Pte Duff?

Answer :- Yes, sir.

Question :- Do you recall seeing Pte Duff passing through No.3 Gate entrance of the Issue Square, No. 4 V.R.D., between 1415 and 1445 hrs on Feb. 24th, 1945.

Answer :- No, sir.

Question :- Was it possible for a vehicle to come past No. 3 Gate without being seen by you when you were on duty that day.

Answer :- No, sir.

Question :-- Do you recall checking W.D. vehicle No. CZ 4205993 in on the guard report between 1330 and 1600 hrs Feb. 24th, 1945.

Answer:- No, I do not.

The accused declines to cross-examine this witness.

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FIFTH WITNESS for the Prosecution

William Daughtry, Causeway, Hornedean, Portsmouth, Hants, a scout patrol of the Automobile Association, having been duly sworn, states as follows:-

"I am an employee of the Automobile Association, and while on point duty at approximately 1605 hrs 24 Feb., 1945, I was standing at Butser Hill telephone box and,on hearing a crash on the Petersfield-Portsmouth highway, I looked up the road and saw a cloud of dust and that an accident had occurred. I at once cycled to the scene of the accident and found a Canadian Army lorry No. CZ 4205993, the property of 4 V.R.D., 1 C.C.O.D., had collided with a telephone pole, crashed through a hedge and fallen down an eight-foot bank into the field. On seeing that none of the occupants were injured, I returned to my post and informed the Civil police at Petersfield of the accident. When the police arrived about half-an-hour later the driver and sailors had left, leaving the lorry abandonned in the field."

Cross-examined by Officer detailed to take Summary of Evidence.

Question :- On arriving at the scene of the accident, did you leave the highway and go down the bank to the spot where the vehicle finally came to a stop?

Answer :- No.

Question :- Were there any other witness at the scene of the accident?

Answer :- Yes, a Willie Treagus, the Cottage, Butser Hill, and Wilfred Aldred, a chap who works at Laycock & Garrett, Petersfield.

FIFTH WITNESS for the Prosecution (Cont'd)

Question :- Did you ask the name of the driver of the vehicle CZ 4205993?

Answer :- No, sir.

Question :- Do you identify Pte Duff as the driver of W.D. vehicle CZ 4205993?

Answer :- No.

Question :- Would you be able to identify the driver of the vehicle?

Answer :- No, I shouldn't be able to identify the driver.

Cross-examined by G.45117 Pte Duff, D.S.

Question :- How far away from the vehicle was the fence along the highway which you were leaning over?

Answer: :- Eight to ten feet.

Question :- Did you notice how the soldier was dressed?

Answer :- He was wearing battle-dress, brown leather jerkin, brown shoes, dark socks and no anklets, and I don't recall seeing him with a cap on.

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SIXTH WITNESS for the Prosecution

Wilfred Aldred, an employee of Laycock & Garrett, Petersfield, residing at No. 5 Wyldslane, Weston, having been duly sworn, states as follows:-

"At approximately 1600 hrs 24 Feb., 1945, I, along with my father, was hedge trimming when we heard a crash in the direction of Butser Hill. My father said, 'It looks as if a lorry has turned over.' So I proceeded towards the direction of the accident. On arriving at the accident, I noticed that the driver of the vehicle was a Canadian soldier, who was accompanied by two British sailors. One of the sailor's Mackintosh was jammed in the door on the passenger's side of the cab and I helped him to release it. After we got the coat free, the sailors remarked that they had to catch a train, so they left the scene of the accident. The driver of the vehicle and myself then endeavored to start the motor, and when we were unable to get the engine running the driver remarked that he would have to catch a bus back to Bordon, and with that he went up onto the highway and thumbed a lift in a passing automobile proceeding in the direction of Petersfield. I then went back home."

Cross-examined by Officer detailed to take the Summary of Evidence.

Question :- Do you identify Pte Duff as being the driver of the W.D. vehicle No. CZ 4205993?

Answer :- I identify Pte Duff as being the soldier at the scene of the accident.

Question :- How do you identify Pte Duff?

SIXTH WITNESS for the Prosecution (Cont'd)

Answer :- By the way his hair was cut and by the scratches on his nose and neck.

The accused declines to cross-examine this witness.

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SEVENTH WITNESS for the Prosecution

Willie Treagus, the Cottage, Butser Hill, a gamekeeper, having been duly sworn, states as follows:-

"At approximately 1605 hrs 24 Feb. 1945, while talking with William Daughtry, the A.A. scout of Buriton Cross-roads, I, along with William Daughtry, heard a crash along the Petersfield-Portsmouth highway, approximately 400 yards away. The two of us proceeded towards the scene of the accident to see if anyone was injured. On arriving, I noticed an army lorry at the bottom of the bank by the side of the road and a soldier accompanied by two sailors around the lorry. No one appeared to be hurt, so Mr. Daughtry informed me that he was going to notify the civil police. I left the scene of the accident and went home."

Cross-examined by Officer detailed to take the Summary of Evidence.

Question :- Do you identify Pte Duff as the soldier at the vehicle at the time of the accident?

Answer :- No, sir.

Question :- Would you be able to recognize the driver of the vehicle if you were to see him again?

Answer :- No, sir.

Question :- Did you leave the highway and go down the bank to where the vehicle stopped?

Answer :- No, sir.

The accused declines to cross-examine this witness.

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The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

After the above caution, the accused declines to make any statements and reserves his defence.

FIRST WITNESS for the Defence.

F5082 Cpl Cameron, L.E., on strength of 4 V.R.D., 1 C.C.O.D., (R.C.E.M.E. Sect.), a soldier of the Canadian Army Overseas, having been duly sworn, states:-

"I, F5082, Cpl Cameron, L.E., on Saturday, Feb. 24th, 1945, was in my quarters from 1400 to 1630 hrs doing my weekly washing, after which I had a game of darts with Cfns Buckingham, Chisholm and Pte Duff. At approximately 1630 hrs I went over to the mess hall for tea and after having tea I went out for the evening."

Cross-examined by Officer detailed to take the Summary of Evidence.

Question :- Do you recall at what time Pte Duff arrived in his quarters?

Answer :- I couldn't state any definite time as to when he arrived in the quarters.

Question :- At what time did you start playing darts with Pte Duff and Chisholm?

Answer :- Approximately 1445 hrs.

Question :- When did you finish the dart game?

Answer :- Approximately 1600 hrs.

Question :- Did Pte Duff leave the quarters from the time that you started playing darts until the time that you stopped?

Answer :- I never noticed him leave.

The accused declines to cross-examine this witness.

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SECOND WITNESS for the Defence.

B2429 Cfn Buckingham, W., on strength of 4 V.R.D., 1 C.C.O.D., (R.C.E.M.E. Sect.), a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

"At approximately 1400 hrs on Feb. 24th, 1945, I, along with Cpl Cameron, after having visited the canteen proceeded to our quarters. I wrote a couple of letters and did my weekly washing. I had a few games of darts with Cpl Cameron, Cfn Chisholm and Pte Duff and others. After playing darts, I went to the mess hall for dinner. At approximately 1630 hrs, just before going to dinner, Pte Duff asked me if I would like to accompany him on a recreational trip that he was taking that evening. I told him that I didn't wish to go."

Cross-examined by Officer detailed to take Summary of Evidence.

Question :- At what time did you first see Pte Duff during the afternoon of Feb. 24th?

Answer :- Approximately 1500 to 1530 hours.

SECOND WITNESS for the Defence. (Cont'd)

Question:- When did you quit playing darts?

Answer :- At approximately 1630 hrs.

Question:- Was Pte Duff in the room from the time that you first saw him until the time that you quit playing darts with him?

Answer :- I am reasonably certain that he was there all the time.

The accused declines to cross-examine this witness.

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THIRD WITNESS for the Defence.

P129135 Cfn Chisholm, J., on strength of 4 V.R.D., 1 C.C.O.D., (R.C.E.M.E.), a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

"After the noon-day meal on Saturday, Feb. 24th, 1945, I went to bed and had a sleep. At approximately 1500 hrs I woke up and got into a game of darts with Cpl Cameron, Cfn Buckingham and Pte Duff. I then went to the post office to see if there was any mail. After collecting my mail, I went to dinner." of evidence

Cross-examined by Officer detailed to take the Summary

Question :- Do you recall if Pte Duff was in the billets from the time that you woke up till the time that you went to the post office?

Answer :- Yes, sir.

The accused declines to cross-examine this witness.

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I certify that the foregoing Summary of Evidence consisting of seven (7) pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c)(d)(e)(f) and (g) have been complied with.

.....Lieut.
Officer detailed to take
Summary of Evidence.

Bordon, Hants
27 Mar 45.

Summary of Evidence

in the case of

G-45117 Pte Duff D. S. on strength of 4 V.R.D (R.C.E.M.E.) 1 C.C.O.D. a soldier of the Canadian Army Overseas.

By Direction of the O.C. Depot Bn., H.Q. 1 C.C.O.D. the Summary of Evidence is taken on oath.

First Witness for the Prosecution — A-17212 Pte Archer N.M. on strength of 4 V.R.D (R.C.E.M.E., 1 C.C.O.D. ~~[illegible]~~ a soldier of the Canadian Army Overseas having been duly sworn states as follows:

I am A-17212 Pte Archer N.M employed as a driver for M.T. Stores Section R.C.E.M.E. #4 V.R.D 1 C.C.O.D. On the morning of Feb 24, 1945 ~~[illegible]~~ at 0800 hrs I drew the work ticket for veh. CZ-4205993 from the Unit Transport dispatcher. I then proceeded to carry out my daily duties of picking up and delivering stores for the M.T. Stores Sect 4 V.R.D. At ~~approx~~ 1157 hrs. I checked W.D veh. No CZ-4205993 out at the No 2 Out gate and proceeded to my quarters. I then contacted Pte Duff and asked him if he would drive the vehicle to Farnham and return it to the parking lot. He said he would so we proceeded to Farnham with Pte Duff driving the veh. On arriving at Farnham Station I got out of the veh

and P to Duff drove off.
I then caught my bus for Crookham crossroads:

The accused P to Duff cross - examines this witness.
Ques:- Did you enter No 3 gate entrance to the Issue on the morning of the 24 Feb 1945.
Answer:- No I do not recall going in No 3 gate.
Ques:- Do you always show your work ticket and sign the guards sheet when you enter + ~~[illegible]~~ leave the squares.
Answer:- No.

Cross examined by Officer detailed to take the Summary of Evidence.
Ques:- Was this trip to Farnham Station authorized by an Officer.
Answer:- No Sir.

N Archer

~~Lieut.~~ Second Witness for the Prosecution

Lieut. G.E. Algar on Strength of 4. V.R.D. 1. C.C.O.D. an Officer of the Canadian Army Overseas having been duly sworn states as follows.

I am ~~pte~~ employed as Officer in charge of Unit Transport 4. V.R.D. 1. C.C.O.D. At approx 1900 hrs. on Saturday 24. Feb. 45 I received information by my dispatcher that veh. CZ-4205993 was found wrecked & abandoned 2 miles along the Portsmouth road south of Petersfield. I then went to the Transport office and checked the log-book & found that vehicle was out without authority. I then went down with Pte YASSKIN & recovered the veh. On Sunday 25th Feb I went back to the scene of the accident and made out the 1000 + 2A. R.A.R. I then went to the Petersfield Civil Police who were unable to give me any information but stated that William Daughtry was a witness to the accident. On the morning of Feb 26 I went to see William Daughtry but was unable to locate him. I finally located him on Feb 27 & he refused to make a statement. I then asked the Adjutant of 4. V.R.D. to convene a Court of Inquiry & also got permission from the Automobile Assn. to get a statement from William Daughtry.

On 28th Feb the Pres of the Court of Inquiry & myself accompanied by Ptes Duff & Archer ~~[illegible]~~ interviewed William Daughtry.

Daughtry stated that neither Duff or Archer was

the driver of the veh and gave us the names of two other witnesses a Willie Treagus + a Wilfred Aldred. We then interview Aldred + when asked if he could identify the driver of the lorie he replied yes that him there and pointed out Pte Duff. The Pres of the Court asked Aldred if he was certain that Pte Duff was the driver of the lorie and Aldred stated that he was

The accused declines to cross-examine this witness

[illegible]

G Algar
Lieut

H. 95694, Cpl. Hodgins G.S.
on strength of 4. V.R.D. (R.C.E.M.E.)
1. C.C.O.D. a soldier of the
Canadian Army Overseas, having
been duly sworn states as follows:-

Said Witness for the Prosecution

I am H. 95694, Cpl. Hodgins, G.S. employed as a driver mech. in the Headquarters Wkshp R.C.E.M.E. 4. V.R.D., 1. C.C.O.D.

On 1st March 1945, I checked over the damaged vehicle W.D. No. C.L. 4205993 and found the estimate cost of damage and repair sustained to this vehicle amounted to the sum of £14-12s-0.

The accused declines to cross-examine this witness

G. S. Hodgins

— // —

W

B-79778 Pte Daignault, N. J.
attached to 4. V.R.D. 1 P.P.C.O.D.
(Guards Section) a soldier of the
Canadian Army Overseas, having
been duly sworn states as follows:

Fourth Witness for the Pro-Secution

I am employed in the Guard Section of 4. V.R.D.
1. P.P.C.O.D.
"I was ~~employed~~ on duty on Saturday, Feb.
24th 1945, from 0800 hrs to 1700 hours,
checking vehicles in at Gate No 3 entrance
to the Issue Square of 4. V.R.D., 1. P.P.C.O.D.
It is my duty to check all Work Tickets
and see that all vehicle drivers sign the
vehicle gate report before entering the Issue
Square."

Cross examined by Officer detailed to take Summary
of Evidence.

Ques: Do you know Pte Duff

Answer: Yes Sir.

Ques: Do you recall seeing Pte Duff
passing through #3. Gate entrance to the Issue
Square #4 V.R.D. between 1415 and 1445 hrs.
on Feb. 24, 1945.

Answer: No Sir.

Ques: ~~Was~~ it possible for a vehicle to come
past #3. Gate without being seen by ~~you~~ ~~when you~~
were on duty that day.

Answer: ~~No Sir~~ No Sir.

Ques: ~~Do you~~ recall checking WD vel NO CZ-4205993
~~[illegible]~~ on the Guard report ~~[illegible]~~
~~CZ 4205993 [illegible]~~ between
1330 to 1600 hrs. Feb. 24th, 1945?

Answer: ~~[illegible]~~ No I do not.

The accused declines to cross examine this witness.

N S Daignault

NJ

Fifth Witness for the Prosecution

William Daughtry, Causeway, Hornedean, Portsmouth, Hants a scout patrol of the Automobile Association, having been duly sworn states as follows:-

I am an employee of the Automobile Association, and while, on point duty at approximately 1605 hours, 24 Feb. 45, I was standing at Butser Hill telephone box and on hearing a crash on the Petersfield-Portsmouth Highway I looked up the road and saw a cloud of dust and that an accident had occurred. I at once cycled to the scene of the accident and found a Canadian Army Lorry No CZ-4205993 the property of 4 V.R.D., 1 C.C.C.D., had collided with a telephone pole, crashed through a hedge and fallen down an eight foot bank into the field. On seeing that none of the occupants were injured, I returned to my post and informed the civil police at Petersfield of the accident.

When the police arrived about half an hour later, the driver and sailors had left leaving the lorry abandonned in the field.

Cross-examined by ~~the~~ Officer detailed to take Summary of Evidence.

Ques ~~[illegible]~~ On arriving at the scene of the accident did you leave the highway and go down the bank to the spot where the vehicle finally came to a stop.

~~Answer~~ — No

W

Ques: Where there any other witnesses at the scene of the accident.

Answer: Yes a Willie Treagus, the Cottage Butter Hill and Wilfred Aldred a chap who works at Laycock & Garrett, Petersfield.

Ques: Did you ask the name of the driver of the vehicle CZ-4205993

Answer: No sir.

Ques: Do you identify Pte Duff as the driver of WD veh. CZ-4205993.

Answer: No

Ques: Would you be able to identify the driver of the vehicle

Answer: No I shouldn't be able to identify the driver.

Cross-examined by ~~[illegible]~~ Pte Duff D.L.

Ques: How far away from the veh. was the fence along the highway which you were leaning over!

Answer: 8 to 10 ft.

Ques: Did you notice how the soldier was dressed

Answer: He was wearing battle dress, brown leather jerkin, brown shoes, dark socks, & no anklets & I don't recall seeing him with a cap on

A. Daughtry

My.

Wilfred Aldred an employee of Laycock & Garrett, Petersfield residing at No. 5, Wyldslane, Weston having been duly sworn states as follows:-

Sixth Witness for the Prosecution

At approx 1600 hrs. 24 Feb. 1945, I, along with my father, was hedge trimming when we heard a crash in the direction of Butser Hill. My father said. "It looks as if a lorry has turned over." so I proceeded towards the direction of the accident. ~~[illegible]~~ On arriving at the accident I noticed that the driver of the vehicle to be a Canadian soldier who was accompanied by two British sailors. One of the sailor's Machintosh was jammed in the door on the passenger's side of the cab and I helped him to release it. After we got the coat free, the sailors remarked that they had to catch a train so they left the scene of the accident. The driver of the vehicle and myself then endeavoured to start the motor and when we were unable to get the engine running, the driver remarked that he would have to catch a bus back to Bordon and with that he went up onto the highway and thumbed a lift in a passing automobile proceeding in the direction of Petersfield. I then went back home.

Cross-examined by Officer detailed to take the Summary of Evidence.

Ques:- Do you identify Pte Duff as being the driver of the W.D. vehicle No. CZ 4200993.

Answer:- I identify Pte Duff as being the soldier at the scene of the accident

Ques:- How do you identify Pte Duff?

Answer:- By the way that his hair was cut and by the scratches on his nose and neck

The accused P. G. Duff declines to cross-examine this witness

W Aldred.

[illegible]

Seventh Witness for the Pro-Secution

Willie Treagus, the Cottage, Butser Hill, a game-keeper having been duly sworn states as follows.

At Approx 1605 hours, 24 Feb. 45 while talking with William Daughty, the A.A. scout of Buriton Cross-roads, I along with William Daughty heard a crash along the Petersfield-Portsmouth highway approx 400 yards away. The two of us proceeded towards the scene of the accident to see if anyone was injured. On arriving, I noticed an Army lorrie at the bottom of the bank by the side of the road. ~~I~~ and a soldier accompanied by two sailors around the lorrie. No-one appeared to be hurt so Mr. Daughty informed me that he was going to notify the civil police. I left the scene of the accident and went home

Cross-examined by the Officer detailed to take the summary of Evidence.

Question:- Do you identify Pte. Duff as the soldier at ~~[illegible]~~ the vehicle at the time of the accident-

Answer:- No Sir.

Question:- Would you be able to recognized the driver of the vehicle if you were to see him again

Answer:- No Sir

~~Question~~:- Did you leave the highway and go down the bank to where the vehicle stopped.

Answer:- No Sir.

The accused declines to cross-examine the witness

To Fairgrs.

77

The Accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

After the above caution, the accused declines to make any statements and reserves his defence.

First Witness for the Defence

F-5082, Cpl. Cameron L.E. on Strength ~~attended~~ ~~on Saturday afternoon~~ to 4 V.R.D., 1 C.C.O.D. (R.C.E.M.E. Sect.) a soldier of the Canadian Army Overseas having been duly sworn states.

"I F-5082, Cpl. Cameron, L.E. on Saturday afternoon Feb 24th, 1945 was in my quarters from 1400 to 1630 hours doing my weekly washing after which I had a game of darts with Cfns. Buckingham, Chisholm & Pte Duff. At approx 1630 hours I went over to the mess hall for tea and after having tea I went out for the evening.

Cross-examined by the Officer detailed to take the Summary of Evidence

Ques: Do you recall at what time Pte Duff arrived in his quarters?

Answer: I couldn't state any definite time NA to when he arrived in the quarters

Question :- At what time did you start playing darts with Pte Duff & Chisholm.
Answer :- Approx 1745 hrs.
~~Question~~ :- If hen did you finish the dart game
Question :- Approx 1600 hrs.
~~Question~~ :- Did Pte Duff leave the quarters from the time that you started playing darts until the time that you stopped.
Answer :- You never noticed him leave

The accused declines to cross examine this witness.

L.E. Cameron. 11

Mx

B-2429 Tfn. Buckingham W.
on Strength of ~~attached to~~ 4. V.R.D. 1. F.L.O.D.
(R.T.E.M.E. Sect.) a soldier of
2nd Witness for the Defence the Canadian Army Overseas having been duly sworn states as follows:-

At approx 1400 hours on Feb. 24, 1945 I along with Spl. Cameron, after having visited the canteen proceeded to our quarters. I wrote a couple of letters and did my weekly washing. I had a few games of darts with Spl. Cameron, Tfn. Chisholm, Pte. Duff and others. After playing darts, I went to the Mess hall for dinner. At approx 1630 hours just before going to dinner Pte Duff asked me if I would like to accompany him on a recreational trip that he was taking that evening. I told him that I didn't wish to go.

Cross-examined by the officer detailed to take the Summary of Evidence.

Ques:- At what time did you first see Pte Duff during the afternoon of Feb 24th

Answer. Approx 1500 to 1530 hours

Ques:- When did you quit playing darts.

Answer:- Approx 1630

Ques:- Was Pte Duff in the room from the time that you first saw him until the time that you quit playing darts with him.

Answer I am reasonably certain that he was there

all the time.

The accused declines to cross examine
the witness. W. Buckingham

W7

Cfn. P. 129 135 Cfn. Chisholm J.
on strength of 4. V.R.D. (R.C.E.M.C.)
1. C.L.A.D. having been duly
sworn states as follows.

Third Witness for the Defence

After the noon-day meal on Saturday Feb. 24th 1945 I went to bed and had a sleep. At approx 1500 hours I woke up and got into a game of darts with Cpl. Cameron, Cfn. Buckingham and Pte Duff. I then went to the post office to see if there was any mail. After collecting my mail I went to dinner.

Quer: Do you recall if Pte Duff was in the billets from the time that you woke up till the time that you went to the post office.

Answer: Yes Sir.

The accused declines to cross examine this witness

J. Chisholm

I certify that the foregoing Summary of Evidence consisting of seven (7) pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c)(d)(e)(f) and (g) have been complied with

H. Elliott Lieut.
Officer detailed to take Summary of Evidence

Bordon Hants
27. Mar. 45.
M

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
G-45117	Private	Duff, D.S.	No. 4 V.R.D., 1 C.C.O.D.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Sec. 15(1) A.A. 2 times.

Date of first entry in Field Conduct Sheet 12 July 1943

Date of last entry in Field Conduct Sheet 26 Sept 1943

*Strike out if not applicable.

*3. The accused at the present time is under sentence for Nil beginning on the Nil day of Nil

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for Nil days in military custody, *i.e.*, Nil days in open arrest, Nil days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 23 years ( )

6. The date of his attestation is 22 July 1941

7. The service which the accused is allowed to reckon is 3 years ( )

‡State the military decorations (if any) held by accused.

8. The accused is in possession of‡ C.V.S.M. & Clasp, dated 15 Jan 44.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*28072) Wt.20721/9701 [illegible] 9-44 A.&E.W.Ltd. Gp.690

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		No Previous Courts-Martial		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 29th day of ~~March~~ 45

No. G-4511 Name DUFF, D.S. | Sqn., Battery, or Company | Corps R.C.O.C. | Date of enlistment 22-7-41 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /3136 (2965)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. "J.P.Dorion, Lieut. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed on completion of six months service 22-1-43. "J.P.Dorion" Lieut. (J.P.Dorion) Adjt.					
Bordon	12/5/43	L/Cpl		A.W.L. Sec 15(1) 27 minutes	Cpl.Stoddard	Reverted to perm. rank of Pte.	13/5/43	Lt-Col.W.McKinlay "JPD"	
	Entries to date 24 Sep 43								
Field	26 Sep 43	Pte		AWL 2359 hrs 26 Sep 43 to 0615 hrs 27 Sep 43. Sec 15(1) A.A. (Total 6 hrs 15 mins)	Documentary	5 days F.P. & to forf. 5 day pay FR&I 149(1)(b)	28 Sep 43	Major D.E Mounteer	one days pay forf. FR&I 149(1)(a)

CERTIFIED TRUE COPY

DATE: Apr 45 .....
(Officer Having custody of Regimental Books)

(P.T.O.)

I, G-45117, Pte. Duff, D.S., of 4 V.R.D., 1 C.C.O.D. (R.C.E.M.E.) wish to have Lieut. A.W. Coulter of 4 V.R.D., 1 C.C.O.D., R.C.O.C. to represent me at my trial.

G45117 Pte. Duff D.S.
(G-45117 Pte. Duff, D.S.)

-X-X-X

5 F-61
Pte Duff, S. F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.66843 Pte DUFF G. F. 1 Can Armd Bde Coy (83 Coy) RCASC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 130 AWL.	guilty	guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; Findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

A6 present ~~under sentence for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To ~~suffer~~ ninety (90) days detention

(Sgd) ... Judge-Advocate, if any. 18 Sept 45 Date awarded. (Sgd) E.W. Westcott Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Accusatorial require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation must be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1. AA 57A. Delete if not used.)

J.W. Cranston Lt.Col

Date 19 Sep 45 Commanding RCEME, 3 Can Inf Div Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B-66843 Pte. Duff G.F.	20 SEP 45	

Promulgated Casualty No. 182

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 28 SEP 1945 JAG BRANCH R.H.Q.

PROCEEDINGS REVIEWED 28 Sep 45 REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS RECEIVED 28 SEP 1945 DEPUTY JUDGE ADVOCATE GENERAL

ST-61

CFA86 (To face p 4 of AFA81) 40-P-AC-8/1945 (4308)

FIELD GENERAL COURT-MARTIAL

Convened by Order of F.W. CRANSTON Lt.Col Comd RCEME 3 Can Inf Div Dated 16 Sept 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed ~~insanity~~, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-66843	Pte	GEORGE FRANCIS	DUFF	1 Can Armd Bde Coy (83 Coy) RCASC

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 18 Sept 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this Form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, C.F. A83, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 36, 63-70, 72, 74, 94, 103, 119, 122.) 37/92

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Have you any objection to~~ ... as interpreter? Ans ...

~~The interpreter is sworn.~~ Do you object to ... as shorthand ~~writer~~ ... ? Ans ...

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President, or by any of the Members of the Court?

Ans No.

(1. RP 110. 2. If no objection, waiting member retires. RP 60(E). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	E.E. WESTCOTT	19 Can Army Fd Regt RCA
Member	CAPTAIN	S.A. HAWKINS	RCASC 3 Can Inf Div
Member	CAPTAIN	W.G. HERBERT MC.	QOR of C. att H.Q. 3 Can Inf Div
~~Judge-Advocate~~			
Prosecutor	Capt	H.A.S. BARNES	(Can Reinf Unit) 2 Can Corps Fd Coy RCE
Defending Offr	Capt	F.S. Westwood	1 Can Armd Bde Coy (83 Coy) RCASC

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment within RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused B.66843 PTE DUFF G.F. before arraignment makes(s) ~~makes~~ no plea

~~...~~ (1)

(1. A special plea is made (for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(3), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or (in one of several accused charged jointly to be tried separately (RP 16, 71), such plea), the addresses made in support or against, the evidence, if any, and finding (are) recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 name (s) of the accused making the plea(s).)

A9. The accused is ~~not~~ arraigned ~~severally~~ on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is (no) amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See paras 1 of Inserts p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use sequestrate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Revised Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RE 160 C2 P72

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3. *MML p* 54 *para* 47. *4. See para* E3 *of Record Form* E.
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.~~(1) ~~The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s).~~ The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on ..... charge(s).~~ Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115*.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF* 495. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(2) (*d*), *RP* 45, 120(*A*). *2. AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans ..... NO
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~extract~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans ..... NO (2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(*b*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its purpose, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 363-366. *Overseas RO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(*1*), *KR Con* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No. B66843 Pte Duff, G.F, of 1 Canadian Armoured Brigade Company (83 Coy) R.C.A.S.C., a soldier of the Canadian Army Overseas, is charge with:

First Charge
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE.

in that he

At Coy lines ZEIST, HOLLAND, did absent himself without leave from 0800 hrs 7 Aug 45 until he was apprehended by the C.M.P. at AMSTERDAM at 1045 hrs 11 Sep 45.
Total Absence - 35 days, 2 hrs, 45 minutes.

Field
13 Sep 45
/c

(R.G. ROBARTS) Major
Commanding
1 Cdn Armd Bde Coy
(83 Coy) R.C.A.S.C.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

Filed
15 Sep 45

(F.W. Cranston) Lt.-Col.
Comd. RCEME 3 Cdn Inf Div.

FIELD GENERAL COURT-MARTIAL

CFA26 (In lieu of AFA3)
40/P&S/1097 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.66843	Pte		G F	DUFF	1 Cdn Armd Bde Coy (83 Coy) RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 15 Sep 45 endorsed by me, (or by my duly authorized staff officer) "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable under the said reference to a superior qualified authy.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. (I name ~~the~~ as deputy judge advocate to form the Court, in a Fd Area as Provided for by the ~~Army Act~~ Army Act.)
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. (I appoint as Judge Advocate General the Officer named hereunder.)
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E E WESTCOTT	19 Cdn Army Fd Regt RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	S A HAWKINS	R C Sigs 3 Cdn Inf Div
Captain	W G HERBERT MC	QOR of C att HQ 3 Cdn Inf Div

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
xxxxxxxxx	xxxxxxxxxxxxxxx	xxxxxxxxx

On Active Service in the Fd

in HOLLAND (Country.)

Date 15 Sep 45

F.W. Cranston Lt Col.
(Signed personally. RP 105 fn 2.) (Rank.)

(F.W. Cranston) Lt.-Col.
Commanding ~~RCEME~~ 3 Cdn Inf Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

DJH.

Medical Officer Certificate
[illegible] (Form [illegible])

I certify that I have this morning examined

NUMBER B66843 Pte DUFF G F

of 1 Cdn Armd Bde Coy (83 Coy) RCASC and in my opinion he is

fit/~~[illegible]~~ to undergo Trial by Field General Court Martial

STATION Field

J. W. Love Capt
Medical Officer

DATE 18 Sep 45

Statement in Mitigation of Sentence
B 66843 Pt Duff G. F. 1 CAB Cay. & CASC.

Mr. President and Members of the Court:

It is usually the function of a statement in mitigation of sentence to account for and explain away a person's particular line of conduct. Therefore such a statement is not one of the easiest things in life to prepare - for one must needs have a smattering of psychology or at least have a better than average understanding of human nature.

Due to long years of war now finished, and the sacrifices, lonesome-ness, brawn off-ish-ness and instability that are its consequences, we have all been guilty of mental lethargy, periods of slackness and at times a "what's the use" attitude.

I do not pretend to justify the [illegible]tion of the accused in going AWL but suggest that what I have said applied to the accused and that his temporary lapse [illegible] duty is understandable.

After talking with the accused I know that when he left his platoon lines he had no intention of going AWL and fully expected to return to his billets within the appointed time, but on occasion human nature is governed by circumstances that war brings about.

The accused has served his country for six years, enlisting 11 Sept 1939 in the Royal Regiment of Canada. He served in Canada and Iceland, arriving overseas in November 1940 as a member of the Royal Regiment with the rank of Corporal. At his own request he was transferred to the Royal Canadian Armoured Corps 5 June 44 and subsequently became a driver with 1 MAC Increment, 1 Cdn Admin Spt Coy; then served with 86 Bridge Coy and upon the breaking up of that unit joined his present Coy 6 Aug 45.

It cannot be denied that the accused has done more than his share of army duty and with a good record behind him.

I would strongly urge the Court to give just consideration to this case in view of the fact that Duff has already served a repeat draft due to this Court Martial and has a wife and 14 months baby awaiting his return in England.

Capt F. S. Westwood
Defending Officer.

Ex "A"

SUMMARY OF EVIDENCE
in the case of:
B66843 Pte DUFF, G.F.
of
1 CDN ARMD BDE COY (83 COY) RCASC

By direction of the Commanding Officer the evidence is taken on oath:

1st Witness: The first witness Lieut P.E. Reeve, having been sworn states:

I am Lieut P.E. Reeve, Adjutant of 1 Cdn Armd Bde Coy (83 Coy) RCASC. In the case of B66843 Pte Duff G.F. of 1 Cdn Armd Bde Coy (83 Coy) RCASC whom I see and recognize I submit the following documents as evidence:

(a) Certified true copy of Part II Order No. 29 dated 25 Aug 45.
(b) Certified true copy of Part II Order No. 32 dated 1 Sep 45.
(c) Army Form B 115 and Appendix A.
(d) Certificate of Surrender A.A. Sec 163 (i) (J).

(P.E. Reeve) Lieut
1 CAB Coy (83 Coy) RCASC

The accused declines to cross-examine this witness.

The documents were taken into evidence and marked exhibit A, B, C and D.

2nd Witness The Second witness D10631 Cpl Hatch D.W., having been duly sworn states:

I am D10631 Cpl Hatch D.W. of B Platoon, 1 Cdn Armd Bde Coy (83 Coy) RCASC. On the 6th Aug 45 at approximately 1430 hrs Pte Duff reported to B Platoon Orderly Room and his documents were taken in my presence. I then turned him over to Cpl Didur, instructing him to show Pte Duff to his section. This was the last I saw of him.

D10631 cpl Hatch, D.W.
1 CAB Coy(83 Coy) RCASC

The accused declines to cross-examine this witness.

(cont'd page Two)

3rd Witness — The third witness C100276 Cpl Corrigan M. having been duly sworn states:

I am C100276 Cpl Corrigan M of B Platoon 1 Cdn Armd Bde Coy (83 Coy) RCASC. On the 7th Aug 45 at 0800 hrs I called the roll of my sections and found that No. B66843 Pte Duff G.F. was not present. I then reported him absent at my platoon orderly room.

C100276 Cpl Corrigan M
1 CAB Coy (83 Coy) RCASC

The accused declines to cross-examine this witness.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of evidence, consisting of two pages, were taken down by me in the presence of the accused and the R.P. 4 (C) (D) (E) and (F) were complied with.

Field
13 Sep 45
/c

(W.A.S. BARNES) Capt
1 Cdn Armd Bde Coy
(83 Coy) R.C.A.S.C.

LIST OF EXHIBITS

Case of No. B66843 Pte Duff, G.F. of 1 Cdn Ammd Bde Coy (83 Coy) R.C.A.S.C.

(A) Certified true copy of Part II Orders No. 29 dated 25 Aug 45.
(B) Certified true copy of Part II Order No. 32 dated 1 Sep 45.
(C) Army Form B 115 and Appendix "A".
(D) Certificates of surrender under A.A. Sec 163 (i)(J).

LIST OF WITNESSES

Case of No. B66843 Pte Duff G.F. of 1 Cdn Armd Bde Coy (83 Coy) R.C.A.S.C.

1st Witness. .....Lieut P.E. Reeve - 1 Cdn Armd Bde Coy (83 Coy) R.C.A.S.C.

2nd Witness.....D10631 Cpl Hatch D.W. - 1 Cdn Armd Bde Coy (83 Coy)RCASC

3rd Witness.....C100276 Cpl Corrigan M. - 1 Cdn Armd Bde Coy (83 Coy)RCASC

EXHIBIT "A"

Last Order No. 28 18 Aug 45

1 CANADIAN ARMOURED BRIGADE COMPANY (83 COY) RCASC THIS ORDER No. 29
Part II Orders issued by 25 Aug 45
CANADIAN SECTION 2ND ECHELON HEADQUARTERS
21 ARMY GROUP

"B" OTHER RANKS

6. ABSENT WITHOUT LEAVE

(a) AWL from 2300 hrs 6 Aug 45
B66843 Pte DUFF G F

(b) AWL from 2300 hrs 6 Aug 45 still absent 2300 hrs 14 Aug 45
(8th day)
B66843 Pte DUFF G F

??????????
(G.R.S. FOSTER) Capt
for officer i/c
CDN SEC 2 ECH HQ BRIT ARMY of the RHINE

/FW

CERTIFIED TRUE AND CORRECT COPY.

(F.E. REEVES) Lieut
Adjt 1 Cdn Armd Bde Coy
(83 Coy) R.C.A.S.C.

Field
13 Sep 45
/c

EXHIBIT "B"

Last Order No. 11 30 Aug 45

1 CANADIAN ARMOURED BRIGADE COMPANY (83 COY) RCASC
PART II ORDERS ISSUED BY
CANADIAN SECTION 2nd ECHELON HQ 21 ARMY GROUP

This Order No. 12 1 Sep 45

"B" OTHER RANKS

5. ABSENT WITHOUT LEAVE

(a) AWL from 2300 hrs 6 Aug 45 still absent 2300 hrs 28 Aug 45.
(22 day)
B66843 Pte DUFF GF

???????
(G.R.S. FOSTER) Capt
for O I/C CDN SEC 2 ECH HQ B.A.O.R.

/FW

CERTIFIED TRUE AND CORRECT COPY.
(P.E. REEVES) Lieut
Adjt 1 CAB Coy (83 Coy) RCASC

Field
13 Sep 45

Exhibit "C"

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at 1 Cdn Arm'd Bde Coy., (83 Coy) R.C.A.S.C. on the 5th day of September 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-66843 Pte Duff, G.F.

DECLARATION.

The Court declare that B66843 Pte Duff, G.F. of 1 Cdn Arm'd Bde Coy (83 Coy) R.C.A.S.C. went absent without leave at 1445 hrs 6 Aug 1945 and is still so absent. Court further declare that B66843 Pte Duff, G.F. is deficient in kit as per attached deficiency list, the catalogue value of which is $61.37

Names of President and Members President: Capt. J.A.Whitelaw
1 Cdn Arm'd Bde Coy RCASC

Member:- Lt. R.L.Carr,
1 Cdn Arm'd Bde Coy RCASC

Signature of Commanding Officer R G Roberts major

CERTIFIED TRUE COPY.

T E Reeve Lt adj

Signature of Officer having custody of the Original Record.

E6627: Wt.51046/560 [illegible] 2/44 A.& R.W.Ltd. Gp.698 Forms/B.115/60

Exhibit "D"

SCHEDULE "F"

CERTIFICATE IN ACCORDANCE WITH P.O. 2797 of 10 APR 42

I certify that No. B-66843 Rank PTE Name DUFF, G.F.

Unit I CAR COY RCASC was arrested at AMSTERDAM Placeat 1045

hrs. 11 day of Sept. 1930 and at the time of his arrest he was

wearing (Military Uniform) ~~or Civilian clothes~~.

Signature of Provost Officer or non commissioned officer in charge.....
Detachment on No 7 Provost Coy Cdn Army into whose custody
the above named person was taken into arrest

O.i.c. [signature]
(H.F. [illegible]) Lt.
No 7 Cdn Pro Coy
C.F.N.

ARMY FORM B.296.

Pte Ex B

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 66843	Pte	Duff G.F.	1 Con Armd Bde Coy (83 Coy) RCASC

1. The following is a fair and true summary of the entries in the regimental [illegible] conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

[illegible]

2. The accused has not been previously convicted [illegible]

3. The accused is not under sentence at the present time [illegible]

4. The accused has been in confinement, awaiting trial on the present charges, for No days in civil custody, and 7 days in military custody, making a total of 7 days, of which No days were spent in hospital.

5. The present age of the accused according to his record of service is 30 years

6. The date of his attestation specified in his record of service 11 Sep 39

7. [illegible]

8. The accused is entitled to deferred pay or gratuity in respect of 5 years 329 days service.

9. [illegible]

10. The accused [illegible] or entitled to C.V.S.M., 1939/45 Star, France & Germany Star Defence Medal

[illegible]

[illegible]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B 66843 Rank Pte Name Duff G.F. of 1 Cdn Armd Bde Coy (83 Coy) RCASC Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
N/A	N/A	NIL	N/A	N/A

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15th day of Sep 1945

N.E. Reeve Lt adj
for (R.G. Roberts) Major
Commanding
1 Cdn Armd Bde Coy (83 Coy) RCASC

13 The [redacted]

In [redacted] yea[redacted]

In [redacted] yea[redacted]

In [redacted] yea[redacted]

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

No. B 66843 Name DUFF G.F. Sqn., Batty., or Company 10 1 Cdn Armd Bde Coy (83 Coy) RCASC Corps RCASC Date of enlistment 11 Sep 39 Sheet No. Ex C

Date of last entry in Company Conduct Sheet | No. and date of last drunk | G.C. Badges | Long Service and G.C. Pay | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Army Form B.122

[P.T.O.

45 H. Pte. DUFF G.F. (3rd case) **O. H. M. S.**

See 200B for 1st case
and 80C for 2nd "

M. F. B. 270

Correspondence to be PINNED here.

P1 1
F.G.C.M.
Pte. Duff, R. Regt. C.
H. F. Lazier, Maj.
President
45 H

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this eighth day of April, 1942.

Whereas it appears to me, the undersigned, an officer in Command of FOURTH CANADIAN INFANTRY BRIGADE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ OK

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~*[I am unable to appoint:—~~ OK

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~for the following reasons, namely:—]~~ OK

In my opinion, military exigencies, namely the dispersion of units, and difficulties of communication and other difficulties, render it inexpedient to observe the provisions of those rules inconsistent with appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

PROCEEDINGS REVIEWED.

[signature] 6 May 42

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

WAITING MEMBER

President.

Rank.	Name.	Regiment.
Major	H.F. LAZIER	R.H.L.I.

Members.

Rank.	Name.	Regiment.
One Lieutenant	to be detailed by O.C., R. Regt. C.	R. Regt. C.
One Lieutenant	to be detailed by O.C., Essex Scot.	Essex Scot.
One Lieutenant	to be detailed by O.C., R. Regt. C.	R. Regt. C.

*Signed [signature] (SHERWOOD LETT) Brigadier,
Commanding 4 CDN. INF. BDE.
Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court, to be initialled by him.

2

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
No.B.66843 Private George Francis DUFF, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army (Active).	FIRST CHARGE A.A. Sec.15(1) Absenting himself without leave	Guilty	Guilty	
	SECOND CHARGE A.A. Sec.24(2) Losing by neglect his equipments, clothing and regimental necessaries.	Not guilty	Guilty	
	(SEE CHARGE SHEET) (ATTACHED)			confirmed

One year's imprisonment with hard labour.

Dated this 15th day of April, 1942

H. F. Lazier, Maj.
President

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (*to be recorded on separate sheet if necessary*) :— No

(Signed) [signature] (SHERWOOD LETT) Brigadier (Signed) H. F. Lazier, Maj.

Commanding 4 CDN. INF. BDE. Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

32

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the fifteenth day of April, 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~ H.F.L.
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 15th day of April 1942.

H. F. Lazier, Maj.
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

~~*President of the Court Martial.*~~

* See footnote (b) on page 762 M.M.L. 1929.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 17 day of Apr. 1942.

[signature]
Confirming Officer. Brig.
Comd. 4 Cdn. Inf. Bde.

Promulgated and extracts taken in the case of B66843 Pte Duff A 4

(a) (Dated) 23 April (Signed) [signature]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

3

MEDICAL OFFICER'S REPORT

I certify that No. A66843 Pte Duff G.F.

of 1 R.R. of C is in a good state of health,

and fit to undergo Trial by Court martial.

R. R. Laird Capt

Medical Officer

Station In the Field

Date 15 April 42

R.R. Laird Capt.

P3

F.G.C.M.

Pte. Duff, R. Regt. C

H. F. Lazier, Maj

President

M. F. B. 246

20M—5-40 (4393)
H.Q. 1772-39 480

5

CHARGE SHEET

The accused, No. B66843 Pte. George Francis DUFF, 1 Bn. THE ROYAL REGIMENT OF CANADA, a soldier of the Canadian Army, Active Force, is charged with:

FIRST CHARGE
Army Act
Sec 15(1)

Absenting himself without leave

in that he

at MAYFIELD, Sussex, on the 28th December 1941, did absent himself without leave from 2245 hours until he surrendered to the Canadian Provost Corps in London, at 1320 hours on the 27th March 1942 and that the cost of returning him from London to his unit, under escort, was ten shillings and nine pence (£-/10/9).

SECOND CHARGE
Army Act
Sec 24(2)

Losing by neglect his equipments, clothing and regimental necessaries

in that he

at EASTBOURNE, Sussex, on 1st April 1942 was deficient the following:

	£	s	d		£	s	d
1 Steel Helmet		9		1 Brush Boot Polish.		2	1
1 Cape A/G		11	9	1 Brush Blacking			8½
1 Holdall			9	1 Brush Shaving		1	2
1 Spoon			4½	1 Brush Tooth			5
1 Fork			4½				

TOTAL £1/6/7½

G. Bedley Basher
(G. Bedley Basher)
Lieut-Colonel, Commanding,
1 R. REGT. C., CANADIAN ARMY.

In the Field
1 Apr. 42.

P4

F.G.C.M.
Pte Duff, R. Regt. C.
H. F. Hagies, Maj
President

To be tried by F. G. C. M.
[signature]
Comd. 4 Cdn. Inf. Bde.

6

STATEMENT OF THE ACCUSED AS TO WHETHER HE DESIRES AN OFFICER TO REPRESENT HIM AT HIS TRIAL

I hereby request that no one represent me at my trial by Field General Court Martial.

Pte George Duff
B66843 Pte. DUFF, G.F.

CERTIFIED THAT

is available to represent B66843 Pte. DUFF. G.F. at his trial by Field General Court Martial.

(J.M. MacLachlan) Lieut.
A/Adjutant.

7

ABSTRACT OF EVIDENCE IN THE CASE OF B66843 Pte. DUFF.
George Francis, 1 Bn. THE ROYAL REGIMENT OF CANADA. C.A. (A.F.)

B66654 Sgt. HAYDEN. A.
B66541 Sgt. PEAKS. E.
B66921 Sgt. CRABTREE. C.
B68089 A/Sgt. ELLIOT. J.E.
1 Bn. THE ROYAL REGIMENT OF CANADA. C.A. (A.F.)

Will state that during their respective tours of duty as Orderly Sgt., the accused did not answer his name at any roll call. This covered period from 2245 hrs 28 Dec. 41 to 1320 hrs 27 Mar. 42.

B66692 C.Q.M.S. NORLEY. R.J.
1 Bn. THE ROYAL REGIMENT OF CANADA. C.A. (A.F.)

Will state that on the return of the accused from A.W.L., he inspected his equipment, clothing and kit and found he was in possession of the following:

1 Steel Helmet	9/ -	Brushes Boot Polishing	2/ 1d
1 Cape A/G	11/ 9	Brushes Boot Blacking	8½
Holdall	9	Brushes Shaving	1/ 2
1 Spoon	4½	Brushes Tooth	5
1 Fork	4½		

TOTAL - £1/6/7½d

Documentary Evidence:

Exhibit 1. Certificate of D.A.P.M. given pursuant to Army Act Section 163 (1) (jj) certifying to the surrender of B66843 Pte. DUFF. G. at 1320 hrs on 27 Mar. 42 in London. Certificate marked Exhibit 1 to this Abstract of Evidence.

Exhibit 2. Certificate of Expenses incurred in returning B66843 Pte. DUFF. G. from London to his unit under escort. Total ten shillings and 9 pence. Marked Exhibit 2 to Abstract of Evidence.

This Abstract of Evidence taken at EASTBOURNE, Sussex this 1 day of April, 1942 by me.

[signature] Lieut.

PS

F.G.C.M.
Pte. Duff, R. Regt C
H.T. Hughes, Maj
President

9

APPENDIX "B"

RECORD OF PROCEEDINGS OF A F.G.C.M. (To be completed in duplicate)
(For use on plea of guilty)

1. Trial of No. B 66843 Rank Pte Name Duff, G. F.
Unit R. Regt. C
Held at Mastbourne on 16th day of April 1942

2. ACTUAL COURT

PRESIDENT: Rank, Major, ~~Name and Unit~~ H.F.L. H.F.Lazier, 1st.Bn.R.H.L.I.

MEMBERS: ~~Rank, Name and Unit~~ H.F.L. Lieut. J.A. Foster, R. Regt C; Lieut P.O. Lee, Essex Sects
Officers under Instruction: Lieut. J.A. Woodhouse, R. Regt C; Lieut W.B. Wellington, R. Regt C.
PROSECUTOR: ~~Rank, Name and Unit (if lawyer so state)~~ Lt. F.S. Ryerson
DEFENDING OFFICER: ~~Rank, Name and Unit (if lawyer so state)~~ H.F.L. R. Regt C
accused stated he did not want ~~----~~ defending officer. He also stated that his demand for use of K.R. (can) to assist him in preparing his defence had been denied until the last day.

4. The accused is arraigned and pleads "guilty" to the following charges: ~~(1st charge, 3rd charge, etc.)~~ H.F.L. First charge "Not guilty" to the second charge

5. Rule of Procedure 35(B) is complied with.

6. The abstract or summary of evidence is read.

7. The Prosecutor files AFB 296 and certified copy of M.F.M. 6 H.F.L.

8. The accused makes the following statement in mitigation of sentence.

Hearing of evidence on second charge proceeded with.
Rule of Procedure 40 complied with H.F.L.
Found guilty
Rule of Procedure 35(B) complied with H.F.L.
Abstract of evidence read.
AFB 296 and MFM 6 filed and admitted by accused.
No statement in mitigation of punishment.

List of Exhibits

P1 Convening Order
P2 Memo explaining delay before trial
P3 M.O.'s certificate
P4 Charge sheet
P5 abstract of evidence.
P6 Certificate under A.A. 163(1)(JJ)
P7 State[3] in lieu of A.F.B. 296
P8 MFM 6

The foregoing and four pages of evidence each marked "H.F.L." constitute the record.
H.F. Lazier, Maj President

15 Apr 1[illegible]

Case of B66843 Pte. Duff G. S.

Acc. pleaded guilty to 1st charge
" " not guilty to 2nd "

Pte Duff wished to record that as he was defending his case himself he wished access to R. P. (Can) for 1 hr per day, but this had been denied up until today

Charge No 2

1st witness having been duly sworn stated -
What is your name
B

C.Q.M.S. Morley then read to him at his evidence - namely a statement of deficiencies found by C.Q.M.S. on examination

Pte Duff

At time of your exam of equipt in gd I told you what I had lost by neglect - 2 shirts

Interrupted here by President who asked him to confine himself to matters

concerning cross-examination of witness. 13

Exam

Pres. What day did you make the examination of kit.

Cons. Cape 1st, sir, to be exact.

Member. Who is responsible for Pte Duff's equipt when going on leave.

No one is responsible It is with the pl

Pte Duff, having been duly sworn, states.

That 7 articles on sheet were lost by him That the 1st 2 articles were not lost by him. ~~at~~ (1 steel helmet & 1 cape A/G.)

Member Did you take either a steel helmet or a cape A/G with you when you went away?

No.

No further evidence. ... ...

1st Charge.

~~Charge~~ Evidence read by Pros. Offr to show that acc was absent from his quarters from 2245 ... to 1 see summary

3. Statement as to expense incurred £3.
in returning acc. to Eastbourne was
read.
Evidence of character produced.

H.H.L.

Second charge

1st Witness B66692 C.Q.M.S. Norley, R.J. sworn

17 4.

When accused returned from A.W.L. examined accused's kit and found him to be short the items listed in the abstract of evidence, total value £1.6.7½d. Examination made 1 April 42.

Defence

Accused sworn R.P.40 complied with.

admits loss of last seven articles listed. The first two articles helmet and gas cape were left behind and taken while he was away. all equipt left behind packed in a bundle. Never returned to Mayfield where equipt left.

found guilty of second charge

H.F.L.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. 36873 Rank Pte Name Duff G Unit Royal Regt of Can

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ Unit from Eastbourne from London

Date	Particulars	Amount		
28 Mar 72	Escorts return fare from LONDON To Eastbourne & 7/3 fares	—	5	10
	Prisoners single fare to LONDON From	—	—	—
	Prisoners fare from London To Eastbourne	—	4	11
	Escorts & Prisoners expenses for Bed, Meals, Bus fares	—	—	—
	Total £	—	10	9

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

M. E. Byers Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000 55
40/P & S/483

(Substitute for A.F.B. 296)
or M.F.B.355

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. B66843 Name DUFF, George Francis UNIT 1 Bn., THE
ROYAL REGIMENT OF CANADA, Cdn. Army, (A.F.)
AGE 23 MARRIED OR SINGLE S NO. OF DEPENDENTS -
DATE OF ATTESTATION 11 Sep. 39
NO. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)
CIVIL —— MILITARY 19 HOSPITAL — TOTAL 19
DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY
nil

A CERTIFIED TRUE COPY OF M.F.B. 6 MUST ACCOMPANY THIS FORM

(Signature of Witness)

1 Bn. THE ROYAL REGIMENT OF CANADA. Unit.

Dated in the Field
This 15 day of April 1942
(To be dated and signed as of date of trial)

No. B-66843 Name Duff, G.F. Sqn., Battery, or Company "C" Corps 1 R. REGT. C. Date of enlistment 11-9-39 G.C. Badges

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc. George F Scholfield, Major — Service or Proficiency Pay — Character

M.F.M. 6

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Toronto	1-11-39	Pte		AWL from 2400 hrs 1-11-39 to 0845 hrs 4-11-39 A.A. Sec 15(1)	CSM Holohan	96 hours detention	4-11-39	Lt-Col GH Basher	Forfeits 7 dys pay
Toronto		"		Fraud (2 charges)	T.Eaton Co.	Suspended Sentence	27-11-39	Civic Authorities	
Toronto	1-12-39	"		A.W.L. Sec. 15(1), A.A. from 2400 hrs 30-11-39 until 2350 hrs 1-12-39	Cpl Hayden	168 hrs Detention	2-12-39	Lt-Col G.H. Basher	Forfeits 8 dys pay
Toronto	7-1-40	"		A.A. Sec 15(1), A.W.L. 2200 hrs. 7-1-40 to 0600 hrs. 10-1-40	Cpl Pettit Cpl Mayes	168 hrs Detention	10-1-40	Lt-Col G.H Basher	Forfeits 10 dys pay
							(over)		

(P.T.O.)

No. B-66843 Name Duff, G.F. Sqn., Battery, or Company "C" Corps R. Rgt. C. Date of enlistment 11-9-39 G.C. Badges

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 2 — Signature O.C. Company, etc. — Service or Proficiency Pay — Character

M.F.M. 6

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Iceland	28-8-40	Pte		AA Sec 15(1) A/L from 2315 hrs 28-8-40 until 1045 hrs 29-8-40	Sgt Lee L/Cpl Orpen Pte Everist	28 days det.	2-9-40	Major Jones	Forfeits 28 dys pay.
"	28-8-40	"		AA Sec 15(2) Going from the place of parade appointed by his CO at 2315 hrs 28-8-40 in REYKJAVIK.	CSM Godfrey Pte Marsh Cpl McDermott	28 dys Det. (To run concurrently.) (Earned 4 dys remission from ALABASTER F.P. CAMP)	2-9-40.	Major Jones	Ffts 1 dys pay under PRI for CASF, Ffts 3 dys pay (close arrest)
Alafoss	6-10-40	"		AA Sec 15(1) A/L from 2200 hrs to 0600 hrs 7-10-40	Sgt Peaks	28 dys FP	7-10-40	Lt-Col GH Basher	Forfeits 29 dys pay.
	7-10-40	"		AA 15(2) Failure to appear at place of parade when warned as Guard.	L/S Peaks				

(P.T.O.)

No. B-66843 Name Duff, G.F. Sqn., Battery, or Company Corps R. REGT. C. Date of enlistment 11-9-39 G.C. Badges

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 3 — Signature O.C. Company, etc. — Service or Proficiency Pay — Character

M.F.M. 6

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
England	12-7-41	Pte		(1) AA Sec 15(1) A/L from 1415 hrs until apprehended at 2010 hrs 10-8-41 (29 dys 5 hrs 55 mins) (2) AA Sec 40, Conduct to the prejudice of good order, wearing Sgt. chevrons when not entitled to do so.		150 dys Detn. (EARNED 48 DYS REMISSION FROM WHITLEY DETENTION BARRACKS.)	21-8-41	FOCM.	Forfeits 30 dys PRI 149(1) 150 dys 149(1)(b) 10 dys 149(1)(c)

CERTIFIED A TRUE AND CORRECT COPY.

(D. M. MacLac...
Lieut. and A...

Ex 1

Certificate in accordance with ...

I certify that REG'T NO. B-66843...

UNIT... C. Coy., Royal Regt. of Canada...

at HOUR... 1800... DATE. Nov. 22nd 40...

he was wearing military uniform.

(Paragraph) Signature of Provost Marshal ... other officer into whose ... proof person was ...

No. B-66843 Name Duff, G.F. Sqn., Battery, or Company "C" Corps 1 R. REGT. C. Date of enlistment 11-9-39 G.C. Badges Service or Proficiency Pay M.F.M. 6 A.F.B. 122 [illegible]

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. George P Scholfield Character Major

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Toronto	1-11-39	Pte		AWL from 2400 hrs 1-11-39 to 0845 hrs 4-11-39 A.A. Sec 15(1)	CSM Holohan	96 hours detention	4-11-39	Lt-Col GH Basher	Forfeits 7 dys pay
Toronto		"		Fraud (2 charges)	T.Eaton Co.	Suspended Sentence	27-11-39	Civic Authorities	
Toronto	1-12-39	"		A.W.L. Sec. 15(1), A.A. from 2400 hrs 30-11-39 until 2350 hrs 1-12-39	Cpl Hayden	168 hrs Detention	2-12-39	Lt-Col G.H. Basher	Forfeits 8 dys pay
Toronto	7-1-40	"		A.A. Sec 15(1), A.W.L. 2200 hrs. 7-1-40 to 0600 hrs. 10-1-40	Cpl Pettit Cpl Mayes	168 hrs Detention	10-1-40	Lt-Col G.H Basher	Forfeits 10 dys pay
							(over)		

(P.T.O.)

No. B-66843 Name Duff, G.F. Sqn., Battery, or Company "C" Corps R. Rgt. C. Date of enlistment 11-9-39 G.C. Badges Service or Proficiency Pay M.F.M. 6 A.F.B. 122 [illegible]

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Iceland	28-8-40	Pte		AA Sec 15(1) AWL from 2315 hrs 28-8-40 until 1045 hrs 29-8-40	Sgt Lee L/Cpl Orpen Pte Everist	28 days det.	2-9-40	Major Jones	Forfeits 28 dys pay
"	28-8-40	"		AA Sec 15(2) Going from the place of parade appointed by his CO at 2315 hrs 28-8-40 in REYKJAVIK.	CSM Godfrey Pte Marsh Cpl McDermott	28 dys Det. (To run concurrently.) (Earned 4 dys remission from ALABASTER F.P. CAMP)	2-9-40.	Major Jones	Ffts 1 dys pay under FRI for CASF. Ffts 5 dys pay (close arrest)
Alafoss	6-10-40	"		AA Sec 15(1) AWL from 2200 hrs to 0600 hrs 7-10-40	Sgt Peaks	28 dys FP	7-10-40	Lt-Col GH Basher	Forfeits 29 dys pay.
	7-10-40	"		AA 15(2) Failure to appear at place of parade when warned at Guard.	L/S Peaks				

(P.T.O.)

No. B-66843 Name Duff, G.F. Sqn., Battery, or Company Corps R. REGT. C. Date of enlistment 11-9-39 G.C. Badges Service or Proficiency Pay M.F.M. 6 A.F.B. 122 [illegible]

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
England	12-7-41	Pte		(1) AA Sec 15(1) AWL from 1415 hrs until apprehended at 2010 hrs 10-8-41 (29 dys 5 hrs 55 mins) (2) AA Sec 40, Condout to the prejudice of good order, wearing Sgt. chevrons when not entitled to do so.		150 dys Detn. (EARNED 48 DYS REMISSION FROM WHITLEY DETENTION BARRACKS.)	21-8-41	FGCM.	Forfeits 30 dys FRI 149(1) 150 dys 149(1)(b) 10 dys 149(1)(c)

CERTIFIED A TRUE AND CORRECT COPY.

(G. M. MacLachlan)
Lieut. and A/Adjt.

(P.T.O.)

Certificate in accordance with the Army Act Section 163 (1) (jj).

I certify that REG'T NO. B-66843 RANK Pte. NAME Duff, G.

UNIT C. Coy. Royal Regt. of Canada was arrested at PLACE London

at HOUR 1320 DATE 27-Mar-42 and that the time of his arrest

he was wearing military uniform.

Signature of Provost Marshal, A.P.M. or other officer into whose custody the above named person was taken inarrest.

Lieut.
O. i/c Detention Room
No. 8 Provost Company

Place	Date of offence	Rank	Cause of detention/arrest	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Toronto	17-1-40	Pte		AWL 2400 hrs 17-1-40 until 0330 hrs21-1-40 A.A. Sec 15(1)	Cpl Surphlis Cpl Penks	21 days Detention	22-1-40	Lt-Col GH Basher	Forfeits 25 days pay
Toronto	15-2-40	"		AWL 2400 hrs 15-2-40 until 1120 hrs 18-2-40, A.A. Sec 15(1)	L/Cpl Chrysler L/Sgt Robinson	14 dys C.B.	19-2-40	Lt-Col GH Basher	Forfeits 3 days pay
Camp Borden	25-5-40	"		AWL, A.A. Sec 15(1), from 0800 hrs 25-5-40 to 0420 hrs 27-5-40	L/Cpl Chrysler	3 dys C.B.	28-5-40	Major GP Scholfield	Forfeits 2 dys pay
Camp Borden	5-6-40	"		AWL, A.A. Sec 15(1) from 1230 hrs 5-6-40 to 0600 hrs 6-6-40.	Sgt Hayden	5 dys C.B.	6-6-40	Major GP Scholfield	Forfeits1 dys pay
Alafoss	3-8-40	"		AA Sec 15(2) Failure to appear at the placeof parade appointed by his Commanding Officer in that be was absent from parade at 0900 hrs, 3-8-40.	PSM Singleton	21 dys Field Punishment (No remission earned)	4-8-40	Lt-Col GH Basher	Forfeits 21 days pay

Place	Date of offence	Rank	Cause of detention/arrest	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	31-1-41	Pte		Sec 15(1) AA Absent from 0900 hrs 31-1-41 until 0600 hrs 1-2-41.	L-S E Peaks	7 dys F.P.	6-2-41	Lt-Col GH Basher.	Forfeits 1 dys pay for AWL, 7 dys for F.P.
ALDERSHOT	15-3-41	"		AA Sec 15(1) AWL from 2359 hrs 15-3-41 to 0945 hrs 16-3-41.	Sgt Hayden	Sentenced by F.G.C.M. to undergo 112 dys detention Sentence confirmed 2 May 41. (Earned 37 days remission from ALDERSHOT DETENTION BARRACKS)	29-4-41	Field General Court Martial	Forfeits 112 dys pay for Detention 31 dys pay for AWL 23 dys pay whilst in custody awaiting trial.
	16-3-41	"		AA Sec 15(1) AWL from 2230 hrs 16-3-41 to 1535 hrs 3-4-41 when apprehended by MPs in LONDON.	Sgt Hayden Sgt Lee Sgt Preston				
	7-4-41	"		AA Sec 22, Escaping from lawful custody at 2050 hrs 7-4-41.	Pte Rhuda Pte Tucker				
	7-4-41	"		AA Sec 15(1) AWL from 2050 hrs 7-4-41 to 1025 hrs 10-4-41 when apprehended by MPs in LONDON.	Cpl Randall L/Cpl Curie L/Cpl Sheehan				

Place	Date of offence	Rank	Cause of detention/arrest	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

200 C. Pte Duff. G.O. (1st case)
R. R. of C.

See 80 C for 2nd case
and 45 A for 3rd "

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this TWENTY-SEVENTH day of APRIL, 19 41

Whereas it appears to me, the undersigned, an officer in Command of FOURTH CANADIAN INFANTRY BRIGADE, 2 CANADIAN DIVISION, CANADIAN ARMY (ACTIVE), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

~~*I am unable to appoint~~

~~*1. Three Officers to form the Court.~~

~~*2. A Field Officer as President.~~

~~*3. Three Officers having more than one year's service.~~

~~for the following reasons, namely:-~~

President.

Rank.	Name.	Regiment.
Major	R.C. CLARKSON	R. REGT. C.

Members.

Rank.	Name.	Regiment.
Capt.	R.A. ADAMS.	R.H.L.I.
Lieut.	W.D. McGREGOR.	ESSEX SCOT.
Lieut.	M.B. JOHN (Waiting Member)	R. REGT. C.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

**Signed* [signature]

Commanding (C. B. TOPP) Brig., 4 CDN. INF. BDE.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.66843 Pte. DUFF, G.F., R.REGT.C.	FIRST CHARGE: A.A. SEC. 15(1): W.O.A.S. absenting himself without leave (See Charge Sheet attached).	Guilty	Guilty	
	SECOND CHARGE: A.A. SEC. 15(1): W.O.A.S. - A.W.L. (See Charge Sheet attached).	Guilty	Guilty	
	THIRD CHARGE: A.A. SEC. 22: W.O.A.S. - when being in lawful custody escaping. (See Charge Sheet attached).	Guilty	Guilty	
	FOURTH CHARGE: A.A. SEC. 15(1): W.O.A.S. - A.W.L. (See Charge Sheet attached).	Guilty	Guilty	Confirmed [illegible]

Sentenced to undergo 112 days Detention

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) [illegible] Brig., (Signed) [illegible] Major

Commanding 4 Cdn.Inf.Bde. Convening Officer (c) 1 R Regt. C. President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

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B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 29th day of April 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(~~3. The interpreter~~)
*(~~4. The officers under instruction~~) The Standard Writer
were duly sworn.

* Omit if not applicable.

Signed this 29th day of April 1941.

[illegible] Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

Signed this day of 19

~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison until further orders.~~)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 2 day of May 1941.

[illegible] Major general Comd. 2 Cdn. Div.
Confirming Officer.

Promulgated and extracts taken in the case of B66843 Pte Duff, G.F. 1 R Regt C. C.A.

(a) (Dated) 8 May 1941 (Signed) [illegible] Major A/Adj. 1 R Regt C. C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

MEDICAL OFFICER'S REPORT.

I certify that No. B66843 Pte. Duff, R.
of R.R.R.C. is in a normal state of health,
and is fit to undergo Trial by Court-martial.

R. R. Laird Capt. R.A.M.C.
Medical Officer.

Station Aldershot

Date 29 Apr 41.

M.F.W.246.
25m-3-18.(M)
H.Q.1772-39-480.

5

CHARGE SHEET

The accused, No. B-66843, Pte. Duff, G.F., 1 Bn. The Royal Regiment of Canada, a soldier of the Canadian Army (Active) is charged with:

FIRST CHARGE
A.A.Sec.15(1)

When on active service, absenting himself without leave

in that

he at Mandora Barracks, Aldershot, did absent himself without leave from 2359 hrs. 15 March, 1941, until 0945 hrs. 16 March 1941.

The accused, No. B-66843, Pte. Duff, G.F., 1 Bn. The Royal Regiment of Canada, a soldier of the Canadian Army (Active) is charged with:

SECOND CHARGE
A.A. Sec. 15(1)

When on active service, absenting himself without leave

in that

he at Mandora Barracks, Aldershot, did absent himself without leave from 2230 hrs. 16 March 1941, until apprehended by the Military Police in London at 1535 hrs. 3 April, 1941.

The accused, No. B-66843, Pte. Duff, G.F., 1 Bn. The Royal Regiment of Canada, a soldier of the Canadian Army (Active) is charged with:

THIRD CHARGE
A.A. Sec. 22

When on active service, being in lawful custody, escaped,

in that

he at Mandora Barracks, Aldershot, at about 2050 hrs. 7 April, 1941, while in close arrest, escaped from the custody of B-66776, Pte. Rhuda, J., 1 R. REGT. C.

The accused, No. B-66843, Pte. Duff, G.F., 1 Bn. The Royal Regiment of Canada, a soldier of the Canadian Army (Active) is charged with:

FOURTH CHARGE
A.A. Sec. 15(1)

When on active service, absenting himself without leave

in that

he at Mandora Barracks, Aldershot, did absent himself without leave from 2050 hrs. 7 April 1941, until apprehended by Military Police at the Beaver Club in London at 1025 hrs. on 10 April 1941.

Mandora Barracks,
Aldershot, Hants.
31 April, 1941.

(G. Medley Basher)
Lt-Colonel, Commanding,
1 R. REGT. C., CANADIAN ARMY.

To be tried by F.G.C.M.

27 Apr 41

Brig.
Comd 10 Can Inf Bde.

PROCEEDINGS OF A FIELD GENERAL COURT
MARTIAL HELD AT MANDORA BARRACKS,
ALDERSHOT, 29 APRIL 1941

Trial of No. B66843, Private G. F. Duff, R. Regt. C.

PROSECUTOR: Major B. West, R. Regt. C.,

DEFENDING OFFICER: Lieut. W. A. McLachlan, R. Regt. C.

SHORTHAND WRITER: D24030, Sgt. J. H. Spence, H. Q. 2 Cdn Div.

---0000---

1. The Order Convening the Court is read in the presence and hearing of the accused.

2. The accused is asked the following questions by the President:

Q 1 Do you object to being tried by me, as President, or by any of the other members of the Court whose names you have heard read over?
A 1 No, sir.
Q 2 Do you object to Sgt. Spence here taking down the evidence in shorthand?
A 2 No, sir.

3. The President, Members of the Court and the Shorthand Writer are duly sworn.

4. The accused answered to his name and number and was duly arraigned on the charges.

5. The accused pleaded "Guilty" to all charges as set out in the attached charge sheet.

6. Rule of Procedure 35(B) is complied with and the accused refuses to change his plea.

6A. THE SUMMARY OF EVIDENCE IS READ BY THE PRESIDENT.

7. The Prosecutor is sworn, and files A.F.B. 296, and M.F.M. C, in connection with the accused.

BY THE COURT:
Q 3 Is the accused the person named in the statement which you have just read?
A 3 Yes, sir.
Q 4 Have you compared the contents of that statement with the regimental books?
A 4 I have, sir.
Q 5 Are they true extracts from the Regimental Books and is the statement of entries in the conduct sheet a fair and true summary of those entries?
A 5 They are sir.

THE DEFENDING OFFICER: Sir, I would like to respectfully submit to the Court a few observations which I think you should bear in mind in considering the sentence which you will impose on the accused.

Taking the first charge, which is A.W.L., Section 15 of the Army Act, you will note that it entails the absence of one day, and then if you willlook at the second charge it is also A.W.L. under the same Section. You will see that it is a straight charge of A.W.L. 19 days and I wish you would please note that there is no case of the accused having escaped custody in between these two charges of A.W.L. Then, just leaving the third charge for a moment and going on to the 4th charge, you will see that it is a straight a.w.l. charge, under Section 15, and this 4th charge is being A.W.L for 3 days and so therefore for the first, second and fourth charges you have straight A.W.L. charges for 23 days. On the third charge of escaping from lawful custody I would like to refer you to M.M.L. page 447, a note to Section 22, the Section under which the accused is charged, and you will see, Note 3, second paragraph: "A soldier who

escapes from arrest and then absents himself without leave may legally be charged with and convicted of both offences, but as a rule it is preferable to charge only the absence, alleging in the particulars, as increasing the gravity of the offence, that it was committed in arrest." So I would like the Court to please consider that when imposing sentence the best authority considers it is the better practice not to charge under Section 22, under these circumstances, but rather to put in the particulars of the A.W.L. Charge that it was A.W.L. from lawful custody, and I trust that the Court will consider that that submission perhaps warrants a reduction in the sentence from what they would otherwise impose. In other words, my submission is that the 3rd charge might have been laid as an A.W.L. charge, say from lawful custody and the charges would then amount to 27 days A.W.L. plus the aggravating circumstances of having escaped from lawful arrest on the last A.W.L. charge.

Now, in reference to the conduct sheet of the accused, which you have, and I hope you will please consider carefully because although there seem to be all sorts of offences they are all, except this one, A.W.L. and they are all for short periods, and the Prosecutor was kind enough to bring to your attention that the one case of fraud was, as alleged-- we can't prove it-- but I think the Court may take it as a fact, was before the accused was in the army; the actual sentence happened after the war, and finally I would like the Court to note that the accused has been incustody for 23 days.

BY THE COURT:

Q 6 Have you, Duff, anything further you wish to add in mitigation of punishment?

A 6 Nothing, sir.

THE COURT IS CLOSED FOR CONSIDERATION OF SENTENCE.

I HEREBY CERTIFY THAT THE FOREGOING TWO PAGES OF TYPEWRITTEN MATTER, is a true and correct transcript of shorthand notes taken by me at the time and place first hereinbefore written.

J.H. Spence Sgt.

D24030, Sgt. JH Spence (Sworn)

SUMMARY OF EVIDENCE IN THE CASE OF

B-66843, Pte. DUFF, G.F., 1 R. REGT. C.

1st Witness B-67255, Cpl. Eckert, E.M., 1 R. REGT. C., having been duly sworn, states:
"I am B-67255, Cpl. Eckert, E.M. I was Coy. Orderly Corporal on the 15th March 41. Pte. Duff was in possession of a pass which expired at 2359 hrs. on that date. He failed to answer his name at roll call at 0630 hrs. on 16th March 41 and reported to me at 0945 hrs. 16 March 41. He again failed to answer his name at roll call at 2230 hrs 16 March and did not answer his name at any roll call up to and including 0630 hr. roll call on the 22nd March 41. I handed over my duties at 1200 hrs. 22 March 41 when I reported Pte. Duff still absent."

Question 1 "Pte. Duff, have you any questions?"
Answer 1 "None, sir".

E.M. Eckert Cpl.

2nd Witness B-66541, A/Sgt. Peaks, E., 1 R. REGT. C., having been duly sworn, states:
"I am B-66541, A/Sgt. Peaks, E. I took over the duties of Coy. Orderly Sgt. at 1200 hrs. on the 22 March 41 when Pte. Duff was reported absent. He did not answer his name at any roll call up to and including roll call at 0630 hrs. on the 29th March 41. I handed over my duties at 1200 hrs on the 29th March when I reported Pte. Duff absent".

Question 2 "Any questions, Pte. Duff?".
Answer 2 "No question, sir".

E. Peaks A/Sgt

3rd Witness B-66544, L/Sgt. Peaks, A., 1 R. REGT. C., having been duly sworn, states:
"I am B-66544, L/Sgt. Peaks, A. I took over the duties of Coy. Orderly Sgt. at 1200 hrs. on Saturday, 29 March 41. I turned over the duties of Coy. Orderly Sgt. at 1630 hrs. on 31 March to Sgt. Lee. The accused was reported to me as being absent without leave when I took over duties, and did not answer roll call at any time during my tour of duty. I reported him as being A.W.L. to Sgt. Lee at approx. 1630 hrs. 31 March 41"

Question 3 "Any questions"?
Answer 3 "None, sir".

A. Peaks L/Sgt

4th Witness B-66676, Sgt. Lee, A.E., 1 R. REGT. C., having been duly sworn, states:
"I am B-66676, Sgt. Lee, A.E., I took over duties of Coy. Orderly Sgt. from L/Sgt. Peaks at about 1630 hrs. 31 March 41, when Pte. Duff was reported absent without leave to me. He did not answer any roll call. He was reported as present to me by the Guard Commander who stated that he had been returned to the Guard Room by the Military Police at 1910 hrs. on the 4th April 41".

Question 4 "Any questions, Duff?"
Answer 4 "None, sir".

A E Lee

5th Witness B-67148, Sgt. Preston, T., 1 R. REGT. C., having been duly sworn, states:
"I am B-67148, Sgt. Preston, T. I was Commander of the Regimental Quarter Guard on the 4th April 41, and at about 1910 hrs. Pte. Duff was handed over to me as an absentee without leave by Pte. Paynter of the Regimental Military Police. I placed him in the cells".

Question 5 "Any questions"?
Answer 5 "None, sir".

T. Preston Sgt

6th Witness B-66776, Pte. Rhuda, J., 1 R. REGT. C., having been duly sworn, states:
"I am B-66776, Pte. Rhuda, J. I was a member of the Regimental Quarter Guard on the 7th April 41, and Pte. Duff was in the big cell in the Guard Detention Room. At about 2050 hrs. he asked to be taken to his barrack room to get some clean pajamas. I accompanied him to the barrack room and he asked permission to go to the latrine. I followed him to the door which he slammed in my face and disappeared in the darkness. I was unable to find him and returned to the Guard Room and reported his escape".

Question 6 "Any questions?"
Answer 6 "Prior to my asking Pte. Rhuda permission to go he had permission from Sgt. Peaks?
Question 7 "Is that correct Pte. Rhuda?"
Answer 7 "Yes, sir".
Question 8 "Any other question?"
Answer 8 "No, sir".

pe Rhuda

7th Witness B-66777, Pte. Tucker, D., 1 R. REGT. C., having been duly warned, states:
"I am B-66777, Pte. Tucker D. At about 2100 hrs on 7th April 41 I was in my barrack room which is on the right of the ground floor of "C" block when Pte. Duff came in escorted by Pte. Rhuda. Pte. Duff asked permission to go to the latrine and Pte. Rhuda followed him. On reaching the door of the room Pte. Duff slammed the door in Pte. Rhuda's face and disappeared. Pte. Rhuda followed him out of the room as soon as he was able to get the door open. I followed as far as the outer door but did not go outside".

Question 9 "Any questions?"
Answer 9 "no questions, sir"

D. Tucker

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8th Witness B-66852, L/Cpl. Sheehan, F., 1 R. REGT. C., having been duly sworn, states:
"I am B-66852, L/Cpl. Sheehan, F. of the Regimental Military Police, 1 R. REGT. C. Pte. Duff was received into close arrest and placed in the large cell in the Guard Detention Room at about 1910 hrs. on the 4th April 41. On the 7th April at about 2050 hrs. I was informed that he had escaped custody. He was not present in the cells again until he was returned by a member of the Canadian Military Police at about 1500 hrs. on the 11th April 41.

Question 10 "Any questions, Duff"?
Answer 10 "none, sir".

F. Sheehan L/Cpl

9th Witness B-66921, L/Sgt. Crabtree, C., 1 R. REGT. C., having been duly sworn, states:
"I am B-66921, L/Sgt. Crabtree, C. I took over the duties of Orderly Sgt. from Sgt. Lee at 1300 hrs. Saturday 5th April 41. He reported to me that Pte. Duff was in custody in the Guard Detention Room. On Monday April 7th Sgt. E. Peaks, Guard Commander, reported to me that Duff had escaped custody at or about 2130 hrs. During my tour of duty he did not answer any roll calls.

Question 11 "Any questions, Pte. Duff"?
Answer 11 "No, sir".

C. Crabtree L/Sgt.

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DOCUMENTARY EVIDENCE

Statement of Evidence in the case of
B-66843 Pte. G. Duff,
"C" Company,
THE ROYAL REGIMENT,
Canadian Active Service Force,
Mandora Barracks, Aldershot.

COPY

Sir,

At LONDON on 3rd April 1941 at 1535 hours I was on duty at SHAFTESBURY AVENUE in company with L/CPL. H.R. WEST, C.M. POLICE, when I asked the above-named soldier for his Pass. He failed to produce one, and I arrested and conducted him to the CANADIAN PROVOST COMPANY HEADQUARTERS, where he was handed over to be detained.

(sgd) C. UPTON L/Cpl.
C.M. POLICE

LONDON
3/4/41

Sir,

I have read over and corroborate the above statement.

LONDON
3/4/41

(sgd) H.R. West L/Cpl.
C.M. POLICE

Statement of Evidence in the case of
B-66843 Pte. Duff, G.
R.H. of C.

COPY

Sir,

At London on the 10-4-41 at about 10.25 hrs. I was patrol duty in company with L/Cpl Currie at the Canadian Beaver Club London where I saw the a/m soldier. I asked him for his pass. He replied that "he had one downstairs in his greatcoat pocket". I accompanied him to where his greatcoat was but he then said "I have lost it and I was on 9 days leave ending to-night". He was without respirator or steel helmet. I arrested him and escorted him to C.P.C.H.Q. where I turned him over to the N.C.O. i/c cells to be detained.

London
10-4-41

(sgd) A.R. Mandall Cpl.
Canadian Provost Corps.

Sir,

I have read over and corroborate the above statement.

London
10-4-41

(sgd) J. Currie L/Cpl.
Canadian Provost Corps.

WARNING TO THE ACCUSED

Major F.B. West: Pte. Duff, you have heard the evidence against you and you have been given an opportunity of cross-examining the witnesses and you may now make a statement or give evidence upon oath.
You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be used in evidence at your trial.
Do you wish to make any statement or to give evidence upon oath?

Accused: No, sir.

F.B. West (Major)
1 R. REGT. C., CDN. ARMY

STATEMENT OF ACCUSED AS TO WHETHER HE DESIRES AN OFFICER TO REPRESENT HIM AT HIS TRIAL.

I hereby request that the Convening Officer assign Lieut. G.M. MacLachlan, 1 R. REGT. C. to represent me at my trial by Field General Court Martial.

B66843, George Duff Pte
1 R. REGT.

CERTIFIED THAT Lieut. G.M. MacLachlan, 1 R. REGT. C. is available to represent B-66843, Pte. DUFF, G.F. at his trial by Field General Court Martial.

F.B. West Major
1 R. REGT. C., CDN. ARMY.

CERTIFICATE

I, Forbes Benson WEST, hereby certify that Rules of Procedure 4 (c) (d) and (e) have been fully complied with.

Dated this [illegible] day of April, 1941.

Mandora Barracks, Aldershot, Hants.

F.B. West Major
1 R. REGT. C., CDN. ARMY.

Description of Court by which Trial, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 29 day of Apr 1941

Bulent major
A/Adj 1 R. Regt. C.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B-66843, Pte. DUFF, G.F. the 1 R. REGT. C.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Form 664, K.R. 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the ~~Regimental~~ and ~~Squadron~~, ~~Battery~~ or ~~Company~~ FIELD Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For A.A. Sec. 15(1)	5	times	10	times.
For A.A. Sec. 15(2)	1	times	1	times.
For Fraud (Civil Court)		times	2 charges (Suspended sentence)	times.
For		times		times.

Number of instances of gallantry or distinguished conduct, NIL

or,

~~There are no entries in the Conduct sheets of the accused.~~

2. The accused has not been previously convicted,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for ~~[illegible]~~ beginning on the ~~[illegible]~~ day of [illegible]

4. The accused has been in confinement, awaiting trial on the present charges

for No days in Civil Custody, [illegible]

and 23 days in Military Custody, [illegible]

Total 23 days. [illegible]

Of which No days were spent in hospital. [illegible]

5. The present age of the accused according to his ~~record of service~~ / attestation paper [illegible] is 24 yrs 11 mos 13 days [illegible]

6. The date of his ~~commission~~ / attestation [illegible] specified in his ~~record of service~~ / attestation paper [illegible] is 11 Sept. 1939. [illegible]

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is Nil [illegible]

8. The accused is entitled to deferred pay or gratuity in respect of No [illegible] years' service.

9. The accused is entitled to reckon No years' service for the purpose of determining his pension, &c. [illegible]

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to NIL [illegible]

]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of NA [illegible]

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated NA [illegible]

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date, NA [illegible]

		Date of Promotion.
In the rank of	, years,	NA [illegible]
In the rank of	, years,	NA [illegible]
In the rank of	, years,	NA [illegible]

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked N.A., signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with

Army Number, Rank and Name B-66843, Pte. [illegible], G.P. of the 1st Bn., The Royal Regiment of Canada

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which trial, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
Magistrate's Court	Toronto, Ont.	FRAUD, (two charges)	Suspended sentence.	

(*Continued overleaf.*)

No. 66843 Name Duff, G.F. | Sqn., Battery, or Company: "C" Corps R. REGT. C. | Date of enlistment: 10-9-39 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.: George P. Scholfield Major (sgd)

CERTIFIED A TRUE AND CORRECT COPY:

Place	Date of offence	Rank	Cases of drunken none	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Toronto	1-11-39	Pte		A.W.L. from 2400 hrs 1-11-39 to 0845 hrs 4-11-39 A.A.Sec. 15(1)	CSM Holohan	96 hours detention	4-11-39	Lt-Col G.H. Basher	Forfeits 7 dys pay G.H.B.
Toronto		"		Fraud (2 Charges)	T.Eaton Co.	Suspended sentence	27-11-39	Civic Authorities	F.B.W.
Toronto	1-12-39	"		A.W.L. Sec. 15(1), A.A. from 2400 hrs. 30-11-39 until 2350 hrs 1-12-39	Cpl. Hayden	168 hrs Detention	2-12-39	Lt-Col G.H. Basher	Forfeits 8 dys pay G.H.B.
Toronto	7-1-40	"		A.A. Sec 15(1), A.W.L. 2200 hrs. 7-1-40 until 0600 hrs. 10-1-40	Cpl. Pettit Cpl. Mayes	168 hrs detention	10-1-40	Lt-Col G.H. Basher	Forfeits 10 dys pay G.H.B.

(P.T.O.)

No. B66843 Name Duff, G.F. | Sqn., Battery, or Company: "C" Corps R. Rgt. C. | Date of enlistment: 11-9-39 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunken none	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Iceland	28/8/40	Pte		A.A. Sec. 15(1) A.W.L. from 2315 hrs 28/8/40 until 1045 hrs 29/8/40	Sgt Lee Pte Everist	28 days detention	2.9.40	Major Jones	Forfeits 28 days pay E.H.J.
Iceland	28/8/40	Pte		A.A.Sec.15(2)Going from the place of parade appointed by his commanding officer at 2315 hrs 28.8.40 in Reykjavik.	CSM Godfrey Pt. Marsh Cpl McDermott	28 days detention awards to run concurrently.	2.9.40	Major Jones	Forfeits 1 days pay under F.R.&I. for CASE Forfeits 5 days pay (close arrest) under F.R.&I. CASE.
RELEASED FROM ALBASTER FIELD PUNISHMENT CAMP 28-9-40 REMISSION EARNED 4 DAYS. CAPT COMDT. (sgd) P.C. Nerdle								E.H.J.	
Alafoss	6/10/40	Pte		A.A.Sec.15(1) AWL from 2200 hrs until 0600 hrs 7/10/40. A.A.15(2) Failure to appear at place of parade when warned as Guard.	Sgt. Peaks L/Sgt.Peaks	28 days F.P.	7/10/40	Lt-Col. G.H. Basher	Forfeits 29 days pay. G.H.B.

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date if award or if order dispensing with trial	By whom awarded	Remarks
Toronto	17-1-40	Pte		A.W.L. 2400 hrs 17-1-40 until 0330 hrs. 21-1-40. A.A. Sec 15(1)	Cpl Surphlis Cpl. Peaks	21 dys detention	22-1-40	Lt-Col GH Basher	Forfeits 25 days pay. G.H.B.
Toronto	15-2-40	"		A.W.L. 2400 hrs 15-2-40 until 1120 hrs 18-2-40. A.A. Sec 15(1)	L/Cpl Chrysler L/Sgt Robinson	14 days C.B.	19-2-40	Lt-Col GH Basher	Forfeits 3 days pay G.H.B.
Camp Borden	25-5-40	"		A.W.L. A.A. Sec. 15(1) from 0800 hrs 25-5-40 to 0420 hrs. 27-5-40.	L/Cpl Chrysler	3 days C.B.	28-5-40	Maj. G.P. Scholfield	Forfeits 2 days pay G.P.S.
Camp Borden	5-6-40	"		A.W.L. A.A. Sec. 15(1), from 1230 hrs 5-6-40 to 0600 hours, 6-6-40.	Sgt. Hayden	5 days C.B.	6-6-40	Maj. G.P. Scholfield	Forfeits 1 days pay G.P.S.
Alafoss RELEASED FROM ALABASTER FIELD PUNISHMENT CAMP 24-8-40 REMISSION EARNED R.C. WARDLE (Syd) CAPT. COMDT	3-8-40	"		A.A. Sec 15(2) Failure to appear at place of parade appointed by his Commanding Officer in that he was absent from parade 0900 hours 3-8-40	PSM Singleton	21 days Field Punishment	4-8-40	Lt-Col. G.H. Basher	Forfeits 21 days pay G.H.B.

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date if award or if order dispensing with trial	By whom awarded	Remarks
Brighton	16/1/41	Pte							
Aldershot	31/1/41	Pte		Sec. 15(1), A.A. absent from 0900 hours 31/1/41 until 0600 hours 1-2-41.	L/Sgt. E. Peaks	7 dys F.P.	6-2-41	Lt-Col GH Basher	Forfeits 1 days pay for A.W.L. 7 days pay for F.P. G.H.B.

CERTIFIED A TRUE AND CORRECT COPY:

80 C. Dte. Duff. S.J. (2nd case)

See 200 B for 1st case)
and 45 H for 3rd "

B-66843 Pte. Duff, G.F.
No.1 Cdn Inf Hldg Unit

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 16th day of August, 1941

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

*~~I am unable to appoint~~

*(1. ~~Three Officers to form the Court~~)

*(2. ~~A Field Officer as President~~)

*(3. ~~Three Officers having more than one year's service~~)

~~(or the following reasons, namely:)~~

Proceedings Reviewed
[illegible]
Reviewing Officer (Rank) [illegible]

President.

Rank.	Name.	Regiment.
Major	W.J. Hanson	No.2 Cdn Arty Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	J.W. Drennan	No.1 Cdn Gen Hldg Unit
Lieutenant	M.J.A. Cote	No.2 Cdn Inf Hldg Unit
Lieutenant	R.M. Dillon	No.1 Cdn Inf Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding Cdn Base Units, Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-66843				
PTE. DUFF, G.F.	First Charge			
No.1 Cdn Inf Hldg Unit.	A.A. sec 15(1)	Guilty	Guilty } ~~150 days detention~~ WGH	
	Second Charge			
	A.A. sec 40	Guilty	Guilty }	
	See charge sheet attached.		to undergo detention for a period of 150 days WGH	Confirmed [signature]

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) [signature] Brigadier (Signed) [signature] Major RCA

Commanding Cdn Base Units, Cdn Army. President.
Convening Officer (c)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 21st day of August 1941 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 21st day of August 1941.

[signature] Major
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 22nd day of August 1941.

[signature] Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of B-66843 Pte DUFF, G.F.

(a) (Dated) 27 Aug 41 (Signed) [signature] Major
O/OC No 1 C.I.H.U.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B 2
W.W. Hanson, Major
President.

CHARGE SHEET

In the case of, B-66843, Pte Duff, G.F. (Royal Regiment of Canada) on the strength of No. 1 Canadian Infantry Holding Unit, as a reinforcement, a soldier of the Canadian Army (Overseas), is charged with:-

FIRST CHARGE
SEC 15(1)
ARMY ACT

When on active service, absenting himself without leave:-

in that he

at Algonquin Camp, Witley, Surrey, absented himself without leave, from 1415 hours on the 12th July 1941, until apprehended at Edgware Rd., London, at 2010 hours on the 10th August 1941.

SECOND CHARGE
SEC 40
ARMY ACT

When on active service, conduct to the prejudice of good order and military discipline:-

in that he

at London on Edgware Rd., wore the chevrons of a Sgt., on his battle dress blouse, while not entitled to do so

Witley, Surrey,
13th Aug. 1941

L.W.W. Slack .....Lt-Col.
(L.W.W. Slack) Officer Commanding,
No. 1 Cdn. Inf. Hold. Unit.

To be tried by Field General Court Martial

F.R. Phelan
(F.R. Phelan) Brigadier
Commanding Cdn Base Units

Bordon, Hants
This 16th day of Aug 41.

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

W. G. Hanson Major
President.

I certify that I have this morning examined

No B-66843 Pte Duff C. (Royal Regiment of Canada

Of No. 1 Canadian Inf. Hol. Unit and in my opinion he

is fit to undergo Trial by Court Martial.

~~unfit~~

Station, Algonquin Coo...

Date, 21 August 41 .....

H. Johnson Pres

Medical Officer

W.G.H.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT Witley Surrey ON THE 21st DAY OF August 41.

TRIAL OF:- No. B 66845 Pte Duff, C.F. (R.R. of C.) No. 1 C.I.H.U.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Lieut F.S. Weatherston (Unit) No. 1 C.I.H.U.

Defending Officer:- (Name) Lieut D.W. Cooper (Unit) No. 1 C.I.H.U.

At 1000 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1- No, sir.

The President, members ~~and judge advocate (if any)~~ are duly sworn.

The officers under instruction are duly sworn.

Q2. ~~Do you object to~~ ~~acting as shorthand writer?~~

A2.-

~~The shorthand writer is duly sworn.~~

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Q3. Do you wish to make any statement in mitigation of punishment?

A3.- Yes, sir.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4.- Lieut F.S. Weatherston produces AF B 296 & M.F.M. 6

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER.

Unbalanced mental condition due to illness of father. Father with Board of Education, City of Toronto. Prosecutor under questioning by defending officer says there is a possibility of accused becoming good soldier. Defending officer pleads for leniency on the grounds he believes accused would make a good soldier.

W.G.H. Hamm, Major
President

P2
W.G.H.

SUMMARY OF EVIDENCE

In the case of No. B-66843, Pte. Duff, G. F. (Royal Regiment of Canada), No. 1 Canadian Infantry Holding Unit.

The Commanding Officer directs that the evidence shall be taken under oath.

1st Witness

Lieut. E.J. Rider, Officer i/c Records, No. 1 Cdn Infantry Holding Unit, having been duly sworn states:-

I am Officer i/c Records, No. 1 Cdn Infantry Holding Unit, and as such produce the following documents in evidence:-

(1) A certified true copy of Pt. 11 Daily Orders No. 157, dated the 14th July 1941, issued by Lt-Col., L.W.W. Slack, MC, VD, showing that Pte. Duff, G.F. was taken on the strength of No. 1 Cdn Infantry Holding Unit from the Royal Regiment of Canada, Field Unit, on being awarded 112 days detention with effect from 30th April 41.

(2) A certified true copy of Pt. 11 Daily Orders No. 162, dated the 21st July 1941, issued by Lt-Col., L.W.W. Slack, MC, VD, showing that the accused was granted a remission of 37 days with pay.

The accused was due for release from the Military Prison and Detention Barracks, Aldershot at 1415 hours the 12th July 1941. He did not report to this Holding Unit.

E.J. Rider .....Lieut.

(The accused declines to cross-examine this witness)

2nd Witness

M-20862 L/Cpl. McLeod, P.H., Canadian Provost Corps, Will give the following evidence;-

Sir:-

At London on the 10 Aug. 41 at about 2010 hours I was on duty on EDGWARE ROAD, in company with L/Cpl Elder when I saw the a/m soldier, I approached him and asked him for his pass, he said that he had lost it. I then asked him for his paybook, he said that he had lost it also. When asked what his name was he said "Thompson, I am a Sgt", as he had no means of identification I informed him that we would have to take him to H.Q. and have it verified. On the way to Cdn Provost Corps H.Q. he admitted he was not a Sgt. and that his name was not "Thompson" but "Duff" and that he was a Pte. I placed him under arrest and handed him over to the N.C.O. i/c cells to be detained.

M-20862 McLeod P.H., L/Cpl.

SUMMARY OF EVIDENCE

A written statement to this effect signed by him has been read to the accused, and is included in this summary of evidence.

Having regard to the exigencies of the Service the attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

3rd witness Lieutenant C.G. Kent, Assistant Commandant, Military Prisons, and Detention Barracks, Aldershot.

Will prove that the accused came due for release from Military Prisons and Detention Barracks, Aldershot, at 1415 hours on 12th July 1941.

A memorandum to this effect purporting to be signed by him has been read to the accused and is included in this summary of evidence.

Having regard to the exigencies of the Service the attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

The accused having been duly cautioned in accordance with Rules of Procedure No. 4 (e), elects to give evidence on Oath.

The accused having been duly sworn states:-

I was released from Military Prisons and Detention Barracks, Aldershot, at 1445 hours on the 12th July 1941. On being shown the gates and handed a travelling warrant to Milford Station I understood that I was to go to No. 1 CIWU. I did not go there but absented myself without leave until my apprehension in London on the 10th August 1941. After my apprehension on the 10th August 1941 I was sent to C.P.C. Headquarters in a van by L/Cpl McLeod who followed on a motorcycle. At C.P.C. Headquarters I admitted my name was not Thompson, but Duff and that I was not a Sgt. This was before L/Cpl McLeod arrived.

Geo. Duff .....Pte

P 4

SUMMARY OF EVIDENCE

Certified that Rules of Procedure 4(c), (d), (e), (f), and (g) have been complied with.

Taken down by me in the presence and hearing of the accused this 13th Day of August 1941 at Camp Algonquin, Witley, Surrey.

.....Lieut.,
(F.S. Weatherston) Court Martial Officer,
No. 1 Canadian Infantry Holding Unit
Officer Taking Summary.

CHARGE

Army Form B 252
(See King's Regulations)

ROYAL REGT OF CANADA. Regiment

"C" COY. Battery / Squadron / Troop or / Company

CHARGE against No B.66943 Rank Pte.

Name DUFF.G.

Place LONDON. Date of Offence 10-Aug-41

OFFENCE W.O.A.S. was absent without leave from 8pm 41. until apprehended by the Cdn. Provo st. Corps. on EDGEWARE RD. LONDON at about 2010-hrs. on the 10-Aug-41. (2) Impresonating an N.C.O. i/e He was wearing Sgts. chevrons on his battle dressblouse to which he was not entitled. (3) Stating a falsehood to an N.C.O. of the Cdn. Provost Corps. Same time, dateand place.

D.A.P.M.

Names of Witnesses CANADIAN MILITARY POLICE LONDON AREA

L/Cpl McLeod. Canadian Provost Corps.

L/Cpl Elder. Canadian Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded Remanded to C.O.

By whom Awarded Graham Sinclair Major

Adjutant

P.T.O

Statement of **EVIDENCE** in the case of

B-66843.Pte Duff C.
"C" Coy. Royal Regt. of Canada

Sir.

AT LONDON on the 10-Aug-41 at about 2010 hrs. I was on duty on EDGEWARE RD. in compa-ny with L/Cpl.Elder when I saw the a/m soldier, I approached him and asked him for his pass, he said that he had lost it. I then asked him for his paybook,he said that he had lost it also. When asked what his name was he said "Thompson,I am a Sgt. as hehad no means of identification I informed him that we would have to take him to H.Q.and have it verified.On the way to Cdn.Provost Corps H.Q. he admitted he was not a Sgt.and that his name was not"Thompson"but"Duff" and that he was a Pte. I placed him under arrested and handed him over to the N.C.O.i/c cells to be detained.

London
10-8-41.

...R.H.McLeod...L/Cpl
(M-20862 McLeod,P.H.)

Sir:

I have read over and corroborate the above statement.

London
10-8-41.

REMARKS ...L.W.Elder...L/Cpl.
(H-3533 Elder,L.W.)

The m/n has no complaints.
[illegible] Capt

Well

MILITARY PRISON & DETENTION BARRACK
No. R/2592.
Date
ALDERSHOT

ARMY FORM C324.

MEMORANDUM

To THE OFFICER COMMANDING,

No.I.Cdn. Infty: Hold: Unit.

Bordon. Witley, Surrey.

Date

The undermentioned Soldier under Sentence will become due for release on the date stated.

Army No.	Regiment	Name	Due for Release		Number of days remission earned under Rules 126 and 129, Rules for Military Detention Barracks and Military Prisons
			Date	Hour	
B-66843.	CASF.	Duff.G.	12 JUL 1941	2-15pm	37 days.

Conduct while in Detention Good.

Exercised in PHYSICAL, MILITARY AND WEAPON TRAINING

Remarks

Field Unit D/0 34

[signature] Capt

ASSISTANT COMMANDANT,
MILITARY PRISON AND DETENTION BARRACK
Commandant.

Form/C.324/44

D 48744-1 80,000 D/d 976 2/40 P R P

LAST ORDER No. 161 18 JUL 41

No. 1 CANADIAN INFANTRY HOLDING UNIT
CANADIAN ARMY (OVERSEAS)
DAILY ORDERS, PART II
ISSUED BY
LIEUT-COL L.W.N. SLACK, M.C., V.D.,
OFFICER COMMANDING

No. 162
21 JUL 41
SHEET 1

SECTION "A"

1. STRENGTH INCREASE.

Major D. FLETCHER, V.D. (H.L.I. of C.), T.O.S. this Unit from No. 1 Cdn Staging Camp, w.e.f. 19 Jul 41. (Auth: No. 1 C.S.C. Part II D.O. 8, dated 18 Jul 41.)

2. ATTACHMENTS

Lieut W.C. ADDISON (R.C.A.P.C.), ceases to be attached to this Unit w.e.f. 17 Jul 41. (Auth: CBU 6-1-APP/3 INF).

Major J.C. DAWSON (Mx & Huron Regt), continues to be attached to H.Q. 1 Cdn Division as acting Camp Commandant until 2 Aug 41. (Auth: Letter A.G. 2 C.M.H.Q. 44/1 DIV/1 (A.G. 2b)10/DAWSON, J.C./1, dated 16 Jul 41.)

3. COURSES

Capt. R.O. CLEWORTH (HPE), proceeded on command to C.T.S. Sniping Course, w.e.f. 20 Jul 41.

Major T.E. HAYHURST (E.S.), returned from C.T.S. Course No. 744, Ser. 8 (Coy Comndrs D. & M.), w.e.f. 19 Jul 41.

Lieut G.B. MACGILLIVRAY (HQ), returned from on command to War Intelligence Course, Matlock, w.e.f. 20 Jul 41.

4. COURSES, RESULTS OF

Major T.R. GRAY (HQ), having completed #8 Infantry Company Commanders' Course 7 Feb 41, is now shown as "qualified". (C.A.R.O. 804, dated 9 Jul 41).

Lieut A.D. GREEN (E.S.), having completed ON.13 Officers' P.T. Course on 29 Jan 41, is now shown as having "passed." (C.A.R.O. 804, dated 9 Jul 41.)

Major A.A. KENNEDY (HPE)
Major C.C. PATTERSON (RCR)
having attended C.M.H.Q. Course No. 744, Ser. 7 (Coy Comndrs D. & M.), are now shown as having "qualified."

Capt. R.W. YOUNG (HQ), having attended Comb Recce Course, is now shown as having "qualified."

5. LEAVE

Capt. G.W. KIRKPATRICK (R.C.A.M.C.), granted 1st Privilege Leave from 1200 hrs 21 Jul 41 to 1200 hrs 30 Jul 41, with warrant No. 647502.

Lieut G.B. MACGILLIVRAY (HQ), granted 1st Priv. Leave from 1200 hours 21 Jul 41 to 1200 hrs 28 Jul 41 (7 days), with warrant No. 647503.

Major C.C. PATTERSON (RCR), proceeded on 1st & 2nd Privilege Leave (14 days) from 14 Jul 41 to 28 Jul 41.

6. AMENDMENTS (Hospitalization)

Part II D.O. 161 (3) dated 18 Jul 41, insofar as it relates to Lieut J. PRAYSNER (DCR), is amended to read "No. 15 Cdn Gen. Hosp."

SECTION "A" (Cont'd)

7. ATTACHMENTS

Lieut J.C. ARMSTRONG (HPE), attached to No. 1 Road Construction Coy, R.C.E., w.e.f. 19 Jul 41, for rations, quarters and duty.

Capt. C.S. HADLEY (E.S.), attached to H. L. I. of Canada for rations and quarters w.e.f. 21 Jul 41. (Auth: AGH/7-4-ACCOM dated 16 Jul 41.)

Lieut A.R. JOHNSTON (E.S.), attached to H.L.I. of Canada for rations and quarters, w.e.f. 21 Jul 41. (Auth: AGH/7-4--ACCOM dated 16 Jul 41.)

SECTION "B"

8. STRENGTH INCREASE

B-73463 Pte CAIRNS, W.P. (48th), T.O.S. this Unit on being awarded 50 days detention by a F.G.C.-M., w.e.f. 4 Jul 41, and posted to 48th High'rs Coy. (Auth: 48th Highlanders Part II D.O. 43 (2) dated 16 Jul 41.)

B-67431 Pte DOONAN, D.D. (RRegtC), T.O.S. this Unit on admission to hospital and posted to R. Regt of C. Coy, w.e.f. 14 Jun 41. (Auth: R. Regt of C. Part II D.O. 45 (1) dated 20 Jul 41.)

B-73617 Pte MANDERS, M.T. (48th), ceases to be attached to this Unit on being T.O.S. w.e.f. 6 Jul 41, and posted to 48th Coy. (Auth: 48th Highlanders Part II D.O. 43 (2) dated 16 Jul 41.)

B-66982 Pte MARMEN, H. (RRegtC), ceases to be attached to this Unit on being T.O.S. on admission to hospital w.e.f. 13 Jun 41. (Auth: R. Regt of C. Part II D.O. 45 (1) dated 20 Jun 41.)

B-67079 Cpl MacKENZIE, A. (RRegtC), T.O.S. this Unit on admission to hospital, w.e.f. 17 Jun 41, and posted to R. Regt of C. Coy. (Auth: R. Regt of C. Part II D.O. 45 (1) d/20 Jun 41.)

B-67181 Pte McLEAN, A.D. (RRegtC), T.O.S. this Unit on ceasing to be attached on admission to hospital, w.e.f. 12 Jun 41. Posted to R. Regt of C. Coy. (Auth): R. Regt of C. Part II D.O. 45 (1) dated 20 Jun 41.)

F-76970 Pte OLIVER, G.H. (RCR), T.O.S. on admission to hospital w.e.f. 4 Jul 41, and posted to R.C.R. Coy. (Auth: H.Q. Cdn Corps Part II D.O. 26 (2) dated 13 Jun 41.)

C-10514 Pte O'NEIL, T.S., T.O.S. this Unit on admission to hospital w.e.f. 31 May 41, and posted to H.Q. Coy. (Auth: H.Q. 2 Cdn Div. Part II D.O. 26 (2) dated 6 Jun 41.)

B-67682 Pte SCOTT, J.L. (RRegtC), T.O.S. this Unit on admission to hospital w.e.f. 14 Jun 41, and posted to R. Regt of C. Coy. (Auth: R. Regt of C. Part II D.O. 45 (1) d/20 Jun 41.)

B-73621 Pte WILLIAMS, D. (48th), T.O.S. this Unit on being awarded 90 days detention by a F.G.C.-M., w.e.f. 4 Jul,41, and posted to the 48th Coy. (Auth: 48th Highlanders Part II D.O. 43 (2) dated 16 Jul 41.)

8. STRENGTH INCREASE (Cont'd)

B-66913 Pte WRIGHTMAN, W.C. (RRegtC), ceases to be attached to this Unit on being T.O.S. w.e.f. 17 Jun 41, and posted to R. Regt of C. Coy. (Auth: R. Regt of C. Part II D.O. 45 (1) dated 20 Jun 41.)

9. AMENDMENTS (Strength Increase)

Part II D.O. 200 (1) dated 19 Dec 40, insofar as it relates to B 87898 Pte FULSOM, L.G., is hereby CANCELLED.

Part II D.O. 154 (2) dated 10 Jul 41, insofar as it relates to B-73352 Pte JOHNSTON, J.C. (48th) is amended to read "B-73552, Pte JOHNSTON, J.C. (48th)."

Part II D.O. 133 (1) dated 21 Sep 40, insofar as it relates to B-26419 Sgt MESSHAM, A., is hereby CANCELLED.

Part II D.O. 144 (7) dated 25 Jun 41, insofar as it relates to B-37363 Pte PILCH, G.A. (RHLI), is hereby CANCELLED.

10. STRENGTH DECREASE

B-73941 Pte ADAMS, J.C. (48th), having been declared by a Court of Inquiry to have been illegally absent without leave from 0200 hrs 17 Jun 41, is S.O.S. this Unit as a deserter, w.e.f. 10 Jul 41.
Deficiencies of kit: £11:1:0
Forfeits 24 days' pay F. R. & I. 149 (1)(a).

A-3055 Pte ASHTON, J.T. (RCR), S.O.S. this Unit on posting to Cdn Base Depot, w.e.f. 18 Jul 41 (Cat. "E".)

B-36583 Pte DICKIE, J. (RHLI), S.O.S. this Unit on posting to Cdn Base Depot, w.e.f. 18 Jun 41. (Cat. "E".)

C-4329 Pte HUBBS, B. (HPE), S.O.S. this Unit to H. & P.E. Field Unit, w.e.f. 25 Oct 40. (Auth: 2nd Echelon Demand No. 4151.)

B-74100 Pte JOHNSTON, H. (48th), S.O.S. this Unit on posting to Cdn Base Depot, w.e.f. 17 Jul 41. (Cat. "E".)

A-5031 Pte LLOYD, F.W. (RCR), S.O.S. this Unit to the R.C.R. Field Unit, w.e.f. 29 Jan 41. (Auth: R.C.R. Part II D.O. 16, dated 26 Feb 41.)

A-3505 Cpl MOWATT, J. (RCR), S.O.S. to No. 1 Cdn Base Depot, w.e.f. 18 Jul 41. (Cat. "E".)

B-72931 Pte McCOY, J.P. (48th), having been declared by a Court of Inquiry to have been illegally absent without leave from 2230 hrs 17 Jun 41, is S.O.S. this Unit as a deserter w.e.f. 10 Jul 41.
Deficiencies of kit: £4:5:1.
Forfeits 24 days' pay F. R. & I. 149 (1)(a).

C-5398 Pte PERRY, O.A. (HPE), S.O.S. this Unit to No. 1 R.C.Engineers H.U. on transfer to Royal Canadian Engineers, w.e.f. 16 Jul 41. (Auth: CMHQ letter 10/Perry, O./1 AG 3b dated 7 Jul 41.)

C-5292 Pte PRINGLE, H.J. (HPE), having been declared by a Court of Inquiry to have been illegally absent without leave from 0900 hrs 17 Jun 41, is S.O.S. this Unit as a deserter, w.e.f. 10 Jul 41. Deficiencies of kit: £5:4:11½.
Forfeits 24 days' pay F. R. & I. 149 (1)(a).

No. 162
21 JUL 41
SHEET 4

11. ATTACHMENTS

A-2250 6 Pte CARPENTER, C. (ES), ceases to be attached to No. 1 Road Construction Coy, R.C.E., w.e.f. 17 Jul 41.

C-5576 Pte FISHER, C.F. (HPE), ceases to be attached to Corps of R.C.E., w.e.f. 9 Jul 41. (Auth: Corps of R.C.E. with Cdn Corps Part II D.O. 46 (4) dated 16 Jul 41.)

A-22448 Pte GILLARD, (ES), ceases to be attached to No. 1 Road Construction Coy, R.C.E., w.e.f. 17 Jul 41.)

A-5000 A/Sgt JOHNS, W.F. (HQ), attached to No. 1 C.G.H.U. for all purposes, w.e.f. 19 Jul 41. (Auth: AGH 6-2-ATTACH dated 17 Jul 41.)

C-4568 Sgt KELUSKY, M.B. (HPE), attached to this Unit from H. & F.E. Field Unit on admission to hospital, pending authority to T.O.S., w.e.f. 4 Jul 41.

A-3885 Pte KNOWLES, H. (RCR), ceases to be attached to 2nd Bn, R.C.E., w.e.f. 16 Jul 41. Re-attached, w.e.f. 19/7/41.

A-21250 Pte LEMIEUX, C. (ES)
A-21265 Pte McNALLY, A. (ES)
attached to No. 1 Road Construction Coy, R.C.E., w.e.f. 17 Jul 41.

B-74024 Pte LOTT, N.C. (HQ), ceases to be attached to No. 12 C.A.F. Coy, R.C.E., w.e.f. 19 Jul 41.

A-22592 Pte McLAUGHLIN, C.F. (ES), ceases to be attached to No. 1 Corps Survey Coy, R.C.E., for rations and quarters and to Educational Services for duty, w.e.f. 19 Jul 41.

P-76987 Pte OZON, N.A. (RCR), attached to 2nd Bn, R.C.E., w.e.f. 16 Jul 41. Ceases to be attached w.e.f. 19 Jul 41.

P-13052 L/Cpl SMITH, D. (RCR), ceases to be attached to R.C.A.S.C.H.U. on attachment to No. 3 C.I.H.U., w.e.f. 19 Jul 41. (Auth: CBU 6-C-BAND-PERS dated 15 Jul 41.)

C-5328 Pte WALKER, F. (HPE), ceases to be attached to 2nd Bn, R.C.E. w.e.f. 12 Jul 41.

C-5339 Pte WILSON, J. (HPE), ceases to be attached to 2nd Bn, R.C.E., w.e.f. 17 Jul 41.

A-22507 Pte COLLINS, W.J.
A-22051 Pte LOVELL, L.
A-22531 Pte MacINTOSH, J.
A-22499 Pte PINEAU, J.F.
A-21637 Pte POST, C.E.
for rations & quarters the a/m personnel of E.S. Coy cease to be attached/to No. 1 Road Construction Coy, R.C.E. w.e.f. 21 Jul 41.

A-22523 L/Cpl CAREY, T. (ES)
A-21409 L/Cpl SHEPPARD, G. (ES)
C-6031 Pte EMERSON, R.A. (HPE)
C-4908 Pte EMENY, W.T. (HPE)
C-6163 Pte SMOPTER, J.W. (HPE)
C-5280 Pte KLIPPENSTEIN, J. (HPE)
the a/m personnel ate attached for rations and quarters to No. 1 Road Construction Coy, R.C.E., w.e.f. 21/7/41.

11. ATTACHMENTS (Cont'd)

The u/m personnel of the E.S. Coy are attached to H.L.I. of Canada for rations and quarters w.e.f. 21 Jul 41. (Auth: AGH 7-4-ACCOM dated 16 Jul 41.):

A-22454 L/Cpl ADAMS, C.P.
A-34899 Sgt ARTHUR, A.E.
A-21193 Cpl BENNETT, T.
A-22549 Cpl BOWERS, C.O.
A-22495 Pte BURDICK, I.F.
A-22496 Pte BURDICK, L.L.
A-21391 Pte CLARK, J.
A-22461 Pte COYLE, M.P.
A-22631 Pte COLE, J.
A-22503 Pte DAVEY, W.
A-22100 Pte DUNN, B.H.
C-95008 Pte FORAN, R.
A-22465 Pte GORNALL, R.
A-21929 CQMS HORSTEAD, R.H.
A-21796 Pte HUGHSON, D.
A-21109 Cpl JOYES, R.
A-22585 Pte KIT, J.
A-22298 Pte LEGRAND, D.
A/22499 Pte MacKINNON, R.
A-22601 Pte McMAHON, T.
A-22386 Pte MORTON, R.
U-1754 Pte MAHONEY, J.
A-22339 Pte O'NEIL, J.
A-22598 Pte PILLON, W.
A-21127 CSM SIMPSON, J.
A-22245 Pte SMITH, I.D.
A-21288 Sgt TAYLOR, N.

The u/m personnel are attached to H.L.I. of Canada for rations and quarters w.e.f. 21 Jul 41. (Auth: AGH 7-4-ACCOM d/16 Jul 41.):

B-73870 Pte CUBITT, N.N. (48th)
B-67664 Pte JOHNSTON, D. (HQ)
B-73720 Pte LELIEVRE, J. (48th)
A-3761 Pte SMITH, L. (RCR)
C-5334 Pte TOWES, R. (HPE)

The u/m personnel of the R.C.R. Coy are attached for rations quarters and duty to No. 1 Road Construction Coy, R.C.E., w.e.f. 19 Jul 41:

A-3272 Pte ARDIEL, F.G.
A-4060 Pte BENTLEY, W.E.
A-3289 Pte CHAMBERS, M.
A-3297 Pte DEPTON, L.E.
A-3988 Pte FORSYTHE, C.C.
A-3935 Pte GALLAGHER, C.J.
A-3308 Pte HIGGINS, M.J.
A-3822 Pte KEACHIE, J.R.
A-6056 Pte LEE, M.T.
A-3973 Pte MITCHELL, C.R.
A-6115 Pte ROVETO, C.
A-4225 Pte SHIELDS, M.
A-4058 Pte STEVENS, C.
P-15259 Cpl TERRY, W.R.
A-3873 Pte [illegible]

The u/m personnel of the 48th Highlanders Coy are attached for rations and quarters and duty to No. 1 Road Construction Coy, R.C.E., w.e.f. 19 Jul 41:

B-73889 Pte BELFITT, E.
B-74237 Pte COLEMAN, J.E.
B-73854 Pte FOSTER, J.J.
B-72529 CQMS GOGO, G.A.
B-73723 Pte HALES, O.M.
B-73815 Pte HADDOW, J.R.
B-73093 Pte KING, L.J.
B-73602 Pte MacKAY, A.
B-73617 Pte MANDERS, M.T.
B-73609 Pte MONOVICH, W.
B-74126 Pte PARKES, E.N.
B-73850 Pte PYPER, R.
B-74280 Pte ROGERS, W.A.
B-74202 pte SNIDER, R.F.
B-73929 Pte THICKE, D.V.
U-1749 Pte WESTBURY, H.J.

The u/m personnel of the H.P.E. Coy are attached for rations quarters and duty to No. 1 Rd Construction Coy, R.C.E., w.e.f. 19 Jul 41:

C-4748 Pte BANTING, F.C.
C-6020 Pte BATES, W.H.
C-5300 Pte BERTRAND, J.
C-5723 Pte CASTLE, A.A.
C-5760 Pte CUMMINGS, V.R.
C-6115 Pte DRAYTON, M.
C-4334 Pte DELINE, R.
C-6141 Pte FAIRES, V.
C-5182 Pte HILL, A.R.
C-40526 Pte HIRCOCK, J.W.
C-40560 Cpl HOLLINGSWORTH, G.
C-40514 L/Cpl GRAHAM, E.
C-5654 Pte HUDGINS, J.
C-5125 Pte JOHNSON, J.E.
C-4337 Pte KEECH, V.J.
C-6009 Pte HIE, H.
C-4410 Pte DOW, A.W.G.
C-4713 Sgt NUTLEY, C.F.
c-6170 Pte REYNOLDS, J.A.
D-71190 Pte SMITH, G.F.
C-5258 Pte WANNAMAKER, C.B.

12. AMENDMENTS (Attachments)

Part II D.O. 161 (7) dated 18 Jul 41, insofar as it relates to B-67111 Pte RICHARDS, E., is hereby CANCELLED.

13. COMMAND COURSES

B-16426 Cpl ARMSTRONG, D.E. (RCR)
B-67376 Sgt REES, H.J. (RRegtC)
C-4923 L/Cpl LANGSTAFF, E.R. (HPE)
proceeded on C.T.S. Course No. 804, Ser. 2 (Infantry N.C.O.s' Qualifying Course), w.e.f. 20 Jul 41.

H-16224 Pte BADCOCK, I.F. (ES), returned from Shoemakers' Course, Aldershot, w.e.f. 19 Jul 41.

A-3825 Pte BLOOMFIELD, C. (HQ)
B-73697 Pte EVANS, W.E. (HQ)
A-3957 Pte CAMTY, C.B. (HQ)
returned from on command to Fire-Fighters' Course, Bordon, w.e.f. 19 Jul 41.

C-5131 Pte BRANT, G. (HPE), returned from Shoemakers' Course, Aldershot, w.e.f. 19 Jul 41.

A-22506 Pte CARPENTER, C. (ES), proceeded on command to Shoemakers' Course, Aldershot, w.e.f. 20 Jul 41. Attached for all purposes except duty to No. 1 Det., R.C.O.C. Details, and for duty to No. 1 A.F.W., R.C.O.C., w.e.f. 20/7/41.

B-88755 A/Sgt DAY, G.S. (HQ "I" Wing), returned from CIHQ Course No. 746, Ser. 1, w.e.f. 19 Jul 41.

C-5246 L/Cpl FORSYTHE, T. (HPE), returned from on command to P.T. Course, No. 906, Ser. 32, w.e.f. 19 Jul 41.

B-67854 L/Cpl GUNN, R.A. (RRegtC), proceeded on command to Command Course No. 912, Ser. 5, (P.E.), w.e.f. 20 Jul 41. Attached to No. 1 C.C.H.U. for all purposes except duty.

A-21517 L/Cpl MARTIN, J.H. (ES), returned from on command to Course No. 906, Ser. 32 (P.T.), w.e.f. 19 Jul 41.

B-67648 A/Sgt MALLISTER-YOUNG, A.J. (RRegtC), returned from on command to CIHQ Course No. 906, P.T., w.e.f. 19 Jul 41.

C-5398 Pte PERRY, O.A. (HPE), returned from on command to C.T.S., w.e.f. 15 Jul 41.

B-68092 A/Sgt ROBERTS, R.L., returned from on command to CIHQ Course No. 906, (P.T.), w.e.f. 19 Jul 41.

B-67709 L/Cpl SKIRROW, T.J. (RRegtC), proceeded on command Course No. 906, Ser. 33 (P.T.), w.e.f. 20 Jul 41, and is attached for all purposes except duty to No. 1 C.C.H.U.

C-5541 L/Cpl SMITH, R.B. (HPE), returned from on command to P.T. Course No. 912, Ser. 3, w.e.f. 19 Jul 41.

B-73061 Pte STAGG, W. (48th), returned from Motorcyclists' Course, w.e.f. 19 Jul 41.

B-72765 Sgt WEBB, C.G. (48th, 'I' Wing), proceeded on C.T.S. Sniping Course, w.e.f. 20 Jul 41.

B-66522 Pte WRIGHT, K. (RRegtC), proceeded on command to Shoemakers' course, Aldershot, w.e.f. 20 Jul 41, and is attached for all purposes except duty to No. 1 Det., R.C.O.C. Details, and for duty to No. 1 A.F.W., R.C.O.C.

14. AMENDMENTS (Command Courses)

Part II D.O. 161 (8), dated 18 Jul 41, insofar as it relates to B-67885 Pte BALFOUR, W.A. (RRegtC), and to C-5398 Pte PERRY, O.A. (HPE), is hereby CANCELLED.

15. APPOINTMENTS, PROMOTIONS

B-67720 Pte LAINBRIDGE, J.W. (HQ), appointed lance-corporal w.e.f. 30 Jun 41, whilst employed on regimental provost duties.

C-4923 Pte LANGSTAFF, D.R. (HPE), appointed lance-corporal w.e.f. 20 Jul 41 for duration of C.T.S. Course No. 804, (2).

C-5541 Pte PAVIA, J. (HPE), appointed lance-corporal without pay w.e.f. 28 Jun 41.

B-67709 Pte SKINNON, T.J. (RRegtC), appointed lance-corporal w.e.f. 21 Jul 41 for duration of CMHQ Course No. 906, Ser. 23.

16. CONFIRMATION OF RANK

B-72694 Pte COOKE, L. (48th), confirmed in the rank of corporal, w.e.f. 5 Sep 39 (Auth: 48th High'rs Part II D.O. 44 (5) dated 18 Jul 41.)

17. REVERSIONS

C-5246 L/Cpl FORSYTHE, T. (HPE), reverts to his permanent grade of private soldier on return from P.T. Course, w.e.f. 19 Jul 41.

A-21517 L/Cpl MARTIN, J. (ES), reverts to his permanent grade of private soldier on return from P.T. Course, wef 19/7/41.

C-5541 L/Cpl SMITH, R.D. (HPE), reverts to his permanent grade of private soldier on return from P.T. Course wef 19/7/41.

18. COURSES, RESULTS OF

B-37150 L/Cpl BRANT, B.J. (RHLI)
C-40775 L/Cpl LEROUX, E.R. (HPE)
B-83348 L/Cpl McCARTHY, N.E. (RHLI)
having qualified as P.T. instructors, are entitled to wear crossed swords.

B-67854 L/Cpl GUNN, R.A. (RRegtC), having attended CMHQ Course No. 701, Ser. 56D (Anti-gas), is shown as "qualified, Q-1."

B-73761 L/Cpl HOLLAND, J.D. (48th), having attended Bomb Recce Course, is shown as having qualified.

A-22415 L/Cpl THIGPENN, J.A. (ES), having attended CMHQ Course No. 701, Ser. 56D, (Anti-gas), is shown as having qualified "Q-1".

19. PERMISSION TO MARRY

C-4606 Pte VESTERFELT, D.V. (HPE), having been granted permission to marry, was married 12 Jul 41.

20. CHANGE OF ADDRESS OF NEXT-OF-KIN

D-88755 A/Sgt DAY, G.S. (HQ "I" Wing), next-of-kin's new address:
67 Lowther Ave, TORONTO, Ontario.

A-6047 L/Cpl DODD, R.M. (RCR), next-of-kin, Mr R.F. Dodd, from
2097 St-Luc St, MONTREAL, Quebec, to
1417 St-Mathieuw St, MONTREAL, Quebec.

C-5531 Pte SHRED, A.J. (HQ), next-of-kin, Mrs A.J. Shred, from
65, Raymond Cres., Dennisville, GUILDFORD, Surrey, to
8, Sheepfold Road, R.D. "Cromarty", Stoughton, GUILDFORD,
(c/o Mrs F. Kisbee).

21. CHANGE OF NEXT-OF-KIN

C-4606 Pte VESTERFELT, D.W. (HPE), from Peter Vesterfelt, father,
MARKHAM, Ontario, to Mrs Joan I. Vesterfelt, wife,
10, Old School Lane, BROCKHAM, Surrey.

22. RECATEGORIZATION

C-4105 Sgt JORGENSON, P.A. (HPE), having been medically re-boarded is now shown as category "E". (Auth: D.A.D.M.S., C.B.U.)

23. HOSPITALIZATION

			HOSPITAL	ADMITTED	DISCH.
B-37183	Sgt	DAILIE, H. (RHLI)	No. 1 Conval.	15 Jul 41	(removal) 18 Jul 41
B-38279	A/Sgt	BUYAN, A.N. (RHLI)	No. 1 Neuro.		
B-67431	Pte	DOONAN, D.D. (RRegtC)	No. 15 Cdn Gen	13 Jun 41	
B-37976	Pte	DENNIS, F. (RHLI)	ditto	18 Jul 41	18 Jul 41
B-72823	Pte	FOX, A. (48th)	#5 Cdn Gen.		
B-67029	Sgt	HIPPNER, H. (RRegtC), removed from No. 1 Cdn Gen. Hosp. to No. 1 Neuro. Hosp., w.e.f. 18 Jul 41.			
B-93552	Pte	JOHNSTON, J.C. (48th)	#15 Cdn Gen.	23 Jun 41	16 Jul 41
B-74100	Pte	JOHNSTON, H. (HQ)	C.M.C.	3 Jul 41	17 Jul 41
C-4568	Sgt	KELUSKY, M.E. (HPE)	Reigate Isol.	5 Jul 41	
B-73617	Pte	MANDERS, M.T. (48th)	#15 Cdn Gen.	18 Jul 41	
B-74187	Pte	MONCRIEFF, C. (HQ)	ditto		17 Jul 41
A-3505	Cpl	MOMATT, J. (RCR)	ditto	16 Jun 41	
B-67079	Cpl	MacKENZIE, A. (RRegtC)	ditto	3 Jul 41	
F-76970	Pte	OLIVER, G.H. (RCR)	ditto	30 May 41	
C-10514	Pte	O'NEIL, T.S. (HQ)	ditto		18 Jul 41
C-5587	Pte	POTTS, L. (HPE)	#1 Conval.		21 Jul 41
B-37453	Pte	PRINE, M. (RHLI)	Military Isol.		16 Jul 41
B-67633	Pte	QUACKENBUSH, F. (RRegtC)	# 1 Conval.		18 Jul 41
B-67111	Pte	RICARD, E. (RRegtC)	#15 Cdn Gen.	18 Jul 41	
B-72945	Pte	SCOTT, J.D. (48th)	ditto	13 Jun 41	
B-67682	Pte	SCOTT, J.L. (RRegtC)	ditto		18 Jul 41
A-22228	Pte	TABOR, E.C. (ES)	#5 Cdn Gen.		

24. AMENDMENTS (Hospitalization)

Part II D.O. 161 (14) dated 18 Jul 41, insofar as it relates to B-67111 Pte RICHARDS, E., is hereby CANCELLED.

Part II D.O. 200 (7) dated 19 Dec 40, insofar as it relates to B-87898 Pte FULSOM, L.G., is hereby CANCELLED.

Part II D.O. 160 (11) dated 17 Jul 41, insofar as it relates to A-22228 Pte TABOR, E.C. (ES), is hereby CANCELLED.

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No. 1 CANADIAN INFANTRY HOLDING UNIT
DAILY ORDERS PART II

No. 162
21 JUL 41
SHEET 9

25. ABSENTEES

A-21999 Pte BOYLE, R.L. (ES), A.W.L. from 2359 hrs 12 Jul 41, now shown as absent after eighth day.

A-3391 Pte DUVAL, A.C. (RCR), returned at 0700 hrs 20 Jul 41.

D-72823 Pte FOX, A. (48th), A.W.L. from 2359 hrs 19 Jul 41.

F-76977 Pte GILLIS, D.J. (RCR), A.W.L. from 0600 hrs 18 Jul 41.

D-73330 Pte HICKS, J. (48th), A.W.L. from 0800 hrs 18 Jul 41.

B-37826 Pte HOUSE, E. (RRegtC), A.W.L. from 0001 hrs 15 Jul 41. (Auth: No. 1 Neurological Hosp., R.C.A.M.C. Part II D.O. 152 (2), dated 17 Jul 41.

A-22586 Pte KENNEDY, W.D. (ES), A.W.L. from 0600 hrs 11 Jul 41, now shown as absent after eighth day.

D-73512 L/Cpl MILLER, J.W. (48th), A.W.L. from 0800 hrs 18 Jul 41.

C-4478 Pte McFARLAND, D. (HPE), A.W.L. from 2230 hrs 18 Jul 41.

B-67326 L/Cpl PRICE, H.L. (RRegtC), A.W.L. from 2359 hrs 18 Jul 41.

B-67099 Pte SZLFANOWIZ, L. (RRegtC), A.WL.from 2359 hrs 18 Jul 41.

B-67971 Pte YOUNG, L.D. (HQ), A.W.L. from 2359 hrs, 15 Jul 41.

26. REMISSIONS OF SENTENCES

A-22155 Pte ARMOUR, J.P. (ES), having been awarded 90 days detention by a F.G.C.-M. on 21 May 41 (D.O. 120 (4), was granted a remission of 30 days with pay under Rules for Military Prisons and Detention Barracks.

B-66843 Pte DUFF, C.F. (RRegt C), having been awarded 112 days detention by a F.G.C.-M. on 29 Apr 41, (RRegtC Part II D.O. 39 (5) is granted a remission of 37 days with pay under Rules for Military Prisons and Detention Barracks.

B-66611 Pte McMILLAN, E. (RRegtC), having been awarded 28 days detention by his commanding officer on 25 Jun 41, is granted a remission of 4 days with pay under Rules for Military Prisons and Detention Barracks. (DO 144)

27. PUNISHMENTS

The following is an extract from Part II D.O. 112 (2) dated 17 Jul 41, issued by No. 1 Convalescent Depot, R.C.A.M.C.:

"B-73651 Pte SCOTT, K. (48th)
(1) W.O.A.S. improperly appropriating a paint-brush the property of a civilian retailer (Sec. 40 A.A.)
(2) W.O.A.S. using insubordinate language to an N.C.O. in the performance of his duty. Sec. 40 A.A.

Awarded: Eight days detention, w.e.f. 0001 hrs 17 Jul 41.

Automatic forfeiture 8 days' pay F. R. & I. 149 (1)(b)."

27. PUNISHMENTS (Cont'd)

THe followng is an EXTRACT from CASUALTY RETURN issued by 2nd Bn, R.C.E., dated 17 Jul 41:

"C-5324 Pte WEBSTER, J. (HPE)
(1) W.O.A.S. absent without leave from 1930 hrs 13 Jul 41 to 0130 hrs 17 Jul 41. Absent 78 hrs. (A.A.Sec. 15 (1)).
(2) W.O.A.S. absent from Guard Mounting.
Forfeits 7 days' pay under Sec. 46
Forfeits 4 days' pay under F.R. & I. 149 (1)(a).
Total 11 days' pay."

D-60547 Pte GRENIER, A. (HQ) A.A. Sec. 40.
was on 19 Jul 41 awarded 14 days C.B. for conduct to the prejudice of good order and military discipline in that he insolently spoke to his superior officer.

D-72999 Pte WILSON, J.P. (48th) A.A. Sec. 15 (1),
was on 19 Jul 41 awarded 7 days C.B. for W.O.A.S. absence without leave from 1800 hrs 16 Jul 41 to 1200 hrs 18 Jul 41. (2 days).
Forfeits 2 days' pay F. R. & I. 149 (1)(a).

B-37582 Pte REID, T.P. (RHLI) A.A. Sec. 15 (1)
was on 19 Jul 41 awarded 14 days C.B. for W.O.A.S. absence without leave from 2230 hrs 17 Jul 41 to 1530 hrs 18 Jul 41. (17 hours.)
Forfeits 1 day's pay F. R. & I. 149 (1)(a).

C-5328 Pte WALKER, F. (HPE) A.A. Sec. 15 (1)
was on 12 Jul 41 awarded 14 days detention for W.O.A.S. absence without leave from 1930 hrs 5 Jul 41 to 1700 hrs 9 Jul 41. (93 hrs, 30 minutes).
Forfeits 4 days' pay F. R. & I. 149 (1)(a)
Forfeits 14 days' pay F. R. & I. 149 (1)(b)
(Auth: A.F.D. 252, issued by 2nd Bn, R.C.E.)

B-37150 L/Cpl BRANT, E.J. (RHLI), A.A.Sec. 15 (2)
was on 21 Jul 41 severely reprimanded for W.O.A.S. absent from Guard Mounting after having been duly warned.

A-21710 Pte JARDINE, R.A. (ES) A.A. Sec. 15 (1)
was on 21 Jul 41 awarded 7 days' C.B. for W.O.A.S. absence without leave from 2359 hrs 19 Jul 41 to 0930 hrs 20 Jul 41. (9 hrs 31 minutes).
Forfeits 1 day's pay F. R. & I. 149 (1)(a).

A-3391 Pte DUVAL, A.C. (RCR) A.A. Sec. 15 (1)
was on 21 Jul 41 awarded 14 days detention for W.O.A.S. absence without leave from 2230 hrs 13 Jul 41 until 0600 hrs 20 Jul 41. (6 days 7 hrs 30 min.)
Forfeits 7 days' pay F. R. & I. 149 (1)(a)
Forfeits 14 days' pay F. R. & I. 149 (1)(b)
Total forfeiture 21 days' pay.

28. RATION STRENGTH

Ration strength, Cdn Detention Barracks, as of 21 Jul 41:

Staff: 52 Prisoners: 144

CERTIFIED TRUE COPY
R.J. Ride Lieut.,
Officer i/c Records.

.....Capt.,
(W.O. Stockdale) A/Adjutant,
No. 1 Cdn Infantry Holding Unit.

LAST ORDER
No. 156
12 JUL 41

No. 1 CANADIAN INFANTRY HOLDING UNIT
CANADIAN ARMY (OVERSEAS)
DAILY ORDERS, PART II
ISSUED BY
LIEUT-COL L.W.W. SLACK, M.C., V.D.

No. 157
14 JUL 41
SHEET 1.

W&A

SECTION "A"

1. ATTACHMENTS

Lieut R.A. COUCHE (RCR), attached to 2nd Bn, R.C.E., w.e.f. 13 July 1941.

Lieut E.L. LITTLEFORD (RCR), ceases to be attached to 2nd Bn, R.C.E., w.e.f. 13 July 1941.

2. COMMAND COURSES

Major T.E. HAYHURST (ES), proceeded on C.T.S. Course No. 744, Ser. 8, (D. & M.), w.e.f. 14 Jul 41.

Major C.C. PATTERSON (RCR)
Major A.A. KENNEDY (HPE)
returned from D. & M. Course, C.T.S., w.e.f. 12 Jul 41.

Lieut E.L. FROGGETT (RHLI), returned from on command to CIWC Course No. 314 (Range-finders), w.e.f. 13 Jul 41.

3. LEAVE

Lieut E.L. LITTLEFORD (RCR), granted 3rd Privilege Leave from 1000 hrs 14 Jul 41 to 1000 hrs 21 Jul 41 (7 days). Warrant No. 1272997.

SECTION "W"

1. STRENGTH INCREASE

[illegible] Pte KINKAID, W.W. (RRegtC), T.O.S. this Unit on admission to hospital w.e.f. 15 Apr 41, and posted to R. Regt of C, Company. (Auth: R. Regt of Canada Part II D.O. 32 (2), dated 16 Apr 41.)

D-80041 Pte WILSON, J.J. (48th), T.O.S. this Unit from 48th Highlanders of Canada Field Unit, w.e.f. 26 Feb 41 on being awarded 120 days detention. (Auth: 48th High'rs of Canada Part II D.O. 12 (1) dated 7 Mar 41.)

W&A

D-66843 Pte DUFF, G.F. (RRegtC), T.O.S. this Unit from Royal Regt of Canada Field Unit on being awarded 112 days detention, w.e.f. 30 Apr 41. (Auth: R. Regt of C. Part II D.O. 39 dated 14 May 41.)

[illegible] Sgt MACKNESS, S.G. (RCR), T.O.S. this Unit on posting from C.T.S., w.e.f. 9 Jun 41. (Auth: C.T.S. Part II D.O. [illegible] dated 12 Jun 41.)

[illegible] Pte WHITEHOUSE, Robert, , (single), having been enlisted attested in the 48th Highlanders of Canada Regiment, w.e.f. 12 Jul 41 and allotted regimental number as shown, is taken on strength this Unit w.e.f. 12 Jul 41, and posted to the 48th Highlanders Company.

P-13244 Sgt MORGAN, J.L. (RCR), T.O.S. this Unit from C.T.S., w.e.f. 9 Jun 41. (Auth: C.T.S. Part II D.O. 58 d/12 Jun 41.)

A-22201 Pte FRAZER, J.R. (ES), T.O.S. this Unit on being admitted to Wandsworth Prison to undergo six months imprisonment with hard labour, w.e.f. 22 Jun 41. (Auth: D.S. Part II D.O. 42 dated 27 Jun 41.)

No. 1 CANADIAN INFANTRY HOLDING UNIT
DAILY ORDERS, PART II
ISSUED BY
LIEUT-COL L.W.W. SLACK, M.C., V.D.

No. 157
SHEET 2
14 JUL 41

4. STRENGTH INCREASE(Cont'd)

A-22100 Pte DUNN, D.H. (ES), T.O.S. this Unit from the Essex Scottish Field Unit, w.e.f. 26 Jun 41, on admission to No. 15 Cdn General Hospital. (Auth: E.S. Part II D.O. 42, dated 27 Jun 41.)

B-37046 Pte CLUNEY, J.G. (RHLI), T.O.S. this Unit on admission to hospital w.e.f. 22 Jun 41. (Auth: R.H.L.I. Part II D.O. 44, dated 25 Jun 41.)

B-73000 Pte BARCLAY, G. (48th), T.O.S. this unit on admission to No. 1 Neurological Hospital, w.e.f. 1 May 41. (Auth: 48th High'rs of C. Part II D.O. 29 dated 16 May 41.)

5. CANCELLATIONS (Strength Increase)

P-13177 Sgt MACKNESS, J.G. (RCR), D.O. 40 (1) dated 22 Feb 41, insofar as it relates to this man is CANCELLED.

6. STRENGTH DECREASE

A-3747 Pte GRAHAM, H.P. (RCR), S.O.S. this Unit on posting to No. 1 Cdn Base Depot, w.e.f. 11 Jul 41. (Cat. "B")

C-5401 Pte WAY, S. (HPE), declared by a Court of Inquiry to have been absent without leave from 2230 hrs 9 Jun 41 is S.O.S. this Unit as a deserter w.e.f. 4 Jul 41. Deficiencies of kit: £15:11:4. Forfeits 26 days' pay under F. R. & I. 149 (1)(a).

C-4645 Sgt YEARWOOD, C.M. (HPE), S.O.S. this Unit to H. & P.E. Field Unit, w.e.f. 28 Jun 41. (Auth 2nd Echelon Reinforcement Demand No. 4029 dated 11 Jul 41.)

7. ATTACHMENTS

P-13244 Sgt MORGAN, J.L. (RCR), attached to C.T.S. for all purposes w.e.f. 9 Jun 41. (Auth: C.T.S. Part II D.O. 58 dated 12 Jun 41.)

P-13177 Sgt MACKNESS, J.G. (RCR), attached to C.T.S. (O.C.T.U.) for all purposes w.e.f. 9 Jun 41. (Auth: C.T.S. Part II D.O. 58 dated 12 Jun 41.)

C-40787 Sgt BARKER, W.H. (HQ 1 Wing), ceases to be attached to H.Q. 3rd Cdn Division R.C.E. w.e.f. 12 Jul 41.

C-5045 Pte THOMPSON, C.C. (HPE), attached to this Unit for all purposes w.e.f. 4 Jul 41, pending authority to T.O.S.

[illegible]988 Pte FORSYTH, C.C. (RCR), attached to 2nd Bn, R.C.E., w.e.f. 10 Jul 41.

B-73889 Pte DELPITT, E. (48th)
B-73865 Pte OSBORNE, G.W. (48th)
B-73719 Pte MacKENZIE, J.A. (48th)
ceases to be attached to 2nd Bn, R.C.E., w.e.f. 5 Jul 41.

B-73737 Pte CATON, [illegible] (48th)
B-74160 Pte [illegible], R. (48th)
B-74160 Pte BUSH, R. (48th)
[illegible]237 Pte COLEMAN, J.P. (48th)
[illegible]657 Pte [illegible], O.[illegible] (48th)
Ceases to be attached to 2nd Bn, R.C.E., w.e.f. 8 Jul 41.

7. ATTACHMENTS (Cont'd)

B-73723 Pte HALES, O.M. (48th)
B-74037 Pte FEE, E.S. (48th)
B-73744 Pte BOOKALAM, E. (48th)
The a/m personnel are attached to 2nd Bn, R.C.E., w.e.f. 5 Jul 41.

B-73984 Pte MEIHAN, A. (48th)
B-74049 Pte ROGERS, J.H.S. (48th)
B-74036 Pte SNOWBALL, C.R. (48th)
B-73748 Pte ARDOUR, W. (48th)
Attached, 2nd Bn, R.C.E., w.e.f. 8 Jul 41.

B-73687 Pte HATLEY, E.J. (48th)
B-73837 Pte McLEAN, J.F. (48th)
Attached 2nd Bn, R.C.E., w.e.f. 10 Jul 41.

8. CANCELLATION (Attachments)

Part II D.O. 40 (2) dated 22 Feb 41, insofar as it relates to P-13177 Sgt MACKNESS, S.G. (RCR), is CANCELLED.

9. COMMAND COURSES

B-88751 Sgt JOICE, C.T.W. (HQ I Wing)
A-22498 A/Cpl LIDDELL, D.F. (ES)
returned from on command to CMHQ Course No. 314 (Range-finders), w.e.f. 13 Jul 41.

B-72504 L/Sgt DREW, F.J. (48th)
C-5361 Cpl SHARPE, G.K. (HPE)
proceeded on command to Guards' Drill Course, Caterham, w.e.f. 12 Jul 41.

B-[illegible] Pte BOUGHNER, L.L. (RHLI), returned from on command to Regimental Water Duties Course, Army School of Hygiene, w.e.f. 12 Jul 41.

C-4114 Sgt BAKER, R.C. (HPE)
A-3672 A/Sgt HANDYSIDES, J.K. (RCR)
B-72644 Cpl FARNDON, F.S. (48th)
B-72552 Pte CRAIG, D.S. (48th)
A-34889 A/Sgt ARTHUR, A.E. (ES)
A-22526 L/Cpl WATSON, J.L. (ES)
B-68089 A/Sgt ELLIOTT, J.E. (RCR)
B-67060 A/Sgt PARTRIDGE, J. (RCR)
The a/m personnel returned from on command to N.C.Os' course, C.T.S., w.e.f. 12 Jul 41.

C-5474 Pte SOPHA, J.S. (HPE), returned from on command to Motor-cyclists' Course, C.T.S., w.e.f. 12 Jul 41.

10. PERMISSION TO MARRY

C-40526 Pte HIRCOCK, J.W. (HPE), granted permission to marry by his commanding officer.

11. DEATH OF NEXT-OF-KIN

B-38230 A/Cpl MUIR. J. (RHLI): Mrs Margaret Diana Muir, wife, died HAMILTON, Ontario, on 1 Jul 41.

12. COURSES - RESULTS OF

A-22549 A/Sgt BOWERS, C.O. (RCR)
A-3492 A/Sgt SMITH, C. (RCR)
having attended a course for Infantry Instructors, are shown as having qualified.

B-74188 A/Cpl HAMILTON, A.W. (HQ), having attended Driving and Maintenance School, is shown as qualified "Q-2".

13. RECATEGORIZATION

B-74100 Pte JOHNSTON, H. (HQ), having been medically re-boarded on 29 Apr 41, is now placed in category "E".

14. TRADESMEN'S RATES

B-88774 Pte SIMONSEN, A.W. , ceases to draw Tradesmen's Rates, Group "C", on being S.O.S. this Unit, w.e.f. 1 Nov 40.

A-3554 L/Cpl BRYANT, G.G. (HQ), to draw Tradesmen's Rates of Pay, Group "C", w.e.f. 18 Sept 40.

15. REVERSIONS

B-36541 A/Sgt YEO, F.D.C. (RWLI), reverts to his permanent grade of private soldier at his own request, w.e.f. 12-7-41.

16. CANCELLATIONS (Remission of Sentences)

Part II D.O. 156 (10) dated 11 Jul 41, insofar as it relates to C-5125 Pte JOHNSTON, J.E. (HPE), and C-5300 Pte BERTRAND, J. (HPE), is hereby CANCELLED.

17. CHANGE OF ADDRESS OF NEXT-OF-KIN

C-4443 Pte SEAMES, J. (HQ), wife, Mrs E. Seames, from 56 Upper Beau Street, Liverpool, to, 25 Wallamill Road, GODALMING, Surrey.

B-72594 A/Sgt COMINS, E., (HQ), wife, Mrs L.M. Comins, from Evely, Cranhurst Lane, Witley, Surrey to: 41 Sunnyhill, WITLEY, Surrey.

A-3673 Pte COWDEROY, P.N. (HQ), wife, Mrs P. Cowderoy, from 374 Burwell Street, London, Ontario, to 195 Mill Street, LONDON, Ontario.

B-67060 A/Sgt PARTRIDGE, J. (RRegtC), wife, Mrs Audrey Partridge, 91 Chester Av., Toronto, Ontario, to: 27 Prizzell Av., TORONTO, Ontario.

18. CHANGE OF NEXT-OF-KIN

C-30142 Pte BRUCK, J.P. (RWLI), from Mrs M.A. Druck, (aunt), 193 McLeod Street, Ontario, to Mr J.M. Bruck (father), 193 McLeod Street, OTTAWA, Ontario.

19. HOSPITALIZATION

		HOSPITAL	ADMITTED	DISCHARGED
B-67487	Pte KINKAID, W.V. (RRegtC)	#5 Cdn Gen.	14 Apr 41	
B-36953	Cpl LOVE, J.P. (RWLI)	#15 Cdn Gen.	2 Jul 41	
C-5045	Pte THOMPSON, C.E. (HPE)	#5 Cdn Gen.	4 Jul 41	12 Jul
B-3553	Pte MINSTONE, J. (RCR)	#15 Cdn Gen.		13 Jul
B-74190	Pte [illegible], J. (48th)	#5 Cdn Gen.		15 Jul
C-4645	Sgt MEARWOOD, C.N. (HPE)	Carlwood Isolation		28 Jun
B-37308	Pte McCHESNEY, O. (RWLI)	#15 Cdn Gen.		12 Jul

20. AMENDMENTS (Hospitalisation)

Part II D.O. 155 (13) dated 11 Jul 41, insofar as it relates to A-3747 Pte GRAHAM, H.P. (RCR), is hereby CANCELLED.

LEAVE

The u/m personnel are granted 1st Privilege Leave as shown:

[illegible] Pte WOOD, C.E. (HQ), from 1200 hrs 14 Jul 41 to 1200 hrs 28 Jul 41 (14 days). Warrant No. 367044.
[illegible] Pte PALMER, G.H. (48th), from A.D. 15 Jul 41 to 1800 hrs 24 Jul 41 (9 days). Warrant No. 367040.
D-74054 Pte PARKES, O.P. (48th), from A.D. 15 Jul 41 to 1800 hrs 24 Jul 41 (9 days). Warrant No. 367041.
D-105801 L/Cpl HORIN, A.N. (HQ), from 1200 hrs 14 Jul 41 to 1200 hrs 28 Jul 41 (14 days). Warrant No. 371200.
C-21359 Pte HENDERSON, A.C.(HQ), from 1200 hrs 15 Jul 41 to 1200 hrs 24 Jul 41 (9days). Warrant No. 367050.
B-37556 Pte HASTINGS, W. (HQ), from 1200 hrs 15 Jul 41 to 1200 hrs 24 Jul 41 (9 days). Warrant No. 367044.
A-22498 A/Cpl LIDDELL,D.F.(ES), from 15 Jul 41 to 1700 hrs 29 Jul 41 (14 days) Warrant No. 367058.
A-22617 Pte BRUSH, L. (ES), from 1200 hrs 15 Jul 41 to 1200 hrs 24 Jul 41 (9 days). Warrant No. 367056.
A-22663 Pte BROWNING, R.L. (ES), from 0600 hrs 14 Jul 41 to 0600 hrs 23 Jul 41, (7 days) Warrant No. 367055.
A-22626 Pte NYMAN, D. (ES), from 0600 hrs 14 Jul 41 to 0600 hrs 23 Jul 41 (14 days) Warrant No. 367053.
A-22605 L/Cpl BELLAND, L., from 1200 hrs 15 Jul 41 to 1200 hrs 24 Jul 41 (9 days) Warrant No. 367052.
A-22451 Pte BURKE, R.J. (ES), from 1200 hrs 15 Jul 41 to 1200 hrs 24 Jul 41 (9 days). Warrant No. 367060.
B-74182 A/Cpl SMITH, C.A. (48th), from 0600 hrs 14 Jul 41 to 0600 hrs 23 Jul 41 (9 days). Warrant No. 371194.
D-68088 Sgt MIST, A. (RRegtC), from 0800 hrs 14 Jul 41 to 0800 hrs 21 Jul 41 (7 days) Warrant No. 371193.
[illegible] L/Cpl GUNN, A. (RRegtC), from 1630 hrs 11 Jul 41 to 1630 hrs 18 Jul 41 (7 days). Warrant No. 371192.
[illegible]-22329 Pte DUNBAR, J. (ES), from 1200 hrs 15 Jul 41 to 1200 hrs 24 Jul 41, (9 days). Warrant No. 367064.
[illegible]-22396 Pte PRUSAK, K. (ES), from 0600 hrs 14 Jul 41 to 0600 hrs 23 Jul 41 (9 days). Warrant No. 367063.
A-22417 Pte LARGE, J.A. (ES), from 0600 hrs 14 Jul 41 to 0600 hrs 23 Jul 41 (9 days). Warrant No. 367062.
A-22416 Pte BROWN, H.J. (ES), from 1200 hrs 15 Jul 41 to 1200 hrs 24 Jul 41 (9 days). Warrant No. 367061.
C-5799 Pte HARRISON, T. (HQ), from 1200 hrs 14 Jul 41 to 1200 hrs 28 Jul 41 (14 days). Warrant No. 371199.
A-21940 A/Cpl GORDON, N. (ES), from A.D. 15 Jul 41 to 1700 hrs 29 Jul 41 (14 days). Warrant No. 371198.
A-22035 Pte GOODWIN, A. (ES), from 0600 hrs 14 Jul 41 to 0600 hrs 28 Jul 41, (14 days). Warrant No. 371197.

The u/m personnel are granted 2nd Privilege Leave as shown:

[illegible]-22308 Pte TAYLOR, R.E. (HQ), from 1200 hrs 14 Jul 41 to 1200 hrs 28 Jul 41 (14 days). Warrant No. 367045.
[illegible]-67975 Pte BRODERICK, T. (HQ), from 1200 hrs 14 Jul 41 to 1200 hrs 23 Jul 41 (9 days). Warrant No. 367043.
[illegible]-72935 A/Cpl PEARCY, C. (HQ), from 1200 hrs 14 Jul 41 to 1200 hrs 23 Jul 41 (9 days). Warrant No. 367042.
C-6324 Pte FOULDS, L. (HQ), from 1200 hrs 14 Jul 41 to 1200 hrs 28 Jul 41 (14 days). Warrant No. 367051.
[illegible]-72632 Pte McGILCHRIST, W. (HQ), from 1200 hrs 14 Jul 41 to 1200 hrs 28 Jul 41 (14 days). Warrant No. 367046.

A-6133 L/Cpl PICARD, T.O. (HQ), from 1200 hrs 14 Jul 41 to 1200 hrs 21 Jul 41 (7 days). No warrant.

21. LEAVE (Cont'd)

A-21818 Pte McCANN, A. (ES), from 1200 hrs 14 Jul 41 to 1200 hrs 21 Jul 41 (7 days) No warrant

B-72108 Pte PATE, G.T. (ES), from 0600 hrs 14 Jul 41 to 0600 hrs 21 Jul 41 (7 days). No warrant.

A-22100 Pte DUNN, D.H. (ES), from 0600 hrs 14 Jul 41 to 0600 hrs 28 Jul 41. (14 days). No warrant

C-8644 Pte METCALFE, M. (HQ), from 1200 hrs 15 Jul 41 to 1200 hrs 24 Jul 41 (9 days). No warrant.

B-72747 Pte MEDLAND, W. (HQ), from 1200 hrs 14 Jul 41 to 1200 hrs 23 Jul 41 (9 days). Warrant No. 367059.

U-1523 CSM TOUSSAINT, H.A. (48th), from A.D. 18 Jul 41 to 1800 hrs 27 Jul 41 (9 days). No warrant.

U-1610 Pte ANDERSON, H.E. (48th), from A.D. 16 Jul 41 to 1800 hrs 23 Jul 41 (7 days). No warrant.

C-5721 Pte HUMBLE, E. (HPE), from 0800 hrs 12 Jul 41 to 2359 hrs 19 Jul 41 (7 days) No warrant.

B-67132 Pte LUNN, T. (RRegtC), from 0800 hrs 14 Jul 41 to 0800 hrs 23 Jul 41 (14 days), Warrant No. 371195.

The u/m personnal are granted 3rd Privilege Leave as shown:

B-37830 Pte WARDROPE, M. (HQ), from 1200 hrs 14 Jul 41 to 1200 hrs 23 Jul 41 (9 days). Warrant No. 367048.

C-40571 Pte CURRY, A.A. (HQ), from 1200 hrs 14 Jul 41 to 1200 hrs 23 Jul 41 (9 days). Warrant No. 367047.

A-21406 A/Cpl McDONALD, W. (ES), from 0600 hrs 17 Jul 41 to 26 Jul 41 (9 days). Warrant No. 367057.

B-73470 Pte SPARKS, E. (48th), from A.D. 14 Jul 41 to 1800 hrs 21 Jul 41 (7 days). Warrant No. 367054.

B-72734 Pte THOMPSON, C. (HQ), from 1200 hrs 14 Jul 41 to 1200 hrs 23 Jul 41 (9 days). No warrant.

U-7680 Pte CHANTRY, H. (48th), from A.D. 14 Jul 41 to 1800 hrs 23 Jul 41. (9 days). Warrant No. 371196.

ABSENTEES

B-83344 Pte KIMBERLEY, J.H. (RHLI) absent from 2230 hrs 9 Jul 41
B-37964 Pte POPE, W.J. (RHLI) absent from 2230 hrs 9 Jul 41

C-4328 Pte LABELLE, V.J. (HPE) absent from 30 Jun 41
B-37334 Pte McMILLIN, C.A. (HQ), having been absent from 0315 hrs 22 Jun 41, now shown as absent after twenty-first day.
C-6033 Pte ELLIS, D.C. (HPE), apprehended at 1130 hrs 12 Jul 41.
B-89015 Pte KENNEDY, J.S. (RHLI), returned at 1330 hrs 10 Jul 41
B-37624 Pte SYLVAIN, L. (RHLI) returned at 1330 hrs 10 Jul 41
B-73774 Pte WILLIS, S. (48th) absent from 1000 hrs 4 Jul 41
B-66920 Pte LOCKWOOD, N.P. (RRegtC) returned at 2100 hrs 10 Jul 41

PUNISHMENTS

Pte KERGH, W.J. (HQ) A.A. Sec. 15 (1)
was on 14 Jul 41 awarded 14 days C.B. for W.O.A.S.
absence without leave from 0600 hrs 11 Jul 41 to 1945 hrs 12 Jul 41. (1 day 13 hrs 45 minutes).
Forfeits 2 days' pay R. R. & I. 149 (1)(a).

C-6033 Pte ELLIS, D.C. (HPE) A.A. Sec. 15 (1)
was on 14 Jul 41 awarded 28 days detention for W.O.A.S.
absence without leave from 0600 hrs 17 Jun 41 to 1130 hrs 12 Jul 41. (25 days 5 hrs 30 minutes)
Forfeits 26 days' pay R. R. & I. 149 (1)(a)
Forfeits 33 days' pay R. R. & I. 149 (1)(b)
Total forfeiture 59 days' pay.

23. PUNISHMENTS (Cont'd)

A-3703 Pte GRAY, K.W. (RCR) A.A. Secs 15 (1), (2)
was on 28 Jun 41 awarded 14 days detention for (1) absence without leave from 1730 hrs 23 Jun 41 to 2000 hrs 27 Jun 41. (4 days, 2 hrs 30 minutes.) (2) failing to appear at a place of parade appointed by his commanding officer, in that he did fail to appear for guard mount after having been duly warned.
Forfeits 14 days' pay F. R. & I. 149 (1)(b)
Forfeits 5 Days' pay F. R. & I. 149 (1)(a)

D-36724 Pte SYLVAIN, L. (RHLI) A.A. Sec. 15 (1)
was on 12 Jul 41 awarded 14 days detention for W.O.A.B. absenting himself without leave (after having been warned for guard duty) from 1500 hrs 8 Jul 41 to 1330 hrs 10 Jul 41 (1 day, 22 hrs, 30 minutes.)
Forfeits 2 days' pay F. R. & I. 149 (1)(a)
Forfeits 14 days' pay F. R. & I. 149 (1)(b)
Total forfeiture 16 days' pay.

D-36996 Pte DESCHENES, J.E. (RHLI, attd, Advance Party, No. 14 Cdn General Hospital, R.C.A.M.C.) A.A. Secs 15, 40.
was on 2 Jul 41 admonished for (1) drunkenness (2) causing a disturbance in a barrack-room.
(A.F.B. 252, issued by No. 14 Cdn Gen. Hospital)

D-89015 Pte KENNEDY, J.E. (RHLI) A.A. Sec. 15 (1)
was on 12 Jul 41 awarded 14 days detention for W.O.A.B. absenting himself without leave after having been warned for guard duty from 1500 hrs 8 Jul 41 to 1330 hrs 10 Jul 41. (1 day, 22 hrs, 30 minutes.)
Forfeits 2 days' pay F. R. & I. 149 (1)(a)
Forfeits 14 days' pay F. R. & I. 149 (1)(b)
Total forfeiture 16 days' pay.

A-3704 Pte BRYATON, C.T. (HQ), A.A. Sec. 40
was on 12 Jul 41 awarded 21 days detention for conduct to the prejudice of good order and military discipline in that he was found to be in possession of War Department property, well knowing that he should not have same.
Forfeits 21 days' pay F. R. & I. 149 (1)(b)

D-37005 L/Cpl LUEN, L.D. (RHLI) A.A. Sec. 40
was on 12 Jul 41 reprimanded for conduct to the prejudice of good order and military discipline in that he did talk while on parade.

D-66520 Pte LOCKWOOD, N. (RRegtC) A.A. Sec. 15 (1)
was on 12 Jul 41 awarded 14 days C.B. for W.O.A.B. absence without leave from 2359 hrs 7 Jul 41 to 2100 hrs 10 Jul 41. (2 days, 21 hours.)
Forfeits 3 days' pay F. R. & I. 149 (1)(a).

24. AMENDMENTS (Punishments)

Part II D.O. 155 (17) dated 11 Jul 41, insofar as it relates to A-6163 Pte SAUNDERS, G.(RCR), is hereby CANCELLED.

Part II D.O. 151 (24) dated 7 Jul 41, insofar as it relates to C-5002 Pte MAY, M.D. (HPC), is amended to read "absent from 1000 hrs 1 Jul 41 to 0115 hrs 6 Jul 41 (4 days, 15 hrs 15 minutes). Forfeits 5 days' pay (FR&I 149 (1)(a)); Total forfeiture 32 days' pay."

No. 1 CANADIAN INFANTRY HOLDING UNIT
DAILY ORDERS, PART II

No. 157
14 JUL 41
SHEET 6

GENERAL COURT-MARTIAL

On 27 Jun 41 before a Field General Court-Martial held at Camp Algonquin, Witley, Surrey, convened by Brogadier L.F. Page, G.O.C. Cdn Base Units,
A-3553 Pte HANNIFORD, J. (RCR), was arraigned and charged as follows:

CHARGES:

(1) (A.A. Sec. 15 (1)), absence without leave from 2130 hrs 11 May 41 until apprehended at 1920 hrs 2 Jun 41 (Total absence: 21 days 21 hrs 50 min.)

(2) (A.A. Sec. 40), conduct to the prejudice of good order and military discipline, in that he was found improperly dressed in London on 2 Jun 41.

FINDINGS: GUILTY, on both charges.

SENTENCE: The court sentenced the accused to undergo detention for a period of 120 days.

CONFIRMATION: The findings and sentence of the Court were confirmed by the G.O.C. Cdn Base Units on 5 Jul 41.

The accused was under close arrest whilst awaiting trial for a period of 24 days, 4 hours, 40 minutes.

Forfeits 24 days' pay — P. R. & I. 149 (1)(c)
Forfeits 22 days' pay — P. R. & I. 149 (1)(a)
Forfeits 120 days' pay — P. R. & I. 149 (1)(b)
Total forfeiture 166 days' pay.

RATION STRENGTH

Ration strength, Cdn Detention Barracks, of 14 Jul 41:

Staff: 52 Prisoners: 154

for [illegible] Capt.,
(W.O. Stockdale) A/Adjutant,
No. 1 Cdn Infantry Holding Unit.

CERTIFIED TRUE COPY E.J. Reid Lieut.,
Officer I/c Records.

No. B66843 Name Duff C.F. Sqn., Battery, or Company "C" Corps R.REGT. C. Date of enlistment 11-9-39 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Iceland	28-8-40	Pte		A.A.Sec 15(1) A.W.L. from 2315hrs 28-8-40 until 1045hrs 29-8-40	~~Sgt Lee~~ L/Cpl Orpen Pte Everist	28 days Detention	2-9-40	Major Jones	Forfeits 28 days pay
Iceland	28-8-40	"		A.A.Sec 15(2) Going from place of parade appointed by his Commanding Officer at 2315hrs 28-8-40 in Reykjavik.	CSM Godfrey Pte Marsh Cpl McDermott	28 days Detention Awards to run concurrently	2-9-40	Major Jones	Forfeits 1 dys pay under F.R.AI.CASF
Released from ALBASTER FIELD PUNISHMENT CAMP 25-9-40 REMISSION EARNED 4 Days F.C. WARDLE									Forfeits 5dys pay(Close Arrest) under F.R.AI.CASF.
Alafoss	6-10-40	Pte		A.A. Sec 15(1) A.W.L. from 2200hrs until 0600hrs 7-10-40	Sgt Peak	28 Days F.P.		Lt-Col C.H. Basher	Forfeits 29 Days pay
Alafoss	7-10-40	"		A.A. Sec 15(2) Failure to appear at place of parade when warned at Guard.	L/Sgt Peak				

(P.T.O.)

DD1 Welda mukherjee Pendet

No. B-66843 Name Duff C.F. Sqn., Battery, or Company "C" Corps R. REGT. R.C. A.M.C. Date of enlistment 11-9-39 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Toronto	1-11-39	Pte.		A.W.L. from 2400 hrs 1-11-39 to 0845 hrs 4-11-39 A.A. Sec 15(1)	CSM Molohan	96 hours Detention	4-11-39	Lt/Col C.H. Basher	Forfeits 7 days pay
Toronto		"		Fraud (2 Charges)	T. Eaton Co	Suspended Sentence	27-11-39	Civil Authorities	
Toronto	1-12-39	"		A.W.L. Sec. 15(1) A.A. from 2400 hours 30-11-39 until 2350 hrs 1-12-39	Cpl. Hayden	168 hours Detention	2-12-39	Lt-Col C.H. Basher	Forfeits 8 days pay
Toronto	2-1-40	"		A.A.Sec 15(1) A.W.L. 2230 hours 2-1-40 until 0600 hrs 16-1-40	Cpl Pettit Cpl Hayes	168 hours Detention	20-1-40	Lt-Col C.H. Basher	Forfeits 10 days pay

(47 m2)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	31-1-41	Pte		Sec 15(1) A.A. Absent from 0900 hours 31-1-41 until 0600hrs 1-2-41	L/S E. Peake	7 dys F.P.	6-2-41	Lt-Col C.H. Basher	Forfeits 1 Dys pay for A.W.L. 7 dys pay for F.P.
Aldershot	15-3-41	"		A.A.Sec 15(1) AWL from 2359hrs 15-3-41 to0945hours 16-3-41	Sgt Hayden	Sentenced by F.C.C.M. to undergo 112 Dys Detention	29-4-41	Field General Court Martial	Forfeits 112 Days pay for Detention 31 dys pay forAWL 23 dys pay whilst incustody awaiting trial.
	16-3-41	"		A.A.Sec 15(1) AWL from 2230hrs 16-3-41 to 1535hrs 3-4-41 when apprehended by M.Ps in London	Sgt Lee Sgt Hayden Sgt Preston				
	7-4-41	"		A.A.Sec 22 Escaping from lawful custody at 2050hrs 7-4-41	Pte Bhuda Pte Tucker	Sentence Confirmed 2 May 41. Released from DETENTION			
	7-4-41	"		A.A. Sec 15(1) AWL from 2050hrs 7-4-41 to 102 hrs 10-4-41 when Apprehended by M.Ps in London	Cpl Randall L/Cpl Curnick L/Cpl Sheehan	BARRACKS AND BOUT on 10 July 1941 Sentence having expired ADMISSION WARNED 37 Days Cmdt.			

CERTIFIED TRUE COPY C. H. Basher Lieut.
for Record Office

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Toronto	17-1-40	Pte		A.W.L. 2400 hrs 17-1-40 until 0330 hrs 21-1-40 A.A. Sec 15(1)	Cpl Curphlis Cpl Peaks	21 days Detention	22-1-40	Lt-Col C.H. Basher	Forfeits 25 days Pay
Toronto	15-2-40	"		A.W.L. 2400 hrs 15-2-40 until 1120 hrs 18-2-40 A.A. Sec. 15(1)	L/Cpl Chrysler L/Sgt Robinson C.B.	14 days	19-2-40	Lt-Col C.H. Basher	Forfeits 3 days pay
Alsfoss	3-8-40	"		A.A. Sec 15 (2) Failure to appear at the place of parade appointed by his Commanding Officer in that he was absent from parade 0900 hours 3-8-40.	PSM Singleton	21 days Field Punishment	4-8-40	Lt- Col C.H. Basher	Forfeits 21 days pay
Released from ALABASTER FIELD PUNISHMENT CAMP 24-8-40 ADMISSION WARNED									
F.C. Randle		Capt	Comdt.						

Description of Court by which trial, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
				A.M.H.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21st day of August 1941

for A.M. Hueston
E.J. Rider) Officer i/c Records
No. 1 Canadian Infantry Holding Unit.
Lieut.

A.M.H.

DD 2 W.G. Hammersley or President.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B-66843 Pte. Duff G.F. of the (Royal Regiment of Canada)
No. 1 Cana dian Infantry Holding Unit.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Para. 664, K.R., 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For Absence without leave	4	times	7	times.
For Absent from place of parade	2	times	3	times.
For		times		times. A.M.H.
A.M.H. For		times		times.

Number of instances of gallantry or distinguished conduct. NIL

or,

A.M.H. ~~There are no entries in the Conduct sheets of the accused.~~ A.M.H.

A.M.H. ~~2. The accused has not been previously convicted.~~ A.M.H.

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time,

or,

~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement, awaiting trial on the present charges

for NIL days in Civil Custody,

and 11 days in Military Custody.

Total 11 days.

Of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 26 years.

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 11 Sept 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 year and 11 months

8. The accused is entitled to deferred pay or gratuity in respect of ~~_____~~ years' service.

9. The accused is entitled to reckon ~~_____~~ years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward ~~(or is in possession of or entitled to _____)~~

~~(1) *(If the accused is a warrant officer.)* The accused before he was made a warrant officer last held the regimental rank of~~

12. *(In the case of an officer.)* The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

	Date of Promotion.
In the rank of ,	years,
In the rank of ,	years,
~~In the rank of~~ ,	~~years,~~

(INSTRUCTIONS.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name 6-6684 Pte. Duff G.F. (R. R.G.T. C.) of the NO. 1 CANADIAN INFANTRY HOLDING UNIT

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or statute of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or of summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
Field General Court-Martial	27th November 1939 Toronto, Canada.	Fraud - T. Eaton Co.	Suspended Sentence	
	29th April 1941 In the Field Eng.	(1) Absenting himself without leave from 2330 hours 15th March 1941 until 0945 hours 16th March 1941. A.A. Sec. 15(1) (2) Absenting himself without leave from 2230 hours 16th March 1941 until apprehended by Military Police in London at 1535 hours 3rd March 1941. A.A. Sec 15 (1). (3) Escaping from lawful custody at 2050 hours 7th April 1941. A.A. Sec 22. (4) Absenting himself without leave from 20 50 hours 7th April 1941 until apprehended by Military Police in London at 1025 hours 10th April 1941. A.A. Sec 15 (1).	112 Days' Detention	37 Days.

(*Continued overleaf.*)

COUNTER NUMBER 5558995

HOUR 1127

OPERATOR'S INITIALS DA

RELIEVING OPERATOR BM

RR-3
BDR. DUFF W.N

CHARGE SHEET

The accused, A-28122 Bdr. William Norman DUFF, 41 Cdn Lt AA Bty., 5 Cdn Lt AA Regt RCA., a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE

Sec 15(1) A A

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field on 5 Sep 43, absented himself without leave from his regiment, 5 Cdn Lt AA Regt RCA., from 1200 hrs 5 Sep 43 until he surrendered himself at his unit guardroom at 1930 hrs, 24 Sep 43. (absent 19 days, 7 hours, 30 mins.).

In the Field,
27 Sep 43.

(S.L. Higgs) Lt-Col.,
Commanding Officer,
5 Cdn Lt AA Regt RCA.

To be tried by Field General Court-Martial.

R.O.G. Morton
(R.O.G. Morton) Brig
CRA 5 Cdn Armd Div

In the Field,
28 Sep 43.

W. L. Shortreed, Major.
President.

MEDICAL OFFICER'S REPORT

I certify that No. A-28122 Bdr Duff, W.N.

of 5 Lt AA Regt RCA is in a good state of health,

and fit to undergo Trial by Court martial.

W. MacIsaac Capt
Medical Officer

Station In the Field

Date 30 Sep 43.

N A Shortreed Major

M. F. B. 246

PAGE I

Record of Proceedings of a Field General Court Martial

Held in the Field in Field (Country) on 30th September 1943 (Date) to try

Accused A28122 (Number) Bdr. (Rank) William Norman (Christian Names) Duff (Surname) 5 Cdn LAA Reg't (Unit)

	Rank	Name	Unit
President	Major	W. L. Shortreed	4th Cdn A.T.K. Reg't
Member	Capt	RD Palk	5 Cdn LAA Reg't
Member	Lieut	E Flowers	4th Cdn A.T.K. Reg't.
Judge Advocate (if any)			
Offms under Instruction (if any)			
Prosecuting Officer	Capt	T. B. Harrison	5 Cdn LAA Reg't
Lawyer? Ans NO			
Defending Officer	Lieut	J. S. Leefe	5 Cdn LAA Reg't
Lawyer? Ans NO			

(The following procedure must actually be carried out)

1. The President produces the Convening Order, Charge Sheet(~~s~~) and Summary of Evidence. (Rs.P.17(2), 22(A)).

   (If a waiting member substituted, record is on separate sheet, initialled by the President and attached hereto.)
   (For form of record see MML page 742 top)

2. The President in closed Court, (R.P. 22, fn 1) reads the Convening Order and the Charge Sheet(~~s~~) to the Members, and the Court satisfy themselves that it is properly convened and constituted (A.A. 49; Rs.P. 105, 106, 107), that the accused is (~~are~~) amenable to Military Law, and that each charge discloses an offence (Rs.P. 23, 108).

3. The accused is (~~are~~) brought before the Court and at 0931 hours the trial commences.

4. The Prosecuting Officer produces a Medical Certificate under K.R. (Can) 557 (See CMHQ Circular Letter 173) that the accused has (have) this day been examined and is (are) fit to undergo trial by Court Martial. The certificate is signed by the President and attached to the proceedings.

5. President to accused:

   Q - Do you object to _____ as interpreter? N/A
   A - _____

   The interpreter is duly sworn. (Form of oath on page "D")

   Q - Do you object to _____ as shorthand writer?
   A - _____

The ~~shorthand writer is duly sworn.~~ (Form of oath on page "D")

6. The Convening Order is read in the hearing of the accused.

The names of the President and Members of the Court are read to the accused and they severally answer to their names (R.P. 25).

7. ~~President to accused:~~

Q - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

A - No. Sir

(If objection is made it is recorded on separate sheet, initialled by the President and attached hereto) (R.P. 25). (For form of record see MML page 742 Variation).

8. The President, Members, ~~Judge Advocate and Officers under Instruction~~ are duly sworn (Rs.P. 26, 27). (Forms of oath on page "D").

9. The Charge Sheet(s) is (are) signed by the President.

10. The Prosecuting Officer informs the Court that the accused ~~has (have not)~~ has not elected trial by Court Martial. (A.A. 46(8)).

(If special plea(s) is (are) made for separate trial on one or more charges (Rs.P. 32(E), 108); or as to the jurisdiction of the Court (R.P. 34); or in bar of trial (R.P. 35); or as to accused's mental fitness to stand trial (A.A. 130; R.P. 37), such pleas and evidence (if any) are recorded on separate sheet(s), initialled by the President and attached hereto). (For form of record see MML page 744, 745, Variations).

11. Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P. 112). He pleads as follows:

First Charge	Guilty	Fifth Charge	
Second Charge		Sixth Charge	
Third Charge		Seventh Charge	
Fourth Charge		Eighth Charge	

(For procedure on alternative charges, see R.P. 37(A) and fn 2). (For form of record see MML page 744 Instructions).

Further proceedings are recorded on pages hereto attached.

W. L. Shortreed, Major

PAGE A

(For use when accused pleads "Guilty" to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President).

1. The President complies with R.P. 35(D) by ascertaining that the accused understands the nature of the charge(s) (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B) (fn 3) and advising him to withdraw his plea if he thinks the accused ought to plead "Not Guilty" thereto.

2. The finding(~~s~~) of the Court is (~~are~~) recorded on page 2 of APA 3.

3. President to accused

Q - Do you desire to make any statement of the circumstances in reference to the charge(s)? (R.P. 37(B)).

A - No Sir

(Statement (if any) not on oath and on which accused is not subject to cross examination is recorded on separate sheet, initialled by the President and attached hereto.

4. The Summary of Evidence is read aloud, in the presence of the accused, signed by the President and attached to the proceedings.

(If no such Summary, sufficient evidence for determination of the sentence is taken and recorded on separate sheets, initialled by the President and attached hereto). (R.P.37(E)).

5. President to accused

Q - Do you wish to make any statement in mitigation of punishment? (R.P. 37(C)).

A - Attached, Appendix "A"

(Statement (if any) not on oath and on which accused is not subject to cross examination is recorded on separate sheet, initialled by the President and attached hereto).

(If from paras 3, 4 or 5 it appears to the Court that the accused did not understand the effect of his plea see R.P. 37(B) fn 3; 37(C); 37(D) fns 5 and 6; MML page 747 Variations).

6. President to accused

Q - Do you wish to give evidence yourself or to call any witnesses as to character? (R.P. 37(C)).

A - No sir

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto).

7. Statement of Character and Service (AFB 296 or MFB 355) and Field Conduct Sheet (MFM 6), signed in the manner required by A.A. 163(1)(h) and purporting to refer to the accused by his number, rank, name and Corps, are produced to the Court, read, signed by the President and attached to the proceedings. (R.P. 46; Overseas RO 3131).

8. President to Accused

Q - Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P. 46(D)).

A - No

(Address (if any) not on oath and on which accused is not subject to cross examination is recorded on separate sheet, initialled by the President and attached hereto).

/Overleaf

9. The President announces

"The Court is closed for consideration of the sentence. The sentence to be awarded by the Court, being subject to confirmation, will not be announced but will be promulgated later and the proceedings in Open Court are accordingly terminated".

10. The Court is closed to consider the sentence.

11. The sentence is recorded, dated and signed by the President (R.P. 50) on page 2 of AFA 3.

(Punishments, A.A. 44; MML pages 130-134; K.R. (Can) 565-566; Overseas Hos 309,2325).
(One sentence is awarded in respect of all offences, R.P. 48).
(For form of sentence see MML pages 756-759).

12. N. L. Shortreed Major
(Signature of President)

Statement of Defending Officer in Med. of Punishment Appendix B.

While there has been no defence offered in this case, it has been pointed out to the court, before they consider sentence, that, of the five cases of AWL appearing on the conduct sheet, four took place in Canada. The last occurred in this country on 8 Oct 41. The accused in that case has had nearly a year with no entries. Further, I would like to point out that the accused was married on 23 May 42, and has gone straight, so to speak, since that time. He's been, to the best of my knowledge, a good soldier, confirmed Bdr. on 7 Aug 42. There may have been, prior to this case, some trouble of a personal nature at home, that the accused does not wish to use in his defence, and, while we realize that such things as that are no defence, unless duly brought out, I think we can realize that everyone is human, and I would ask the court in considering sentence to take notice of the good record of the accused for the past twelve months.

H. J. Shortreed, Major

SUMMARY OF EVIDENCE IN THE CASE OF

A.28122 Bdr. Duff, W.N.

41 Cdn Lt AA Bty RCA

5 Cdn Lt AA Regt RCA

The accused demands that all evidence be taken under oath.

FIRST WITNESS: B15001 B.S.M. Ouellette, A.J. 41 Cdn Lt AA Bty RCA, 5 Cdn Lt AA Regt RCA having been duly sworn states:-

"As B.S.M. of the 41 Cdn Lt AA Bty RCA, I issued A28122 Bdr. Duff, W.N. with a 48 hour pass expiring at 1200 hrs 5 Sept 43. At the time of expiration, 1200 hrs 5 Sept 43, A28122 Bdr. Duff, W.N. failed to report and his name was duly placed on the absentee report. To the best of my knowledge, A28122 Bdr. Duff, W.N. did not return to this unit until Friday 24 Sept 43."

B.S.M. Ouellette, A.J.
41 Cdn Lt AA Bty RCA
5 Cdn Lt AA Regt RCA

The accused declines to cross examine the witness.

SECOND WITNESS: B15096 L/Bdr. McKim, J.R. 41 Cdn Lt AA Bty RCA, 5 Cdn Lt AA Regt RCA having been duly sworn states:-

"As N.C.O. i/c Guard 5 Cdn Lt AA Regt RCA on 24 Sept 43, A28122 Bdr. Duff, W.N. reported to me and handed in his pass at 1930 hrs, 24 Sept 43. He was clean, sober and properly dressed. I am also in T.H.Q. of C troop of 41 Cdn Lt AA Bty, the same troop to which A28122 Bdr. Duff, W.N. is posted; and to the best of my knowledge he did not return to the troop from the time his absence was established at 1200 hrs 5 Sept 43 until he reported to me at 1930 hrs 24 Sept 43."

L/Bdr. McKim, J.R.
41 Cdn Lt AA Bty RCA
5 Cdn Lt AA Regt RCA

The accused declines to cross examine the witness.

The accused having been duly sworn declines to make any statement or to give evidence under oath.

Rules of Procedure 4 (c),(d) and (e) have been duly complied with.

Taken down before me this 27th day of September 1943 in the presence of the accused.

(T.B. Harrison), Capt.
41 Cdn Lt AA Bty. RCA
5 Cdn Lt AA Regt RCA

W. I. Litchfield, Maj

L [illegible] B

No A28122 Name DUFF, W.N. Sqn., Battery, or Company Corps R.C.A. Date of enlistment 28 Dec 40 G.C. Badges Service or Proficiency Pay n.a. M.F.M. 6 (A.F.B. 122) (28M—7-41 (1215-30) H.Q. 1772-30-1612

Date of last entry in Company Conduct Sheet n.a. No. and date of last drunk n.a. Period not reckoning towards freedom from extra fine n.a. Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dimensing with trial	By whom awarded	Remarks
Completed six months service 28 Jun 41 Original Sheet Destroyed 15 Sept 42 Last Entry 2 Jun 41									
Petawawa	4 ~~Jul~~ Jul 41	Gnr		AWL 2-7-41 Absent 2 days A.A. Sec 15 (1)	Sgt. Young	3 days C.B.			Forf. 2 D.P. FR&I 149 (1) a
Petawawa	27 Jul 41	Gnr		AWL 27 Jul 41 (Absent 5 days) A.A. Sec. 15 (1)	Sgt Hunter L/Bdr Franklin	7 days C.B.			Forf. 1 D.P. FR&I 149 (1) a 3 D.P. FR&I 149 (g)
Petawawa	16 Aug 41	Gnr.		AWL 16 Aug 41 (Absent 17 dys 19 hrs. A.A. Sec. 15 (1)	Documentary				18 D.P. FR&I 149(1) a 10 D.P. FR&I 149 (g)

OVER

(P.T.O.)

Certified true Copy:

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Petawawa	8 ~~Oct~~ Sept 41			AWL 12 Sept. 41(Absent 2 dys 10hrs 30 Mins) A.A. Sec. 15 (1)	Sgt Young Bdr Hunt	14 dys C.B.			Forf. 3 dys Pay FR&I 149 (1) a 15 dys Pay FR&I 149 (g)
Field	8 ~~Nov.~~ Oct 41			AWL 8 Oct 41(Absent 1 dy 6 hours) A.A. Sec. 15(1)	Bdr Earle				2 dys Pay FR&I 149 (1) a

Certified true copy.
D. Armitage Capt & Adjt

5th Lt. A.A. REGT., R.C.A.

N. T. Thornton Major President

Exhibit A.

M.F.B. 355
(2M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A-28122	Bdr.	DUFF, William Norman	5 Cdn Lt AA Regt RCA

1. The following is a fair and true summary of the entries in the ~~Conduct~~ Regimental and ~~Summary~~ Battery Conduct sheets ~~of the accused, exclusive of convictions by a Court-Martial or a Civil Court,~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	times	Sec 15(1)-A.A. - four times
For	times	times
For	times	times
For	times	times

~~[illegible]~~

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~[illegible]~~ Air Force Act ~~[illegible]~~ A.F.A. 73 ~~[illegible]~~

3. The accused is not under sentence at the present time.

or,

~~[illegible]~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 6 days in military custody, making a total of 6 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 22 years & 4 months.

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper 28 Dec 40

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is ~~[illegible]~~ entitled to no ~~[illegible]~~ decoration, or ~~[illegible]~~ military reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held ~~[illegible]~~ the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N/A dated , and in his regiment (or corps), the rank of

N/A dated ,

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A 4 May 42 Date of promotion.

In the rank of Bdr 1 years. 4 months

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	None			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27 day of Sept 43 -

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked Exhibit A signed by the president, and annexed to the proceedings.

W. J. Shortreed Major
President

I desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

Bdr. W. N. Duff
A-28122 Bdr Duff, W.N.
41 Cdn Lt. A.A. Bty

W. Robertson Major

RR-3

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty-seventh day of September, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery 5 Canadian Armoured Division on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [and that it is not practicable to delay the trial for reference to a superior qualified officer.] RR-4.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [I am unable to appoint :—
*(1. Three Officers to form the Court.) RR-4.
*(2. A Field Officer as President.)
for the following reasons, namely :—]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	W.L. Shortread	4 Cdn A Tk Regt

Members.

Rank.	Name.	Regiment.
Capt	to be detailed by	5 Cdn LAA Regt
Lieut	" " " "	4 Cdn A Tk Regt
	WAITING MEMBER	
Lieut	to be detailed by	5 Cdn LAA Regt

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed R.D.J. Meldrum
(R.D.J. Meldrum) Brig
Commanding CRA 5 Cdn Armd Div
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A.28122 Bdr William Norman DUFF 5 Cdn LAA Regt RCA	First Charge Sec 15 (1) AA WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE	Guilty	Guilty Reverts to the permanent rank of Bdr 30 Days detention H. L. Shortreed Major	Confirmed 1731

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) R.D.G. Norton (Signed) H. L. Shortreed, Major
(R.D.G. Norton, Brig)
Commanding CRA 5 Cdn Armd Div
Convening Officer (e) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 30th day of September, 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

*Omit if not applicable.

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

Signed this 30th day of September 1943

H. L. Shortreed, Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (5) on page 762 M.M.L. 1929.

I certify that the terms of *~~A.C.I. 570 of 1918~~ have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 2 day of Oct 1943.

R.D.G. Norton
Confirming Officer
CRA 5 Cdn Armd Div

(a) Promulgated and extracts taken in the case of
(Dated) 2 Oct 43 (Signed) S. L. Higgs Lt-Col
Comd 5 Cdn Armd Div AA Regt RCA

Promulgated and extracts taken in the case of
(Dated) (Signed)

Promulgated and extracts taken in the case of
(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(20056) W.C.(H.Q.&C.) 60,000 12/42 A.& E.W.Ltd. Gp.698

52-66 Duffie, H. R.

(32)

The Vice Judge-Advocate-General, Canadian Army Overseas, having advised that the conviction on the first charge in these proceedings is invalid, I hereby direct that the record of the conviction on the said charge be and the same is hereby removed and the accused relieved from all consequences of his trial thereon, and I, being an authority having power to mitigate, remit or commute the punishment awarded by the sentence herein, having regard to the findings on the second charge do not mitigate the punishment as awarded by the court and confirmed by the confirming officer.

London
31 Mar 46.

(E.R.Suttie) Brigadier
Deputy Adjutant General,
Canadian Military Headquarters.

PROMULGATED AND EXTRACTS TAKEN

Accused:	Date:	Signature of Offr:
D.121284 Pte Duffie, H.R.	28 Mar 46.	

No. D121284 Name Duffie H.R.L. Sqn, Battery, or Company Corps C.I.C. Date of enlistment 18 Apr 41 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/PAS/136 (7808)

Date of last entry in Company Conduct Sheet n/a No. and date of last drunk n/a Period not reckoning towards freedom from extra fine n/a Sheet No. TWO Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of order dispensing with trial	By whom awarded	Remarks
Field		Pte		Granted 3 months remission ot sentence of 18 months' Det'n awarded 8 Dec 45 by F.S.C.R. wef 9 Oct 45.					
Field	26 Oct 45	Pte		WOAS AWL from 0830 hrs 25 Oct 45 until 0730 hrs 30 Oct 45 (Total Absence 3 days, 23 hrs) AA 15(1)	Cpl Burke H.L.	14 days C.B. 8 days pay	30 Oct 45	Lt-Col R. M. Wynn	Forf 4 days pay FR&I 149 (1)(a). Forf 8 days pay FR&I 149 (2)

Certified True Extract from MFM 4 and MFM 6 29 Jan 46.

(R.A.C. Turnau) Lt

Officer detailed to take Summary of Evidence.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if tried thereafter stating with trial	By whom awarded	Remarks
Field		Pte		1.AA 15(1) AWL 6 days, 17 hrs, 59 mins.		21 days Det'n Forf 21 dys pay.	13 May42		Aut forf 7 days pay.
				2.AA 10(4) Breaking out of bks.					
				3.AA 40					Total forfeiture
Field		Pte				28 days Det'n	10 Aug 42		35 days pay.
Field		Pte		AA Sec 15(1) AWL 18 hrs,45 mins		5 days pay	21 Apr43		Aut forf 1 days pay.
Field		Pte		AA Sec 15(1) AWL 12 hrs.		7 days pay	27 Aug43		Aut forf 1 days pay.
Field		Pte		AA Sec 15(1) AWL 6 hrs, 10 mins.			15 Oct43		Aut forf 1 days pay.
Field		Pte		AA Sec 15(1) AWL 4 days, 22 hrs, 1 min.		28 days pay.	24 Apr44		Total forfeiture 33 days pay.
Field		Pte		1.AA 15(1) AWL 27 days,3 hrs,30 mins		18 months Detention	8 Dec 44	F.G.C.M.	Total forfeiture 562 days pay.
				2.AA 15(1) AWL 2 days,8 hrs,15 mins					
				3.AA 15(1) AWL 66 days,15 mins.					

Exhibit "C"

No. D121284 Name Duffie H.R.L. Sqn, Battery, or Company Corps C.I.C. Date of enlistment 18 Apr 41 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/PAM/136 (7808)

Date of last entry in Company Conduct Sheet n/a No. and date of last drunk n/a Period not reckoning towards freedom from extra fine n/a Sheet No. ONE Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Notes of Witnesses	Punishment awarded	Date of arrest or of order, Sergeant's Office	By whom awarded	Remarks
Field		Pte	1	AA Sec 19 WOAS DRUNKENNESS (First Offence)		Admonished	10 May 41		Aut forf 1 days pay.
				AA Sec 15(1) AWL 9 hrs.		7 days C.B.			
Field		Pte		AA Sec 15(1) AWL 17 days,4 hrs		14 days Det'n	8 Jul 41		Aut forf 1 days pay.
Field		Pte		AA Sec 15(1) AWL 17 hrs,30 mins		7 days C.B.	3 Dec 41		Aut forf 3 days pay.
Field		Pte		A.A.Sec15(1) AWL 2 days, 19 hrs.		5 days C.B.	20 Jan42		Aut forf 1 days pay.
Field		Pte		AA Sec 15(1) AWL 9 hrs.		7 days C.B.	9 Feb 42		Aut forf 1 days pay.
Field		Pte		AA Sec 15(1) AWL 9 hrs.		7 days C.B.	21 Feb42		Aut forf 5 days pay.
Field		Pte		AA Sec 15(1) AWL 5 days.		10 days pay 7 extra drills	18 Feb42		

Exhibit "B"

HQ No 3 Wing
14 Feb 46.

The following is a certified true extract from No 3 Cdn Repat Depot Part II Order No. 12 dated 26 Jan 46.

9. ABSENT WITHOUT LEAVE

(A) AWL from 0830 hrs 20 Dec 45.

D-121284 PTE DUFFIE HR 3 WING

Certified True Extract 14 Feb 46

(A. Lihou) Capt
Officer in custody of
Regimental books and
Documents.

PART II ORDER EXTRACT FORM Exhibit "A"

D & P SECTION A-8 99/20/.....
.....8 Oct.....19..45....

EXTRACT FROM: Unit: 1 CDN ARMD BDE COY (83 COY) RCASC

Part II Order No. 35 dated 19 Sep 45

ABSENCE WITHOUT LEAVE

AWL from 2359 hrs, 13 Feb 45 App in ROME 0001 hrs, 30 Mar 45
D-121284 Pte DUFFIE, H.R.

certified to be a true extract
from the regimental books and
documents in my custody.

? ? Foster Capt.
Officer IC Records
Cdn Sec 2 ECH HQ 21 A Gp.

The following documents are (xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
(xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
(xxxxxxxxxxxxxxxxxxxxxxxx
for information

Originating Clerk initials,,,..... ..... for
Officer in Charge
Cdn Sec GHQ 2nd Echelon.

Certified true copy of a certified true extract.

29 Jan 46 Sgd (A.P. Chapman) Capt
Officer in custody of
Regimental books and
Documents.

Certified True Copy of certified true copy of a certified true extract.

A Lihou

14 Feb 46. (A. Lihou) Capt
Officer in custody of
Regimental books and
Documents.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

DESCRIPTION OF COURT BY WHICH TRIED	DATE AND PLACE OF TRIAL	CHARGE UPON WHICH CONVICTED	SENTENCE OF THE COURT	PUNISHMENT REMITTED OR SENTENCE SUSPENDED.
Field General Court Martial	8 Dec 45	A.A. SEC 15(1) AWL 27 days, 3 hrs, 30 mins. A.A. SEC 15(1) A.W.L. 2 days, 8 hrs, 15 mins. A.A. SEC 15(1) A.W.L. 66 days, 15 mins.	18 months detention total forfeitures 668 days pay.	granted 3 months remission of sentence.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 4th day of Feb 1946

A.S. Chapman Lt
(A.S. Chapman Lt)
Officer in custody of Regimental Books,

ET/cas

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

DESCRIPTION OF COURT BY WHICH TRIED	DATE AND PLACE OF TRIAL	CHARGE UPON WHICH CONVICTED	SENTENCE OF THE COURT	PUNISHMENT REMITTED OR SENTENCE SUSPENDED.
Field General Court Martial	8 Dec 45	A.A. SEC 15(1) AWL 27 days, 3 hrs, 30 mins. A.A. SEC 15(1) A.W.L. 2 days, 8 hrs, 15 mins. A.A. SEC 15(1) A.W.L. 66 days, 15 mins.	18 months detention total forfitures 682 days pay.	granted 3 months remission of sentence.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 4th day of Feb. 1946

A. S. Chapman Capt.
(A. S. Chapman) Capt.
Officer in custody of Regimental Books,

Z/cas

Exhibit "B"

ARMY FORM B.296 (WAR)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED
(For Use at Trials by Field General Courts-Martial only).

NUMBER	RANK	NAME	REGIMENT (or as the case may be)
D-121284	Pte	DUFFIE, Horace, Ross	3 Cdn Repat Dep.

NOTE:- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entry for drunkenness or absence as the case may be, should be stated separately. Any recognized special acts of gallantry, or distinguised conduct recorded on the Field Conduct Sheet should also be inserted here.

Strike out if not applicable.

"State the military decorations (if any held by accused).

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :-

For A.A. SEC. 15(1) AWL	12 times
	..... times
For A.A. SEC. 19. Drunkenness	1 times
	..... times
For A.A. SEC. 10. Breaking out of barracks	1 times
	..... times
For A.A. SEC. 40. Conduct to the prejudice	1 times
	..... times

Date of first entry in Field Conduct Sheet 10.May.

Date of last entry in Field Conduct Sheet 10.Oct.

2. Previous convictions of the accused by a Court Martial or a civil court are set out in the Schedule overleaf.

3. [illegible]

4. The accused has been awaiting trial on the present charge(s) for ..... nil ..... day(s) in civil custody; and for 17 ..... day(s) in military custody, i.e., nil ..... day(s) in open arrest, 17 ..... day(s) in close arrest; of which 12 ..... day(s) were spent in hospital.

5. The present age of the accused is 22 years 178 days

6. The date of his attestation is 18 Apr 41

7. The service which the accused is allowed to reckon is ..... 4 years 271 days .....

8. The accused is in possession of 1939-45 Star, Italy Star and CVSM & Clasp.

9. [illegible]

INSTRUCTION:- If any matter in any of the above paras cannot be stated from the regimental books the paragraph must be struck through.

LIST OF EXHIBITS

EXHIBIT "A" - Certified True Copy of ECH-6 (Part II Order Extract Form) purporting to be a true extract from Part II Order No 35 dated 17 Sep 45 issued by 1 Cdn Armoured Bde Coy (83 Coy) RCASC purporting to be signed by ?? Foster Capt., Officer IC Records, Cdn Sec 2 ECH HQ 21 A Gp showing the accused D-121284 Pte Duffie H.R. as AWL from 2359 hrs, 13 Feb 45 until apprehended in Rome, Italy, at 0001 hrs 30 Mar 45.

EXHIBIT "B" - A Certified True Copy of Part II Order No 12 dated 26 Jan 46, issued by No 3 Cdn Repat Depot, purporting to be signed by E.W. McMahon, Maj., showing the accused D-121284 Pte Duffie H.R. AWL at 0830 hrs 20 Dec 45.

LIST OF WITNESSES FOR THE PROSECUTION

A/Capt A.F. Chapman, Adjutant, No 3 Wing, No 3 Cdn Repat Depot.

B-119837 L/Cpl Hare R.E., Regt'l Police, 3 Wing, No 3 Cdn Repat Depot.

STATEMENT OF THE ACCUSED IN ACCORDANCE WITH R.P. 14(b)

I, D-121284 Pte Duffie H.R., desire that an officer be assigned to defend me at my trial by Field General Court Martial.

I desire the services of ...Lt. T.W. Townsend.....

..... if he is available.

H.R. Duffie
.....
D-121284 Pte Duffie H.R. (RCASC)
No 3 Wing, 3 Cdn Repat Depot.

STATEMENT OF THE ACCUSED IN ACCORDANCE WITH R.P. 14(b)(h)

This is to certify that I have received one (1) copy of the charge sheet and one (1) copy of the Summary of Evidence in my forthcoming Field General Court Martial.

in the field.
29 Jan 46.

H.R. Duffie
.....
D-121284 Pte Duffie H.R. (RCASC)
No 3 Cdn Repat Depot.

I certify that the foregoing Summary of Evidence consisting of one (1) page and two (2) exhibits was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

A Turnau

(R.A.C. Turnau)Lt.
No. 3 Cdn Repat Dep
Officer detailed to take the Summary of Evidence.

Delville Barracks
Cove, Hants

29 Jan 46.

SUMMARY OF EVIDENCE

Extract

Summary of Evidence in the case of D-121284 Pte DUFFIE, Horace, Ross, Royal Canadian Army Service Corps, on strength of No 3 Wing, No 3 Cdn Repatriation Depot, a soldier of the Canadian Army Overseas.

By the direction of the Officer Commanding No 3 Wing No 3 Canadian Repatriation Depot, the Summary of Evidence is taken on OATH.

FIRST WITNESS for the Prosecution.

A/Capt A.F. Chapman, (CIC) Adjutant No 3 Wing, No 3 Cdn Repatriation Depot, an officer of the Canadian Army Overseas, having been duly sworn, states:

"I am A/Capt A.F. Chapman, Adjutant No 3 Wing, No 3 Cdn Repatriation Depot, an Officer of the Canadian Army Overseas. I produce the following documents relating to the accused, whom I now recognize.

(a) A certified true copy of ECH-6 (Part II Order Extract Form) purporting to be a true extract from Part II Order No 35 dated 17 Sep 45 issued by 1 Cdn Armoured Bde Coy (83 Coy) RCASC purporting to be signed by ?? Foster Capt., Officer IC Records, Cdn Sec 2 ECH HQ 21 A Gp showing the accused D-121284 Pte Duffie, H.R. as AWL from 2359 hrs, 13 Feb 45 until apprehended in Rome, Italy, at 0001 hrs 30 Mar 45. (Exhibit A).

(b) A certified true copy of Part II Order No 12 dated 26 Jan 46, issued by No 3 Cdn Repat Depot, purporting to be signed by E.W. McMahon, Maj., showing the accused D-121284 Pte Duffie, H.R. as AWL at 0830 hrs 20 Dec 45. (Exhibit B).

A.P. Chapman Capt.
A/Capt A.P. Chapman (CIC)
No 3 Cdn Repat Depot.

The accused declines to cross-examine this witness.

SECOND WITNESS for the Prosecution.

B-119837 L/Cpl Hare, R.E. (CIC) Regtl Police No 3 Wing, No 3 Cdn Repatriation Depot, a soldier of the Canadian Army Overseas, having been duly sworn, states:

"I am B-119837 L/Cpl Hare, R.E. employed as Regtl Police No 3 Wing No 3 Cdn Repat Dep. I was on duty at 1830 hrs, 12 Jan 46, when the accused D-121284 Pte Duffie H.R. reported into the Guard Room of No 3 Wing, No 3 Cdn Repat Depot. He was AWL and so was put under close arrest.

R E Hare L/Cpl
B-119837 L/Cpl Hare R.E.
No 3 Cdn Repat Depot.

The accused declines to cross-examine this witness.

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

H.R. Duffie
D-121284 Pte Duffie H.R.

Exhibit E3/
Ceb

Plea of mitigation on behalf of D-121284 Pte Duffie H.R. R.C.A.S.C.

In Feb. 1945 Pte Duffie was serving a sentence in #56 Br. military Prison in Brindisi Italy.

On the morning of 13 Feb. 1945, Duffie, along with some other prisoners, was escorted to #98 British General Hospital to undergo hospitalization.

On arrival at the Hospital they were refuzed admittance, and were then escorted to another hospital. en route the British military Police escort turned them over to some British Soldiers proceeding on leave from Greece. They were escorted from Barri to Naples. On the train they were all drinking. In the morning Duffie awoke in Naples, he was in a different compartment with a L/Cpl of the escort and two American Officers.

They got off the train to find the rest of the escort, but they had left.

The L/Cpl had no documents and did not know where Duffie was to report, and as he was proceeding on leave he told Duffie to find his way to no 5 Cdn Gen Hospital in Rome.

Duffie proceeded to Rome, but found on arrival that no. 5 Cdn. hospital had left Italy. He then proceeded to #104 British Gen Hosp. on the advice of the Sgt at the Canadian leave centre M.I.R. in Rome.

Duffie reported into 104 British General Hospital, but did not tell them that he was from prison, because he did not want to go into the detention ward.

On 30 March 45 two British military Police came to the hospital and questioned him. He told them he was from no 56 British military Prison. They removed him to the detention Ward.

In submitting this plea I would like to draw the courts attention to the fact that the persons, who accompanied Duffie from no 56 Br. military Prison to hospital, have since returned to Canada and therefore statements could not be obtained from them to substantiate the chain

of events I have just related. And that although Duffie is charged with being absent from 13 Feb 1945 until 30 March 1945 part of that time must have been spent under escort while en route to hospital and he would therefore not be absent without leave for that period and also, when Duffie reported into 104 Br. Gen. Hospital his absence ~~would~~ then would no longer be voluntary but would become involuntary and therefore he could not be deemed absent without leave for that period, according to sec 15 (1) sub para 1 of the AA.

Therefore I ask the court to consider these facts in passing sentence and I hereby submit a further plea for leniency.

J W Thomson Lt. RCA

Plea of mitigation in behalf of D-121284 Pte Duffie HR
RCASC

On the 10th Dec 45 Pte Duffie proceeded on 9 days embarkation leave from 3 Cdn Repat Depot. He was on C.D. 698

He proceeded to Glascow Scotland with a girl he had been going with since Dec. 1942. They were planning on being married when his divorce became final.

In Scotland he told her that this would be his last leave in England and that he would be returning to Canada after he finished his leave.

She took this news quite hard and told him that she was pregnant and that he couldn't leave her. She also threatened to kill herself if ~~she~~ he did.

That night they went out to a Pub and on returning home Duffie to purchase some coffee & sandwiches when he arrived back at the house he found her lying on the bed in pain. Some women were with her and they told him she had taken a bottle of disinfectant mistaking it for a bottle of coffee. They said they had called a Doctor. As there was no one to care for her Duffie had to remain until he could contact her parents.

He thought she would be well in a few days and would be able to go home. But as she didn't recover as quickly as he thought, he was required to over stay his leave.

On the first she was up she had a miscarriage and was quite sick again. As Duffie still had been unable to contact his parents he had no alternative but remain with her.

Eventually he was able to contact her parents, who came and took her home. He then returned to 3 Cdn Repat.

Duffie's PULHAMS shows an S3 and according to the Psychiatrists report on his documents is due to nervous frustration. This nervous trait in Duffie together with the chain of events I have just related caused him to do what he thought was right at the time even if it meant missing his draft to Canada.

I therefore ask the court to consider these facts in passing sentence and I hereby submit a further plea for leniency.

J.W. Townsend Lt. R.C.R.

I certify that I have this morning examined D/21284 PTE. DUFFIE H.R. 8 REPAT. DEPOT, and in my opinion he is fit to undergo trial by Court-martial.

Cove, Hants.
4 Dec 46

Capt. RAMC

CEd

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-121284	Pte		Horace Ross	DUFFIE	3 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 1 Feb 46 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

WTI

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt-Col	C.E. WOODROW OBE ED	HQ CRU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Captain	being detailed by CO	1 Cdn Repat Dep
Lieutenant	being detailed by CO	1 Cdn Repat Dep
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Lieutenant	being detailed by CO	1 Cdn Repat Dep
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~ W.T.I

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

W.T. Ibbott

in ENGLAND	(W.T. IBBOTT)	COL
(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)

Dat 1 Feb 46 T/Commanding "B" GP, CDN REPAT UNITS
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 46/P & S/1897 (6142)

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused, D-121284 Pte Horace Ross DUFFIE, Royal Canadian Army Service Corps, on strength of No 3 Wing, No 3 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, absented himself without leave from 2359 hrs, 13 Feb 45, until apprehended at 0001 hrs, 30 Mar 45. (Absent 44 days, 2 mins).

SECOND CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, absented himself without leave from No 3 Canadian Repatriation Depot from 0830 hrs, 20 Dec 45 until reporting to Delville Guard Room, No 3 Wing, No 3 Canadian Repatriation Depot at 1800 hrs, 12 Jan 46. (Absent 23 days, 9 hrs, 30 mins).

In the field
30 Jan 46

(R.G. McCullagh) Lt-Col
Commanding
No 3 Cdn Repat Depot

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
1 Feb 46

(W.T. Ibbott) Col
T/Comd "B" Gp
Cdn Repat Units

FIELD GENERAL COURT-MARTIAL

CP/ABR (To be typed on A/F A3) 4/38B

Convening Order of COL W.T. IBBOTT MC ED T/Comd "B" GP, CRU dated 1 Feb 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-121284	Pte		Horace Ross	DUFFIE	3 Cdn Repat Dep

REVIEWED
3 Apr 46 C. H. Tait Maj
REVIEWING OFFICER, JAG BRANCH O.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) ENGLAND on (*date(s)*) 4 Feb 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of each variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted;(2) accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1)~~ Do you object to 2109409 Sgt O'NEILL, J as shorthand writer? Ans No SIR

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	C.E. WOODROW OBE ED	HQ CRU
Member	Captain	J.C. ANDERSON	1 Cdn Repat Dep
Member	Lieutenant	D.G. SIEMON	1 Cdn Repat Dep
~~Judge Advocate~~			
Prosecutor	LIEUT	R.A.C. TURNAU	3 CDN REPAT DEP
Defending Offr	LIEUT	T.W. TOWNROW	3 CDN REPAT DEP

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~(a)~~ plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D-121284 Pte DUFFIE, H.R. - 3 Cdn Repat Dep

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd	AA Sec 15(1)	GUILTY	GUILTY	
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 36, RP 44 ; findings on alternative charges see MML p 493 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which 12 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of one hundred and twenty (120) days.

(Sgd) ..... Judge-Advocate, if any. 4 FEB 46 Date awarded. (Sgd) C.F. Woodrow President. (RP 45, 50.) A/ Col

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) W.T.P.

(1. AA 57A. Delete if not used.)

Date 5 Feb 46 (Sgd) W.T. Proctor Lt Col

T/ Commanding B Gp C.R.V. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D 121284 Pte Duffie H.R.	6 Feb 46	L.T. Macdonell Lt-Col

Published in Part II Order No 26 d/12 Feb 46

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED AT CMHQ IN AB 168 : 52-66

FIELD GENERAL COURT-MARTIAL

CFA88 (In lieu of AFA81 40/F & S/Tech (E)(4)) 4/38B

Convened by Order of COL W.T. IBBOTT MM ED T/Comd "B" GP, CRU dated 1 Feb 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
D-121284	Pte	Horace Ross	DUFFIE	3 Cdn Repat Dep

REVIEWED
3 Apr 46 C.H. Taint Maj
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 4 Feb 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused : ~~Do you object to ..... as interpreter ? Ans~~ ~~The Interpreter is sworn.(1)~~ Do you object to 2105407 Sgt O'NEILL, J as shorthand writer ? Ans No SIR

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt-Col	C.F. WOODROW OBE ED	HQ CRU
Member	Captain	J.C. ANDERSON	1 Cdn Repat Dep
Member	Lieutenant	D.G. SIEMON	1 Cdn Repat Dep
~~Judge Advocate~~			
Prosecutor	LIEUT	R.A.C. TURNAU	3 CDN REPAT DEP
Defending Offr	LIEUT	T.W. TOWNROW	3 CDN REPAT DEP

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment where RP 85 (E) and fn 2 were not followed. See DI p 2.)

A8. The accused before arraignment make(s) (no) (~~or plea~~ (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (G)), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans N a S/R (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by dealing with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans N o S/R
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex C respectively.(3)
(1. *MFB 355 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans expecting. affects plea in mitigation attached (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~with the J A, if any~~.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 58(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HK64.
P6. Duffie H.R.L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D 121284 Pte DUFFIE HRL

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Sec 15(1)AA	Guilty	Guilty	
2nd Sec 15(1)AA	Guilty	Guilty	
3rd Sec 15(1)AA	Guilty	Guilty	
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 36, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

Accused ~~was previously convicted by~~ [illegible] "WHP" (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 31 days, of which 22 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo Detention for aperiod of eighteen months

(Sgd) ..... Judge-Advocate, if any. 8 Dec 44 Date awarded. (Sgd) "W H PAYNE" Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 13, MML p 65. Quashing after promulgation : KR Con 571. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the findings and sentence of the Court.

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

(Sgd) "W.C. Murphy" Brig.

Date 10/12/44 Commanding 1 Cdn Armd Bde. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
D121284 Pte Duffie H.R.L.	11 DEC 1944	"J.G.F. Morrice" Lt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY (D.M.Owen)Capt Cdn Sec GHQ 2Ech AAI Brig

4K-67.

FIELD GENERAL COURT-MARTIAL

CPA86 (To Issue of AFA31) 40-P & E-1696 (6000) 4/38B

Convened by Order of W.C. Murphy Comd 1 Cdn Armd Bde dated 5 DEC 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
D121284	Pte	Horace Ross Livingston	DUFFIE	1 Cdn Armd Bde Coy (83 Coy) RCASC

Major Cdn Sec GHQ 2 Ech AAI

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 8 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant from ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3) "WHP"

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.) "WHP"

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by~~ [illegible] summarily by the CO.(2) "WHP"

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 561(c). Delete, if not applicable.)

A5. President to accused : Do you object to N/A as interpreter ? Ans N/A

~~The Prosecutor informs the Court that accused elected to be tried by~~ [illegible] "WHP"

President to accused : Do you object to N/A as shorthand writer ? Ans N/A

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	W H PAYNE	HQ Sqn 1 Cdn Armd Bde
Member	Captain	L WARDMAN	1 Cdn Armd Bde Wksp
Member	Captain	C F HOGAN	1 Cdn Armd Bde Ord Fd Pk
Judge-Advocate			
Prosecutor	Captain	R D REID	1 C.A.B. Coy (83 Coy) RCASC
Defending Offr	Captain	G RATHBONE	1 C.A.B. Coy (83 Coy) RCASC

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See DJ p 4.) "WHP"

A8. The accused D 121284 Pte Duffie HRL before arraignment make(s) (no) (a) plea (1) "WHP"

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AE rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule. "WHP"

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No .(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 1 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) (in) ..... charge(s). Part I of the Schedule is amended accordingly. "N.G.P." "N.G.P."
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty X (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea of Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para. If submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 22 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D4.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 4.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A92. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 46(B).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No .
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by *A.S.* 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *AFB 255 or AFB 256.* 2. *MFM 6.* 3. *RP 46, KR Can 158. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes recorded per notes. .(2)
(1. *RP 27(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 752-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"WHE"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D.121284	Pte		Horace Ross Livingston	DUFFIE	1 Cdn Armd Bde Coy (83 Coy) RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 5 Dec 44 endorsed by me, (~~or by an offr of my staff for me~~); "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(*Delete part in brackets when not required for compliance with RP 104(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W.H. PAYNE	HQ Sqn 1 Cdn Armd Bde

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	L WARDMAN	1 Cdn Armd Bde Wksp
Capt	C F HOGAN	1 Cdn Armd Bde Ord Fd Pk

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
TO BE DETAILED BY O.C. HQ SQN 1 Cdn Armd Bde.		

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (Country.)

"W.C. Murphy" Brig
(W.C. Murphy)
(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Date 5 Dec 44

Commanding 1 Cdn Armd Bde.
Convening Officer

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAGO 12b (Am) of AFA2: 60-P-M-8/1697 (6031))

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE "WHP"
KR (CAN) Para 557

I certify that I have this morning examined

NUMBER D121284 Pte Duffie, H.R.L.

of 1 Cdn Armd Bde Coy(83 Coy) RCASC and in my opinion he is

Fit to undergo Trial by Field General Court Martial.

STATION Field

DATE 8 Dec 44

"R.J. Fonina" Capt. R.C.A.M.C.
Medical Officer.

---

8 Dec 44

PLEA IN MITIGATION OF SENTENCE Pte DUFFIE H.R.L. "WHP"

On making the plea in mitigation of sentence Driver DUFFIE volunteered for active service, he is entitled to wear the 39-43 star and CVSM.

The court has heard details of this mans previous misdemeanors and it will be seen that since joining the army he has been found Guilty on numerous occasions of absenting himself without leave, and twice of breaking arrest, apart from this he has only been on one other charge for a comparatively minor offense.

The accused then is an hibitual absentee, and his deliquencies have been brought about by a sense of grievance which however misplaced was nevertheless undoubtedly real in the accuseds' mind.

His first crime occurred under the following circumstances, when he received a telegram from his common-law wife telling him that their child was seriously ill, he was paraded to the commanding officer of the Basic Training centre and refused permission to to to his wife, he immediately went absent and upon arrival home found his child dead and his wife really sick, to add to his worries he learned that his wife who already had two children by another man and whose upbringing he had undertaken prior to volunteering, was not receiving any dependents allowance, and it was only after several months that she started to receive her reduced allowance

---

"WHP"

OF $20.00 per month, and nothing for the children.

This man in my opinion is mentally sick from constant worry for his wife and children, and after three and a half years of army life, it has become an obsession with him. If it please the court I would suggest that detention in his case is neither, an adequate punishment or a remedy, and from the man's condition I would respectfully suggest that he be given an opportunity of seeing a psychiatrist and receive the medical care due a Canadxian soldier; perhaps also instruction in a trade might help to relieve his bitterness and give this man a fresh start.

"G. Rathbone" Capt.
8-12-44

SUMMARY OF EVIDENCE Page 1 EX "A" "BHP"

in the case of
D-121284 Pte Duffie, H.R.L. 1 Canadian Armoured Brigade Company (83 Coy) Royal Canadian Army Service Corps.

The Commanding Officer directs that the evidence be taken on oath.

First Witness for Prosecution: Lieut G.J.F. MORRICE 1 Canadian Armoured Brigade Company (83 Coy) Royal Canadian Army Service Corps, having been duly sworn, states:-

I, Lieut. G.J.F. Morrice Administration Officer of (83 CoY) R.C.A.S.C., produce Documentary evidence as follows:-
On the first charge: I produce AFB 115 marked exhibit "A"; as evidence of the commencement of absence. I produce also a certificate of apprehension and body receipt, marked exhibit "B", as evidence of apprehension.
On the second charge: I produce guard report and MFB264, marked exhibit "C" as evidence of commencement of Absence. I produce also certificate of apprehension, marked exhibit "D" as evidence of particulars of apprehension.
On the third charge: I produce AFB115, marked exhibit "E" as evidence of commencement of absence. I also produce certificate of apprehension, marked exhibit "F" as evidence of particulars of apprehension.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS

"G.J.F. MORRICE" Lt
(G.J.F. Morrice) Lieut.
1 Cdn Armd Bde Coy
(83 Coy) R.C.A.S.C.

The accused was duly cautioned in accordance with Rules of Procedure 4(e) which in part states:- "Do you wish to make any statement or to give evidence upon oath. You are not obliged to say anything or give evidence unless you wish to do so, and whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Field
2 Dec 44

"H.R.L. Duffie"
(H.R.L. DUFFIE) Pte.
1 Cdn Armd Bde Coy.,
(83 Coy) R.C.A.S.C.

I certify that the foregoing summary of evidence consisting of one page was taken down by me in the presence of the accused, and that rules of procedure 4(c),(d),(e) and (f) have been complied with.

Field
2 Dec 44

"R.D. REID"
(R.D. REID) Capt.,
1 Cdn Armd Bde Coy.,
(83 Coy) R.C.A.S.C.

Army Form B 115

RECORD OF THE DECLARATION OF A COURT OF INQUIRY ON THE ILLEGAL ABSENCE OF A SOLDIER.

RECORD of the Declaration of a Court of Inquiry at #15 Cdn Gen Hosp on the 25th day of June 1944, for the purpose of investigating and recording the absence without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Euipments, instruments, Regimental Necessaries, or Clothing of

No. D121284 Pte Duffie, G.H.? 83 Coy 1st Tank Bde RCASC

DECLARATION.

The court declare It is the opinion of the Court that D121284 Pte. Duffie, H.R., 83 Coy 1st Tank Bde RCASC, a patient in this hospital has been illegaly absent from 2215 hrs. 28 May 44 and is still absent at the expiration of 21 clear days.

REVERSE SIDE.

Names of President and Members.

President - Major G.F. Smith
Members - Capt. G.M. Black
Lieut. W.R. Hyndman

Signature of Commanding Officer "W.B. Bowman" Col.
CERTIFIED TRUE COPY

"????????????" Major Registrar,
15th Canadian General Hospital

CERTIFICATE OF ARREST UNDER A.A. 103 (1) (JJ)

I, Lt. J NEAL certify that No. D/121284 Rank Pte

Name DUFFIE H R Unit 83 Coy 1st Canadian Tank Bde

was arrested at FOGGIA at about 0145 hrs on the 25 June 1944.

"J NEAL" Lieut.
Officer Commanding,
230 Provost Company Det
The officer into whose custody the above named person was taken on arrest.

RECEIPT FOR SOLDIER PLACED IN CLOSE ARREST.
No. D/121284 Rank Pte. Name DUFFIE H Coy 83rd Bn.
Regiment 1st Can Tank Brgde
Station in the Field
was handed over to me by the Military Police at about 0145 hrs hours on the 25June 1944.
He was sober
FOGGIA
25/6/44

"C.B. Ridgeland" L/Cpl.
N.C.O. i/c Guardroom
230 Provost Coy Det.

D-121284 Pte Duffie H R 1 CAB RCASC

Sir:

I wish to report that the m/n soldier, under arrest awaiting trial broke out of this hospital at approx 1445 hrs 6 JULY 44

B 93554 "G.H. COR" 9 MS
15 Cdn Gen. Hosp RCAMC

No. 15 Cdn General Hospital RCAMC
(Patient)
83 Coy RCASC 1st Bde.

CHARGE ~~SHEET~~/
SQUADRON, BATTERY OR COMPANY

CHARGE against No. D121284 Pte Duffie, H.R.

Place

Field	6JUL44	Sec 15(1) A A WOAS AWL in that he while a patient in Special Compound a soldier awaiting trial did absent himself from approx. 1445 hrs. 6 Jul 44 till apprehended by the CMPs at 2300 hrs. 8 Jul 44 (Absent 2 days, 8 hrs. 55 mins)	Documentary

AWOL 21 Day wef 15 Aug 44. 12 Jul 44 Record to be added to other charge:- In close arrest. "F.B. Bowman" Col.

X List Part II #108 31 July 44

CERTIFICATE OF APPREHENSION

In accordance with Army Act Sec 163 (1)(jj)

I, certify that Regt No. D-121284
Rank Pte Name DUFFIE H.H.

Unit 83 CoyR.C.AS.C. 1ST Bde.

was apprehended by No. 1 Cdn L of C Provpst Company at AVELLINO Italy, at approximately 2300 hrs 8 July1944. At the time of his apprehension he was wearing Military Uniform

Signature ....."H.F. Law" Capt.....
Name Rank
No. 1 Cdn L of C Prov Coy.

CERTIFICATE OF APPREHENSION

In accordance with Army Act Sec 163(1) (jj)

I, certify that Regt No. D-121284

Rank Pte Name Duffie H.H.
Unit 83 Coy R.C.A.S.C. 1st Bde.

was apprehended by No. 1 Cdn L of C Provost Company

at AVELLINO Italy, at approximately 2300 hrs 8 July 1944.

AT the time of his apprehension he was wearing Military Uniform.

Signature ....."H.F. Law" Capt.....
(Name) (Rank)
No. 1 Cdn L of C Prov Coy.

2244 Army Form B 252

83 Coy. RCASC 1st Bde

CHARGE against No. D-121284 Rank Pte Name DUFFIE R H

Place AVELLINO Date of Offence 8 July 44

OFFENCE W.O.A.S. Absent without leave from.....

until he was apprehended by No 1 Cdn L of C Provost Coy

at approx 2300 hrs 8 July 44 No. 1 Cdn L of C Provost Coy
FILE "H.F. LAW" Capt
ORDERLY ROOM

Names of witnesses:-
H-32053 Cpl Beaman P. - 1 Cdn L of C Provost Coy.
C-30912 L/Cpl. Droeske G.W. " " " "
S
S

P
A
B
A

Adjutant. P.T.O.

IN THE CASE OF D-121284 Pte DUFFIE R.H.

Statement of

At approx 2300 hrs 8 July 44 while on patrol in the town of Avellino in company with L/Cpl. Broeske I received information that the a/m soldier was being held at the Traffic Control Post. I proceeded there and questioned the a/m soldier who admitted that he was A.W.L. I placed him under close arrest and escorted him to the Central Guard room Avellino where a body receipt was obtained.

"P.A. Beaman"
(P.BEAMAN) Cpl.

I have read over and corroborate the above statement

"G.W. DROESKE"
(G.W. DROESKE) L/Cpl.

REMARKS.

Army Form B 115

RECORD OF THE DECLARATION OF A COURT OF INQUIRY ON THE ILLEGAL ABSENCE OF A SOLDIER

RECORD of the Declaration of a Court of Inquiry assembled at 15 Cdn Gen Hosp on the 16th day of August 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of
No. D121284 Pte Duffie, H.R., 1 CAB RCASC

DECLARATION

The court declare It is the opinion of the Court that D121284 Pte Duffie, H.R. 1 CAB RCASC, a patient in this hospital has been illegaly absent from 0900 hrs. 17 Jul 44 and is still absent at the expiration of 21 clear days.

REVERSE SIDE. President Major J.G.R. Dillane
Members: Capt. J. Balfour
Lieut. W.R. Hyndmarsh

Names of President and Members.
Signature of Commanding Officer "F.B. Bowman" Col
CERTIFIED TRUE COPY "??????" Registrar 15th Cdn Gen Hospital.

C O P Y

X RCASC

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT SEC 163 (1)(JJ)

I certify that

No.D/121284 Rank Pte Name DUFFIE H R L

of the Royal Canadian Army service corps.

was arrested at ROME at 0915 hrs.

on the 21st day of September 1944.

S "C.E. Mercer."
W
O

Rank Captain.

Appointment(if any) D.A.P.M.
Commanding 111 Provost Company C.M.Police.

Date 21st September 1944. Publish TOM X4(7Bn) from des & ret this cert with Sch 6 (???) 26 Sep 44.

ARMY FORM B.296.

Ex B "WHP"

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D121284	Pte	DUFFIE H R L	1 Can Armd Bde Coy (83 Coy) R.C.A.S.C.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced to court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		* Since Enlistment.	
For AA Sec 15(1) NIL	times		12	times.
For AA Sec 10(4) NIL	times		2	times.
For AA Sec 40 NIL	times		1	times.
For	times			times.
For	times			times.

Number of instances of gallantry or distinguished conduct, NIL

or

~~There are no entries in the conduct sheets of the accused.~~ "RDR"

2. The accused has not been previously convicted, *or*

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the~~ "RDR"

Army Act (and the particulars which by regulations under section 73 of the Army Act, are set out in the said statement) are as set out in the said statement. "RDR"

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence for~~ "RDR"

~~beginning on the day of~~ "RDR"

8.12.44 "RDR"

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 31 days in military custody, making a total of 31 days, of which 22 days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 31 yrs "RDR"

6. The date of his ~~attestation~~ "RDR" specified in his ~~attestation paper~~ record of service "RDR" is 28 April 1941 3-7-3

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is Yrs-Mos-days.

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. ~~The accused is entitled to reckon~~ ~~service for the purpose of determining his present rate~~ "RDR"

10. The accused is in possession of ~~no entitled to, no military decoration or military award to which entitled or~~ "RDR"

~~entitled to~~ (*state any military decoration or reward*). C.V.S.M. & Clasp, 1939-43 Star

11. ~~If the accused is a warrant officer. The accused holds an~~ ~~has held the substantive~~ "RDR"

~~(Signed)~~

~~If the accused is an officer. The accused holds or has held the rank of~~ "RDR"

~~and of the regiment (or corps or department) the rank of~~ ~~dated~~ "RDR"

(20941) W.L.16/705/1877 10,000 5/41 A.A.S.S.(Ltd.) Gp.a/a
(21181) W.L.12927/481 50,000 A.G. " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D121284 Rank Pte Name Duffie H R L 1 Cdn Armd Bde Coy of (83Coy) RCASC Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th day of December 1944

"P DOUGLAS Reid"
(R.D. Reid) Capt.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of	years.	
In the rank of	years	
In the rank of	years.	

N/A

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

CERTIFIED TRUE COPY OF THE ORIGINAL RCASC "R.D. REID" Capt. EX "C"

No D121284 Name Duffie H R L | Sqn, Battery, or Company | Corps | Date of enlistment 28.4.41 | GC Badges | Service or Proficiency Pay N/A | MFM 6 (AFB 122) 40/P&S/126 (3438)

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded 1 FEB 43	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Old sheet not available Supplementary compiled from MFM 2					
Field 1 DEC41		Pte		AA Sec 15(1) WOAS AWL 17 hrs	Doc	7 dys CB	2 DEC 41	Forf 1	days pay
Field 16JAN 41		Pte		AA Sec 15(1) WOAS AWL 2 dys 19h.	Doc	5 dys CB	19JAN 42	Forf 3	dys pay
Field 5FEB42		Pte		AA Sec 15(1) WOAS AWL 9 hrs	Doc	7 dys CB	6FEB42	Forf 1	day pay
Field 15FEB42		Pte		AA Sec 15(1) WOAS AWL 1 Day 20 hrs	Doc.	Admonished	17FEB42	Forf 2	dys pay
Field 1MAR42		Pte		(1)AA Sec 15(1) WOAS AWL 5 dys.	Doc.	10 dys pay			
				(2)AA Sec 10(4) Breaking out of barracks.	Doc	7 dys drill	6 Apr 42		
Field 4MAY42		Pte		(1) AA Sec 15(1) WOAS AWL from 0600 hrs 4.5.42 until 2359 hrs	Doc.	21 dys det	11.5.42		

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Toronto	4MAY42	Pte		10.5.42(6days 17hrs 59 mins (2) Breaking out of barracks	AA Sec 10(4)				
Field	18Oct42	Pte		AWL from 0930hrs 15 Sept 42 to 2335 hrs 17SEPT42	Sgt. Blackburn	21 dys det	18.9.42		
Camp Borden	TOS A19 29 Nov42	RCASC	(A)1C Pte	Reinft Eff 29.10.42 Pte II Order No 266 d/26.10.42 AWL from 2200hrs 29.11.42 until 2200hrs 1.1 .42 (2 days)	Doc	28 days Det.	2.12.42		
	SOS A19	RCASC	(A) 1C	on attachment to No. 1 RCASC(Reinft) unit overseas eff			4.12.42	Part II order No 296 d/4.12.42	
	Field 29	JAN43		AWL Sec 15(1) 8 hrs 20 mins	Cpl. Spence	admonished	1.2.43		
	Field 20	APR43		AWL SEC 15(1) 18 hrs 46 mins	Doc.	5 days pay	21 APR 43		

CERTIFIED TRUE COPY OF THE ORIGINAL "R. Douglas REID" Capt

MFM 6
(AFB 122)
40PA4/136 (5480)

No	Name	Sqn, Battery, or Company	Corps	Date of enlistment	GC Badges	Service or Proficiency Pay

Date of last entry in Company Conduct Sheet	No and date of last drunk	Period not reckoning towards freedom from extra fine	Sheet No	Signature OC Company, etc	Character

	Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25Aug 43		Pte		AA Sec 15(1) AWL frm 1800 hrs 25 Aug 43 till 0600 hrs 26 Aug 43 Absent 12 hrs	Cpl. WILSON	7 days pay	26AUG43		
Field	7Oct43				AA Sec 15(1) AWL from 1330 hrs 7 Oct 43 absent 6 hrs, 30 mins.	Cpl Wilson	Admonished	11 Oct 43		

(PTO)

CHARGE SHEET "WHIP"

The accused, No. D 121284 Pte. Duffie, H.R.L. of 1 Canadian Armoured Brigade Company (83 Coy) R.C.A.S.C. a soldier of the Canadian Army Overseas, is charged with.

1st Charge Section 15 (1) Army Act — W.O.A.S. ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

While a patient in 15 Canadian General Hospital did absent himself from 2215 hrs 28 May 44 until apprehended by Military Police at Foggia at 0145 hrs 25 June 44. Total absence, 27 days, 3 hrs, 30 mins.

2nd Charge Section 15 (1) Army Act. — W.O.A.S. ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

While a patient in special compound awaiting trial at 15 Canadian General Hospital did absent himself from 1445 hrs 6 July 44 until apprehended by Military Police at Avellino at 2300 hrs 8 July 44. Total absence, 2 days, 8 hrs, 15 mins.

3rd Charge Section 15 (1) Army Act. — W.O.A.S. ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

While a patient in 15 Canadian General Hospital did absent himself from 0900 hrs 17 July 44 until apprehended by Military Police at ROME at 0915 hrs 21 Sept 44. Total absence, 66 days, 0 hrs, 15 mins.

In the Field
2 DEC 44

"R.G. Roberts"
(R.G. Roberts) Major
Commanding
1 Cdn Armd Bde Coy.,
(83 Coy) R.C.A.S.C.

To be tried by Field General Court Martial.

5 Dec 44

"W.C. Murphy" Brig.
(W.C. Murphy) Brig.
Comd, 1 Cdn Armd Bde.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D.121284, Pte DUFFIE, H.R.L.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Sec 15(1)AA	Guilty	Guilty.	
2nd Sec 15(1)AA	Guilty	Guilty.	
3rd Sec 15(1)AA	Guilty	Guilty.	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ N/H ~~beginning on (date)~~ (1) N/H

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 31 days, of which 22 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

to undergo Detention for a period of eighteen months.

8 Dec HH (Sgd) W. H. Payne Maj

(Sgd) ..... Judge-Advocate, if any. Date awarded. President (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence of the court

~~I direct that the accused be not committed to prison, or detention barracks, until further ordered.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date 10-1-45 Commanding 1 Cdn Armd Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D 121284 Pte Duffie H.R.L.	11 Dec 1944	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 8 JAN 1945 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160. 4K-67.

FIELD GENERAL COURT-MARTIAL

(CFAB6 (In lieu of AF33) 40/P.A.S./1098 (2004))

Convened by Order of Brigadier W. O. Murphy Comdl 9dn Armd Bde dated 5 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R/K (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D.121284	Pte	Horace Ross Livingston	DUFFIE	1 Cdn Armd Bde Coy (183 Coy), RCA

PROCEEDINGS REVIEWED BY REVIEWING OFFICER JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 8 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2F-55

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with~~ summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to N/A as interpreter? Ans N/A

~~The interpreter is sworn.~~ (1) Do you object to N/A as shorthand writer? Ans N/A

~~The shorthand writer is sworn.~~ (1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W. H. Payne	HQ Sqn 1 Cdn Armd Bde
Member	Captain	L. Wardman	1 Cdn Armd Bde Wksp
Member	Captain	C. F. Hogan	1 Cdn Armd Bde Gpd Fd Pk
Judge-Advocate			
Prosecutor	Captain	R. D. Reid	1 C A B Coy (51 Coy) RCASC
Defending Offr	Captain	G. Rathbone	1 C A B Coy (83 Coy) RCASC

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused D121284 Pte Duffie H.R.L. before arraignment make(s) (no) ~~no~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. 172

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) accordingly informed, and he (they) changes(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~ N/A
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty was (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1) N/A
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf AP5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes. Recorded Per Notes.
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 80, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), (d)(i), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 367. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. D 121284 Pte. Duffie, H.R.L. of 1 Canadian Armoured Brigade Company (83 Coy) R.C.A.S.C. a soldier of the Canadian Army Overseas, is charged with.

1st Charge Section 15 (1) Army Act

W.O.A.S. ABSENTING HIMSELF WITHOUT LEAVE,
in that he,
While a patient in 15 Canadian General Hospital did absent himself from 2215 hrs 28 May 44 until apprehended by Military Police at Foggia at 0145 hrs 25 June 44. Total absence, 27 days, 3 hrs, 30 mins.

2nd Charge Section 15 (1) Army Act

W.O.A.S. ABSENTING HIMSELF WITHOUT LEAVE,
in that he,
While a patient in special compound awaiting trial at 15 Canadian General Hospital did absent himself from 1445 hrs 6 July 44 until apprehended by Military Police at Avellino at 2300 hrs 8 July 44. Total absence, 2 days, 8 hrs, 15 mins.

3rd Charge Section 15 (1) Army Act

W.O.A.S. ABSENTING HIMSELF WITHOUT LEAVE,
in that he,
While a patient in 15 Canadian General Hospital did absent himself from 0900 hrs 17 July 44 until apprehended by Military Police at Rome at 0915 hrs 21 Sept 44. Total absence, 66 days, 0 hrs, 15 mins.

In the Field
2 Dec 44.

(R.G.Robarts) Major
Commanding
1 Cdn Armd Bde Coy.,
(83 Coy) R.C.A.S.C.

To be tried by Field General Court Martial.

5 Dec 44

(W.C.Murphy) Brig.
Comd, 1 Cdn Armd Bde.

FIELD GENERAL COURT-MARTIAL

CFAAG (In lieu of AFAAG) 40/PAR/1607 (2nd Ed)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D.121284	Pte		Horace Ross Livingston	DUFFIN	1 Cdn Armd Bde Coy (83 Coy) RCASC

CONVENTING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (date) 5 Dec 44 endorsed by me, ~~[illegible]~~ To be tried by Field General Court-Martial ;

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reasons less urgent than~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

~~If no one available to appoint as three officers for the Court, a Fd Offr as President, the remainder two Captains.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~If no Judge Advocate appointed, the Officers named hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Unit.)
Major	W. H. Payne (Must be named. RP 106.)	HQ Sqn 1 Cdn Armd Bde

MEMBERS.

(Rank.)		(Unit.)
Captain	L. Wardman	1 Cdn Armd Bde Wksp
Captain	C. F. Hogan (Named or detailed. RP 106.)	1 Cdn Armd Bde Ord Fd Pk

WAITING MEMBER.

(Rank.)		(Unit.)
	To be detailed by O.C. HQ Sqn 1 Cdn Armd Bde (Named or detailed, if any. RP 106.)	

JUDGE-ADVOCATE.

(Rank.)		(Unit.)
	(Must be named, if any. RP 106.)	

On Active Service in the Fd

in ITALY (Country.)

(Signed personally. RP 105 (a 2)) W. W. Murphy

Brigadier (Rank.)

Date 5 Dec 44

Commanding 1 Cdn Armd Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

D121284 Pte Duffie, H.R.L.

1 Cdn Armd Bde Coy(83Coy)RCASC

R.J. Farina Capt. 2.C.L.F.A.

Field

8 Dec 44.

8 Dec 44

Plea in Mitigation of sentence Pte Duffie H.R.L.

On making the plea in mitigation of sentence Driver Duffie volunteered for active service, he is entitled to wear the 39-43 star and C.V.S.M.

The court has heard details of the man previous misdemeanors and it will be seen that since joining the army he has been found guilty on numerous occasions of absenting himself without leave, and twice of breaking arrest, apart from this he has only been on one other charge for a comparatively minor offence.

The accused then is an habitual absentee, and his delinquencies have been brought about by a sense of grievance which however misplaced was nevertheless undoubtedly real in the accused's mind.

His first crime occurred under the following circumstances, when he received a telegram from his common-law wife telling him that their child was seriously ill, he was paraded to the commanding officer of the Basic Training Centre and refused permission to go to his wife, he immediately went absent and upon arrival home found his child dead and his wife really sick, to add to his worries he learned that his wife who already had two children by another man and whose upbringing he had undertaken prior to volunteering, was not receiving any dependents allowance, and it was only after several months that she started to receive her reduced allowance

2/ of $20.00 per month, and nothing for the children.

This man in my opinion is mentally sick from constant worry for his wife and children, and after three and a half years of army life, it has become an obsession with him. If it please the court I would suggest that detention in his case is neither, an adequate punishment or a remedy, and from the man's condition I would respectfully suggest that he be given an opportunity of seeing a psychiatrist and receive the medical care due a Canadian soldier; perhaps also instruction in a trade might help to relieve his bitterness and give this man a fresh start.

C. Rathbone
Capt.

8-12-44

Ex "A"

Summary of Evidence Page 1.
in the case of
D-121284 Pte Duffie H.R.L. 1 Canadian Armoured Brigade Company (83 Coy) Royal Canadian Army Service Corps.

The Commanding Officer directs that the evidence be taken on oath.

First Witness for Prosecution

Lieut. G.J.F.Morrice 1 Canadian Armoured Brigade Company (83 Coy) Royal Canadian Army Service Corps, having been duly sworn, states:-

I, Lieut G.J.F.Morrice Administration Officer of (83 Coy) R.C.A.S.C., produce Documentary evidence as follows:-
On the first charge: I produce AFB 115 marked exhibit "A"; as evidence of the commencement of absence. I produce also a certificate of apprehension and body receipt, marked exhibit "B", as evidence of apprehension.
On the second charge: I produce guard report and MFB 264, marked exhibit "C" as evidence of commencement of Absence. I produce also certificate of apprehension, marked exhibit "D" as evidence of particulars of apprehension.
On the third charge: I produce AFB 115, marked exhibit "E" as evidence of commencement of absence. I also produce certificate of apprehension, marked exhibit "F" as evidence of particulars of apprehension.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS

(G.J.F.Morrice) Lieut.
1 Cdn Armd Bde Coy
(83 Coy) R.C.A.S.C.

The accused was duly cautioned in accordance with Rules of Procedure 4(e) which in part states:- "Do you wish to make any statement or to give evidence upon oath. You are not obliged to say anything or give evidence unless you wish to do so, and whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Field
2 Dec 44

(H.R.L. Duffie) Pte.
1 Cdn Armd Bde Coy.,
(83 Coy) R.C.A.S.C.

I certify that the foregoing summary of evidence consisting of one page was taken down by me in the presence of the accused, and that rules of procedure 4(c),(d),(e) and (f) have been complied with.

Field
2 Dec 44

(R.D.Reid) Capt.
1 Cdn Armd Bde Coy.,
(83 Coy) R.C.A.S.C.

ON HIS MAJESTY'S SERVICE.

FASTEN Envelope by gumming this Label across Flap.
OPEN by cutting Label instead of tearing Envelope.

2 JUN 1944

Names of President and Members

President - Major G.F. Smith
Members - Capt. G.M. Black
Lieut. W.R. Hyndman

Signature of Commanding Officer J.B.A. Bowman Col

CERTIFIED TRUE COPY.

Registrar,
Signature of Officer having custody of the
Original Record.

RECEIPT FOR SOLDIER PLACED IN CLOSE ARREST.

No. D/121284 Rank. Pte

Name. DUFFIE H. Coy. 83rd.

Btn. Regiment. 1st CAN TANK BRADE

Station. IN THE FIELD

was handed over to me by the Military Police at about 0145 hrs hours on the 25 June 1944.

He was Sober

C. Bridgland L/CPL.
H.C.O i/c Guardroom
230 Provost Coy Det.

FOGGIA.
25/6/44.

D121284 Pte Duffie H.R.
ICAB RCASC

Sir:
I wish to report that the M/N soldier, under arrest awaiting trial broke out of this hospital at approx 1445 hrs, 6 July 44.

B93554 [illegible]
15 Can Gen Hosp RCAMC

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at #15 Cdn Gen Hosp on the 25th day of June 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D121284 Pte. Duffie, G.H., 83 Coy 1st Tank Bde RCASC.

DECLARATION.

The Court declare It is the opinion of the Court that D121284 Pte. Duffie, H.R., 83 Coy 1st Tank Bde RCASC, a patient in this hospital has been illegaly absent from 2215 hrs. 28 May 44 and is still absent at the expiration of 21 clear days.

CERTIFICATE OF ARREST UNDER A.A. 163 (i) (jj).

I, Lt Jheal certify that No. D/121284 Rank Pte Name DUFFIE H.R. Unit 83 Co 1st CANADIAN TANK BDE was arrested at FOGGIA at about 0145 hours on the 26 JUNE 1944.

Jheal Lieut.
Officer Commanding,
230 Provost Company Det
The officer into whose custody the above named person was taken on arrest.

CRIME CHARGE.

No.15 Cdn General Hospital RCAMC
(Patient)

83 Coy RCASC 1st Bde

SQUADRON, BATTERY OR COMPANY

CHARGE against No. D121284 Pte. Duffie, ~~R.R.~~ H.R.

Place	Date of Offence	OFFENCE	Name of Witness	Punishment Awarded	By whom Awarded
Field 6	Jul 44	Sec 15(1) AA WOAS AWL in that he while a patient in Special Compound a soldier awaiting trial did absent himself from approx. 1445 hrs. 6 Jul 44 till apprehended by the CMPs at 2300 hrs. 8 Jul 44 (Absent 2 days 8 hrs. 55 mins).	Documentary		

AWOL - 21 Day
U.C.F.
12 Aug 44

12 Jul 44 Remarks to be added to the charge - in line with [illegible] Bowman Cl

Service years

Number of good conduct badges

Date of last entry in company conduct book

Character

Date of last entry for an act of drunkenness

Number of cases of drunkenness within the last twelve months

MFD 184
[illegible]

x List Part II No 108
31 July 44

Commanding

XXXXXXXXXX

D-121284

DUFFIE R.H.

Pte

83 Coy N.C.A.S.C. 1st Bde

xxxxxxxxxxxxxxxxxxxxxx

2300

AVELLINO

xxxxxxxxxxxx

6 July

Military Uniform

XXXXXXXXXX

D-121284

Pte DUFFIE R.M.

83 Coy R.C.A.S.C. 1st Bde

xxxxxxxxxxxxxxxxxxxxxx

AVELLINO 2300

8 July

xxxxxxxxxxxx

Military Uniform

2244

Army Form B 282
(See King's Regulations)

CHARGE

83 Coy R.C.A.S.C. 1st Bde — Regiment / Battery / Squadron / Troop or Company

CHARGE against No D-121284 Rank Pte

Name DUFFIE R.H.

Place AVELLINO Date of Offence 8 July 44

OFFENCE R.C.A.S.C. Absent without leave from..... until he was apprehended by No 1 Cdn L of C Provost Coy at approx 2300 hrs 8 July 44.

No 1 Cdn L of C Provost Coy
FILE
ORDERLY ROOM

Names of Witnesses:

H-32063 Cpl Beaman P. - 1 Cdn L of C Provost Coy

C-30918 L/Cpl Droeske G.H. " " " "

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded — Adjutant.

P.T.O.

Army Form B 115.

Record of the [illegible]ion of a Court of Inquiry on the Illegal Absence of a Soldier.

RECOR[illegible] of the Declaration of a Court of Inquiry assembled at 15 Cdn Gen Hosp on the 16th day of August 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

D121284 Pte. Duffie, H.R., 1 CAB RCASC

DECLARATION.

The Court declare It is the opinion of the Court that D121284 Pte. Duffie, H.R.1 CAB RCASC, apatient in this hospital has been illegaly absent from 0800 hrs. 17 Jul 44 and is still absent at the expiration of 21 clear days.

Part II 108
21 July 44

ASE. X RCASC

COPY.

Certificate in accordance with the Army Act Sec. 163 (1) (jj)

I certify that

No D/121284 Rank PRIVATE Name DUFFIE H. R. L.

of the ROYAL CANADIAN ARMY SERVICE CORPS.

was arrested at ROME at 0915 Hrs.

on the 21st day of SEPTEMBER 1944

Signature of P. M., A. P. M., or other Officer into whose custody the above named person was taken on arrest.

C.E. Hercer.

Rank Captain

Appointment (if any) D.A.P.M.

Commanding 111 PROVOST COMPANY, C.M.POLICE

Date 21st SEPTEMBER 1944

Publish 20 S X4 (7 Pm) from dis
4 - 1st thus cert with Exh 6

26 Sep 44

PSSN/771/5-44/2 500

Ex "B" Wtd.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
D 121284	Pte	Duffie, H.R.L.	1 Cdn Armd Bde Coy (83 Coy) R.C.A.S.C.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.
For	AA Sec 15 (1)	NIL times	12 times.
For	AA Sec 10 (4)	NIL times	2 times.
For	AA Sec 40	NIL times	1 times.
For		times	times.
For		times	times.

Number of instances of gallantry or distinguished conduct, NIL

2. The accused has not been previously convicted.

3. The accused is not under sentence at the present time.

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 31 days in military custody, making a total of 31 days, of which 22 days were spent in hospital.

5. The present age of the accused according to his record of service is 31 yrs

6. The date of his attestation specified in his record of service 28 April 1941

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 - 7 - 3 Yrs-Mos.Days

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9.

10. The accused is in possession of (Date any military decoration or reward) C.V.S.M & Clasp, 1939-43 Star

11.

12.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D 121284 Rank Pte Name Duffie, H.S.L. of 63 Coy RCASC Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th day of December, 1944

(H.T. Reid) Capt.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion.
In the rank of	years,
In the rank of	N/A years
In the rank of	years,

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraphs concerned amended accordingly.)

D 121284

No. Name Duffie, H.R.L. Sqn., Battery, or Company Corps RCASC Date of enlistment 28.4.41 G.C. Badges Service or Proficiency Pay N/A

CERTIFIED TRUE COPY OF THE ORIGINAL

E & C

M.F.M. 6

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 1 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Old sheet not available. Supplementary compiled from MFM 2 L Feb 43.									
Field	1 Dec 41	Pte		AA Sec 15 (1) WOAS Awl 17 hrs.	Doc	7 days CB	2 Dec 41		Forf 1 days pay
Field	16 Jan 42	Pte		AA Sec 15 (1) WOAS Awl 2 days 19 hrs	Doc	5 days C.B.	19 Jan 42		Forf 3 days pay
Field	5 Feb 42	Pte		AA Sec 15 (1) WOAS Awl 9 hrs.	Doc	7 days C.B.	6 Feb 42		Forf 1 day pay
Field	15 Feb 42	Pte		AA Sec 15 (1) WOAS AWL 1 day 20 hrs.	Doc	Admonished	17 Feb 42		forf 2 days pay
Field	1 Mar 42	Pte		(1) AA SEC 15 (1) WOAS Awl 5 days	Doc	10 days pay			
				(2) AA Sec 10(4) breaking out of barracks		7 days drill	6 Apr 42		
Field	4 May 42	Pte		(1) AA SEC 15 (1) WOAS Awl from 0600 hrs 4.5.42 until 2359 hrs	Doc.	21 days det.	11.5.42		

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if under Subsection with trial	By whom awarded	Remarks
~~Field~~ Toronto	4 May 42	Pte		10.5.42 (6 days 17 hrs 59 mins (2) AA Sec 10(4) breaking out of barracks. AA Sec 40.					
Field	18 Oct 42	Pte		AWL from 0930 hrs 10 Sept 42 to 2335 hrs 17 sept 42	Sgt Blackburn	21 days det	18.9.42		
TOS A19 RCASC (A)IC Reinft Eff 29.10.42 Pt 11 Order No 266 d/ 26.10.42.									
Camp Borden	29 Nov 42	Pte		AWL from 2200 hrs 29.11.42 until 2200 hrs 1.12.42 (2 days)	Doc	28 days det.	2.12.42		
SOS A19 RCASC (A) IC on attachment to No 1 RCASC (Reinft) unit overseas eff 4.12.42 Part 11 order No 296 d/ 4.12.42.									
Field	22.1.43			AWL Sec 15 (1) 6 hrs 20 mins.	Cpl Spence	admonished	1.2.43		
Field	20 Apr 43	Pte		AWL Sec 15 (1) 18 hrs 46 mins.	Doc.	5 days pay.	21 Apr 43		

CERTIFIED TRUE COPY OF THE ORIGINAL [illegible]

M.F.M. 6
(A.F.B. 122)
40/P & S/136 (2637)

No. | Name | Sqn., Battery, or Company | Corps | Date of enlistment | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order disposing with trial	By whom awarded	Remarks
Field	25 Aug 43	Pte		AA Sec 15 (1) AWL from 18 00 hrs 25 Aug 43 till 0600 hrs 26 Aug 43 Absent 12 hrs.	Cpl Wilson	7 days pay.	26 Aug 43		
Field	7 Oct 43			AA Sec 15 (1) AWL from 1330 hrs 7 Oct 42 till 2000 hrs 7 Oct 43 absent 6 hrs, 30 mins.	Cpl Wilson	admonished.	11 Oct 43		

(P.T.O.)

D121284 Pte Duffie, H.R.L.,
1 Cdn Armd Bde Coy.,
(83 Coy) R.C.A.S.C.

3 Dec 44.

Officer Commanding,
1 Cdn Armd Bde Coy.,
(83 Coy) R.C.A.S.C.

Sir,

With reference to my pending trial by Field General Court Martial.

I wish to have [illegible] to of defend me at my trial.

(H.R.L. Duffie) Pte.,
1 Cdn Armd Bde Coy.,
(83 Coy) R.C.A.S.C.

AAA 24

PTE DUFFIELD E.W.

Lost Maj's.

CHARGE SHEET

The accused Regimental No. A. 22322 Private Ethyl Wilson DUFFIELD, The Highland Light Infantry of Canada, a soldier of the Canadian Army Overseas is charged with:-

Sec 15 (1) Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, at 2300 hours 8 November 1943 absented himself without leave from unit lines until apprehended by the Canadian Provost Corps on Coventry St., London at 1430 hours 12 December 1943 (Absent 33 days 15 hours 30 minutes) thereby incurring cost of apprehension to the amount of £0.18.0.

In the Field
17 Dec 43

R.T. Shantz Lt.-col.
C.O. The Highland Light Infantry of Canada

To be tried by Field General Court Martial:

(C. Petch) Lt-col
A/Comd 9 Can Inf Bde

In the Field
20 Dec 43

Fwd. major.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA5)
40/P&S/1697 (2363)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A.22322	Pte.		Ethyl Wilson	DUFFIELD	H L I of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 20 Dec 43 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~[illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	FW Lander	SD & G Highrs

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	D.M. Dickson	Nth NS Highrs
Lieut	J.G. Nearingburg	H L I of C

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	W.R. Grant	SD & G Highrs

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

[signature] Lt-Col (Signed personally. RP 105 fn 2.) (Rank.)

C. Petch Lt-Col Lt-Col

Date 20 Dec 43 A/Commander 9 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Ex B. Page 1 Fwh

Plea For Mitigation of Sentence

Mr.President,members of the court,I plead for mitigation of sentence for the accused A.22322 Private Ethyl Wilson Duffield.This soldier has been known to me for some months past.He was in my platoon for several weeks last summer at #3 Cdn.Inf.Rft.Unit.He was always a good soldier during that time and was very anxious to be placed on an overseas draft.It was not possible so to place Pte.Duffield at that time and I was able to send him to this unit instead of his former unit. This was done at his own request since he felt that his chances for action would be better with this unit.As you will see his record whilst serving with this unit has been spotless until the time of his absence at 2300 hrs.8 November 1943.This absence occurred at the end of a seven day priviledge leave,which Pte.Duffield had spent with his wife ,in London. Pte.Duffield married in this country on the I November 1941.The marriage has not been a happy one and during the early part of this year his wife instituted divorce proceedings.However a reconciliation took place in July of this year and the divorce proceedings were dropped by his wife. Pte.Duffield arranged to have leave with his wife the first of last month and the couple lived together until the last day of that leave.That day they quarrelled and in his worry over these family difficulties Pte. Duffield entered a public house and began drinking.Through drink he missed the opportunity to return to his unit on time and from that time on he kept putting off his return from day to day.During the time of his absence he repeatedly called Mrs.Duffield and tried to see her so that they could adjust their affairs to the satisfaction of both parties.Mrs. Duffield refused to discuss matters either with a view to reconciliation or divorce.I submit that Pte.Duffield ,in his anxiety over family troubles, took leave of absence,he is a good soldier and is very anxious to see action.I plead for leniency in sentencing this soldier so that he may at the earliest opportunity return to his military duties,and play his part in action with the Canadian Army.

R J McCormick Lieut
Defending Officer
The Highland Light
Infantry of Canada

The facts as above are a true expression of my statement to counsel

A22322 Pte E. W. Duffield

Date. 21 Dec. 43 Fwh Major.

This is to certify that I have examined A22322 Pte DUFFIELD E.W. H.L.I. of Can. and find him physically fit to stand trial by Court Marshal

John H.P. Barr Capt. RCAMC.
R.M.O. H.L.I. of Canada

Exhibit "A"

Record of the Declaration of a Court of Inquiry assembled at In the Field on the 30th day of November 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. A. 22322 Pte. Duffield, E.W.

D E C L A R A T I O N

The Court declare that No. A. 22322 Pte. Duffield, E W. of The Highland Light Infantry of Canada illegally absented himself without leave In the Field at 2300 hours on the 8th day of November 1943 that he is still absent and that on the 30 November 1943 he was deficient, and that he is still deficient of the following articles:-

ARTICLES			Vocabulary Price	50% of Vocabulary Price
Blouses, Battledress,	Prs	1	£ 1. 3. 6	£ 11. 9
Bonnet, Tam-O/Shanter,		1	2. 8	1. 4
Boots, Leather, high	Prs	1	1.12.11	16. 6
Drawers, cellular, short,	Prs	1	1.11	1. 0
Jerkin, leather,		1	1. 5.10	12.11
Shirt, angola, drab,		1	9. 1	4. 7
Trousers, Battledress,	Prs	1	1. 4. 1½	12. 1
Badge, cap,		1	4½	2
Braces,		1	1. 4	8
Brush, hair,		1	1. 6	9
Brush, shaving,		1	1. 8	8½
Brush, tooth,		1	6	3
Comb, hair,		1	2	1
Discs, Identity,	set	1	1	½
dressing, first field,		1	1. 1	6½
Housewife,		1	9	4½
Razor, safety,		1	3	1½
Braces, W.E.,		1	1. 4	8
Haversack,		1	8. 0	4. 0
			£ 6.17. 1	£ 3. 8. 6½

P.K. Kennedy Capt. President

G.E. Lowe Lieut. Member

J.B. Roy Lieut. Member

Signed at In the Field

this 30th day of Nov 1943

Signature of Commanding Officer Lt.-col. R.F. Shantz

Certified True Copy

[illegible], Capt. & Adjt.

Officer i/c Regimental Books.

Exhibit C

Expense Voucher Re—:

Ref: K.R. & O. (Can) 539

Reg. No. A22322 Rank Pte Name Duffield, E.W. Unit H.L.I.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
13 Dec. 43	Escorts return fare from LONDON To Cosham		12	0
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Cosham		6	0
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		18	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

L S Grayson Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

Exhibit D

CERTIFICATE IN ACCORDANCE WITH P.C.2797 of 10 Apr.43.

I Certify that No. A-22322 Rank Pte. Name Duffield, E.W. Unit C Coy. H.L.I. was arrested at London (Place) at 14.30 (hour) on 12 Dec 43 (date) and that at the time of his arrest he was wearing (Military Uniform) or (~~Civilian Clothes~~). Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

LONDON
12 Dec 43.

L S Grayson Capt.,
(L.S. Grayson), D.A.P.M.,
London Area.

F.W.L.

F.G.C.M. - A22322 Pte Ethyl Wilson Duffield H.L.I. of C.

Offrs under instruction:

Lieut. G.A.P. Smith Nth N.S. Hghrs.
Lieut. A.M. Leaman Nth N.S. Hghrs.
Lieut. F.E. Mackab. Nth N.S. Hghrs.
Lieut. D. Beaulieu General List; att H.L.I. of C.
Lieut. R. Belisle General List; att H.L.I. of C.
Lieut. W.R. Grant S.D.G. Hghrs.

F.W. Lander Maj.
President.

B & D.

SUMMARY OF EVIDENCE in the case of

No. A.22322 Pte. Duffield, E.W., The Highland Light Infantry of Canada.

The Commanding Officer directs that the evidence be taken on oath.

First Witness for the Prosecution

Capt. P.K. Kennedy, Assistant Adjutant, The Highland Light Infantry of Canada having been duly sworn states:-

" I present Record of Declaration of a Court of Inquiry (Attached as exhibit "A") Certificate of apprehension purporting to be signed by the D.A.P.M., London Area (Attached as exhibit "B") Certificate of cost of return purporting to be signed by the D.A.P.M., London Area (attached as exhibit "C") all of which relate to the accused whom I recognize."

The accused declines to cross examine this witness.

P.K. Kennedy Capt. Adjt.
.....
The Highland Light Infantry of Canada

Second Witness for the Prosecution

A. 37384 Sgt. Hare, P.W., The Highland Light Infantry of Canada having been duly sworn states:-

"I am Platoon Sergeant of No. 15 Platoon "C" Company, The Highland Light Infantry of Canada. A.22322 Private Duffield, E.W. is a member of my Platoon and did not report back off leave. To the best of my knowledge he has not been on parade since 9 November 1943."

The accused declines to cross examine this witness.

A.37384 Sgt. Hare
The Highland Light Infantry of Canada

Third Witness for the Prosecution

A. 57278 Sgt. Mogg, T.R., The Highland Light Infantry of Canada having been duly sworn states:-

" I was on duty as guard commander the night of 8/9 November 1943. Private Duffield's seven day privilege leave pass expired at 2300 hours 8 November 1943 and when he has not reported into the Guard Room then or up to 0700 hours 9 November 1943 I reported him as absent without leave to his Company Orderly Sergeant.

The accused declines to cross examine this witness.

A.57278 Sgt. Mogg.
The Highland Light Infantry of Canada

The accused having been duly cautioned in accordance with Rules of Procedure 4 (c) reserves his defence.

Page 3 f.w.h.

I certify that the foregoing Summary of Evidence consisting of 2 pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

W W Griggs Lieut

In the Field
17 Dec 43

The Highland Light Infantry of Canada

No. A-22328 Name DUFFIELD Ethyl Sqn., Battery, or Company "C" Corps H.L.I. of Cab. Date of enlistment 21-6-40 G.C. Badges Nil Service or Proficiency Pay

Date of last entry in Company Conduct Sheet Wilson No. and date of last drunk 15-10-40 Period not reckoning towards freedom from extra fine Sheet No. One Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	15-Oct 1940	Pte		AA Sec. 19 Drunkenness	Sgt Gordon	Reprimand	16-Oct 1940	Maj. T.E. Hayhurst	
Aldershot	31-Jan 1941	"		AA Sec. 15(1) AWL from 2200 hrs 31-Jan-41 to 1000 hrs 2-Feb-41. (Abs. 1 day, 12 hrs)	Sgt Card T.	5 days F. of P. 5 days CB	3-Feb 1941	Lt.Col. A. S. Pearson	Forf 2 days pay under FRI 149-1-s
Aldershot	4-Apr 1941	"		AA Sec. 15(1) AWL from 0700 hrs 4-Apr-41 to 1500 hrs 7-Apr-41. (Abs. 3 days, 8 hrs)	Cpl Card T. L/C Flett	10 days F.Pun.	10-Apr 1941	Lt.Col. A. S. Pearson	Forf 4 days pay under FRI 149-1-s
Camberley	6-Oct 1941	"		AA Sec. 15(1) AWL from 2000 hrs 6-Oct-41 to 1615 hrs 7-Oct-41. (Abs. 18 hrs, 15 mins) Being in possession of a document purporting to be a genuine leave pass knowing it to be false.	L/C Lincourt L/C Ely	7 days F.Pun.	10-Oct 1941	Lt.Col. A. S. Pearson	Forf 1 days pay under FRI 149-1-s

P.T.O.

No. A-22328 Name DUFFIELD Ethyl Sqn., Battery, or Company "C" Corps H.L.I. of Cab. Date of enlistment 21-6-40 G.C. Badges Nil Service or Proficiency Pay

Date of last entry in Company Conduct Sheet Wilson No. and date of last drunk 15-10-40 Period not reckoning towards freedom from extra fine Sheet No. One Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of [illegible]	[illegible]	Remarks
Aldershot	15-Oct 1940	Pte		AA Sec. 19 Drunkenness	Sgt Gordon	Reprimand	[illegible]	Maj. [illegible] Hayhurst	
Aldershot	31-Jan 1941	"		AA Sec. 15(1) AWL from 2200 hrs 31-Jan-41 to 1000 hrs 2-Feb-41. (Abs. 1 day, 12 hrs)	Sgt Cord T.	5 days F. of [illegible] 5 days CB	[illegible]	Lt. Col. A. [illegible] Pearson	Forf 2 days pay under FRI 149-1-a
Aldershot	4-Apr 1941	"		AA Sec. 15(1) AWL from 0700 hrs 4-Apr-41 to 1500 hrs 7-Apr-41. (Abs. 3 days, 8 hrs)	Cpl Cord T. L/C Platt	10 days F.Pun.	10-Apr 1941	Lt. Col. A. [illegible] Pearson	Forf 4 days pay under FRI 149-1-a
Camberley	6-Oct 1941	"		AA Sec. 15(1) AWL from 2000 hrs 6-Oct-41 to 1615 hrs 7-Oct-41. (Abs. 18 hrs. 15 mins) Being in possession of a document purporting to be a genuine leave pass knowing it to be false.	L/C Lincourt L/C Ely	7 days F.Pun.	10-Oct 1941	Lt. Col. A. [illegible] Pearson	Forf 1 days pay under FRI 149-1-a

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Rye	29-Nov 1941	Pte	1	AA Sec. 15(1) AWL from 2359 hrs 29-Nov-41 to 2230 hrs 30-Nov-41. (Abs. 22 hrs 31 mins)	Sgt Flatt L/C Watson	7 days F. of P. 7 days C.B.	2-Dec. 1941	Lt.Col. A. T. Pearson	Forf 1 day pay under FRI 149-1-a
Field	1-Jan 1942	"		AA Sec. 15(1) AWL from 2359 hrs 1-Jan-42 to 2200 hrs 6-Jan-42. (Abs. 4 days 22 hrs 1 min)	Sgt Fox Cpl Morrison Pte Lansdale	28 days Forf. of pay	12-Jan. 1942	A/Lt.Col. F.K. Jasperson	Forf 5 days pay under FRI 149-1-a
Field	12-Apr. 1942	"		AA Sec. 15(1) AWL from 1200 hrs 12-Apr-42 until apprehended by Military Police at approx 1600 hrs 13-Apr-42. (Abs. 1 day 4 hrs)	L/C Horn Documentary	10 days Forf. of pay	16-Apr 1942	Lt.Col. F. K. Jasperson	Forf 2 days pay under FRI 149-1-a
Field	16-Feb 1943	"		AA Sec. 40 Conduct to the prej. of good order and military discipline.	L/C Hall L/C Walton	7 days Field Punishment	26-Feb 1943	Lt.Col. Clingan	F
Field	25-Mar 1943	"		AA Sec. 15(1) AWL from 2359 hrs 25-Mar-43 to 1550 hrs 30-Mar-43. (Abs. 4 days 15 hrs 51 mins)	Cpl Mitchell	14 days Field Punishment. 14 days F. of P.	1-Apr 1943	Lt.Col. D. Fletcher	Forf 5 days pay under FRI 149-1-a

Ex F.

No. A-22328 Name DUFFIELD Ethyl Wilson Sqn., Battery, or Company "C" Corps The H.L.I. of C Date of Enlistment 21-6-40 G.C. Badges Nil Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 25-3-43 No. and date of last drunk 15-10-41 Period not reckoning towards freedom from extra fine Sheet No. Two Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20-Apr 1943	Pte	1	AA Sec. 40 Conduct to the prej. submitted someone to take his place on guard after being duly warned, for duty.	Cpl Purdie Cpt Biddle	14 dys C.B.	20-Apr 1943	Lt.Col. D. Fletcher	
Field	11-May 1943	"		AA Sec. 15(1) AWL from 0900 hrs 11-May-43 to 1500 hrs 27-May-43. (Abs. 16 dys 6 hrs)	Cpt McFarlane	28 dys Field Punishment 28 dys Forf. of pay	29-May 1943	Lt.Col. D. Fletcher	Forf 17 dys pay under FRI 149-1-a
				CERTIFIED TRUE COPY P.K. Kennedy Capt Affidgt					

(T.T.O.)

Ex E

F.W.L.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
A. 22322	Pte.	Duffield, E.W.	H.L.I. of Canada

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, R.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	A. A. Sec. 15 (1)	2 times	8	times.
For	A.A. Sec. 19	times	1	times.
For	A.A. Sec. 40	2 times	2	times.
For		times		times.
For		times		times.

~~[illegible]~~

or

~~[illegible]~~

2. The accused has not been previously convicted, or

~~[illegible]~~

~~[illegible]~~

3. The accused is not under sentence at the present time, ~~[illegible]~~

~~[illegible]~~

4. The accused has been in confinement, awaiting trial on the present charges, for ..... days in civil custody, and Nine days in military custody, making a total of Nine days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service ~~[illegible]~~ is 33 years 5 months

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper is 20 June 1940

7. ~~[illegible]~~

8. ~~[illegible]~~

9. ~~[illegible]~~

10. The accused is in possession of, or entitled to, no military decoration or military award ~~[illegible]~~

~~[illegible]~~

11. ~~[illegible]~~

~~[illegible]~~

12. ~~[illegible]~~

~~[illegible]~~

[illegible] 75,000 1-1-40 A.A. E.W. Ltd. Gp.[illegible]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. A.22322 Rank Pte. Name Duffield, E.W. of H.L.I. of O.C. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispositions with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21st day of Dec 43

R K Kennedy Capt
Adjt

12 The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of ..... years,

In the rank of ..... years

In the rank of ..... years.

(INSTRUCTIONS—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph inserted amended accordingly.)

AAA 24

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AF53) 40/P & S/1898 (2864)

Convened by Order of Lt-Col C. Petch A/Comd 9 Cdn Inf Bde dated 20 Dec 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A.22322	Pte.		Ethyl Wilson	DUFFIELD	H L I of C

PROCEEDINGS REVIEWED
B W Howard Capt.
30 Jany 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED
Dated 23 Jan 44
R W Landry Capt
AG
FIRST CDN ARMY

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*) 21 Dec. 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any,~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 2. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1410 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans ..... The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans ..... The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO (2)

(1. RP 110. 2. If no objection, the member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any,~~ and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F. W. Lander	S. D & G. Hghrs.
Member	Capt.	D. M. Dickson	Nth N.S. Hghrs
Member	Lieut	J. G. Nearingburg	H.L.I. of C.
~~Judge-Advocate~~			
Prosecutor	Lieut	C. D. Campbell	H.L.I. of C.
Defending Offr	Lieut	R. J. McCormick	H.L.I. of C.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (3)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pres a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment make(s) ~~(no) (a)~~ plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A22322 Pte. Duffield E.W. H.Q.1 Bde.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~[illegible]~~ beginning on ~~(date)~~ ~~[illegible]~~ for 1st (1)

~~(1. Insert sentence being served, or delete if not applicable. See RP 46(A). Information should be found on MF B355 or MF B296.)~~

Time in confinement awaiting present trial—a total of 9 days, of which Nil days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or MF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

A22322 Pte Duffield E.W. to undergo detention for a period of 90 days and to be placed under Stoppages of pay until he has made good the sum of £0-18-0 in respect of costs of apprehension.

(Sgd) ~~Judge Advocate, if any~~ 21 Dec 43 Date awarded (Sgd) F. Lander Major President (RP 45, 90.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be ~~[illegible]~~ committed to prison or detention barracks ~~until further orders~~. (1)

(1. AA 57A. Delete if not applicable.)

(Sgd) [illegible]

Date 21 Dec 43 A/Commanding 9 Cdn Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
A22322 Pte. Duffield, E.W.	23 Dec 43	W.D. Lim, Capt. Deputy H.L.E. of C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY, and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*f*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO.(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* L3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex D, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras [redacted] inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by completing with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 29(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 29(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans. ..... Do you intend to call witnesses on your behalf?

Ans. ..... Are they witnesses as to character only? Ans. .....

(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 4.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(6).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(*3*) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(*3*), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. NO.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex F and Ex F respectively.(3)

(1. *AFB* 355 *or AFB* 296. 2. *AFM* 8. 3. *RP* 46. *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes I am Ordinary Seaman [illegible] (2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on such anything them or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the o.h. if any~~.(2)

(1. *When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its* [illegible], *is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas AO* 309, 2323, *MML p* 80, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44, (5), 68(1), *KR Can* 564. 2. *RP* 52. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

3 N - 12

Mr. Duffield, E. W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-22322 Pte Ethly Wilson DUFFIELD - CIC - 3 CITR

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence~~ for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To forfeit all ordinary pay for a period of forty-five (45) days.

(Sgd) ..... 26 JUN/45 (Sgd) [signature] President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 758-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I am not prepared to confirm the sentence(s) (or finding(s) and sentence(s)) for the reasons stated in my attached minute.~~ (1. AA 57A. Delete if not used.)

Date 27 Jun 45 (Sgd) [signature] (K. G. BLACKADER) Brig
Commanding Cond 13 Cdn Inf Trg Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.		Signature of Offr.
A/22322 Pte Ethly Wilson DUFFIELD	30 Jun 45	Promulgated	A G Hall Major
CIC 3 CITR	Extracts taken Pt II DO 159 d/3 Jul 45		A/OC 3 Cdn Inf Trg Regt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 180 5 JN 72

RECEIVED 9 JUL 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA98 (In lieu of AFA3) 40/P.S./B/1688 (40/08) 4/388

Convened by Order of Brigadier K G Blackader Cond 13 CITB dated 25 Jun 45
DSO, MC, ED

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A-22322	Pte	Ethly Wilson	DUFFIELD	CIC 3 CITR

PROCEEDINGS REVIEWED 9 Jul 45 [signature] Capt
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in (Fd) in (country) England on (date) 26 JUN 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instn, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see fmns for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (not) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (not) brought before the Court. At 1149 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (not) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to~~ ~~the Interpreter~~ ~~as interpreter.~~ Ans ~~.....~~

~~The Interpreter is sworn.~~ Do you object to F/Sgt 31126 SGT SINCLAIR AH as shorthand writer? Ans NO
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO S/LT

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instn, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L. BEDMAN	HQ CRU
Member	CAPT	A.F. COLLINS	3 CITR
Member	CAPT	F.C. CRAIG	3 CITR
~~Judge-Advocate~~			
Prosecutor	LT	M.N. MOUSSEAU	3 CITR
Defending Offr	LT	A.K. DAVIS	3 CITR

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instn will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (not) arraigned (separately) on all charges in the charge sheet.(1) The accused does (not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and see separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B".

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President of JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO SIR (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~ (charge(s)). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on~~ charge(s). ~~Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A" initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if charged to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (a), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO - SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that those documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. AFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes I do. (NOTE ATD)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566. Overseas RO 309, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

LIST OF WITNESSES

In the case of A22322 Pte Duffield E.W., HLI, on the strength of No 3 Cdn Inf Trg Regt.

FOR THE PROSECUTION

1. Lt F.C. Goodman — No 3 Cdn Inf Trg Regt
2. A115114 L/Cpl Sisik J. — No 3 Cdn Inf Trg Regt

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

In the case of A22322 Pte Duffield E.W., HLI, on the strength of No 3 Cdn Inf Trg Regt.

EXHIBIT "A" / Certified true Extract from No 3 Cdn Inf Trg Regt Part II Daily Order No 130 dated 28 May 45.

16 Jun 45

This is to acknowledge that I have received, free of charge, the following papers in connection with my forthcoming trial by F.G.C.M.

1 Charge Sheet
1 Copy of Summary of Evidence
1 List of Witnesses
1 List of Exhibits.

E W Duffield

(A22322 Pte Duffield E.W.)

3 CANADIAN INFANTRY TRAINING REGIMENT (C.A.O) 3D/11

I, No. A22622 ...Pte Duffield ...E.W. ..... Wish to have
(Rank) (Name)
an Officer defend me at my forthcoming trial by Court Martial.

I desire the services of ...any Officer.....
~~if he is available.~~

(Sgd.) ..E.W. Duffield.....

No. A22322 Name DUFFIELD E W Sqn, Battery, or Company Corps HLI Date of enlistment 21-6-40 GC Badges Service of Proficiency Pay 1/12 MFM 6 (APR 120)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12 Jun 44	Pte		AA Sec 15(1) AWL from 2300 hrs 12 Jun 45 to 0600 hrs 13 Jun 44. Total abs 7 hrs.	Docy	7 days C.B. 7 days pay FR&I 149(2)	13 Jun 44	Lt-Col WS Bingham	1 days pay FR&I 149.1. a.
Field	5 Jul 44	Pte		AA Sec 15(1) AWL from 2230 hrs 5 Jul 44 to 2300 hrs 6 Jul 44. Abs 1 day 30 mins.	Cpl Wheatley L/C Urlsaki	3 days pay FR&I 149(2)	7 Jul 44	Major TM Pavers	2 days pay FR&I 149.1. a.
Field	17 Spe 44	Pte		1. AA Sec 15(1) AWL from 0900 hrs 17 Sep 44 to 1300 hrs 17 Sep 44 Abs 4 hrs. 2. AA Sec 11 3. AA Sec 40	Docy	7 days pay FR&I 149(2)	26 Sep 44	Lt-Col N Kingsmill	

Ex C
MW

Place	Date of offence	Rank	Cases of drunkenness	Offence	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Oct 44	Pte		AA Sec 15(1) AWL from 2230 hrs 1 Oct 44 until app by MP in ARRAS France at 1115 hrs 10 Oct 44 (Abs 8 days 12 hrs 45 mins)	Cpl Reid	14 days C.B. 21 days pay	27 Oct 44	Maj RD Hodgins	
Field	25 Apr 45	A/Cpl		AA Sec 15(1) AWL from 0800 hrs 25 Apr 45 until 1030 hrs 12 May 45. Abs 17 days 2 hrs 30 min	Docy	Reverts to perm Grd of Pte.	14 May 45	Major A C Ross	18 days pay FR&I 149.1.a.

Certified True Copy - 16 Jun 45

B. C. Goodman, Lt

Officer having custody of Original Record.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A22322	Private	Duffield E.W.	No 3 Cdn Inf Trg Regt.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, provided that nothing herein shall be taken to limit the number of offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec 15 (1)	5 times	5 times
For A.A. Sec 11	1 times	1 times
For A.A. Sec 40	1 times	1 times
~~For~~	~~times~~	~~times~~
~~For~~	~~times~~	~~times~~

~~Number of instances of gallantry or distinguished conduct.~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, or

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, or ~~The accused at the present time is under sentence for~~

~~imprisonment for the~~ ~~day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for ~~12~~ days in civil custody, and ~~12~~ days in military custody, making a total of ~~12~~ days, of which ~~nil~~ days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is ~~36 yrs.~~

6. The date of his ~~enlistment~~ attestation specified in his ~~attestation paper~~ record of service is 21 Jun 40

7. ~~The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~

8. ~~The accused is entitled to deferred pay or gratuity in respect of service.~~

9. ~~The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

10. The accused is in possession of, ~~or entitled to, the military decoration or military award (or is in possession of or entitled to (state any military decoration or reward)~~). C.V.S.M. & CLASP.

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

12. ~~(In the case of an officer.) The accused holds in the army the rank of dated~~ and in his regiment (or corps or department) the rank of dated

(*51402) W1.24590/1750 20,000 10/42 A.A.F.W.3.125. Gp.698
(23909) W1.21092/1490 12,000 5.42 " "

Ex B
MM

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(*INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

cw

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 25th day of Jun 45.

[signature]

~~13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.~~

cw

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

Date of Promotion.

(*INSTRUCTION.—If any officer in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

R. D.

NO 3 CANADIAN INFANTRY TRAINING REGIMENT

PART II DAILY ORDERS

LAST ORDER	Issued by	THIS ORDER
NO 129A		NO 130
26 MAY 45	COLONEL W D WHITAKER, DSO, COMMANDER	28 MAY 45

19 ABSENT WITHOUT LEAVE

(a) AWL from hour and date shown

A22322 PTE DUFFIELD E W "HLI" 1000 hrs 20 May 45

"D. C. Kennedy Lieut"
.....
for (J.B. Stratton) A/Major
Regimental Adjutant
No 3 Cdn Inf Trg Regt

Certified true extract - 16 Jun 45

B. C. Henderson Lt

Officer having custody of Original Record.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of A22322 Private Ethyl Wilson DUFFIELD, Highland Light Infantry, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary is taken on oath.

FIRST WITNESS For the Prosecution — Lieut F.C. Goodman, Stormont, Dundas and Glengarry Highlanders of Canada, on the strength of No 3 Canadian Infantry Training Regiment, an officer of the Canadian Army Overseas, having been duly sworn, states:

I am Lieut F.C. Goodman, and am Acting Adjutant of No 3 Cdn Inf Depot Bn. Pursuant to Overseas R.O. 5352, I produce the following documents which have been read over and shown to the accused, A22322 Pte Duffield, E.W., whom I now recognize, and which are attached hereto as Exhibits. EXHIBIT "A" - Certified true copy of an extract from No 3 Cdn Inf Trg Regt Part II Daily Order No 130 dated 28 May 45 relating to the accused.

F.C. Goodman Lt.
(F.C. Goodman) Lieut

The accused declines to cross-examine this witness.

SECOND WITNESS For the Prosecution — A115114 L/Cpl Sisik J., Canadian Infantry Corps, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am A115114 L/Cpl Sisik J., and am employed on the Regimental Police of No 3 Canadian Infantry Training Regiment. I was on duty in the Unit Guard room when the accused, A22322 Pte Duffield E.W. reported to me at 2315 hrs 13 Jun 45. I now recognize the accused. At the time of his surrender he was sober and properly dressed. I placed him under close arrest.

J Sisik
(A115114 L/Cpl Sisik J.)

The accused declines to cross-examine this witness.

The accused was cautioned as follows: Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of ONE (1) page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

C.B. Welch Lt.
(C.B. Welch) Lieut
Officer detailed to take Summary.

IN THE FIELD
16 June 1945

EXA 117

accused, and his wife have had their long awaited leave together and since Mrs Duffield will be settled very shortly at her husband's home, thus the husband, Private Duffield will be free of all domestic worries. Therefore ~~if~~ Private Duffield a fit and willing man desires to carry on the fight against the Japanese in the Pacific Theatre of War.

25 Dec 45

PLEA IN MITIGATION

Sir and Members of the Court.

I wish to present a plea for mitigation of sentence in defense of A 22322 Private Duffield C. W. of the Highland Light Infantry now on the strength of No 3 Canadian Infantry Training Regiment.

This man was on active service on the Continent for nearly a year. During that period of service he did not get back to England to see his wife until May of this year. Private Duffield volunteered for the Canadian Far East Force at the first opportunity. He desires to continue his service for his country as soon as possible.

The Officer Commanding No. 3 Canadian Infantry Training Regiment, Canadian Army, England received a letter, which, sir, you have in front of you from Mrs Mary K. Duffield, the wife of Private Duffield. She takes most of the blame for her husbands absence because:-

She had not seen her husband for nearly one year. Private Duffield had volunteered for the Canadian Far East Forces and his wife would probably not see him for a considerable length of time. Mrs Duffield is leaving for Canada in a short time and thus she admits that she did her best to keep her husband with her as long as possible.

In conclusion, I request extreme leniency in Private Duffields case because he desires to get into action with the Canadian Far East Force and is eager to continue serving his King and Country. The

Medical Officer's Certificate. 40/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. A22322 .....
Pte. Duffield E.W. ..... of 3 C.U.T.R. .....
and in my opinion, he is Fit ..... to undergo trial by Court Martial.
Station In the field .....
Date 26-6-45 ..... (Sgd.) S.H. [illegible] Capt
(Medical Officer)
(Canadian Reinforcement Units Routine Order No. 3, para 27, d/6 Jan 42)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-22322	Pte		Ethyl Wilson	DUFFIELD	CIC 3 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 25 Jun 45 endorsed by me, (~~order an offr of my staff for trial~~)" To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable for any the trial to be by a superior competent offr~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three offrs to form the Court, (b) a 5th offr as President for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate the next to offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
LT COL	D L REDMAN, VD	HQ CBU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by Comd	3 CITR
Lieutenant	to be detailed by Comd	2 CITR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	to be detailed by Comd	3 CITR

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

In England (Country.)

Date 25 Jun 45

(Signed personally. RP 105 fn 2.)

K G Blackader

(K G Blackader)

Commanding 13 Cdn Inf Trg Bde

Convening Officer.

Brigadier (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (See AFB 1120 (To Secs of AFA 51 40/F & G/1807 (1401))

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused, A22322 Private Ethyl Wilson DUFFIELD, Highland Light Infantry, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHILE ON ACTIVE SERVICE, Absenting himself without leave,

Section 15(1) Army Act

in that he,

In the Field, absented himself without leave from 1000 hours 20 May 1945 until 2315 hours 13 June 1945. Total absence 24 days, 13 hours, 15 minutes.

(W.D. Whitaker) Colonel
Commander
No 3 Cdn Inf Trg Regt

IN THE FIELD
16 June 1945

To be tried by Field General Court Martial.

(K G Blackader) Brig
Comd
13 Cdn. Inf Trg Bde

IN THE FIELD
26 Jun 45

H. U. (2nd case)

Sh. DUFFIELD, G.D

See 137 I for 1st case

REVIEW SHEET

F.G.C.M. - Trial: 863018 Spr.Duffield, G.D. 2 Cdn Fd Pk Coy

Date of Trial: 4 Dec 42

President of Court: ~~Major W.G. Bury~~ ~~Edmn R.~~

1. For the information of the officers asked to sign below, the following irregularities are noted :

(a) Unit of accused omitted from Schedule.

(b) Medical certificate does not certify that accused was examined the morning of trial. (K.R.(Can)557).

(c) There was no J.A.

(d) A.F.B.296 not to date of trial. It is dated four days previous.

(e) Name and unit of accused omitted from minute of promulgation.

2. May these remarks and the authorities quoted be read by the following officers, signed and returned to this Headquarters.

C.O. ~~2 Cdn Fd Pk Coy~~

Adjt ~~2 Cdn Fd Pk Coy~~

President

A.D.J.A. 1 Cdn Div

Staff Offr for Convening Offr

Staff Offr for Confirming Offr

J.W. Graham
Captain
A.D.J.A. 1 Cdn Div

ON HIS MAJESTY'S

FASTEN ... by gumming this
OPEN by ...

SERVICE

Correspondence to be PINNED here.

11-0

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this FIRST day of DECEMBER, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 2nd Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~] [illegible]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[illegible]

[illegible]

[illegible]

[illegible]

13

President.

Rank.	Name.	Regiment.
Major	W.G. Bury	Edmn Regt.

Members.

Rank.	Name.	Regiment.
Capt.	N.H. Bayne	4 Cdn Fd Coy, RCE.
Lieut.	D.D. Love	3 Cdn Fd Coy, RCE.
(w)Lieut.	W. de Salaberry Bosse	4 Recce (4-PLDG)

*Signed [signature] (C.Vokes) Brig.

Commanding 2nd Cdn Inf Bde.

Convening Officer.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Court ... applicable.

Proceedings Reviewed [signature] Reviewing Officer [signature] (A.G.) (Branch) 19 Dec 42

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-83018 Spr. GRANT DOUGLAS DUFFIELD.	1st Charge Sec 15 (1) A.A. Absenting himself without leave.	Guilty	1st Charge Guilty 2nd Charge Guilty To undergo detention for sixty (60) days and to be put under stoppages of pay until he has made good the value of the following articles viz:- Cape Comforter £0-1-1½ Shirt Grey 1/74 Drawers £0-9-2 Vest Cott Sym £0-1-6 Shirt Sym 1 £0-3-10 Total Cost Vocal £0-15-7½ Less 25% (CAMO 1778) £0-3-11 Total £0-11-8½ In the Field 11th Dec 1942	Confirmed WP
	2nd Charge Sec 24 (2) A.A. Losing by neglect his clothing, Equipment and necessaries.	Guilty		

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) ..... (Signed) .....
(K. Vokes) Brig, Commanding 2 Cdn Inf Bde. — *Commanding Officer* (*e*)
C.P. Bury, Capt — *President*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 4th day of December 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The interpreter~~
4. ~~The officers under instruction~~

* Omit if not applicable.

were duly sworn.

Signed this 4th day of December 1942.

C.P. Bury. Capt
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 702 M.M.L. 1929.

I certify that the terms of ~~A.C.I.~~ 570 of 1918 have been complied with.

Signed this ..... day of ..... 19 .....

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further order.~~

Signed this 5th day of December 1942.

K. Vokes Brig
Confirming Officer. Comd 2 Cdn Inf Bde

Promulgated and extracts taken in the case of

(*a*) (Dated) December 7/1942 (Signed) R.B. Fraser Major DCE

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

A.F. B.296

Statement as to character and particulars of Service of the accused.

B-83018 Spr. Duffield, Grant Douglas.
2nd. Cdn.Fd.Pk.Coy., R.C.E.

1. The following is a fair and true summary of the entries in the Company Conduct sheets of the accused, exclusive of convictions by a court-martial or a civil court, and of cases in which trial has been dispensed with:-

	Within last 12 months.	Since Enlistment.
For A.A.15(1) A.W.L.	1	3
For A.A.40	2	4
For A.A. 10(4)	1	1

2. The previous convictions of the accused by a Field General Court Martial is as shown below;-
Tried by F.G.C.M. 7 Apr 42
Sentenced to 30 days detention
Confirmed by G.O.C. 1 Cdn. Div.
For;- First charge - A.A. 15(1) A.W.L.(30 days 20 hrs 15 min)
Second charge-A.A. 40
Third charge - A.A. 15(1) A.W.L.(8 days 18 hours 15 min)
Fourth charge- A.A. 24 (2)
Pending - First charge - Guilty
Second charge- Guilty
Third charge - Guilty
Fourth charge -Guilty
Total forfeiture of pay - 136 days pay and stoppages of pay to the amount of £2-16-1

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges for nil days in civil custody and 8 days in military custody making a total of 8 days in custody of which nil days were spent in hospital. Date of arrest 26 Nov 42.

5. The present age of the accused according to his attestation paper is 21 years.

6. The date of his attestation specified in his attestation paper is 28 May 40.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is -
N/A

8. N/A

9. N/A

10. The accused is in possession of or entitled to no military decoration or military reward.

11. N/A

12. N/A

Schedule

Of convictions by a court-martial and of cases in which the trial has been dispensed with of accused, B-83018 Spr. Duffield, G.D. of the 2nd. Cdn.Fd.Pk.Coy., R.C.E., see M.F.M. 6 attached.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30th day of Nov 1942.

E.A.Ballantyne Capt
(E.A.Ballantyne) Capt.
A/O.C.2nd.Cdn.Fd.Pk.Coy.RCE.

COPY

No.B83018 Name DUFFIELD, G.D. Sqn., Battery, or Company 2 Fd. Corps R.C.E. Pk.Coy. Date of enlistment 28 May 40 G.C. Badges Service or Proficiency Pay M.F.M. 6

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. H Ballantyne Capt. Character BAD

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order forwarding with trial	By whom awarded	Remarks
		1st.sheet		destroyed on completion of 6 months service. K.R.(Can)1524)					
Field	28 Feb 41	Spr.		A.A.Sec.15(1) WOAS A.W.L. from 1050 hrs until 1130 hrs from duty 28 Feb 42.	Cpl.Hughes Spr.Burns	Deprived of 2 days pay	28 Feb 41	Capt.G.E. Smith	
Field	27 Aug 41	Spr.		WOAS AA 15(1) A.W.L. from 2230 hrs until 2359 hrs 27 Aug 41. (Absent 1 hr 28 min)	L/Sgt. Davies L/Cpl.Armstrong	7 days F.P.	28 Aug 41	Capt. G.E. Smith	
Field	27 Sep 41	Spr.		WOAS AA 40 Conduct to the prej., etc when ordered to do a job by CQMS Banks,T.E. failed to carry out the job immediately and argued about doing it.	CQMS Banks L/Cpl. Muggeridge CSM Weedmark	Deprived of 10 days pay	28 Sep 41	Capt. G.E. Smith	

C.G. Bury 27 Aug 41 President

P.T.O.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29 Oct 41	Spr.		WOAS AA40 An act to the prej.etc in that he having been duly warned in Coy Orders to Guard the prisoners held in the Guard Room was not in the Guard Room at approx 2300 hrs 29 Oct 41 when visited by the Orderly Officer and Orderly N.C.O.	L/Sgt.White L/Cpl. Tallack	7 C.B.	3 Nov 41	Capt.N.H. Bayne	
Field	22 Dec 41	Spr.		1.A.A.15(1)A.W.L. from 1745 hrs 22 Dec 41 until 1400 hrs 22 Jan 42 (Absent 30 days 20 hrs 15 min) Cost of apprehension £0-3-4 2. A.A. Sec. 40 3.A.A.15(1) A.W.L. from 2130 hrs 25 Jan 42 until 1545 hrs 3 Feb 42. (Absent 8 days 18 hrs 15 Min) Cost of apprehension £0-10-10	Documentary FAM Woodmark	Guilty of all charges 30 days detention	7 Apr 42	F.G.C.M. Confirmed by G.O.C.	40 days pay FR&I 149(1)(a) 30 days pay FR&I 149(1)(b) 66 days pay FR&I149 (1)(c)(i) Stoppage of pay £1-0-2 FR&I 172(6)

Continued on sheet 3

No. B83018 Name DUFFIELD, G.D. Sqn., Battery, or Company 2 Fd. Corps R.C.E. Pk.Coy. Date of enlistment 28 May 40 G.C. Badges Service or Proficiency Pay M.F.M. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with suspension	By whom awarded	Remarks
				4.Losing be neglect his Regimental necessaries to the amount of £1-18-11					£1-18-11 FR&I 158(2) Total forfeitures 136 days pay and £2-18-1
Field	22 May 42	Spr.		WOAS AA 40 Conduct to the prej. in that he at 0830 hrs 22 May 42 when coming late on parade, acted in such a manner as to show defiance of authority.	CSM.Weedmark	14 F.P.	2 Jun 42	Major G.E.Smith	14 days pay FR&I 149(1)(b)
Field	30 Sep 42			1.WOAS AA 40 Conduct to the prej. in that he failed to comply with an order. 2.A.A.10(4)Breaking out of barracks	Cpl.Frust L/Cpl. Crewe	14 C.B.	1 Oct 42	Major R.B. Fraser	1 days pay FR&I 149(1)(a)

Continued on rear

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				whilst under open arrest. 3.A.A.15(1) A.W.L.from 2230 hrs 30 Sep 42 until 0600 hrs 1 Oct 42. (Absent 7 hrs 30 min)					

Certified True Copy

[illegible] Ballantyne Capt

30 Nov 1942

W.G. Burg. Major
President

"B 2"

CHARGE AGAINST

B 83018 Spr. GRANT DOUGLAS DUFFIELD of the 2 Cdn Fd Pk Coy, Coy, R.C.E. a soldier of the Canadian Army Overseas is charged with, whilst on active service:-

First Charge.
Sec. 15 (1)
Army Act.

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field on 18 Nov 42 at 2240 hrs did absent himself without leave until 1715 hrs 26 Nov 42.
Absent 7 days 18 hours, and 35 minutes.

Second Charge
Sec. 24 (2)
Army Act.

LOSING BY NEGLECT HIS CLOTHING, EQUIPMENT AND NECESSARIES

in that he

in the field on 27 Nov 42 was deficient of the following articles as listed:-

Caps Comforter	1	£0- 1- 1½
Shirts Angora drab	1	£0- 9- 2
Vests Cott. Gym	1	£0- 1- 6
Shorts Gym	2	£0- 3-10
Total cost- Vocab --------		£0-15- 7½
Less 25% (CARO 1398)-------		£0- 3-11
Total deficiencies, unexpired wear		£0-11- 8½

E.A. Ballantyne Capt
(E.A. Ballantyne)Capt.
A/Officer Commanding
2 Cdn Fd Pk Coy, R.C.E.

Signed on the 30th day of November, 1942.

To be tried by Field General Court Martial.

Comdg. 2 Cdn. Inf. Bde.

DEC 1 1942

B4

4 Dec 42

This is to certify that B-83018 Spr. Duffield, G.D. 2nd.Cdn.Fd.Pk.Coy., R.C.E. is medically fit to undergo trial by field general court martial.

F. L. Skinner Capt

Medical Officer. RCE

W. J. Bury. Major
President

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a FIELD GENERAL Court-Martial held at H.Q. 2 CDN. FD. PK. COY R.C.E.
on the 4 day of DECEMBER 1942 by order of BRIG.
C. VOKES Commanding 2 CDN. INF. BRIGADE
dated the FIRST day of DECEMBER 1942

President.
MAJOR W.G. BURY, EDMONTON REGT.

Members.
~~CAPT D.H. BAYNE, 4 CDN FD COY R.C.E.~~ ✓ VGB
LIEUT D.D. LOVE 3 CDN FD COY R.C.E.
~~LIEUT. W.D.E.S. BOSSE 11 CAN. ARMD REGT~~

, Judge Advocate.

Trial of* B83018 SPR. DUFFIELD G.D. 2 CDN. FD. PK. COY. R.C.E.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† LIEUT J. OSBORNE, 2 CDN FD PK. COY R.C.E.

~~Counsel,~~ or defending officer† LIEUT. R.O. RILEY 4 CDN FD COY R.C.E.

At 10:20 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. ~~No, sir~~ YES, SIR (As appendix "A" attd)

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 771
5-DM—8-41 (1318)
H.Q. 1773-49-224

B

The President, members and judge-advocate are duly sworn.

~~The following officers~~ under instruction are duly sworn. W.S.B.

Charge-Sheet

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Answer. Guilty

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Answer. Guilty

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer. N. G.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer. N. G.

The accused having pleaded Guilty to both charges ~~charge~~, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

1st. Witness

Lieut. J. S. Osborne. 2 Cdn. Fd. Pk. by. R.C.S.
C.A.O. is duly sworn.

Question 1. Have you any evidence to produce as to character and particulars of service of the accused?
Answer 1 I produce certified copy of A.F.B. 296 and certified copy of M.F.M. 6 Sir.
Question 2. Is the accused person named in the statement which you have read?
Answer. Yes Sir.
Question 3. Have you compared the contents of the above statement with the regimental records?
Answer. No Sir, but I can swear to the signature of Capt. Ballantyne.
Question 4. Are they true extracts from the regimental books and is the statement of entries in the conduct sheet a fair and true summary of those entries?
Answer 4. Yes Sir. Capt. Ballantyne has certified ~~Question~~ them correct and to the best of my knowledge and belief they are. Capt. Ballantyne is sick in bed.
Question 5. Have you any other evidence?
Answer 5 No Sir.

The accused declines to cross-examine this witness.

Question 6. Do you wish to address the court in mitigation of sentence?
Answer 6. (By defending officer) Yes Sir.

W. G. Burns Major
President

Appendix A.

The accused objects to being tried by Capt. M. H. Bayne, 4 Cdn. Fd. Coy. R.C.E. for the following reason.

Capt. Bayne was formerly a member of the 2 Cdn. Fd. Pk. Coy and has tried the accused on several occasions in Orderly Room.

Decision of the court. The court allowed the objection and substituted the Waiting Member Lieut. W. McB. Bosse, 4 Cdn. Recce. Regt. for Capt. Bayne.

C. J. Burf. Major
President

4th Dec 1942

1st. Witness

Lieut. J. S. Osborne. 2 Cdn. Fd. Pk. Coy. R.C.E.

C.A.O. is duly sworn.

Question 1. Have you any evidence to produce as to character and particulars of service of the accused?

Answer 1. I produce certified copy of A.F.B. 296 and certified copy of M.F.M. 6 Sir.

Question 2. Is the accused person named in the statement which you have read?

Answer. Yes Sir.

Question 3. Have you compared the contents of the above statement with the regimental records?

Answer. No Sir, but I can swear to the signature of Capt. Ballantyne.

Question 4. Are they true extracts from the regimental books and is the statement of entries in the conduct sheet a fair and true summary of those entries?

Answer 4. Yes Sir. Capt. Ballantyne has certified ~~Question~~ them correct and to the best of my knowledge and belief they are. Capt. Ballantyne is sick in bed.

Question 5. Have you any other evidence?

Answer 5. No Sir.

The accused declines to cross examine this witness.

Question 6. Do you wish to address the court in mitigation of sentence?

Answer 6. (By defending officer) Yes Sir

R. J. Burry Major
President

~~1st Witness~~

~~The prosecutory officer Lieut. J. S. Osborne being duly sworn states. I herewith produce~~

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charges to which he has pleaded "Guilty" are read to him again.]

The accused

is found guilty of both charges.

*The summary ~~(or abstract)~~ of evidence is read, marked B3.

signed by the President, and attached to the proceedings.

Question to the accused.

Do you wish to make any statement in mitigation of punishment?

yes sir

Answer.

The accused in mitigation of punishment says:—

Statement in mitigation of punishment by leading officer

~~[or hands in a written statement, which is read, marked ——, signed by the President, and attached to the proceedings.]~~

With reference to the first charge I wish to draw the attention of the Court to the fact that on a recent leave the accused was engaged to be married. On or about the 16 hrs last this girls mother was taken seriously ill and was in need of constant attention. In addition the accused's fiancee was working some 12 hours per day. The accused's fiancee was the only member of the family then at the home.

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

I submit that the absence of the accused was occasioned entirely by anxiety for his fiance and her family. I would like to point out to the court that the accused was not apprehended but returned to his unit as soon as these difficulties had been cleared up. In relation to the 2nd charge I would like to point out that only five minor articles are listed as deficiencies. I would also like to draw the attention of the court to the nature of the deficiencies. These may be classed generally speaking as underwear which is very easily misplaced or worn out.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No.

Answer.

Evidence as to character.

Sentence

The Court sentence the accused to undergo detention for Sixty (60) days and to be put under stoppages of pay until he has made good the sum of £0-11-8½

In the Field
4th Dec 1942

C.J. Bury Major
President

W.G. Bury Major President

SUMMARY OF EVIDENCE IN THE CASE OF B-83018 Spr.DUFFIELD, G.D.
a soldier of the 2nd. Cdn. Fd. Cpk.Coy. RCE.

By direction of the Officer Commanding the Summary of Evidence is taken on oath.

1st.Witness for the Prosecution.

B-28137 Cpl. Prust, W.C., 2nd.Cdn.Fd.Pk.Coy., R.C.E. having been duly sworn, states;-

"I am Spr. Duffield's section N.C.O. When I checked the section at 2240 hrs on 18 Nov 42, Spr. Duffield was not to be found. I did not see Spr. Duffield again until the evening of 26 Nov 42, although I was with the section during the intervening time."

W.C. Prust

The accused declines to cross examine the witness.

2nd.Witness for the Prosecution.

B-28129 Sgt. Davies, W.C., 2nd.Cdn.Fd.Pk.Coy., R.C.E. having been duly sworn, states;-

"I was Orderly Sgt. on 26 Nov 42. Spr. Duffield, who had been absent, reported to me at 1715 hrs. I placed him under open arrest."

W.C. Davies

The accused declines to cross examine the witness.

3rd.Witness for the Prosecution.

B-28057 C.Q.M.S. Banks, T.E., 2nd.Cdn.Fd.Pk.Coy., R.C.E. having been duly sworn, states;-

"I am C.Q.M.S. of the 2nd.Cdn.Fd.Pk.Coy., R.C.E. I have on this day checked the kit and equipment of B-83018 Spr. Duffield, G.D. and found the following deficiencies,-

Caps Comforter	1	£0- 1- 1½
Shirts,angora drab	1	9- 2
Vests Cott.Gym	1	1- 6
Shorts, Gym	2	3-10
	Total	£0-15- 7½ - vocab.

Less 25% - £0-11-6½

Chas Banks Cons.

The accused declines to cross examine the witness.

The accused, having been duly cautioned in accordance with Rule of Procedure 4 (e) declines to make a statement.

Certified that Rule of Procedure 4 (b) (c) (d) and (f) have been duly complied with.
taken down by me in the presence and hearing of the accused this 27th day of November 1942 in the field.

J.S. Osborne
(J.S.Osborne) Lieut.
2nd. Cdn.Fd.Pk.Coy., R.C.E.

G.H. Ballantyne Capt

W.G. Bury Major President

LIST OF WITNESSES FOR THE PROSECUTION IN THE CASE OF

B-83018 SAPPER DUFFIELD, G.D.

B-28137 Cpl. Prust, W.C. 2nd.Cdn.Fd.Pk.Coy., R.C.E.

B-28129 Sgt. Davies, W.C.2nd.Cdn.Fd.Pk.Coy., R.C.E.

B-28057 CQMS.Banks, T.E. 2nd.Cdn.Fd.Pk.Coy., R.C.E.

LIST OF WITNESSES FOR THE DEFENCE

NIL

I, B-83018 Spr. Duffield, G.D. desire to have Capt.Lye of the 1 Cdn. Fd. Coy., R.C.E. represent me at my trial.

G.D. Duffield

E.H. Ballantyne Capt
o/o.c. 2 Fd. Pk Coy R.C.E

2 FPC/5-4
30 Nov 42

W.J. Bury, Major
President

2 Cdn Inf Bde

F.G.C.M.

B83018 Spr Duffield.G.D
2 Cdn Fld Park Coy R.C.E.

1. Prosecuting Officer.
   Lieut J.S.Osborn - 2 Cdn Fld Park Coy R.C.E.

2. Defending Officer.
   Capt W.K.Lye - 1 Cdn Fld Coy R.C.E.
   (If available)

E A Ballantyne Capt
.....
Capt E.A.Ballantyne For O.C.

Capt. Lye not available. 2 Cdn Fd Park Coy will appoint another officer to defend the accused.

E M Bonnell, Capt
for

Comdg. 2 Cdn. Inf. Bde.

VVV-27 Case #3

Spr. Duffield G.D.

see, I-137 for 1st case.
" U- " " 2nd "

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-83018 Spr DUFFIELD G.D. - 1 CERU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. 15 (1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (~~date~~) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which 7 1/4 days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of sixty (60) days.

(Sgd) ..... 25 Aug 44 (Sgd) .....

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

C. from S

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date 30 Aug 44 Commanding 4 C.R.B. Gp CERU

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B-83018 Spr. Duffield G.D.	31 Aug 44	[illegible]
[illegible]		[illegible]

ENTERED PART II ORDERS

DATE 1 Sept 44 ORDER No. 208.

~~No~~ ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

[illegible] Officer i/c Records [illegible] Holding Unit. C.A.

RECEIVED 6 SEP 1944 HQ 3 BRANCH AMHQ

RECORDED AT CMHQ IN AB 160

CF A96 (In lieu of AFA32) 47/P.A.B.-1606 (2004)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier F.R. Shields Comd "B" Gp CRU dated 26 Aug 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-83018	Spr	Grant Douglas	DUFFIELD	1 CERU

PROCEEDINGS REVIEWED

J.C.G. J. Rutherglen Capt. 7 Sept. 44

REVIEWING OFFICER, 3 BRANCH AMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) ..... on (*date*(s)) 28 Aug 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule reference throughout is on p 4. Citations do NOT include all relevant fns/RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for paths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 15-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1150 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if nos applicable.)

A5. President to accused: ~~Do you object to an interpreter?~~ Ans ~~No~~

~~The Interpreter is sworn.~~ Do you object to C-94234 Sgt. DUFFIELD G.D. as shorthand writer? Ans No. The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans N.O. - S.I.R.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L. Redman VD	HQ CRU
Member	CAPT	W.L. TURNBULL	2 CARU
Member	LT	W.M. RANSBERRY	1 CARU
~~Judge-Advocate~~			
Prosecutor	LT	J.S. LILBURN	1 CERU
Defending Offr	LT	G.H. CLAWSON	1 CERU

Questions by President: Is the Prosecutor a lawyer? Ans. N.P. Is the Defending Offr a lawyer? Ans. N.P.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer, and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 32.)

A8. The accused ..... before arraignment make(s) (no) ~~N~~ plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 127), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in ink name and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any change.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 111. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~on closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*ii*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans. N O - I N (5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. *4. See para* E3 *of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.[1]
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(*1. RP* 29(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.[1]
(*1. RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. ..... Do you intend to call witnesses on your behalf?
Ans. ..... Are they witnesses as to character only? Ans. .....
(*1. RP* 85. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 495. *Evidence for accused as to his character should, if on his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(*1. RP* 43, 97(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(*1. AA* 54(3) (*a*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative convenient is not applicable where there are pieces of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]
Ans. N O - I N
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (~~extract~~) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and them to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.[3]
(*1. MFP* 3253 *or AFB* 294. *2. MFM* 6. *3. RP* 46, *KR Corn* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans. Be N O - I N of harm N O T G A I T (2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(*1. Where several accused tried separately see RP* 29(*F*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its powers, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 89, 118, 119(*A*)(*B*), *KR Con* 108, 163-166. *Overseas RO* 309, 2303. *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *Where accused already under sentence of imprisonment or detention see AA* 44(15), 60(*c*), *KR Con* 164. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and dispersal of recruits after trial see note on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B-83018 Spr. DUFFIELD, Grant Douglas, Royal Canadian Engineers, No. 1 Canadian Engineer Reinforcement Unit, a soldier of the Canadian Army (Overseas), is charged with:-

First Charge
A.A. 15(1)

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, was absent from "C" Company No. 1 C.E.R.U. Morval Barracks from 0600 hours 2 Aug 44 till 2015 hours 18 Aug 44, when he surrendered himself to the guard room at No. 1 C.E.R.U.

(Total time absent 16 days 14 hours 15 mins.)

(G.H.WHYTE) Colonel
Commanding Officer,
No. 1 Cdn Engr Rft Unit,
Canadian Army (Overseas)

In the field
22 Aug 44

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

(P.R. Shields) Brigadier
Comd "B" Group
Cdn Rft Units

26 Aug 44

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-83018	Spr		Grant, Douglas	DUFFIELD	1 CERU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 26 Aug 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt-Col	D.L. Redman VD	HQ CRU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Captain	To be detailed by	2 CARU
Lieutenant	To be detailed by	1 CARU
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

(Signed personally. RP 105 fn 2.)

(Rank.)

Date 26 Aug 44

Commanding "B" Group CRU

(P.R. Shields) Brigadier
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. B53018 Spr. Duffield G.D.

of H.L.C.E.R.V. and in my opinion he

is ~~unfit~~ fit to undergo Trial by Court Martial.

from

Station Field

Date 28-8-44

J. Martin Capt.
Medical Officer.
RCAMC

Plea for Mitigation 28 Aug 43

Sapper Duffield

E-3
WW

Spr. Duffield's wife, who lives in Canterbury is suffering from a serious kidney disorder as the medical certificate shows. She wrote Spr. Duffield that she was suffering, had been confined to bed for a week, but told him not to worry. She was obviously very agitated. She wanted to know when he could get leave to see her — Quote part of letter —

At that time there was of course no prospect of leave at all. Canterbury is on the buzz-bomb path. It was only natural that Duffield should be disturbed to the point of desperation and wish to see his wife.

— Quote Minister's letter —

The second part of my plea deals with Duffields Crime sheet. I would like the court to disregard it from the following point of view.

His last four crimes are set out as follows.

Apl. 43 — 9 hours A.W.L. — not a serious offence.

Aug 43 — 10 days A.W.L. He had good reason for this offence since at that time he got married and was awaiting his wife's discharge from the Hospital and the WAAFs. on medical grounds

Dec 43 — Sold a pair of army gloves to a fellow soldier & H.C. A — might be done by almost anyone.

July 41 :- A.W.L less than 2 days - not a serious charge.

I submit that Duffield's crime sheet shows his intention of turning over a new leaf. His last four crimes are minor ones and widely spaced; and show a vast improvement over his record of one and a half years ago. At that time he was planning to get married and had decided that the best way to be a good husband was to be a good soldier too.

A cursory glance at his crime sheet does not show these facts up and Duffield has been rounded for a sheet which is really a year and a half old.

He is in the Holding Unit for 8 months - he is without leave - his wife is dying - he becomes thoroughly browned off - He goes A.W.L. with good reason - he returns and gives himself up properly dressed and sober (Summary of Evidence) - The C.O. reviews the case - sees the crime sheet and at once, "Court Martial" for an offence that would not normally require one.

I therefore ask leniency of this court to give Duffield a fighting chance to live down his record and become a useful member of the army again.

G. H. Clarkson Lieut.
Defending Officer

St. Thomas',
59, Burgate,
Tel. 2896 Canterbury.

I hereby certify that as the Parish Priest of the R.C. Church of St. Thomas, Canterbury, I have known Mr. William Melling of 25 Thanington Road, Canterbury, for five years and testify that he is a man of good standing and reliable character. I also know his daughter, Mary, who was married to Sapper C. Driffield in this Church. For some time she has been suffering from bad health, had to be under hospital treatment as an "in" patient and was eventually discharged from the W.A.A.F. on grounds of ill health. I saw her discharge papers. I can therefore understand her husband's anxiety about her health.

27th. August 1944. C.H. de Lambert-Gore

Aug. 26th 1914

I Hereby Certify that Mrs Duffield

residing at 25 Hennington Road

to suffering from Cystitis & pyelitis

& that according to her history she appears to ~~and is unable to follow employment~~ have had this for several weeks.

(Signature) Wm Garlick

(Registered Qualifications) MB, BS

Summary of Evidence

Summary of evidence in the case of B-83018 Spr. Duffield Grant Douglas, Royal Canadian Engineers, No 1 Canadian Engineers Reinforcement Unit, a soldier of the Canadian Army [Overseas]

By direction of the Commanding Officer, the Summary of Evidence is taken under oath.

FIRST WITNESS

for the prosecution B-40271 A/Cpl MacMillan, K.M., RCE, of No 1 Cdn Engr Rft Unit, having been duly sworn, states:-

I am B-40271 A/Cpl MacMillan K.M., RCE, of No 1 Cdn Engr Rft Unit. I am a section corporal in "C" Company of No 1 Cdn Engr Rft Unit

B-83018, Spr Duffield G.D., who was in my section and whom I now recognize as the accused, was absent at 0600 hours 2 Aug 44, at reveille roll call. At that time I turned in an absentee report to C Company Orderly Room showing B-83018 Spr Duffield G.D. "absent without leave". I called the roll on subsequent days, when Spr Duffield G.D. did not answer his name, nor have I seen him since

The accused declines to cross examine the witness.

K. M. MacMillan

B-40271 A/Cpl MacMillan K.M.

SECOND WITNESS

for the prosecution B25326 A/Cpl Robertson, B., having been duly sworn, states:-

I am B25326, A/Cpl Robertson, B, of No 1 Cdn Engr Rft Unit, Canadian Army [Overseas]. I was the N.C.O. in charge of the upper Guard Room at No 1 Cdn Engr Rft Unit on the evening of 18th Aug 44. At 2015 hours on that evening, B-83018, Spr Duffield G.D., whom I now recognize as the accused, entered the Guard Room, and surrendered himself as an absentee without

...ave. Spr Duffield was sober and properly dressed. I placed him under close arrest, and escorted him to detention barracks.

The accused declines to cross-examine the witness

F. Robertson Capt

B 25326 A/Cpl Robertson, B.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you may give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence. He reserves his defence.

I certify that the foregoing summary of evidence consisting of Two [2] pages was taken down by me in the presence and hearing of the accused and the Rules of Procedure 4 (a) (d) (e) and (f) have been complied with.

In the Field
22 Aug 44

/S/ William Lt. RCE
Officer detailed to take the Summary of Evidence

EXA
DY

SUMMARY OF EVIDENCE

Summary of evidence in the case of B-83018 Spr. DUFFIELD, Grant Douglas, Royal Canadian Engineers, No. 1 Canadian Engineer Reinforcement Unit, a soldier of the Canadian Army (Overseas).

By direction of the Commanding Officer the Summary of Evidence is taken under oath.

FIRST WITNESS
For the prosecution

B-40271 A/Cpl MacMillan, K.M., R.C.E., of No. 1 Cdn Eng Rft Unit, having been duly sworn states:-

I am B-40271 A/Cpl MacMillan, K.M., R.C.E., of No. 1 Cdn Eng Rft Unit. I am a section corporal in "C" Company of No. 1 Cdn Eng Rft Unit. B-83018 Spr. Duffield, G.D., who was in my section and whom I now recognize as the accused, was absent at 0600 hours 2 Aug 44, at reveille roll call. At that time I turned in an absentee report to "C" Company Orderly Room showing B-83018 Spr. Duffield, G.D. "absent without leave". I called the roll on subsequent days, when Spr. Duffield G.D. did not answer his name, nor have I seen him since.

The accused declines to cross-examine the witness.

B-40271 (K.M.MacMillan) A/Cpl

SECOND WITNESS
For the prosecution

B-25326 A/Cpl Robertson, B., having been duly sworn states:-

I am B-25326, A/Cpl Robertson, B., of No. 1 Cdn Eng Rft Unit, Canadian Army (Overseas). I was the NCO in charge of the upper Guard Room at No. 1 Cdn Eng Rft Unit on the evening of 18th Aug 44. At 2015 hours on that evening, B-83018, Spr Duffield, G.D., whom I now recognize as the accused, entered the Guard Room, and surrendered himself as an absentee without leave. Spr. Duffield was sober and properly dressed. I placed him under close arrest, and escorted him to detention barracks.

The accused declines to cross-examine the witness.

B-25326 A/Cpl Robertson, B.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you may give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence. He reserves his defence.

I certify that the foregoing Summary of Evidence consisting of two (2) pages was taken down by me in the presence and hearing of the accused and the Rules of Procedure 4 (c)(d)(e) and (f) have been complied with.

(J.S. Lilburn) Lieut., R.C.E.
Officer detailed to take the Summary of Evidence.

In the field
22 Aug 44

I certify that the above is a true copy of the original Summary of Evidence.

J Shilburn Lt

(J.S.Lilburn) Lt., R.C.E.
22 Aug.44

SUB FOR ARMY FORM B.96 (WAR).

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank	Name	~~Regiment~~ UNIT (or as the case may be)
B-83018	Spr.	DUFFIELD, G.D.	No. 1 C.E.R.U.

NOTE:- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominance being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entry for drunkenness or absence, as the case may be, should be stated seperately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :--

For A.A. 15(1) ..... 9 times.

For A.A. 40 ..... 4 times.

For A.A. 19(4) ..... 1 time.

For A.A. 18(4) ..... 1 time.

A.A. 24(2) 1 time

Date of first entry in Field Conduct Sheet 28 Feb'y 41

Date of last entry in Field Conduct Sheet 4 July 1944

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3. ~~[illegible]~~ not applicable ~~[illegible]~~

4. The accused has been awaiting trial on the present charges for ~~[illegible]~~ Nil ~~[illegible]~~ ~~days in civil custody~~; and for 10 days in military custody, ~~[illegible]~~ Nil ~~days in open arrest~~, 10 days in close arrest; ~~and [illegible] were spent in hospital.~~

Strike out if not applicable.

5. The present age of the accused is 22 10/12 years

6. The date of his attestation is 28 May 1940

7. The service which the accused is allowed to reckon is 3 11/12 years

8. The accused is in possession of CVSM and clasp.

9. ~~[illegible]~~

*State the military decorations (if any held by accused.

EXB

INSTRUCTION.- If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

SCHEDULE OF CONVICTIONS BY COURT-MARTIAL OF CIVIL CRIME.

Description of Court by which tried.	Date and Place of Trial.	Charge upon which convicted.	Sentence of the Court	Punishment remitted or sentence suspended.
F.G.C.M.	Field 7/4/42	1st Charge: AA Sec 15(1) WOAS, AWL from 1745 hours 22/12/41 to 1400 hours 22/1/42(Absent 30 days 20 hours, 15 mins)Cost of apprehension £0:9s:4d 2nd Charge: AA Sec 40 3rd Charge: AA Sec 15(1) WOAS, AWL from 2130 hours 25/1/42 to 1545 hours 3/2/42(Absent 8 days 18 hours, 15 mins)Cost of apprehension £0:10s:10d 4th Charge: AA 24(2) Losing by neglect his regimental necessaries to the amount of £1:15s:11d	1st Charge: GUILTY 2nd Charge: GUILTY 3rd Charge: GUILTY 4th Charge: GUILTY Awarded 30 days detention £6	
F.G.C.M.	Field 4/12/42	1st Charge: AA 15(1) WOAS, AWL from 2240 hours 18/11/42 to 1715 hours 26/11/42 (Absent 7 days 18 hours 35 min) 2nd Charge: AA 24(2) losing by neglect his equipment and clothing and necessaries to the amount of £0:11s:8½d.	60 days detention	Released from DETENTION BARRACK H.Down 12 Jan 43 sentence having expired. Remission earned under "Rules for Detention Barracks and Military Prisons".20..days Commandant's Initial .J.A..

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 28th day of August 44

Adjt. 1CERU.

B 83018

No. Name DUFFIELD, G.D. Sqn., Battery, or Company Corps RCE Date of enlistment 28 May 1940 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 40/7F & S/136 (2637)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine n/a Sheet No. 2 Signature O.C. Company, etc. R.B.Fraser Capt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 22 May	1942	Spr		#CAS AA 40, cond. to the prej... in that he failed to comply with an order.	L/Cpl Drust L/Cpl Crewe	14 days CB	1 Oct 42	Maj. RB Fraser	1 days pay FR&I 149 1(a)
				2. AA 10(4) breaking out of Barracks whilst under open arrest					
				3. AA 15(1) AWL from 2230 hrs 30 Sept 42 until 0600 hrs 1 Oct 42 (absent 7 hrs 30 mins)					
				Verified to date 3 June 1942 (sgd) R. H. Bayne, Capt.					

(P.T.O.)

No. B-83018 Name DUFFIELD, G.P. Sqn., Battery, or Company

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Corps R.C.E.

Period not reckoning towards freedom from extra fine n/a

Date of enlistment 28 May 1940

Sheet No. 3

G.C. Badges

Signature G.C. Company, etc.

Service or Proficiency Pay n/a

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15/11/42	Spr		1. AA 15 (1) AWL from 2240 hrs 18/11/42 until 1715 hrs 26/11/42 (Absent 7 days 18 hrs 35 mins) 2. AA 24(2) losing by neglect his equipment, clothing and necessaries to the amount of 11/8½ d.	CSMG Banks Cpl Frust	60 days' detention	4/12/42	F.G.C.M. Confirmed Brig G Yokes Comdr 2 CIB 1 Cdn Div	8 days' pay FRAI 149 1a 60 days' pay FRAI 145 1b 8 days' pay FRAI 149(1)(c)(1) Total 76 days' pay

(Rubber Stamp)
"Released from DETENTION BARRACK H.Down 12 Jan 1943 REFERENCE HAVING EXPIRED. Remission earned under "Rules for Detention Barracks and Military Prisons" 1.20..days Commandants Initials...J.A...."

(PTO)

B-83018

No. Name DUFFIELD, G.P. Sqn., Battery, or Company Corps R.C.E. Date of enlistment 28 May 1940 G.C. Badges Service or Proficiency Pay n/a

M.F.M. 6 (A.F.B. 122) 40/P & S/126 (2627)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine n/a | Sheet No. 3 | Signature G.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (incorporating with this)	By whom awarded	Remarks
Field	15/11/42	Spr		1. AA 15 (1) AWL from 0240 hrs 18/11/42 until 1715 hrs 26/11/42 (Absent 7 days 18 hrs 35 mins)	S/Sgt Banks Col Trust	60 days' detention	4/12/42	F.G.C.M. Confirmed Brig G Vokes Comdr 2 CIB	5 days' pay FRAI 149 1a 60 days' pay FRAI 145 1b 5 days' pay FRAI 149(1)(c)(1) Total 70 days' pay
				2. AA 24(2) losing by neglect his equipment, clothing and necessaries to the amount of 11/5p.d.					
					(Rubber Stamp) "Released from DETENTION BARRACK R.Down 12 Jan 1943 sentence HAVING EXPIRED. Remission earned under "Rules for Detention Barracks and Military Prisons"...20...days Commandants Initials...J.A..."		1 Can Div		

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24/1/43	Spr		AA 15(1) AWL from 2359 hrs 24 Jan 43 to 0330 hrs 4 Feb 43 (Absent 10 days 3 hrs. 1 min)	Documentary	27 Days Detn.	6/2/43	Lt.Col VE Thompson	Forf 11 days' pay FRAI 149 1a. Total Forf 38 days pay Cost of Appr. 3/6
Field	5/3/43	Spr.		AA 15(1) AWL from 1530 hrs 5 Mar 43 until 0815 hrs 9 Mar 43 (Absent 3 days 10 hrs 45 mins)	Documentary	168 hrs Det. 7 days pay	11/3/43	Lt-Col CM Mitchell	Forf 4 days' pay FRAI 149 1a Cost of apprehension 20-7-5
Field	11/3/43	Spr.		AA 24(2) WOAD losing by neglect Documentary his regtl necessaries and kit to the value of £1-0-10		FRAI 149(1)(b) Deduction of £1-0-10 to cover cost of deficiency	15/3/43	Lt-Col CM Mitchell	
Field	11/4/43	Spr.		AA Sec 15(1) WOAD AWL from 2359 hrs 11/4/43 until 0530 hrs 12/4/43 (Absent 5 hrs 31 mins)	Documentary	5 days CB	13/4/43	T.R.Murphy Major	

B 83018

No. Name DUFFIELD, G.D. Sqn., Battery, or Company Corps R.C.E. Date of enlistment 28 May 1940 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 40/P & S/136 (2637)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine n/a Sheet No. 4 Signature O.C. Company, etc. R.B.Fraser Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26/4/43	Spr		AA 15(1) WOAS AWL from 2200 hours 25/4/43 to 0750 hrs 26/4/43 (Absent 9 hrs 50 mins)		7 days F.P.	26/4/43	Lt-Col T.S. Thompson	1 days' Pay auto forf Total 7 days p.
Field	26/8/43	Spr		AA 15(1) AWL from 2359 hrs 26 Aug 43 to 1330 hrs 6 Sep 43 (Absent 10 days, 13 hrs. 31 mins)	Sgt. Voisey L/Cpl Trahan R	Fined 28 days pay FR&I 149(2)	17/9/43	Major EH Wright	Forf 11 days pay FR&I 149 la
Field	10/12/43	Spr		AA Sec 18(4) WOAS sold public property which had been entrusted to his care	Sgt. Berry N Sgt.Sharp Cpl Taylor WE	28 days FP	15/12/43	Major C.E. Brown	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1/7/44	Spr		AA 15(1) AWL from 1400 hrs 1 Jul 44 to 2330 hrs 2 Jul 44 Absent 1 day 9 hrs 30 mins)	Sgt. Bates JW Cpl McMillan KM	7 days pay FR&I 149(2)	4/7/44	L.G.C. Lilley, Lt.Col	Forf 2 days' pay FR&I 149 (1)a
	31/7/44	Spr		Voluntary Blood donor					

Certified a true copy

[signature]

Officer having custody of Regimental Books
28 August 1944

Ex C

M.F.M. 6
(A.F. B.122)
40/P & /8138 (2985)

No. 83018 Name DUFFIELD, G.D. Sqn., Battery, or Company Corps R.C.E. Date of enlistment 28 May 1940 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet n/a No. and date of last drunk n/a Period not reckoning towards freedom from extra fine n/a Sheet No. One Signature O.C. Company, etc. (sgd) R.B.Fraser, Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award in [illegible]	By whom awarded	Remarks
				1st sheet destroyed on completion 6 months service KR (Cas)					
In the Field	28/2/41	Spr		AA 15(1) WOAS, AWL from 1050 hrs until 1130 hrs from duty 28/2/41	Cpl Hughes Spr Burns	Deprived 2 days' pay	28/2/41	Capt. G.E.Smith	
In the Field	27/8/41	Spr		WOAS AWL from 2230 hrs to 2359 hrs 27/8/41 Absentl hr 28 min AA 15	L/Sgt Davies L/Cpl Armstrong	7 days FP	28/8/41	G. E. Smith Capt.	
In the Field	27/9/41	Spr		WOAS conduct to the prejudice etc when ordered to do a job by CQMS Banks TE failed to carry out the job immediately and argued about doing it.	CQMS Banks A/L/Cpl Muggeridge	Deprived 10 days' pay	28/9/41	G.E.S.	
In the Field	29/10/41	Spr		An act to the prejudice etc in that he having been duly warned in Coy Orders to guard the prisoners held in Guard Room was not in Guard Room at approx 2300 hrs 29/10/41 when visited by Orderly Officer and Orderly NCO	CSM Weedmark L/Sgt White L/Cpl Tallack	7 days CB	3/11/41	N.H.Baynes	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				Certified True Copy (sgd) N.M.Haynes, Lieut.					
Field	22/12/41	Spr.		Was tried by F.G.C.M. on 7 Apr 42 Documents, 1st Charge AA Sec 15(1) WOAS, A&L CSM Headsmark From 1745 hrs 22/12/41 to 1400 hrs 22/1/42(30 days 20 hrs 15 min) Cost of apprehension £0:s9:d4 2nd Charge: AA Sec 40 3rd charge: AA Sec 15(1) WOAS A&L From 2130 hrs 25/1/42 to 1545 hrs 3/2/42 (8 days 18 hrs 15 mins) Cost of apprehension £0:10s:10d 4th Charge: Losing by neglect his regimental necessaries to the amount of £1:15s:11d		1st Charge Guilty 2nd Charge Guilty 3rd Charge Guilty 4th Charge Guilty Awarded 30 days' detention	7 Apr 42	C.O.C.	Forf. 40 days' pay FR&I 149 (1)(a) 30 days pay FR&I (1)(b) and 66 days' pay under FR&I (1)(a) (1) Stoppages of pay £1:0s:2d FR&I 172(8) and £1:15s:11d FR&I 158(2). Total forf 136 days pay and £2:16s:1[illegible]
	Field 22/5/42	Spr		AA 40 Conduct to the prejudice etc CSM In that he at 0830 hrs 22/5/42 when Headsmark coming late on parade, acted in such a manner as to show defiance of authority		14 days F.P.	2/6/42	C.S.Smith Maj	Forf 14 days pay under FR&I 149(11)(a)

LIST OF EXHIBITS

- NIL -

APPLICATION FOR DEFENDING OFFICER

I desire to have Lieut. MacArthur, A.A. to represent me in the event of a Court Martial.

.....
B-83018 Spr. DUFFIELD, G.D.
23 Aug 44

12 R.

Spr Muffin, R.

O. H. M. S.

M. F. B. 270

"G"

CHARGE-SHEET

The accused, M-54552, Spr. Robert DUFFIN, 10 Field Squadron, R.C.E., a soldier of the Canadian Army Overseas, is charged with:-

First Charge Sec.15 (1), A.A.

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

in the field on 12 Sep 42, absented himself without leave from his unit, 10 Field Squadron, R.C.E., from 1700 hours on said 12 Sep 42 until he surrendered himself at his Unit Orderly Room at 1500 hours, 5 Oct 42. (Total time absent 22 days 22 hours)

In the Field
6 Oct 42.

(J.K.B. Jones) Major,
Commanding
10 Field Squadron, R.C.E.

To be tried by Field General Court Martial

(T.J. Rutherford) Brig.,
Commanding,
1 Cdn Armd Bde.

Trial of M-54552, Spr. Robert DUFFIN, 10 Fd Sqn RCE.

Held in the Field on 10 October 1942.

PRESIDENT:

Major W.W.Halpenny, 10 Cdn Armd Regt (FGH)

MEMBERS:

Capt.W.A.Milroy, 2 Cdn Armd Regt (LdSH).
Capt.A.S.Christian, 10 Cdn Armd Regt (FGH).

JUDGE ADVOCATE:

Major N.C.Fraser, ADJA, HQ 5 Cdn Aemd Div.

The order convening the court, the charge-sheet, and the summary of evidence are laid before the court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor:--Lieut.L.G.MacDonald, 10 Fd Sqn RCE.

Defending Officer:--Lieut.Norman P.Robinson, 10 Fd Sqn RCE.

The order convening the Court is read in the hearing of the accused.

The accused does not object to the President or any member of the Court.

The Court and the Judge Advocate are sworn.

The accused does not object to K-57793, S/Sgt.J.R. Mahood, CMSC, Hq 5 Cdn Armd Div, acting as shorthand writer.

The shorthand writer is sworn.

The accused answers his name and number, and is arraigned on the charge. Charge-sheet marked "G" signed by the President and annexed to the proceedings.

PLEA — The accused pleads guilty to the charge.

R. P. 35 (B) is complied with.

FINDING — The Court find the accused, M-54552, Spr.Robert Duffin, 10 Fd Sqn RCE, is guilty of the charge.

The summary of evidence is read, marked "H" signed by the President, and attached to the proceedings.

EVIDENCE AS TO CHARACTER, ETC: — Lieut.L.G.MacDonald, 10 Fd Sqn RCE, the Prosecutor, sworn, states:--I produce M.F.B.355 and certified copy of M.F.M.6 relating to the accused, which I have compared with the regimental books, and which are true statements as to character and particulars of service of the accused. (Documents read, marked "Y" and "Z" respectively, signed by the President, and attached to the proceedings).

No cross-examination.

The accused does not desire to give evidence, to make a statement, or to call witnesses, but does desire the Defending Officer to make a plea for clemency in his behalf.

The Defending Officer makes the following plea:--
I have known Spr.Duffin for some time and I will say that the man's character is good. He is a good soldier and well qualified as a sapper. He is at present employed as a DR and his work there is, I think, a little better than average. The accusedis a Scotchman by birth; he left Scotland in 1929 at the age of 18. He was up in Scotland on leave at the time of going AWL. He has a great many relatives there and he was around visiting them and the temptation to stay overtime could not be resisted, but he came back of his own free will and reported in the correct manner to the SqnSM. When he came back he was correctly dressed and clean and looked like a smart soldier.

The Court is closed for the consideration of the sentence.

SENTENCE: The Court sentence the accused, M-54552, Spr.Robert DUFFIN, 10 Fd Sqn RCE, to undergo detention for six (6) months. Sentence:- Detn.for 6 mos.

CERTIFIED A TRUE RECORD OF THIS TRIAL, this 10th day of October, 1942.

Major.
Judge Advocate

Major
President.

"H"
W. Calgary
Major & President

Summary of evidence in the case of M-54552 Spr. Robert DUFFIN, 10th Field Squadron R.C.E., Canadian Army Overseas, charged with Absence without leave from 12 Sep to 5 Oct 42.

The Commanding Officer directs that the evidence be taken on oath.

First Witness

M-5151 L/Cpl Trotter, D.R., No. 7 Sec., No. 2 Tp, 10th Field Squadron R.C.E., sworn, states:

I was on the 12th of Sep 42 and was until 4 Oct 42 acting N.C.O. in charge of No. 7 Section, No. 2 Tp., 10th Field Squadron R.C.E. I am well acquainted with M-54552 Spr. Duffin, R. whom I recognize here as the accused who has been a member of my section for the past six weeks. At 1700 hours on the 12th Sep 42, knowing Spr. Duffin should have returned at this time from his third Privilege Leave I made a search of the lines and his billets and was unable to locate him. At tattoo roll call at 2300 hours 12 Sep 42 I called the roll of my section and the accused did not answer his name. I searched his barrack room and was unable to find him. I have called the roll on all subsequentparades of No. 7 Sec., No. 2 Tp., up to and including the 4th Oct 42, and at no time did the accused answer his name. I first saw the accused at 1730 hours 5 Oct 42 while he was under custody in the mess hall.

The accused declines to cross examine this witness.

D.R. Trotter L/Cpl
(Signature of Witness)

Second Witness

M-54470 L/Cpl. Merrick, K.W., N.C.O. in charge of No. 7 Sec., No. 2 Tp., 10th Field Sqn R.C.E. sworn states:

I was on 5th Oct and am still Cpl. in charge No. 7 Section of No. 2 Tp., 10th Field Sqn RCE. I am well acquainted with M-54552 Spr. Duffin, R., who I recognize as the accused, and who has been a member of my section for the past six weeks. I took over the command of No. 7 Section on the 5th Oct 42. L/Cpl. Trotter, D.R. informed me when I took over from him that Spr. Duffin, R. was absent. At 0630 hours, 5th Oct 42 I called the roll of my section and the accused did not answer his name. I did not see Spr. Duffin until approximately 1600 hrs., 5th Oct 42. He was in his barracks. I put him under close arrest on orders from Sqn SM.

The accused declined to cross examine this witness.

K.W. Merrick L/Cpl
(Signature of Witness)

Third Witness

M-54233, Sgt. Eckardt, D.C., N.C.O., i/c No. 2 Tp., 10th Field Squadron R.C.E., sworn, states:

I was on the 12 Sep 42 and still am Sgt. of No. 2 Tp., 10th Field Squadron R.C.E. I am well acquainted with M-54552 Spr. Duffin, R. and recognize him as the accused and he has been a member of No. 2 Troop for the past year. Spr. Duffin was reported absent from 1700 hours 12 Sep 42 by the section N.C.O. of No. 7 Section, (L/Cpl Trotter, D.R.) I failed to find him on search of the lines and his barrack room. He has been reported absent to me on all subsequent parades, and I did not see him again until 2000 hours 5 Oct 42 when he was under close arrest in his barrack room.

The accused declines to cross examine this witness.

(Signature of Witness) Sgt.

Fourth Witness

M-5050 Sqn SM Brackman, R.A., Sqn SM 10th Field Squadron R.C.E., sworn, states:

I was on the 5 Oct 42 and still am Sqn SM 10th Field Squadron R.C.E. I am well acquainted with M-54552 Spr. Duffin, R. whom I recognize as the accused, who has for the past 18 months been a member of the 10th Field Squadron R.C.E. I was on duty in the Sqn Orderly Room at 1500 hours 5 Oct 42 when Spr. Duffin, R. approached me and stated he was returning from his absence without leave. He was sober and properly dressed. I placed him under open arrest and at 1600 hours, placed him under close arrest. I herewith submit two passes which were handed to me by M-54552 Spr. Duffin, R. on his return to the unit at 1500 hrs 5 Oct 42.

(Signature of Witness) Sqn SM

The passes referred to by the witness, produced, read over to the accused, marked Exhibit A, signed by me, and attached hereto.

(Signed) Capt

The Accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence".

The accused: I have nothing to say at this time.

Robert Duffin

I certify that R.P. 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this 6th day of October, 1942.

B L Montgomery Capt
(Signature of Officer taking Summary)

...out of the whole Army Reserve is ordered every soldier ...st return immediately to his unit without waiting for instructions.

N.W.R. Hdqrs

10th. FD. SQN., R.C.E.

Army Form 1120 (In pads of 100)

...18 ..... Regiment .....

PASS

No. M54552 (Rank) Spr. (Name) Duffin R.

has permission to be absent from his *quarters/duty, from 1700 hrs. 3-9-42 to 1700 hrs. 10-9-42.

for the purpose of proceeding to* Stirling Scotl

(Station) Field ..... L. G. Macdonald Lt. Comdg. [P.T.O.]

(Date) 1-9-42 for C. 10th. FD. SQN., R.C.E. (A.F.)

* Delete whichever is not practicable.
* Destination and required unless attached to an Regiment or Bonds, unless notified.

If a taking-out of the whole Army Reserve is ordered every soldier on pass must return immediately to his unit without waiting for instructions.

N.W.R. Hdqrs

10th. FD. SQN., R.C.E.

Army Form 1120 (In pads of 100)

No. 918 Regiment

Returned 1500 hrs 8/10/42

PASS

No. M54552 (Rank) Spr. (Name) Duffin R.

has permission to be absent from his *quarters/duty, from 1700 hrs. 10-9-42 to 1700 hrs. 2-9-42

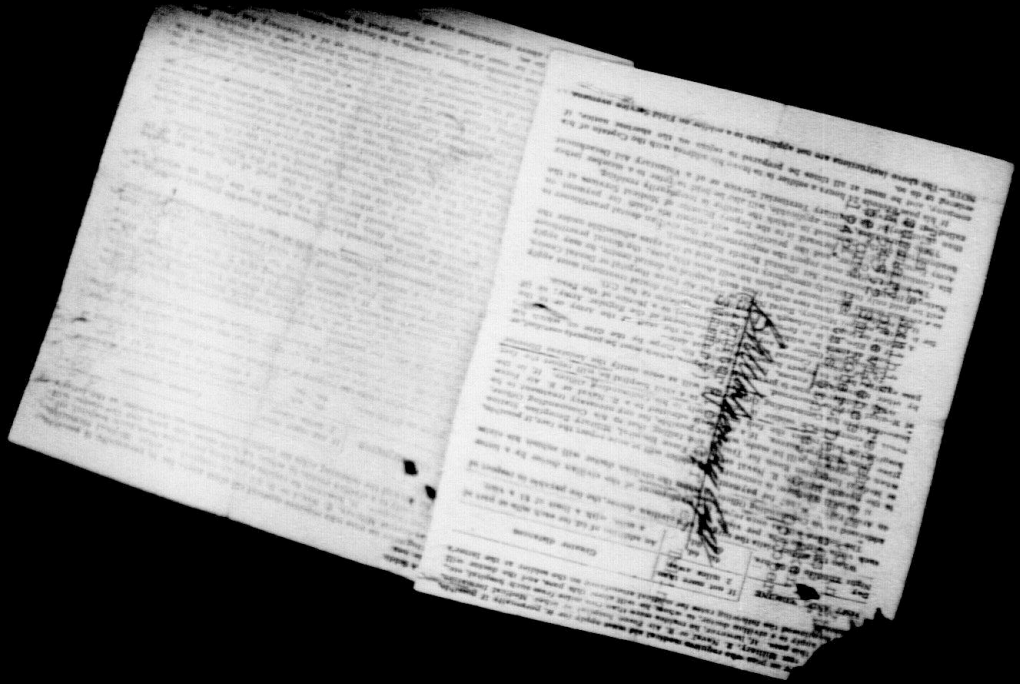
for the purpose of proceeding to* Stirling Scotl

(Station) Field ..... L. G. Macdonald Lt. Comdg. [P.T.O.]

(Date) 1-9-42 for C. 10th. FD. SQN., R.C.E. (A.F.)

* Delete whichever is not practicable.

This is exhibit A referred to in the [illegible] evidence in the case of Spr Robert Duffin [illegible] before me this 9th day of [illegible] 1942.



"V" 13

M.F.B. 355
40/P & S/675

Major & President

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M-54552	Spr.	Duffin, R.	10th Field Sqn RCE

1. The following is a fair and true summary of the entries in the MFM 6 ~~Service and General~~ Regimental and Squadron, ~~Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	Absent without Leave 2 times	Absent without Leave 2 times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct N/A

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or,~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or,~~

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and 35 days in military custody, making a total of 35 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 32 years

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 12 Feb 41

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon 1 yr 7 mos 24 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~(or is in possession of or entitled to)~~. State any air force military decoration or reward. N/A

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force

dated ....., and in his regiment (or corps), the rank of unit

dated ..... N/A

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— ..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years. N/A

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Army

Name N/A ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		N/A		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7th day of October

The ~~above statement (with the schedule of convictions and of cases in which trial has been dispensed with)~~ is read, marked ~~signed by the president, and annexed to the proceedings~~.

B.L. Montgomery Capt. & Adjt.

10 FD SQN RCE

"Z" Hd Hedgen Major + President

No. M-54552 Name Spr. Spr. DUFFIN, R.C.E. Sqn., Battery, or Company } 10TH FIELD SQUADRON, R.C.E. (AF) Corps Date of enlistment } 12-2-41 G.C. Badges } Service or Proficiency Pay } M.F.M. 5 (A.F.B. 122) 800M-4-39-(702) H.Q. 1772-45-14

Date of last entry in Company Conduct Sheet } 2-6-41 No. and date of last drunk } 2-6-41 Period not reckoning towards freedom from extra fine } Sheet No. 1 Signature O.C. Company, etc. } J.R.B. Jones Character Capt. (signed)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Original destroyed 12-8-41	J.R.B. Jones, Capt(signed)				
Petawawa	30-10-41	Spr	2	A.W.L. from 2000 hrs. 30-10-41 until 0630 hrs 1-11-41	Sgt. Eckardt L/Sgt McLaughlin	7 days CB	1-11-41	Maj. T.S. Graham	forfeits 2 days pay(FR&I 149)
Aldershot	21-6-42	Spr	2	A.W.L. from 1700 hrs 21-6-42 until 1430 hrs 22-6-42	Cpl Fullen Cpl Boyd	7 days CB	23-6-42	T.S. Graham (signed) JRB Jones Maj. (signed)	Forfeits 1 days pay under 149(1)(a)FR&I

Certified true copy

JRB Jones Major

OC 10 Fd Sqn RCE

(P.T.O.)

W.A. McGregor
Major President

MEDICAL OFFICER'S CERTIFICATE

K.R.(Can.) Para 557

I certify that I have this morning examined No M-54552
Spr R. Duffin of 10 Fd Sqn RCE and in my opinion he is
fit
unfit to undergo trial by court-martial.

Station In the Field

Date 10 Oct 42

Wm McLatchy Capt
Medical Officer

12 R.

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Eighth day of October, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Armd Bde., 5 Cdn Armd Div., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.] JR

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[I am unable to appoint:—

*(1. Three Officers to form the Court.) JR

*(2. A Field Officer as President.)

for the following reasons, namely:—] JR

Proceedings Reviewed

W. H. Hong Capt

Reviewing Officer (A.G.) G.M.H.Q.

18 Nov 42

NOTE—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	W.W. Halpenny ~~S.S. Xxxxxxx~~	10 Armd Regt (FGH) ~~Xxxxxxxxxx xxxx (X)~~ JR

Members.

Rank.	Name.	Regiment.
Capt	W.A. Milroy	2 Armd Regt (LdSH)
Capt	A.S. Christian	10 Armd Regt (FGH)
Lieut	WAITING MEMBER A.C. Lennon	49 A Tk Bty RCA
Major	JUDGE ADVOCATE N.C. Fraser	ADJA 5 Cdn Armd Div

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J Rutherford

(T J Rutherford) Brig

Commanding 1 Cdn Armd Bde

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
M.54552 Sapper Robert DUFFIN 10th Fd Sqn R.C.E. 5 Cdn Armd Div.	1st CHARGE When on active service Absenting Himself without leave in that he (see charge sheet att) Sec.,15(1) A.A.	Guilty	GUILTY 6 Months D.Ention	confirmed E.J. confirmed E.J.

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (a)) :—

"Do you ~~wish to~~ apply for an adjournment on the ground that ~~any of the~~ rules relating to procedure before trial have not been ~~complied with, and that you~~ have been prejudiced thereby, or on the ground that you have not had ~~sufficient opportunity~~ for preparing your defence ?"

Answer *(to be recorded on separate sheet if necessary)* :— Nil Reply

(Signed) J Rutherford Brig (Signed) N.W. Montgomery

(J.G. Rutherford) 19 May 42.

Commanding 1 Cdn Armd Bde *Convening Officer (e)* *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10th day of October 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The interpreter~~) Shorthand Writer. N.W.A.
4. ~~The officers under instruction~~) Instructor Advocate. N.W.A.

* Omit if not applicable.

were duly sworn.

Signed this 10th day of October 1942.

Neil Wynne Montgomery Major

Judge Advocate

N.W. Montgomery Maj/gen.

President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

N.W. Montgomery Maj/gen.

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 16th day of Oct 19 42

Thos. W. Hanson

~~*Confirming Officer.*~~ Maj. Gen. G.O.C. 5 Cdn. Armd. Div.

Promulgated and extracts taken in the case of M.54552 Spr. Robert Duffin

(*a*) (Dated) 2nd Nov 42 (Signed) J.H. Montgomery Capt. A.D.J.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

4 V. 82

SPR DUFFIN R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M 54552 Spr ROBERT DUFFIN A Cdn Fd Coy, R.C.E.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	S. 40. A.A.	GUILTY	GUILTY.	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for six (6) Months.

(Sgd) ..... 2 Feb 1945 (Sgd) J. Archibald

Judge-Advocate, if any. Date awarded. President. (RP 46, 56) Major

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign mins personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 3 Feb 45 (Sgd) ..... Commanding CCE, 1 Cdn Inf Div, Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
M 54552 - L/Sgt T	4 Feb 45	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. 4/82

FIELD GENERAL COURT-MARTIAL

CFAB6 (To Heir of AFA3) 40-1-A, 8-1698 (2684)

RECEIVED 27 FEB 1945 AAG BRANCH C.M.H.Q.

Convened by Order of LT-COL. E.H. WEBB Comd 1 Cdn Inf Div Comd RCE 1 Cdn Div dated 29 JAN 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M.54552	Spr	Robert	DUFFIN	4 Cdn Fd Coy, R.C.E.

PROCEEDINGS REVIEWED

REVIEWING OFFICER, AAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 2 Feb 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1345 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 562(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans ....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans ....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.G. Archibald	5 Cdn LAA Bty, RCA
Member	Capt.	D. O'C. Byng-Hall	2 Cdn Fd Pk Coy, RCE
Member	Lieut.	J.S. Osborne	HQ RCE 1 Cdn Div
~~Reserve~~			
Prosecutor	CAPT.	B.S. BROWN	4 CDN Fd Coy RCE
Defending Offr	LIEUT	J.E. REESOR.	4 CDN Fd Coy RCE

Questions by President: Is the Prosecutor a lawyer? Ans N/C Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 3.)

A8. The accused Spr ROBERT DUFFIN before arraignment make(s) (no) ~~no~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposit, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B".

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C.132 A2/8

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; securing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans Not guilty .(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his ~~(their)~~ plea(s) of Guilty to Not Guilty on The charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex "H", initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. If "Yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 40(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf 895. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans I intend to call witnesses as to character .
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(1. MFB 255 or AFB 296. 2. MFW 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No .(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(4), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

I wish to have an Officer represent me

at my trial and request Lt J.F. REESOR to do so.

Robert Duffin

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13 Dec 44	Spr		(1) AA15(1). Abs 1 hr. (2) AA 40 Conduct etc ca used a nuisance in his pl lines	Cpl Neff L/Cpl Joudrey Spr McCausland	Forfeits 28 days pay FRAI 149(2	16 Dec 44	C.T.Gray Major	

CERTIFIED TRUE COPY - VERFIED TO DATE 25 Jan 45.

No. M 54552 Name DUFFIN R. Sqn, Battery, or Company 4 Field Coy Corps R.C.E. Date of enlistment 12 Feb 41 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of of order dispensing with Trial	By whom awarded	Remarks
Field	18 Sep 43	Spr	2	AWL from 2330 hrs 18 Sep until 1830 hrs 19 Sep 43	Cpl Eaton Sgt McLaughlin	14 days pay 14 days CB FR&I.149(2)	B.L.MONTGOMERY Major 22 Sep 43		
Field	14 Mar 44	Spr		WOAS. An act to the prej. of good order and military discipline (Striking a comrade) A.A Sec 40	Spr Harpe T.C. Spr.McLarney	5 days summary forf of pay. FR&I.149(2)	14 Mar 44	H.Gordon Young. Col.	
Field	28 Aug 44	Spr		A.A.40 Conduct to the prejudice etc became unfit for duty due to previous indulgence in alcoholic stimulants	Lt.Ferguson Sgt.Demick	Forf. 21 days pay. FR&I.149(2)	3 Sep 44	EAN.Prichard Major	

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if under charge with trial	By whom awarded	Remarks
Field	30 May 43 Spr			A.A Sec 15(1) AWL from 0001 hrs 30 May to 0215 hrs 30 May 43 AA sec 40 Conduct to the prej etc took m/c without authority. AA Sec 40 Neglect to the prej etc drove to injure self and m/c	L/Cpl Stead Cpl Clark Sgt Schrumm Cpl Merrick Spr McDonald	Forfeits 28 days pay under FR&I.149(2)	B.L. Montgomery Major 1 Aug 43		Stoppage of pay £7-0-0 damage to m/c auth AA QMG 6-2-2/a 26-6-43
Field	21 Aug 43 Spr.			AA 15(1) AWL from 1800 hrs 20 Aug 43 to 1230 hrs 21 Aug 43	Doc	7 days C.B. 7 days pay. FR&I.149(2)	24 Aug 43	B.L. Montgomery Major	Forfeits 2 days pay FR&I.149(1)(a
Field 4	25 Aug 44 Spr			AA 15(1) AWL from 1800 hrs 25 Aug 43 to 2000 hrs 26 Aug. 43	Sgt Heaven	Forfeits 14 days pay. FR&I.149(2)	27 Aug 43	EANG Major	Prichard Forfeits 2 days pay. FR&I.149(1)(a

No M 54552 Name DUFFIN R. Sqn, Battery, or Company 4 Field Coy Corps R.C.E. Date of enlistment 12 Feb 41 GC Badges Service or Proficiency Pay MFM 6 (AFB 133) 40/F&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Original destroyed 12-8-41					
Petawawa	30-10 41	Spr	2	A.W.L. from 2000 hrs 30-10-41 until 0630 hrs 1-11-41	Sgt.Eckhardt Sgt.McLaughlin	7 days C.B	1-11-41	T.S.Graham Major	Forfeits 2 days pay, FR&I 149(1)(a
Aldershot	21-6-42	Spr.		A.W.L. from 1700 hrs 21-6-42 until 1430 hrs 22-6-42	Cpl.Fullen Cpl.Boyd	7 days C.B.	23-6-42	J.B.Jones Major	Forfeits 1 days pay, FR&I 149(1)a
Field	12 Sep 42	Spr.		A.W.L. from 1700 hrs 12 Sep 42 to 1500 hrs 5 Oct 42(Abs 22 days 22 hrs) - AA Sec 15(1)	Documentary	6 mos Det'n	10 Oct 42 Confirmed 16 Oct 42	Field General Court-Martial.	Forfeits 23 days under FR&I.149

RELEASED FROM CANADIAN DETENTION BARRACKS on DEC 24 1942 - SENTENCE SUSPENDED BY SENIOR AUTHORITY.

(PTO)

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F&CM	Field 10 OCT 42	AWL from 1700 hrs 12 SEP 42 to 1500 hrs 5 OCT 42(Abs 22 days 22 hrs)-AA 15(1)	6 months detention	Remitted 3½ months.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 2nd day of February, 1945

(H.S. Brown) Capt & Adjt
4 Cdn Fd [illegible]

Ex B

ARMY FORM B.296 (WAR). 14

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M-54552	Spr.	Robert DUFFIN	4 Cdn Fd Coy RCE

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL ..... 7 times.

For AA 40 ..... 5 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet I NOV 41

Date of last entry in Field Conduct Sheet I6 DEC 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

N/A *3. The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for I3 days in military custody, *i.e.*, NIL days in open arrest, I3 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 34

6. The date of his ~~xxxxxxxxxxxxxxxxxxxx~~ attestation is I2 FEB 4I

N/A 7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of† CVSM & Clasp

†State the military decorations (if any) held by accused.

N/A 9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

Wt 55956/1602 50,000 8/44 61-4751. Forms/B.296/War/7

The accused declines to cross-examine the witness.

Third Witness.

I am G15088 H Cpl Thorne, Wh. of No 8 sec. In the late afternoon of 19 Jan. the accused came in the section quarters. I could see that he had been drinking. I went out of the house and saw no disturbance at that time.

The next time I saw ~~[illegible]~~ the accused was about 0300 hrs 20 Jan. He came in the room, pretty well drunk, and ~~told every~~ hollered "Shut up or I'll beat up the whole bunch of you." He did not strike anybody. Shortly after, he must have gone to sleep, as I heard no more until Spr Delamath was trying to wake him up at about 0500 hrs.

Question: Did you see the accused strike anyone, or threaten anyone with arms, during the whole of this unpleasantness from the afternoon of the 19th

No.

Lt Wm Frame Wh L.

Cus

The accused declines to cross-examine the witness

The accused is asked: "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing,

The accused declines to make a statement

Taken down by me in writing this 25 day of January 1945.

Certified R.P. 4(c)(d)(e) & (f) have been complied with

[illegible] Brown Capt

got up and attempted to arouse the accused but failed to do so, because he was "passed out". I then took his guard. At 0700 hrs I told the boys to let him sleep. At approx ~~P~~ 0800 hrs, I came in and found the accused up. I ~~told him~~ placed him under open arrest. He then said "Since I'm under charge, I might as well make it a good charge". He threatened to fight me, but I talked him out of it.

The accused declines to cross examine the ~~Question~~ witness.

Question: At 1630 hrs, 14 Jan, was the accused drunk?

Ans: No, but I could see that he had been imbibing.

Question: Did you see the accused strike Spr. Grafton?

Ans: I did not see the start, but I saw them sparring around.

Question: About 1630 hrs 14 Jan, and during the ~~subs~~ subsequent guard, in what manner was the accused threatening?

Ans: He did not lay hands on me, but he threatened to "get" me, and "get" my "books". He recalled a previous charge I had made against him.

[signature]

2nd Witness:

I am ~~S~~ C 2203 Spr Grafton, wt., of No 2 platoon. Sgt Atherton and I arrived with ration about 1600 hrs. The accused and I got into an argument and exchanged blows. I grabbed a chair and threatened to hit the accused with it if he didn't stop bothering me. Shortly afterwards, Sgt. Atherton and I ~~returned~~ went away in the truck.

Question: What was the accused's condition?

Ans: I didn't see him drinking. At first he was orderly, but he took a grievance at me, and became unruly. W.E. Grafton [signature]

The Summary of Evidence in the Case of Ex "A" [illegible]
M 54552 Spr ROBERT DUFFIN

The Commanding Officer directs that the evidence be taken under oath.

1st Witness.

I am K 29340 Cpl Neff, J. B., sec cmd of No. 8 Sec, No 2 pl, and ~~sec~~ the accused's sec cmd.

On the 19th Jan 45, my sec took over the VERMINION bridge guard. Our wood supply was low, and the accused offered to gather wood. That was at about 1300 hrs. He returned at approx 1600 hrs, in a fighting mood, and just prior to going on ~~the~~ his guard at 1630 hrs, the rates touch arrived, with Spr Grafton & Sgt Atherton. While I was talking to Sgt. Atherton, a fight started between the accused & Spr Grafton. I tried to separate them, and got them to go outside. ~~[illegible]~~ Spr. MacElroy persuaded the accused to stop. ~~[illegible]~~ Shortly after, I asked the accused if he was ready to take over his post at guard. He replied that he had arranged for another sapper to do his guard. I told him that each man must do his own guard. He argued ~~the~~ with ~~one~~ about this, and finally I told him to either take his post or refuse. He went to his post, voicing threats, & continued to voice threats from the bridge which was nearby.

About 0330 hrs 20 Jan 45, I was awakened by noises from the room below, and I recognized the accused's voice and judged him to be under the influence of liquor. He was threatening everyone. Eventually everything quietened down. Next, I was awakened by Spr Delamont, shortly after 0500 hrs. He reported that he was unable to arouse the accused for his turn at guard. I then [illegible]

4 ST. character witness for the defence E=1
B.- 2837 L/Sgt. Henderson, K. M. sworn
states:-

I have known Spr. Duffin since he came to this unit and I have formed him to be a very willing and able worker. I have known him since before the Hitler Line - about eight months.

RP. 83 (B) complied with.



B-2

Statement of the accused M 54552
Spr. Duffin, R. :—

I joined the army 12 Feb 41, and I had a common law wife at that time. There were some difficulties arose as to whether she was entitled to dependents allowance, so I had an interview with a legal adviser. I explained the case to him and with his knowledge of army routine, he informed me that my common law wife was entitled to dependents allowance. Since then there has been a good deal of trouble getting it there, and finally the allowance was cut off. I made representations to me, present OC and the OC previous to him. I received no information and could get no satisfaction or understanding as to why it should be cut off. Until two nites ago Lieut. Reesor must have seen the OC concerning the problem, and told me that the OC gave as his reason for the allowance being cut off was because she was working. This problem has been on my mind and has given me no chance to settle down.

B2

JFA

MEDICAL CERTIFCATE

I certify that I have today examined

M 54552 Spr. Duffin R. 4 Con Fd Coy RCE

and that he is ...fit.....

to undergo trial by court-martial.

Date.. 2 Feb 45

G. Dendenaud & Capt
.....
Signature of Medical Officer

FIELD GENERAL COURT-MARTIAL

CFA93 (In lieu of AFA3)
4/PA&N/1607 (2003)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
M-54552	Sapper	Robert	DUFFIN	4 Cdn Fd Coy, R.C.E.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 29 JAN 45 endorsed by me, [redacted] "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [redacted]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.G. Archibald	5 Cdn LAA Bty, R.C.A.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt.	D. O'C. Byng-Hall	2 Cdn Fd Pk Coy, R.C.E.
Lieut.	J.S. Osborne	HQ RCE 1 Cdn Inf Div

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut.	To be detailed by O.C. 4 Cdn Fd Coy, R.C.E.	
[redacted]		
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY
(Country.)

(Signed personally. RP 105 fn 2.) Lieut. Col (Rank.)

Date 29 JAN 45

Commanding C.R.E. 1 Cdn. Div.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 *Jan* 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 85(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP* 90(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(B)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 563(*a*).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA* 163 (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML p* 789.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

CHARGE SHEET

The accused No.M-54552 Spr Robert DUFFIN, 4th Field Company, Royal Canadian Engineers, a soldier of the Canadian Army Overseas(CMF) on active service, is charged with:

C H A R G E
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, in Italy, at approx 0500 hrs 20 JAN 45, was unfit for duty by reason of previous indulgence in alcoholic stimulants.

In the Fd
27 JAN 45

(C.F.Gray)Major
Officer Commanding,
4 Cdn Fd Coy RCE

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

(E.M.Webb)Lt-Col RCE
CRE I Cdn Div

In the Fd
29 JAN 45

1pm
26 Jan 45

10/D/354.

266.

Pte. A.E. Duffy.

Hast. 4 P.E.R.

C.4108 Pte. Duffy. A.E.

This is to certify that the m/n is physically fit to undergo trial by Field General Court Martial.

Date 4 Feb. 1941.

.....Captain.
M.O.
The Hast. & P.E. Reg't, CASF.

10

C.4108 Pte. Duffy. A.E.

This is to certify that the m/n is physically fit to undergo trial by Field General Court Martial.

Date 4 Feb. 1941.

F. J. Angus ..... Captain.
M.O.
The Hast. & P.E. Reg't, CASF.

Bn. Orderly Room,
Hast. & P.E.R.

11

24 Feb. 41.

N/G.

COURT-MARTIAL
C.4106 Pte. Duffy, A.E.

This is to certify that the m/n soldier is physically fit to undergo trial by F.G.C.M.

F. J. Argue Capt
.....
(F.J. Argue) Medical Officer.

MS

Bn. Orderly Room,
Hast. & P.E.A.

12

24 Feb. 41.

M/G.

COURT-MARTIAL
G.4100 Pte. Duffy, A.E.

This is to certify that the m/n soldier is physically fit to undergo trial by F.G.C.M.

P.J. Argue Capt.
(P.J. Argue) Medical Officer.

Bn. Orderly Room,
Hast. & P.E.R.

13

N/K.

10/Mar. 41

Court Martial
C.4108 Pte. Duffy. A.E.

This is to certify that the m/n soldier is physically fit to undergo trial by F.G.C.M.

F.J. Argue Capt.
(F.J. Argue) Medical Officer.

1165

(1)

CHARGE SHEET

The accused C.4108 Pte. Duffy, A.E. a soldier of the Hastings & Prince Edward Regiment, C.A.S.F. is charged with:

FIRST CHARGE
AA B(2)

W.C.A.S. using threatening language to his Superior Officer in that he at Wynthurst Manor at about 0045 hrs. on 14 Jan. 41 said to Lieut. Morgan - "Get out of bed and come out side and I'll show you whether you can place me under close arrest or not".

SECOND CHARGE
AA B(2)

W.C.A.S. using insubordinate language to his Superior Officer in that he at Wynthurst Manor at about 0045 hrs. 14 Jan 41 said to Lieut. Morgan "Go fuck yourself".

ALTERNATIVE CHARGE
AA Sec Ao

W.C.A.S. conduct to the prejudice of good order and Military Discipline in that he at Wynthurst Manor at about 0045 hrs. 14 Jan. 41 said to Lieut. Morgan "Get out of bed and come out side and I'll show you whether you can place me under close arrest or not", at the same time saying "Go fuck yourself".

B.A. Sutcliffe

(B.A. Sutcliffe) Major,
A/O.C.
The Hastings & Prince Edward Regiment, CASF.

In the Field
23 January 41.

Proceedings of F.G.C.M. in the case of C4108 PTE. DUFFY, A.E., of the Hastings and Prince Edward Regiment. Court assembled at "Woodlands", Woodlands Way, Kingswood, Surrey on the 4th February 41.

Court is convened accordingly and the accused brought in to stand trial.

The Order convening the Court is read to the accused.

The accused was then questioned by the President of the Court.

Q. Have you any objections to the Order convening this Court, which you have just heard read?
A. No Sir.

Q. Do you object being tried by me as President of this Court or to any other members of the Court, whose names you have heard read out to you?
A. No Sir.

All members of the Court, including the waiting member and stenographer are duly sworn in; there being no objection by the accused that the waiting member be present at the trial.

The two charges and also the alternative charge is read out to the accused by the President of the Court.

The accused was then questioned by the President of the Court.

Q. On this first charge, which you have just heard read against you, do you plead guilty or not guilty?
A. I plead "not guilty" Sir, due to extenuated evidence.

Q. On the second charge against you, which you have just heard read out to you, do you plead guilty or not guilty?
A. I plead "not guilty" Sir.

Q. On the alternative charge against you, which you have just heard read out to you, do you plead guilty or not guilty?
A. I plead "not guilty" Sir.

At this point, the President of the Court stressed the fact to the accused that in the case of extenduating evidence on the first charge he, the accused, would either have to plead "guilty" or "not guilty", if the case was to proceed; otherwise adjourn until such times as the evidence can be produced.

Q. Do you wish to apply for an adjournment on the grounds of extenuated evidence?
A. No Sir. I am satisfied to proceed with the trial.

The accused, Private Duffy, elected to do without the services of a defending officer and was allowed to proceed in his own defence.

The accused wished to be tried on all three charges concurrently.

The Prosecuting Officer, Capt. L. Bethery, Hastings and Prince Edward Regiment didn't care to make an opening address and with permission of the Court, proceeded to examine the 1st. witness.

1st. Witness

Lieut. J. E. Morgan, of the Hastings and Prince Edward Regiment, is duly sworn, after which is questioned by the prosecutor.

Q. You are Lieut. J. E. Morgan, of the Hastings and Prince Edward Regiment?
A. Yes Sir.

KLS

Q. You are a platoon commander of No. 4 platoon of this Regiment?
A. Yes Sir.

Q. Do you know the accused to be No. C4108 Pte. Duffy, A.E. of this Regiment?
A. Yes Sir, I do.

Q. Now Pte. Duffy is charged with using threatening and insubordinate language to a superior officer on the 14th January 1941 and also conduct to the prejudice of good order and military discipline etc. on the same day. What, if anything, do you know about this case relating to these charges?
A. On the morning of January 14th., 1941, at about fifteen minutes after twelve, I, being orderly officer that night, heard a lot of hollering and shouting, etc., downstairs in the main hall. I went downstairs and investigated the matter. A number of troops were coming home from a dance. I noticed Private Duffy running about the hall, shouting and hollering about his greatcoat and his cap. I didn't say anything at the time. He continued to make a noise and because noisier, I then told the Guard Commander, Sergeant Stormer to place this man under close arrest, which he did. Later on I went back to the Orderly Room and went back to bed. Approximately half-an-hour elapsed when Private Duffy came into the room, switched on the lights, grabbed me by the feet and said, "I'm looking for Mr. Morgan". I said, "Thats me". The accused said, "Well, I want to know why I was placed under close arrest". I said to him, "For creating a disturbance". He then said, "If you get up and come outside, I'll show you whether you can put me under close arrest or not". I told him then to get out. He started to go up the second flight of stairs and he hollered, "I'd like to talk this thing over" and then said, "You go fuck yourself".

Question by Prosecuting Officer:

Q. How far was he away from you when he said this to you?
A. About from here to that wall. (about twelve or ten feet).

Lieut. Morgan continued:

When I heard that remark, I turned around and he said to me again, "Go fuck yourself". Before that time, Sergeant Stormer came out of his room which is under the first flight of stairs. It was somewhat of a struggle in getting this man upstairs and I noticed that a railing in the banister had been kicked out.

Question by Prosecuting Officer:

Q. How do you account for this railing being kicked out?
A. It was behind the two men that were escorting Duffy.

Q. Was anybody notified in connection with this disturbance?
A. I went by the Battalion Headquarters Detention and told them to send over an R.P. (regimental policeman), which they did.

Prosecutor finished examining the 1st. witness.

President of the Court questioned the accused:

Q. Do you wish to cross-examine the 1st. witness, Lieut. J.B. Morgan?
A. Yes Sir, I do.

Accused questions Lieut. J. B. Morgan, 1st. witness:

Q. Mr. Morgan, you admit that on the night of 14th January 1941 you placed me under close arrest?
A. Yes.

Q. What was the nature of the disturbance down in the hall that made

Q. (cont'd).

you think that I should be placed under close arrest?
A. You were shouting and hollering, etc. and continued to do so.

Q. You knew that my greatcoat and respirator had been stolen?
A. That is what you were making the noise about.

Q. At the time of my arrest, did I see you and did I come in contact with you?
A. That I don't know. I seen you.

Q. There were quite a number of fellows coming in the door with me wasn't there?
A. Yes, there were.

Q. At the time of my arrest, where did you have the two guards take me?
A. I did not have them take you any place. I told the guard commander to put you under close arrest. Where you are put is up to him.

Q. Are you aware of the fact that the guards took me up to my room?
A. Yes.

Q. When I went into the Orderly Room and asked for you, you said, "I'm right here". You then said that I was put under close arrest for being drunk and disorderly?
A. No.

Accused: "But you stated so in your summary of evidence?"

Q. Mr. Morgan, did you say, "for being drunk and disorderly" or "creating a disturbance after tattoo"?
A. For creating a disturbance. You had a midnight pass.

Q. The only crime then was just "creating a disturbance"?

This question was ruled out by the Court.

Q. How many times did you state that I said to you, "Go fuck yourself"?
A. Twice.

Q. Where was Sergeant Storner at the time when I said to you, "Go fuck yourself"?
A. He was right at the foot of the stairs that you were going up.

Q. I started up the stairs and went to my room and you say I kicked out the banister?
A. I said the banister was kicked out but I didn't say you did it.

Q. Did I object to the two guards for taking me up to my room?
A. That I couldn't say.

Q. I never said anything more to you after I started up the stairs?
A. Not that I know of.

Q. Was it not possible that the banister had been kicked out by one of the guards escorting me up to my room?
A. It might have been you or one of the guards.

Accused to the President:

That is all Sir.

Prosecuter questions 1st. Witness, Lieut. J.S.Morgan:

Q. At the time Private Duffy came into the Orderly Room, was he in such a condition as to say he was staggering?
A. No sir, he was not staggering.

JCS

The prosecutor calls on the 2nd. witness, Sgt. Cornish, A.E.

2nd Witness:

Sgt. A. E. Cornish, after having been duly sworn, is questioned by the prosecuting officer.

Q. You are Sergeant A. E. Cornish of the Hastings and Prince Edward Regiment?
A. Yes Sir.

Q. I understand that you are in charge of the regimental police of this unit?
A. Yes Sir.

Q. Do you know the accused, Pte. Duffy?
A. Yes Sir, I do.

Q. Pte. Duffy is charged with using threatening language to a superior officer. What, if anything, do you know about this case, relative to this charge?
A. As regards to this charge, on the 14th January 1941 at 0145 hrs. I received instructions to proceed to Headquarters, which I did. I found the guard commander and asked him where the man was he said was to be placed under close arrest. He said he was in the barrack room asleep. We proceeded to the barrack room and I awakened Private Duffy and told him that he was under close arrest. He immediately got up out of bed, put on his clothes and I took him back over to the Battalion Headquarters Detention Room, as instructed.

Prosecutor questions the 2nd witness:

Q. Did you have any conversation with Private Duffy at that time?
A. No Sir, just casual talk. No conversation relating to this trial.

President of the Court questions the accused:

Q. Do you wish to cross-examine this witness?
A. Yes Sir.

Accused questions Sergeant Cornish:

Q. Where did you find me when you came to arrest me?
A. Right in bed.

Q. During my conversation with you, when we were going from Headquarters to the Battalion Headquarters Detention Room, did you notice that I was intoxicated and not in a sensible frame of mind?
A. Well, I wouldn't state you were. You had been drinking but you knew what you were saying.

President of the Court desires no further information from this witness.

Prosecutor to the Court:

I have only one other witness, Sgt. Storey, who is at present in the hospital.

President of the Court: adjourned the court at 1106 hrs. 4 February 1941, awaiting further evidence for the Prosecution.

HCS

E.

5 a

The Court re-assembled at 1430 hrs, 24 Feb. 41 for the trial of Pte Duffy (the delay being caused by the absence on leave of the Prosecuting Officer and one Member of the F. G. C. M.).

The court was of the opinion that the accused should be released from Close Arrest until such time as Sjt. Storms was fit to appear before the court and that higher authority be asked for permission to release Pte. Duffy.

The court adjourned at 1445 hrs., 24 Feb. 41.

MC

Evidence at F.G.C.M. in the case of Pte. Duffy, A.E. C4108, 10 Mar 41

Court reassembled at 1010 hrs., 10 Mar 41

Major Abrahams assumed charge of prosecuting officer vice Capt. Nethery, transferred to C.M.H.Q.

President: Have you any witnesses,

Prosecution: None

President: We assume prosecution closed.

Prosecution: Yes.

President: Do you wish to give evidence in your own behalf.

Defendent: I have planned a defence. Can that be used as evidence.

President: You may have any one in your defence. If you give evidence you will be subject to cross examination.

Defendent: I wish to give evidence as a witness.

President: Have you any other witnesses.

Defendent: I have my platoon commander as a witness. I would appreciate permission to read my evidence.

President: Go ahead.

Defendent: Here follows evidence given by Pte. Duffy, J., C4408

Defendent: Please read paragraph 490 of K.R.O.

President: Do you intend to call any other witness.

Defendent: No

Prosecution: I have the right to question the witness?

President: Yes.

Prosecution: Two questions. You say that you did not hear Mr. Morgan. I think that you said "go fuck yourself" or "you heard me".

Defendent: Which stairs did you go up.

Defendent: The front stairs.

Prosecution: If the court will take the geography of Headquarters Company billets into account, the back stairs is away from the Orderly Room and I admit anyone on the back stairs couldn't be heard from the Orderly Room door. If you went up the front stairs how far are you from the Orderly Room door.

Defendent: About 3 paces.

Prosecution: You admit you said "You heard me"

Defendent: Yes.

Prosecution: You knew it was Mr. Morgan.

Defendent: I was under the influence of liquor and in a confused state of mind. I couldn't distinguish voices.

Prosecution: That is all.

Evidence given by accused NS 5 & C

PLEA- - Not guilty due to extenuating circumstances.

First of all Sir, I wish to prove to you that at the time of my arrest I was under the influence of liquor. Proof of this is contained in the fact that at the time of my arrest for using threatening language and insubordination (the charges that I am now being tried on) I was also charged with drunkenness and since that time have been taken up, found guilty and punished with a fine of $10.00 by the C.O. of my regiment. May I repeat again that at the same time as I was charged with the crimes that I am now being brought up on, I was also charged with drunkenness, have been taken up, found guilty and punished. Therefore my guilt of drunkenness at the time of committing these crimes cannot be disputed. In spite of this fact I was brought up on the charge of insubordination and using threatening language which according to Art. 47 Chapter 111 of M.M.L. is the improper charge. In this article it states "that mere abusive and violent language used by a drunken man as a result of being taken into custody should not be used as a grounds for framing a charge of using threatening and insubordinate language to a superior officer." Therefore it would seem that the charges against me were improperly laid. ~~Now with your permission, would like to have Mr Morgan take the~~

NS.

As to Mr Morgans' statement that I said to him "Go fuck yourself" Mr Morgan admits that at the time this statement was made he was standing in the Orderly Room door, whereas I was going upstairs which would necessitate my back being towards him and also my escort was between Mr Morgan and myself. Besides this from the relative position of the Orderly Room door to the stairs, it would be very difficult for anyone to even see a person going up the stairs from the door. Is it not possible Sir that this statement was not made directly to Mr Morgan but merely as an expression of disgust because on being asked to repeat it by Mr Morgan I did not do so showing that it was not meant with the actual intentions of insubordination.

May I now refer you Sir to Art. 451 of K.R.& O which deals with the proper procedure of placing a private soldier under close arrest. It states that when a private soldier is placed under close arrest, he will be placed in the barrack guard room, all weapons etc. taken from him, or if this is not possible, should be placed under guard. In my case Sir this was not done as is shown in the summary of evidence which you have in your possession. The procedure that was used in placing me under close arrest was by being escorted to my room by two guards who informed me that I had been placed under close arrest for creating a disturbance after tatoo. At this point they left me at my liberty to wander around the barracks. It is not my intention Sir, of bringing this evidence forward merely to show someone elses mistake, but to show the court that every opportunity was afforded me of going to Mr Morgan or any other superior officer and bringing upon myself the more serious offense, while under the influence of liquor, whereas if I had been placed under guard or in the detention room which was the proper method, it would have been impossible for me to come in contact with Mr Morgan while drunk and therefore would not have subjected myself to the charges for which I am being tried today.

NS

President: You have heard all the witnesses, we can hear your summing up of evidence. We can hear Mr. Davidson on his behalf later. Do you wish to go ahead with summing up.

Prosecution: Yes. This charge is laid under A.A. 8 (2) I submit that the evidence shows that the accused did in fact use threatening language to a superior officer.

In Note (3) to A.A. 8 it states that the court should be satisfied that the accused knew the person with respect to whom the offence was committed to be a superior officer.

In Note (5) to this section it states that the words used must be with insubordinate intent, I submit that they were in that Mr. Morgan was Duty Officer on duty at the time and had issued an order that was disobeyed and insubordinate language used to further aggravate.

If by his defence the accused would have the court think that the words used were not intended to be overheard, and thus seek to nullify the offence, the evidence shows that the words were used once, and either used a second time, or the words "you heard me" were used in such a manner that there can be no doubt that the accused intended them to be heard by the officer concerned.

The accusedmay say that under Chapter 3 Sec. 47 he used the language complained of while drunk and therefore there were no grounds for C.M. charge, however Sec. 48 states that it is a principal of English law, that drunkeness is no excuse for crime, also Lt. Morgan, who in his former civil avocation was connected with the police and is well qualified to judge whether a man is drunk or not, states, that the accused was not so far under the influence of drink that he was incapable knowing what he was doing or saying. Further if the accused were to be let off lightly because it was considered that he was to any degree under the influence of liquor, the a precedent would be established by which any soldier, who planned to be insubordinate in any way to any officer would only have to go out and get drunk, then commit the offence, and escape punishment because he had the forethought or cunning to get intoxicated before commiting an offence.

The accused also tried to convince the court that as under Chapter 5, Sec. 71 the language used was a mere expletive thrown out in a moment of irritation, but I submit that the summary of evidence shows that it was a planned thing, that the accused may have drunk too much to start with, that the putting him under a restraint sobered him up and then as he thought about it, he suffered from a persecution complex, the more he thought about it the more angry he became and worked himself up to such a pitch that he came out of his room and went into the orderly room for the express purpose of having it out with Mr. Morgan, and when the officer rightly refused to discuss the matter uhtil morning he became more angry, and deliberately offered insult by the way of threatening and insubordinate language, because he had been frustrated in his desire to convince

HKS

5a

the officer that he shoud not be under arrest.

The accused states he wasn't placed under arrest properly but I submit that it has no bearing on the fact that all he had to do was to submit to arrest and when he was brought up before Major Sutcliffe, acting Commanding Officer of this regiment, he could have complained. His evidence doesn't show he made any complaint of being placed under arrest by wrong procedure.

President: You may make a statement in reply. Have you anything to say.

Defendent: Yes.

President: You may bring in no fresh evidence.

Defendent: He states that there was a minor article of wrong procedure the reason was that I was drunk and disorderly. Mr. Morgan naturally laid the charge. I came up under three charges of drunk and disorderly and I was given a fine of ten dollars which I think leaves no loop hole in the fact that I was drunk

Mr. Morgan said I was under close arrest which I was later, but he let me go up to my room while I was still under the influence of liquor. I lay on my bed and smoked a cigarett and wondered why I was placed under arrest. The guards didn't stay with me.

President: Can you clear up this point? HLS

Prosecution: Due to the fact that the companies are in billets it is difficult to find proper space for a detention barracks in each company area.

Defendent: There is a guard room convenient to the billets. Up to that time I had only committed one crime. If they had used the proper procedure I wouldn't be here before you to-day. As it is I have been under detention for 55 days scrubbing floors and suffering that humiliation. I feel that I am right and not responsible directly and wouldn't be before you to-day if the proper procedure had been used.

President: Have you anything to add HLS

Prosecution: Two observations. The officer concerned may have and did think he was giving the accused a chance in not putting him under arrest on account of his former convictions. The accused states that he lay on his bed smoking and thinking which merely proves that he planned to go down and have it out with Mr. Morgan and he perhaps had a persecution complex.

I do not think that liberty is any excuse to commit the offence.

President: The court will be cleared.

President: The court will assemble

President: Have the statement as to character and particulars of service of the accused.

The following statement of character and particulars of service was read by the Adjutant of the Hastings and Prince Edward Regiment, Capt. C.S. Nickle.

HLS

Army Form B296.

5 f.

STATEMENT as to CHARACTER and PARTICULARS of SERVICE of ACCUSED.

C.4108 Pte. Duffy, A.E. Mast. & P.E.R. CASF.
..... of the .....

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:-

	Within last 12 months.	Since Enlistment.
Drunkness	two	three
For	times	..... times.
A.W.L.	three	three
For	times	..... times.
Insolence	once	once
For	times	..... times.
For	times	..... times.

Number of instances of gallantry or distinguished conduct, Nil

2. The accused has not been previously convicted,

or

Previous convictions of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 77 of the Army Act, are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

4. The accused has been in confinement, awaiting trial on the present charges

for no ..... days in Civil Custody,

and .....55.....44..... days in Military Custody. (4 Jan 41)

Total .....55.....44..... days.

Of which no ..... days were spent in hospital.

5. The present age of the accused according to his record of service ~~attestation paper~~ is 22 years. (22 Nov.)

6. The date of his attestation specified in his record of service ~~attestation paper~~ is .4.Sept.39.....

P.T.O.

14

7. The accused is entitled to deferred pay or gratuity in respect of .....one..... years' service.

8. The accused is entitled to reckon .....one..... years' service for the purpose of determining his pension, etc.

9. The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ....., signed by the president, and annexed to the proceedings.

This is to certify that this is a true copy of extracts synopsized from the regimental records in my charge.

.....Captain,
Officer i/c regimental records.
The Hastings & Prince Edward Reg't, CASF.

President: Call Lieut Davidson. The accused has called you to give evidence as to his character. 5g

Evidence of witness for defence: Lieut R.L. Davidson, Platoon Commander, No. 2 Pl. Hast. & P.E.R. states:

I took over No. 2 Platoon on December 24 and before that of course I didn't know Pte. Duffy as I came from "A" Coy.

I have found Pte. Duffy always willing to take an order promptly, his appearance is always the best and he has been a very good soldier. That is all, Sir.

Plea in Mitigation

Defendent: On the 14th of January, in the morning, at 0200 hrs I was placed in detention and 2 days later I was brought up. I was convicted on one charge and remmanded for an F.G.C.M. on the other two.

Since that time, Sir, I have spent 55 days in detention. That report says 53 but I think it is 55. I have gone through the humiliation of being detention. It isn't very nice having to scrub floors and so on and I feel that I have suffered enough for any crime that I have committed.

President: Had the accused and escort marched out, ~~and dismissed~~ RS

RS

Summary of Evidence in the case of C.4108 Pte. Duffy, A.E. the Hastings & Prince Edward Reg't C.A.S.F. 6

By direction of the Commanding Officer this summary of evidence is taken on oath.

First Charge
1st. Witness for the Prosecution

Lieut. J.B. Morgan, Pln. Comdr. No. 4 Pln. Hast. & P.E. Reg't having been duly sworn states:

I am Pln. Comdr. No. 4 Pln. Hast. & P.E. Reg't.
At Wynthurst Manor on the morning of 14 Jan. 41 at approximately 0045 hrs. Pte. Duffy burst into the H.Q. Coy. Orderly Room, turned on the light, took a hold of the end of the bed apparently thinking that I was asleep, and he was going to wake me up, saying that he was looking for Mr. Morgan. I said, "What's me right here". "Why did you come in here in this manner"? Pte. Duffy said, "I want to know why I was put under close arrest". I said "For being drunk and disorderly, now get out of here and get back upstairs to bed". Pte. Duffy said "Come outside and I'll show you whether you can put me under close arrest or not". "I will not go to bed until I've got this straightened out". I said "I am not talking to you to-night - go to bed. I will deal with this in the morning". By this time we were at the door of the Orderly Room, where Pte. Duffy started to argue. I told him once more to get upstairs to bed. Pte. Duffy then said "You go fuck yourself". He had started up the stairs to his room. Having evidently made this remark behind my back which I overheard, I asked him again "What was that you said"? Pte. Duffy said, "You heard me, go fuck yourself". At this time Sgt. Strobe appeared at the top of the stairs with two men, so I told him to take Pte. Duffy upstairs and to keep him quiet, which they did, but on the way up he kicked out a railing in the bannister and was very noisy, doing a lot of shouting and talking and continued to do so until the Regt'l Police arrived.

Q.1. Did the Regt'l Police take Pte. Duffy to Bn. H.Q. Guard Room then?
A.1. Yes, they did.
Q.2. What time was it when the Police took Pte. Duffy?
A.2. About 0130 hrs. but I don't know for sure if it was Pte. Duffy who made the noise that was going on after he went upstairs.

The accused cross-examines the witnesses.

Q.3. Sir, How many times did I tell you to go and fuck yourself?
A.3. Twice.
Q.4. Sir, Would you say I was intoxicated beyond reasoning at the time I was put under close arrest and during my conversation with you?
A.4. At the time he was put under close arrest, he was put under arrest for creating a disturbance after tatoo. At the time of our conversation I noticed that he had been drinking but in my opinion he was not drunk beyond reasoning.
Q.5. Did I tell you to go fuck yourself while you were down at the first landing?
A.5. No.
Q.6. Where was it?
A.6. I was standing in the door of H.Q. Orderly Room.
Q.7. Did I not say to you, when you asked me, after you had descended the first flight of stairs, "What did I say?
A.7. No.
Q.8. I said, "You heard me" but I did not repeat "go and fuck yourself, at least not to my knowledge.
A.8. Pte. Duffy did say "go fuck yourself".
Q.9. Do you remember the exact position that I was in upon being escorted up the stairs on the way to my room?
A.9. No.
Q.10 Do you say that I kicked that railing out of the bannister intentionally?
A.10 No.
Q.11 Do you know definitely if I was the cause of the disturbance, after being escorted to my room?
A.11 No.

J.B. Morgan (Lieut.)

2nd. Witness for the Prosecution

Sgt. A. Storms. A/C.S.M. of H.Q. Coy. Hast. & P.E. Regt. having been duly sworn, states:

I am the Acting Coy. Sgt-Major of H.Q. Coy.
At Mynthurst Manor on the morning January the fourteenth I heard a disturbance in the hallway. I came out of my room and Mr. Morgan was standing at the H.Q. Coy. Orderly Room door, and Pte. Duffy was part way up the stairs. I heard Pte. Duffy say "Go fuck yourself" and Mr. Morgan said "What was that you said" and Pte. Duffy said "You heard me."

Q.12 Did you hear Pte. Duffy tell Lieut. Morgan to go and fuck yourself - once or twice?
A.12 Once.

The accused cross-examines the witness.

Q.13 Where was Mr. Morgan and myself standing, when you appeared on the scene?
A.13 Mr. Morgan was standing at the Orderly Room door and Pte. Duffy had started up the stairs but I couldn't swear how many steps.
Q.14 Was it then that you heard me tell Mr. Morgan to go and fuck himself?
A.14 Yes.
Q.15 When Mr. Morgan asked me to repeat myself after he had left the Orderly Room door, did I say "You heard me", or did I say "You heard me go fuck yourself?
A.15 I am only prepared to swear that I heard Pte. Duffy say it the once.
Q.16 Did I make any unnecessary noise outside of conversing with the guards while ascending to my room?
A.16 Loud talking to the guards.
Q.17 Was I threatening to resist being put to bed while talking to the guards, or was I discussing with them about my respirator, greatcoat, soft cap being stolen at the dance from which I had just come home, or insulting Mr. Morgan - the guards or yourself?
A.17 I turned to go in my room, so I don't remember.
Q.18 Did you hear or see Pte. Duffy kick out the railing?
A.18 I heard someone kick the railing but I didn't see Pte. Duffy do it.

Sgt A Storms
Sgt. Storms, A.

3rd. Witness for the Prosecution.

Sgt. A.E. Cornish, Regt'l Provost Sgt, Hast. & P.E. Regt., having been duly sworn, states:

I am the Sgt. in charge of the Regt'l Police of the Hast. & P.E. Regt. At Ravensleigh, Bn. H.Q. I received a message on the morning of the 14-1-41 at about 0125 hrs. to say that there was a disturbance at H.Q. Coy. Myself and two of my men proceeded to H.Q. Coy. by truck. I arrived at H.Q. at about 0215 hrs. I am not very sure of the exact time. I met the Sgt. of the Guard, asked him what was the matter, he told me Mr. Morgan had placed Pte. Duffy under close arrest. Upon asking him where Pte. Duffy was he said he was in bed, sleeping. I proceeded to Pte. Duffy's room and woke him up. He asked me if he was under close arrest and I told him "Yes". He got right up out of bed, dressed himself, and we proceeded to Bn. H.Q. where I locked him up in detention

Pte. Duffy cross-examines the witness.

Q.19 Did I make any resistance or threats of not going along with you after awakening me and on our way to the detention room at Bn. H. Q.?
A.19 No.

AE Cornish
Sgt. A.E. Cornish. (H.P.E.)

The accused No. C.4108 Pte. Duffy, A.W. the Hast. & P.E.R. reserves his defence.

(9)

CERTIFICATE IN ACCORDANCE WITH R.P. 14 (B)

I, C.4108 Pte. A.E. Duffy, Hastings & Prince Edward Regiment wish to have an officer assigned to represent me at the trial, and request that Lt. R.L. Davidson of the Hastings & Prince Edward Regiment be so assigned if he is available.

A.E. Duffy

MC

8

Certified that Rule of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

Taken down by me in the presence of and in the hearing of the accused this 16th day of January 1941 at In the Field.

.....

Lieut. W.H. Seamark.

The Court is of the opinion that the punishment of 60 days Detention should be awarded in view of the length of time the accused has been in arrest awaiting trial, and in view of the circumstances under which the accused was placed in close arrest which permitted him to commit the offences.

D. C. Spry, Maj
Pres. F.G.C.M.

10 March 41.

45

M Mathieson 6-4-1/93
93

233

Correspondence to be PINNED here.

THE HAST. & P.E.R.	
RECEIVED 1 JUL 24/44	
ADJT.	
2 i/c	
C.O.	

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 26th day of January, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[~~I am unable to appoint~~ :—

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~*(3. Three Officers having more than one year's service.)~~

for the following reasons, namely :—]

President.

Rank.	Name.	Regiment.
Major	D.C. Spry	R.C.R.

Members.

Rank.	Name.	Regiment.
Capt.	J.E.W. Wright	48th Highlanders
Lieut.	J.C. Allison	Hast. & P.E.R.
Lieut.	E. McIntyre	R.C.R.

* Must be Wait: signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed G.R. Pearkes

(G.R. PEARKES) Major-General,

Commanding C.O.C. 1st Canadian Division.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C.4108 Pte., DUFFY, A.E., Hast. & P.E.R.	See Charge Sheet attached.			
	1st Charge A.A. 8(2) GH	Not guilty MS	Guilty MS	NOT Confirmed GH
	2nd Charge A.A. 8(2) GH	Not guilty MS	Guilty MS	NOT Confirmed GH
	3rd Charge Alternative A.A. 40 GH	Not guilty MS	Not MS. Guilty MS	NOT Confirmed GH
			To undergo detention for sixty (60) days. MS	NOT Confirmed GH

G.R. Pearkes MS
Gen. 1 Cdn Div

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):— No

(Signed) G.R. Pearkes (Signed) D.C. Spry Major a.c.a.
(G.R. PEARKES) Major-General,
Commanding G.O.C. 1 Cdn. Div.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the 4 Feb/24 Feb 10 B March/1941 day of , and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

Certificate of President as proceedings.

I also certify that:—
✓ 1. The members of the Court
✓ 2. The witnesses
*(~~3. The interpreter~~)
✓*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this tenth day of March 1941.

D.C. Spry Major
President of the Court Martial.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

C.
Certificate in case of death sentences.

Signed this day of 19

President of the Court Martial MS

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule~~, and subject to what I have there stated, I hereby confirm the above findings and sentences.~~

D.
Confirmation
NOT CONFIRMED.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 20th day of March 1941

G.R. Pearkes MS
Confirming Officer.
Gen. 1 Cdn Div

Promulgated and extracts taken in the case of Non-~~Promulgation~~ Confirmation promulgated to the accused

(a) (Dated) 7 Apr. 41 (Signed) H.B. Graham LT. COL.
COMDR. THE HASTINGS & PRINCE EDWARD REGT. C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

5J-48

Pte Duffy A.E.

RECORDED AT CMHQ IN AB 160 5 I-48

RECEIVED 25 MAY 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P & S/1696 (4970) 4/38B

Convened by Order of Brigadier J.D.B. Smith Comd 1 Cdn Inf Bde dated 9 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 4108	Pte		Avon Ernest	DUFFY	HPER

PROCEEDINGS REVIEWED J. Heady Capt 25 May 45 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED D.J.A. Cdn. Sec. 1 Ech., H.Q. 21 Army Gp 15 May 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) In the Field on (*date(s)*) 11 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, J/A, if any, and~~ Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet~~(s)~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 15 15 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. ~~President to accused: Do you object to ... as interpreter? Ans ...~~

~~The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans ...~~

~~The shorthand writer is sworn.(2)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~J/A, if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	G.S.W. PROCTOR	48 HIGHRS of C
Member	CAPT.	E.C.D. WASHER	48 HIGHRS of C
Member	LT.	E.B. STEWART	RCR
~~Judge Advocate~~			
Prosecutor	LT.	D.D. BEAUMONT	HAST + PER
Defending Offr	LT	C.G. CASE	HAST + PER

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans ~~NO~~.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused C 4108 Pte AVON ERNEST DUFFY HAST + PER before arraignment make(s) (no) ~~(a)~~ plea ...(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if conv~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans YES (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his ~~(their)~~ plea~~s~~ of Guilty to Not Guilty on BOTH charge(s). ~~The accused is (are) so informed, and he (they) changes~~ ~~his (their) plea(s) to~~ ~~Not Guilty to the charge(s).~~ ~~Part I of the Schedule is amended accordingly.~~

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ▶ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(E). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (ii).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, C4108 Pte Avon Ernest DUFFY, The Hastings and Prince Edward Regiment, a soldier of the Canadian Army Overseas, on Active Service, is charged with:-

FIRST CHARGE WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

Army Act Sec 15 (1)

In that he,

In the Field, did absent himself without leave from 1200 hrs 26 Feb 45 until 1200 hrs 28 Feb 45. TIME ABSENT - 2 days hrs.

SECOND CHARGE WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

Army Act Sec 40

In that he,

In the Field, Italy, on 26 Feb 45 did improperly and without authority use WD Vehicle No L5927326.

In the Field
14 Mar 45

G A Rossi Major
A/Comd
The Hastings and Prince Edward Regiment

To be tried by Field General Court Martial.

(J D B Smith) Brigadier
Comd 1 Cdn Inf Bde

In the Field
8 Apr 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 4108	private		Avon Ernest	DUFFY	HPER

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 8 Apr 45 endorsed by me, [redacted] "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [redacted]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G.J.W. Proctor	48 Highrs

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	E.C.D. Washer	48 Highrs
Lt.	E.B. Stewart	HCR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt.	C.D. Prince	HPER

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in the Field (Country.)

[signature] (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Dat 9 Apr 45

Commanding (J D B Smith) Brigadier
1 Canadian Infantry Brigade
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 16 (In lieu of AFA 3) 40/P & S/1697 (6142)

(See overleaf for oaths and notes for use on trial.)

COPY

MEDICAL OFFICERS' CERTIFICATE
(R.R. (CAN) para 577)

I certify that I have this morning examined No. C.4108.....

Rank...PTE.....Name.DUFFY...A.E.....of.Hy.P.E.Rank.

and in my opinion he is fit to undergo trial by Court Martial.

Station..FIELD.....

Date.11.APRIL.45.....

.....J.W. Kirby Capt.....
(Medical Officer)
HPER

Proceedings of F.G.C.M. (D) against Pte Duffy
A. E., C 4104 on 11 Apr. 45.

Statement by accused

I the accused Pte Duffy A. E. C 4104 make the following statement:

When I was on the advance party approximately 18 miles from a friend of mine whom I intended to visit I should have asked for permission before going. Although admitting this I do not believe I can be fairly charged for being A.W.L. for 2 days 1½ hrs. but at the most for 6 hrs for this reason - I was given the above by the Military Police at the scene of an accident I had with my vehicle whether I wished to go with my vehicle to the repair shop or be taken back to the base. I chose the former because of the equipment in my truck and the desire to be with it. I do not feel that I should be ~~prolonged~~ charged for the above which was made 6 hrs after leaving camp.

Quiz by court. (2)

Quiz 1 Did you endeavour to inform your unit of your location?

Ans — Yes sir. I asked the M. P. to inform my unit.

E1
EVIDENCE AS TO CHARACTER.

Re C41 08 Pte Duffy A. E.

To Whom it May Concern:

I have known Pte Duffy for the past two and half years, and found him a capable soldier. He came through the Sicilian Campaign and till this occasion did his job well and was dependable. Since my Regiment ~~as~~ H.Q. Coy. Commander I had no trouble with Pte Duffy and he did a good job for me. Causing no trouble and kept his Vehicle in A-1 condition. This action on his part was hard to believe.

S R Walker. Capt.
O.C. Hdqs. Coy.

ACCEPTED BY COURT
CAPT S R WALKER ABSENT
ON DUTY.

Plea of Mitigation on behalf of C4108 Pte. Duffy A.E. of HQ Coy HPER, a soldier of the Canadian Army placed on Active Service Overseas.

The following points, it is felt, should be submitted to the court as they are to the credit of the accused; one, he joined among the earliest of active men in September 1939, two, he landed among those in Sicily as early as August 1943, and three, during the whole of his time in Italy, he had no crime written against him in his M.F.M. 6.

Respectfully submitted,

C. G. Case Lieut

HPER
CAO

E 3

Summary of Evidence in the case of C41085 Pte Duffy, A E of HQ Coy, HPER a soldier of the Canadian Army placed on Active Service Overseas, CMF.

By order of the Commanding Officer this Summary of Evidence is taken on on oath.

1st Witness for the prosecution — Lieut C R Bird, Transport Officer of the HPER having been duly sworn states.

I am Lieut C R Bird, Transport Officer of the HPER. On the evening of the 25th of February 1945 the HPER moved into a concentration area. The vehicles were assigned to a car park. At approximately 1030 hrs 26th of February 1945 after Sjt Flemi had made a check of all vehicles in the car park he informed me that Pte Duffy was AWL and that his vehicle No L5927326 was missing. I made a thorough search of the immediate area and I had the Sjt of the Regimental Police make a search of the towns in the surrounding area but these searches were of no avail. Pte Duffy had no permission whatever to leave the area or to take his vehicle from the car park. All drivers had been warned that they were confined to barracks and that they could not move a vehicle from the car park without written authority.

The accused declines to cross examine the witness.

2nd Witness for the Prosecution — Capt S R Walker, OC of HQ Coy, HPER, having been duly sworn states:

I am Capt S R Walker, OC of HQ Coy, HPER. On 28th of Feb 45 I was appointed by my commanding officer to go to Ortona and pick up Pte Duffy, who was AWL and to make arrangements for the repairs of his vehicle No L5927326. When I arrived at the Workshop where the truck was I found Pte Duffy with his vehicle. This was at approximately 1200 hrs. At this time Duffy related to me how the accident occured stating that he was making a level bend onto a Bailey Bridge and that the steering of the truck was stiff thus failing to make the turn onto the bridge. After making arrangements with the Workshop I brought Duffy back to camp with me and he was placed under arrest.

The accused declines to cross examine the witness.

The accused was cautioned "Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give evidence.

Certified that Rules of Procedure 4 (c)(d)(e) and (f) have been complied with.

Taken down by me in the presence and hearing of the accused this 7th day of April 1945.

"In the Field"
7-4-45

(D D Beaumont) Lieut.
Officer taking Summary of Evidence.

EXHIBIT A.

Summary of Evidence in the case of C 4108 Pte Duffy A.E. of H.Q. Coy H.P.E.R., a soldier of the Canadian Army placed on Active Service Overseas C.M.F.

By order of the Commanding Officer this Summary of Evidence is taken on oath.

First Witness for the prosecution:

Lieut. C.R. Bird, Transport Officer of the H.P.E.R. having been duly sworn states.

I am Lieut C.R. Bird, Transport Officer of the H.P.E.R. On the evening of the 25th of February 1945 the H.P.E.R. moved into a concentration area. The vehicles were assigned to a car park. At approximately 1030 hrs 26th of February 1945 after Sgt Fleming had made a check of all vehicles in the car park he informed me that Pte Duffy was A.W.L. and that his vehicle No L.5927326 was missing. I made a thorough search of the immediate area and I had the Sgt of the Regimental Police make a search of the towns in the surrounding area but these searches were of no avail. Pte Duffy had no permission whatever to leave the area or to take his vehicle from the car park. All drivers had been warned that they were confined to barracks and that they could not move a vehicle from the car park without written authority.

C.R. Bird Lieut

The accused declines to cross examine the witness

J.

2nd Witness for the prosecution:

Capt. L. R. Walker, O.C. of H.Q. Coy., H.P.G.R. having been duly sworn states:

I am Capt. L. R. Walker, O.C. of H.Q. Coy. H.P.G.R. On 28th of Feb., 1945 I was appointed by my Commanding Officer to go to Ortona and pick up Pte Duffy, who was A.W.L. and to make arrangements for the repair of his vehicle No L 59273260. When I arrived at the Workshop where the truck was I found Pte Duffy with his vehicle. This was at approximately 1200 hrs. At this time Duffy related to me how the accident occured stating that he was making a level bend onto a Bailey Bridge and that the steering of the truck was stiff thus failing to make the turn onto the Bridge and hit the left hand side of the bridge. After making arrangements with the Workshop I brought Duffy back to camp with me and he was placed under arrest.

L. R. Walker, Capt.

The accused declines to cross examine the witness.

The accused was cautioned "Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence

The accused declines to make any statement or to give evidence.

The accused declines to make any statement or to give evidence.

Certified that Rules of Procedure 4 (2)(b)(c) + (7) have been complied with.

Taken down by me in the presence and hearing of the accused this 7th day of April 1945.

In ok Fuls
7-4-45

R R Beaumont Lt.
Officer taking Summary of Evidence.

ARMY FORM B.296 (WAR). EXHIBIT "B"

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
G4108	PTE	Avon Ernest DUFFY	HPER

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	AA Sec 15 (1)	7 times.
For	AA Sec 19	3 times.
For	AA Sec 40	2 times.
For		times.

Date of first entry in Field Conduct Sheet 24/12/39

Date of last entry in Field Conduct Sheet 25/1/43

2. [illegible]

*Strike out if not applicable.

*3. [illegible]

4. The accused has been awaiting trial on the present charges for 0 days days in civil custody; and for 44 days in military custody, *i.e.*, 4 days in open arrest, 40 days in close arrest; of which 0 days were spent in hospital.

5. The present age of the accused is 26 yrs 3 mths 20 dys

6. The date of his attestation [illegible] is 4 Sep 39

7. The service which the accused is allowed to reckon is 5 yrs 6mths 10 dys

8. The accused is in possession of† 1939-43 Star- CVSM & Clasp

†Here the military decorations (if any) held by accused.

9. [illegible]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

[illegible]

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 11 day of April 45

Capt & Adjutant

Officer having custody of original records.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16/7/41	Pte		WOAS AWL from 1000hrs 16/7/41 to 1345 hrs 16/7/41 AA Sec 15 (1)	Cpl Butterworth Cpl Murtagh	14 dys CB	16/7/41	Maj Abraham	
On 2 Sep 41 this soldier completed 2 years service in accordance with RO 71 CASF (Overseas) 2 Sep 41 - Above entries brought forward.									previous sheet destroyed
Field	26/9/41	Pte		WOAS AWL from 26/9/41 to 4/10/41 AA Sec 15 (1)	Cpl Butterworth Cpl LaLonde	7 dys FP	6/10/41	Col Graham	Forfeits 9 dys pay FRI 149 (1) AAB
Field	26/6/42	Pte		Using insolent language to a Superior officer.	Cpl Sharpe	16 dys detn		Lt-Col Bingham	
Field	21/8/42	Pte		WOAS AWL from Billets from 1400 hrs 21/8/42 to 1400 hrs 23/8/42. AA Sec 15 (1)	Sjt Gray Cpl Murtagh	12 dys FP	25/8/42	Maj Sutcliffe	Forfs 14 dys pay FRI 149 1 (a) (b)

No C4108 Name Duffy, A E Sqn, Battery, or Company Corps CIC Date of enlistment 2 Sep 39 GC Badges Service or Proficiency Pay MFM 6 (AFB 133) 40/PAT/128 (5000)

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc S R Walker Capt Character

EXHIBIT C

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Ship	24 Dec 39	Cpl	1	Drunkeness, attempting to strike an officer	CSM Duffy	Reduced to Pte	28/12/39	Lt-Col Young	
Aldershot	12/6/40	Pte		(1) AWL from Muster Parade (2) Insolent language to Superior Officer (3) AWL from 15/6/40 to 16/6/40		28 dys detn	28/6/40	Col Salmon	Forf 31 dys pay 149 (1)ab
Rusper Camp	3/8/40	Pte		WOAS AWL from 1/8/40 to 3/8/40 AA Sec 15 (1)	Sjt Merry Cpl Moore	14 dys detn	5/8/40	Col Salmon	Total Forf of 17 dys Pay FRI 149 (1)ab
Brighton	11/12/40	Pte	2	Drunkeness AA Sec 19	CSM Spiers		11/12/40	Maj Abraham	Fined $5.00
Field	13/1/41	Pte	3	Drunkeness AA Sec 19	Lt Morgan		13/1/41	Maj Sutcliffe	Fined 10.00

(PTO)

No C4108 Name Duffy, A E | Sqn, Battery, or Company | Corps CIC | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (APR 122) 40/PAS/136 (3436)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25/1/43	Pte		WOAS AWL from 2359 hrs 25/1/43 to 1500 hrs 30/1/43. AA Sec 15 (1)		14 dys CB	2/2/43		Forfeits 5 dys pay FRI 149 (1)(a)

On 2 Sep 43 this soldier completed 4 years service in accordance with RO 71 CASF (Overseas).
Above entries brought forward.

CERTIFIED TRUE COPY [signature] CAPT & ADJUTANT 1 Apr 46 DATE
OFFICER HAVING CUSTODY OF ORIGINAL RECORDS.

(PTO)

STATEMENT IN ACCORDANCE WITH R OF P 14 (b)

I, C4106 Pte Avon Ernest DUFFY, of HQ Coy, HPER desire to have an officer assigned to represent me at my trial by Field General Court Martial.

I desire the services of Lieut C G Case HPER

if he is available

A. E. Duffy.

C4106 Pte Avon Ernest DUFFY.
HPER
HQ Coy

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans.....Are they witnesses as to character only? Ans.....

(1. RP 115. 2. RP 40(A), see 40(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF AB5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E2 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1) Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(2) (6), RP 42, 120(A). 2. AA 54(3), RP 43, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. YES. WRITTEN EVIDENCE RE TO CHARACTER.

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)

(1. MFR 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. YES.(2)

(1. RP 27(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2123, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to reissue from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C 4108 Pte DUFFY, A.E., HASTINGS AND PRINCE EDWARD REGIMENT.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA SEC 15 (1)	GUILTY	GUILTY	
2nd AA SEC 40	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 44 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO UNDERGO DETENTION FOR A PERIOD OF ONE YEAR.

(Sgd) ..... Judge Advocate, if any. Date awarded: 11 APR 45 (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding of the Court on the second charge, I do not confirm the finding of the Court on the first charge. I mitigate the sentence so that it shall read as follows: to undergo detention for a period of 9(nine) months and I confirm the sentence as so mitigated.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date 23 APR 45

Commanding (J D B Smith) Brigadier Comd 1 Can Armd Bde

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C 4108 Pte Duffy A.E	24 April 1945	H C Baldwin Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-4108 Pte DUFFY, A.E. Hastings and Prince Edward Regiment.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd	AA Sec 40	GUILTY	GUILTY	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 463 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1).

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 44 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO UNDERGO DETENTION FOR A PERIOD OF ONE YEAR.

11 Apr 45 (Sgd) "G S W Proctor" Major
(Sgd) ..... Date awarded. President. (RP 45, 50.)
Judge-Advocate, if any.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(1), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: AA 172 fn 1.) The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding of the Court on the second charge, I do not confirm the finding of the Court on the first charge. I mitigate the sentence so that it shall read as follows: to undergo detention for a period of 9 (nine) months and I confirm the sentence as so mitigated.

~~xxxx

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of J A see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 85, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of J A or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans YES .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his ~~(their)~~ plea(s) of Guilty to Not Guilty on BOTH charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf 485. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 80(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up to the JA under RP 42, 102(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes re Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans YES WRITTEN EVIDENCE AS TO CHARACTER
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 183(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(*1. MFB 103 or MFB 29a. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1E), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

COPY

MEDICAL OFFICERS' CERTIFICATE
(K.R. (CAN) para 577)

I certify that I have this morning examined No. C4108
Rank Pte Name Duffy, AE of RPER
and in my opinion he is fit to undergo trial by Court Martial.

Station Field
Date 11 APR 45

JW Kirby
Capt
Medical Officer - RPER

No C4108 Name Duffy, A E Sqn, Battery, or Company Corps CIC Date of enlistment 2 Sep 39 GC Badges Service or Proficiency Pay MPM 6 (APS 125) PS/PAN/136 (3480)

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc S R Walker Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Ship	24 Dec 39	Cpl	1	Drunkeness, attempting to strike an officer	CSM Duffy	Reduced to Pte	28/12/39	Lt-Col Young	
Aldershot	12/6/40	Pte		(1) AWL from Muster Parade (2) Insolent language to Superior Officer (3) AWL from 15/6/40 to 16/6/40		28 dys detn	28/6/40	Col Salmon	Forf 31 dys pay 149 (1)ab
Rusper Camp	3/8/40	Pte		WOAS AWL from 1/8/40 to 3/8/40 AA Sec 15 (1)	Sjt Merry Cpl Moore	14 dys detn	5/8/40	Col Salmon	Total Forf of 17 dys Pay FRI 149 (1)ab
Brighton	11/12/40	Pte	2	Drunkeness AA Sec 19	CSM Spiers		11/12/40	Maj Abraham	Fined $5.00
Field	13/1/41	Pte	3	Drunkeness AA Sec 19	Lt Morgan		13/1/41	Maj Sutcliffe	Fined 10.00

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16/7/41	Pte		WOAB AWL from 1000hrs 16/7/41 to 1345 hrs 16/7/41 AA Sec 15 (1)	Cpl Butterworth Cpl Murtagh	14 dys CB	18/7/41	Maj Abraham	
On 2 Sep 41 this soldier completed 2 years service in accordance with RO 71 CASF (Overseas) previous sheet destroyed 2 Sep 41 – Above entries brought forward.									
Field	26/9/41	Pte		WOAB AWL from 26/9/41 to 4/10/41 AA Sec 15 (1)	Cpl Butterworth Cpl LaLonde	7 dys FP	6/10/41	Col Graham	Forfeits 9 dys pay ERI 149 (1) A&B
Field	26/6/42	Pte		Using insolent language to a Superior officer.	Cpl Sharpe	16 dys detn		Lt-Col Bingham	
Field	21/6/42	Pte		WOAB AWL from Billets from 1400 hrs 21/6/42 to 1400 hrs 23/6/42. AA Sec 15 (1)	Sjt Gray Cpl Murtagh	12 dys FP	25/6/42	Maj Sutcliffe	Forfs 14 dys pay ERI 149 1 (a) (b)

No C4108 Name Duffy, A E | Sqn, Battery, or Company | Corps CIC | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/138 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25/1/43	Pte		WOAS AWL from 2359 hrs 25/1/43 to 1500 hrs 30/1/43. AA Sec 15 (1)		14 dys CB	2/2/43		Forfeits 5 dys pay FRI 149 (1)(a

On 2 Sep 43 this soldier completed 4 years service in accordance with RO 71 CASF (Overseas).
Above entries brought forward.

CERTIFIED TRUE COPY [signature] CAPT & ADJUTANT [signature] DATE
OFFICER HAVING CUSTODY OF ORIGINAL RECORDS.

(PTO)

CHARGE SHEET

The accused, C4106 Pte Avon Ernest DUFFY, The
Prince Edward Regiment, a soldier of the Can
Overseas, on Active Service, is charged with,

FIRST CHARGE WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WI
LEAVE,

Army Act Sec 15 (1) In that he,

In the Field, did absent himself without leave from 1000 hrs 26 Feb 45 until ~~apprehended at~~ 1200 hrs 26 Feb 45, TIME ABSENT - 2 days 2 hrs.

SECOND CHARGE WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

Army Act Sec 40 In that he,

In the Field, Italy, on 26 Feb 45 did improperly and without authority use WD Vehicle No L5927326.

(G A Ross) Major
A/Comd
The Hastings and Prince Edward Regiment

In the Field
14 Mar 45

To be tried by Field General Court Martial.

(J D B Smith) Brigadier
Comd 1 Can Inf Bde

In the Field
7 Apr 45

CHARGE SHEET

The accused, C4108 Pte Avon Ernest DUFFY, The Hastings and Prince Edward Regiment, a soldier of the Canadian Army Overseas, on Active Service, is charged with:-

FIRST CHARGE WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

Army Act Sec 15 (1)

In that he,

In the Field, did absent himself without leave from 1000 hrs 26 Feb 45 until ~~apprehended at~~ 1200 hrs 28 Feb 45. TIME ABSENT - 2 days 2 hrs.

SECOND CHARGE WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

Army Act Sec 40

In that he,

In the Field, Italy, on 26 Feb 45 did improperly and without authority use WD Vehicle No L5927326.

In the Field
14 Mar 45

(G A Ross) Major
A/Comd
The Hastings and Prince Edward Regiment

To be tried by Field General Court Martial.

In the Field
8 Apr 45

(J D B Smith) Brigadier
Comd 1 Can Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 4108	Private		Avon Ernest	DUFFY	HPER

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet~~(s)~~ attached and on (date) 8 Apr 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint an Judge-Advocate to treat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G.J.W. Proctor	48 Highrs

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	E.C.D. Washer	48 Highrs
Lt.	E.B. Stewart	RCR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt.	C.D. Prince	HPER

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in the Field (Country.)

(Signed personally. RP 105 fn 2.) (J D B Smith) Brigadier (Rank.)

Dat 9 Apr 45

Commanding 1 Canadian Infantry Brigade

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 93 (In lieu of AFA 3) 40/F & S/1697 (6142)

(See overleaf for oaths and notes for use on trial.)

morning
/xxx

Duffy A.E. C-4108 Pte
of H & PE Regt

xxxxx

Station Field

Date 11 Apr 45

"J W Kirby" Capt
HPER

PROCEEDINGS OF FGCM AGAINST PTE DUFFY, A.E., C-4108 on 11 Apr 45

STATEMENT BY ACCUSED

I, the accused, Pte Duffy, A.E., C-4108, make the following statement:-

When I was on the advance party approximately 18 kilos from a friend of mine which I intended to visit I should have asked for permission before going. Although admitting this I do not believe I am being fairly charged for being AWL for 2 days 1½ hours, but at the most for 6 hrs for this reason - I was given the choice by the Military Police at the scene of an accident I had with my vehicle whether I wished to go with my vehicle to the repair shop or be taken back to the bn. I chose the former because of the equipment on my truck and the desire to be with it. I do not feel that I should be penalized for this choice which was made 6 hrs after leaving camp.

Ques by Court

Ques 1. Did you endeavour to inform your unit of your location?

Ans Yes sir, I asked the M.P. to inform my unit.

E.1 - EVIDENCE AS TO CHARACTER Re:C-4108 Pte DUFFY, A.E.

To Whom it May Concern:

I have known Pte Duffy for the past two and half years, and found him a capable soldier. He came through the Sicilian Campaign and till this occasion did his job well and was dependable. Since my regime as HQ Coy Commander I had no trouble with Pte Duffy and he did a good job for me. Causing no trouble and kept his vehicle in A-1 condition. This action on his part was hard to believe.

"S R Walker" Capt
OC Hdqs Coy

Accepted by Court - Capt S.R. Walker absent on duty

PLEA OF MITIGATION ON BEHALF OF C-4108 Pte DUFFY A.E. of HQ Coy HPER, a soldier of the Canadian Army placed on Active Service Overseas.

The following points, it is felt, should be submitted to this Court as they are to the credit of the accused; one, he joined among the earliest of active men in September 1939, two, he landed among those in SICILY as early as August 1943, and three, during the whole of his time in ITALY he had no crime written against him in his MFM.6

Respectfully submitted

E.2

"C G Case" Lieut
HPER, CAO

Summary of Evidence in the case of C4108 Pte Duffy, A E of HQ Coy, HPER a soldier of the Canadian Army placed on Active Service Overseas, CMF.

By order of the Commanding Officer this Summary of Evidence is taken on on oath.

1st Witness for the prosecution

Lieut C R Bird, Transport Officer of the HPER having been duly sworn states.

I am Lieut C R Bird, Transport Officer of the HPER. On the evening of the 25th of February 1945 the HPER moved into a concentration area. The vehicles were assigned to a car park. At approximately 1030 hrs 26th of February 1945 after Sjt Fleming had made a check of all vehicles in the car park he informed me that Pte Duffy was AWL and that his vehicle No L5927326 was missing. I made a thorough search of the immediate area and I had the Sjt of the Regimental Police make a search of the towns in the surrounding area but these searches were of no avail. Pte Duffy had no permission whatever to leave the area or to take his vehicle from the car park. All drivers had been warned that they were confined to barracks and that they could not move a vehicle from the car park without written authority.

The accused declines to cross examine the witness.

2nd Witness for the Prosecution

Capt S R Walker, OC of HQ Coy, HPER, having been duly sworn states:

I am Capt S R Walker, OC of HQ Coy, HPER. On 28th of Feb 45 I was appointed by my commanding officer to go to Ortona and pick up Pte Duffy, who was AWL and to make arrangements for the repairs of his vehicle No L5927326. When I arrived at the Workshop where the truck was I found Pte Duffy with his vehicle. This was at approximately 1200 hrs. At this time Duffy related to me how the accident occured stating that he was making a level head onto a Bailey Bridge and that the steering of the truck was stiff thus failing to make the turn onto the bridge. After making arrangements with the Workshop I brought Duffy back to camp with me and he was placed under arrest.

The accused declines to cross examine the witness.

The accused was cautioned "Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give evidence.

Certified that Rules of Procedure 4 (c)(d)(e) and (f) have been complied with.

Taken down by me in the presence and hearing of the accused this 7th day of April 1945.

"In the Field"
7-4-45

(D D Beaumont) Lieut.
Officer taking Summary of Evidence.

Exhibit "B"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C4108	PTE	Avon Ernest DUFFY	HPER

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For	AA Sec 15 (1)	7 times.
For	AA Sec 19	3 times.
For	AA Sec 40	2 times.
For		times.

Date of first entry in Field Conduct Sheet 24/12/39

Date of last entry in Field Conduct Sheet 25/1/43

2. [redacted]

*Strike out if not applicable.

*3. [redacted]

4. The accused has been awaiting trial on the present charges for 0 days days in civil custody; and for ..... days in military custody, *i.e.*, ... days in open arrest, ... days in close arrest; of which 0 days were spent in hospital.

5. The present age of the accused is 26 yrs 3 mths 20 dys

6. The date of his attestation is 4 Sep 39

7. The service which the accused is allowed to reckon is 5 yrs 6mths 10 dys

8. The accused is in possession of† 1939-43 Star- CVSM & Clasp

†State the military decorations (if any) held by accused.

9. [redacted]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

Wt 55000/1002 20,000 3/44 51-4731. Forms/B.296/War/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 11 April day of ~~May~~ 45

P.E. Baldwin Capt & Adjutant

Officer having custody of original HPER records.

O. H. M. S.

Duffy, A.L. C-4106

D.W.D

Addn: WO II Benoit

M. F. B. 270
H. Q. 1773-39-47

"DON'T WASTE WORDS - DON'T WASTE PAPER"

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

O. H. M. S.

Duffy, A.C.
C-4108

D. W. D

Attn: WO II Benoit

M. F. B. 270
[illegible]
H. Q. 1772-[illegible]-47

"DON'T WASTE WORDS - DON'T WASTE PAPER"

99/37
~~510~~/DUFFY A.E./1

XUK 284

C.4108 PTE DUFFY A.E.

CENTRAL REGISTRY	DATE	P.A. OR B.F.	INITIAL	REFERRED TO	REMARKS	INITIALS	DATE
[illegible] 27 1945	[illegible]	[illegible]	[illegible]	AG 11	PAPERS	CR	24-5-45
JUN - 7 1945				AG 14	BR	CR	3/6
				ADC	[illegible]	[illegible]	6 Jun
JUN 10 1945	[illegible]	[illegible]	DSC	[illegible]			
JUN 19 1945	[illegible]	[illegible]	W	AG 12	Paper	CR	17/6
JUN 26 1945	26 Jun	CR	[illegible]	AG 11	Papers	CR	21/6
JUL 6 1945	[illegible]	[illegible]	[illegible]	AG 10	BF	CR	5/7
JUL 14 1945	[illegible]	[illegible]	W	AG.	Reg	CR	12/7
JUL 19 1945	10 Jul	[illegible]	W	AG 10	Paper	CR	18/7
AUG 1 1945	15 Aug	B.F.	DSC	AG 10	B.F.	CR	1/8
AUG 9 1945	[illegible]	P.A.	DSC	AG 12	papers	CR	8/8
AUG 25 1945	31 Aug	B.F.	DSC	AG	PER B.F.	O.R.	AUG 15 1945
[illegible] SEP 1945	[illegible]	B.F.	DSC	AG 12	B.F.	CR	21/8
13 SEP 1945	3 Sep	P.A.	DSC	[illegible]	Papers	[illegible]	13 SEP 1945
	[illegible]	[illegible]	[illegible]				
[illegible] AON 1 2	[illegible]	[illegible]	[illegible]	A8	Reg	CR	14/11
1 DEC 1945	[illegible] DEC	B.F.	[illegible]	A8	BF	CR	30 Nov

99/37/DUFFY AE /1 (A8)

2ND ECHELON HEADQUARTERS CAOF

DATE 27 Dec 45

Canadian Military Headquarters
2 Cockspur Street
London, S.W. 1

Attn: AAG Dir)

C4108 Pte Duffy A.E.
3/SDAG Highrs (CAOF)

1 Herewith AF A3104 in respect of the sentence set forth below for custody:

Sentence	Dat	Suspended	Remitted by
9 mos detn	11 Apr 45	11 Jun 45	GOC 3 Cdn Inf Div CAOF on 19 Dec 45.

2 A certified copy of the proceedings is also enclosed.

(W H Pope) Lieut
for Officer i/c
2nd Echelon Headquarters CAOF

A.S.

Please ensure that correct casualty return has been rendered and documentation of remission is completed.

99/37/DUFFY.AE/1

C-4108. PTE. DUFFY. AE.

Dept.	Per	Date	Dept.	Per	Date
A8	Reg	14/11			
A8	BB	20 Nov			

This Card must not leave CENTRAL REGISTRY

CMHQ—39.7

rtified true copy

Army Form A 3104.

REVIEW OF SENTENCES AWARDED BY COURT MARTIAL.

I.—Case of No. C 4108 Pte Duffy AE Unit HPER

Sentenced to nine months detn on 11 Apr 45

Age on, and date of, enlistment 20 yrs 4 Sep 39 Term of service 5 yrs 7 mths

FIRST TRIAL.

For details of offences, see paragraph VII. For C.O.'s remarks, see paragraph IX.

II.—To

Superior Military Authority.

I have directed that the above-named be not committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) for reasons given in paragraph X.

Place

Date

Confirming Authority.

III.—I direct that the sentence (which I hereby commute to) (of which I remit) (1) (2) (be suspended) (be put into execution) (1) and be reviewed on (3).

Place

Date

Superior Military Authority (4).

(For notes on rules, see paragraph VI)

SECOND TRIAL.

For details of offences, see paragraph VIII. For C.O.'s remarks, see paragraph XII.

IV.—(5) To

Superior Military Authority.

This man was again convicted on and sentenced to and I have directed that he shall not be committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) and run (concurrently) (consecutively) (1) with the previous (6) sentence for the reasons given in paragraph XIII.

Place

Date

Confirming Authority.

V.—(5) I direct that the sentence (which I hereby commute to) (of which I remit) (1) (2) (be suspended) (be put into execution) and that it run (concurrently) (consecutively) (1) with the previous (6) sentence of and be reviewed on (3).

Place

Date

Superior Military Authority (4).

(1) Some words not required, and strike it unseen.
(2) A sentence of penal servitude or imprisonment, concurrent with Discharge with Ignominy, cannot be suspended unless the Discharge with Ignominy is remitted.
(3) A suspended sentence must be reviewed at least once every three months, and a sentence put into execution should be reviewed in not more than six months.
(4) An order directing a sentence to be put into execution must be signed by the Superior Military Authority personally.
(5) This paragraph to be left unused until required. If this man is convicted a third time, a fresh form, using only paragraphs IV and V, will be made out and attached to this form, and all further reviews will be on the attached form.
(6) A previous sentence of imprisonment or detention on a state of suspense is avoided by the award of a subsequent sentence of penal servitude.

(*28261) Wt.36510/3902 40,000 2/44 A. & E.W.Ltd. Gp.649 Form A.3104-14.

VI.—Action on Review.
(Whether the sentence or sentences are suspended or in execution.)

Any Reviewing Authority *under Section 57 of the Army Act* may under that Section mitigate, remit or commute a sentence which is in execution, and if the sentence as commuted or mitigated is penal servitude, imprisonment or detention, it will remain subject to the powers granted by Section 57A of the Army Act. A partial remission of a sentence in suspension is not legal.

Date	Directions	Signature and Appointment of Authority giving the directions.	If sentence suspended, actual date of release and marks earned to count towards remission, and signature of O.C. Prison or Detention Barracks
	Suspend wef 11 Jun 45	HLM Burns Maj Gen GO i/c Cdn Sec 1 Mob HQ 21 A Gp 8 Jun 45.	Suspended sentence wef 11-6-45 200 days in suspension 704 marks earned WD Cain Capt. A/Commandant.
19 Sep 45	remain suspended BF 19 Dec 45	RH Keefler, Maj-Gen GOC 3 Cdn Inf Div CDA	1 Cdn Detn & FP Bks Cdn Pro Corps
	remit remainder of sentence	C Vokes, Maj-Gen GOC 3 CID CAOF 19 Dec 45	

(Continued on page 4.)

All recommendations, etc., considered upon review, should be pasted here.

If further space required, an additional slip should be pasted here.

Charge or Charges giving particulars	Date of Offence	Date of Trial
VII.—First Trial.		
1st charge AA Sec 15(1) WOAS absenting himself without leave, in that he, in the field did absent himself without leave from 1030 hrs 26 Feb 45 until 1200 hrs 28 Feb 45 (2 days-1 1/2 hrs)	26 Feb 45	11 Apr 45
2nd charge AA Sec 40 - WOAS Conduct to the prejudice of good order and military discipline inthat he in the field I aly on 26 Feb 45 did improperly and without authority use WD Veh No L5927326	26 Fen 45	11 Apr 45
Signature of Officer making entry.		
VIII.—Second Trial.		
Signature of Officer making entry.		

IX.—C.O.'s remarks and recommendations on First Trial.

Date		Signature
24 Apr 45	I recommend that this sentence should be reconsidered after six months.	????Lt Col Comd HPSR

X.—Confirming Officer's remarks and recommendations on First Trial.

Date		Signature
27 Apr45	I recommend the sentence be served in full	JDS Smith Brig Comd 1 Cdn Inf Bde.

98/ DUFFY AE

30 Nov 45

HQ
3 Cdn Inf Div (CAOF)

C4108 Pte Duffy A.E.
3/DDAG Highrs (CAOF)

pff

3/SD8 eH (CAOF)

510/Pers Files/1 (AG.10)

CDN SEC 1 SCH H.Q. BRIT ARMY OF THE RHINE

3 Sep 45

H.Q. CFN

Review of Suspended Sentences — Att'n: 'A' Pers

1. AFs AZ104 are enclosed herewith for action in accordance with Overseas RO 4732, para 4 (b) for the u/m personnel:

B.168825	Pte.	Berard, J. A.	9 Cdn Fd Sqn RCE
G.123310	Pte.	Booker, H. J.	Ch of C (MG)
B.40412	Spr.	Cornelius, E.	23 Fd Coy RCE
C.4106	Pte.	Duffy, A. E.	SD&G Highrs (Cdn)
F.92439	Spr.	Gormley, M. G.	16 Cdn Fd Coy RCE
A.37916	Pte.	Iulenti, R.	SD&G Highrs (Cdn)
H.87930	Sigmn.	Kelln, D.	H.Q. FCA Sigs
B.146665	Pte.	Lefebvre, J.	AS Highrs
C.53968	Pte.	Stuart, A. H. W.	SD&G Highrs
D.63609	Spr.	Turcot, M.	1 Cdn Fd Const Coy

2. On completion of Part VI, may the forms be returned direct by the reviewing authority to this H.Q.

PFH

for (H. L. M. Burns) Maj-Gen
GO i/c
Cdn Sec 1 Sch H.Q. Brit Army of the Rhine

PFF

MESSAGE FORM

99/6/POST DISC/2
99/20/SD&G HIGHRS/1

FROM : CDN SEC 2 ECH HQ 21 A Gp (A2)

DATE - TIME OF ORIGIN
221700B AUG 45

(FOR ACTION)

TO : HAST & PER : SD & G HIGHRS (CDA) :

(FOR INFORMATION)

TO : ARCO HQ 1 CDN INF DIV : A BRANCH 1 DIV : A BRANCH 3 DIV (CDA) : ARCO HQ 3 CDN INF DIV (CDA) : A-8 (2 ECH) : A-5 (2 ECH) : AC 12 (1 ECH) :

ORIGINATOR'S NO

EA2/1684 UNCLASSIFIED (.)

PT I No soldier released on suspended sentence is to be repatriated from this theatre before his sentence is remitted, without special authority from 1 Ech.

PT II The following SUSS will accordingly be SOS HAST & PER wef 25 Aug 45 and be TOS SD & G HIGHRS (CDA) wef 26 Aug 45.

C-4108 PTE DUFFY A E

IAG

for (H C MAXWELL) MAJOR

DAG 17

15/8

15

510/DUFFY A E/1 (AG 12)

9 Aug 45

OIC
Cdn Sec 2 Ech
HQ 21 A Gp

C.4108 Pte Duffy A E

1. Ref your 99/20/Cdn Sec 2 Ech HQ 21 A Gp/1 (A-2) d/7 Aug 45.

2. Enclosed herewith is a copy of our letter d/26 Jun 45. Our letter of 19 Jun 45 merely enclosed a copy of the a/m letter as requested by A-7 of your HQ.

(E. C. Brown) Lt-Col
AAG
Cdn Sec 1 Ech HQ 21 A Gp

SDS
Encl/1

99/20/Cdn Sec 2 Ech HQ 21 A Gp/1(A2) 14

CANADIAN SECTION 2ND ECHELON HQ 21 ARMY GROUP

7 Aug 45

GO IC
Cdn Sec 1 Ech HQ 21 A Gp
Cdn Army Overseas

(Attn AG 12)

C 4108 Pte Duffy A E

1. Ref your 510/DUFFY AE/1 (AG12) d/1 Aug 45.

2. There is no record at this HQ of your letters of even ref d/26 Jun 45 and 19 Jul 45.

3. May copies of above ref letters be sent to this HQ, please.

(H C MAXWELL)Major
DAAG RR&R Sec forOIC
Cdn Sec 2 Ech HQ 21 A Group

Read

bb

Signed at 1700 hrs

13

510/DUFFY A E/1 (AG 12)

1 Aug 45

OIC
Cdn Sec 2 Ech
HQ 21 Army Gp

Attn:- A-Z

C.4108 Pte Duffy A E

1. Ref your 99/20/Cdn Sec 2 Ech HQ 21 A Gp/1 (A7) d/17 Jul 45 and our letter of even ref hereto d/19 Jul 45.

2. Would you please acknowledge receipt of our letter of even ref d/26 Jun 45.

(E. C. Brown) Lt-Col
AAG
Cdn Sec 1 Ech HQ 21 A Gp

SDS/APO/HAND

510/Duffy AE/1 (AG 10a) 12

CDN SEC 1 ECH H$_4$ $_1$ A GP

19 Jul 45.

Cdn Sec 2 Ech
H$_4$ $_1$ A Gp

Attention: A 7

C.4108 Pte Duffy, A.E.

Reference your 99/2G/Cdn Sec 1 Ech H$_4$ $_1$ A Gp/1 (A 7) d/17 Jul 45.

Herewith copies of our letters re the m/n soldier d/6 Jun and 26 Jun 45, as requested.

(H. C. Brown) Lt-Col.,
A.A.G.,
Cdn Sec 1 Ech H$_4$ $_1$ A Gp.

EDS/AFO/H/ED
Encls/2

99/20/Cdn Sec 1 Ech HQ 21 A Gp/1 (A7)

CANADIAN SECTION 2ND ECHELON HQ 21 ARMY GROUP

17 JUL 45

C.R.
CDN SEC GHQ 1 ECH
21 ARMY GROUP

GO IC
CDN SEC I ECH
HQ 21 A GP

C-4108 - Pte DUFFY A E

1. Ref your letter 510/Duffy AE/1 (AG 10a) d/13 Jul 45.

2. Instead of attaching copies of your letters of 8 Jun and 26 Jun 45 as requested a duplicate copy of above mentioned letter was attached in error.

3. May this HQ be supplied with copies of your letters d/8 Jun 45 and 26 Jun 45 re Pte Duffy, please.

(O. F. IRWIN) Captain
for Officer i/c
Cdn Sec 2nd Echelon HQ 21 Army Group

Signed at 1400 B hrs

/wtE

S10/Duffy AE/1 (AG10) 10

6 Jul 45.

Cdn Sec 2 Mch HQ 21 A Gp

Sentence Placed in Suspension
C 4108 Pte Duffy AE

1. Please ack receipt of our S10/Duffy AE/1 (AG11) d/8 Jun as no copy of posting instrs have been received. and 26 June

(E C Brown) Lt Col
AAG
Cdn Sec 1 Mch HQ 21 A Gp.

EDS

510/Duffy AE/1 (AG 10)

9

CDN SEC 1 ECH HQ 21 A GP

26 Jun 45.

Cdn Sec 2 Ech
HQ 21 A Gp

C.4108 Pte Duffy, A.E.

Reference your recent Circular Letter respecting the posting of soldiers under suspended sentences to the CFMF.

1. Specific authority is hereby granted to post the m/n soldier to such force provided he is otherwise qualified.

2. In the event of posting instructions being issued, please advise this HQ earliest.

(E. C. Brown) Lt-Col.,
A.A.G.,
Cdn Sec 1 Ech HQ 21 A Gp.

SDG/APC/HJMD

I CD/FP BKS D/1586

1 Cdn Detn & FP Bks
Cdn Provost Corps

17 June 45

Cdn Sec 1 Ech
HQ 21 A GP Attn AG 11

SUSPENSION OF SENTENCE

X C-4108 Pte Duffy A E

1. Under Auths: Cdn Sec 1 Ech HQ 21 A GP 510/Duffy A E/1 (AG11) d/8 June 45 the a/n soldiers sentence has been placed in suspension wef 11 June 45 and was despatched to 13 CBR BY. Attached find AFA 3104 with Pt VI complete.

2. For your infm, please.

3. The a/n soldier is a volunteer for the Far East Force

LT. COL
Commandant
1 Cdn Detn & FP Bks
Cdn Provost Corps

COR/lah

C.R.
CDN SEC NO 1 ECH
21 ARMY GROUP

7

(AG 12)

510/ANTONELLI		E/1
510/THOMPSON	R	E/1
510/LEROUX		C/1
510/STEWART	N	J/1
510/PARR		R/1
510/DUFFY	A	E/1
510/ALLIN	R	F/1
510/CLOUTHIER	J	H/1
510/VILLENEUVE	G	A/1
510/LINTHORNE		C/1
510/POMERLEAU		J/1
510/COLBOURNE	C	W/1

2 Lt.
Attn is directed to spec permission to post Duffy to CFEF

MESSAGE FORM

FROM : CANFOR (EXFOR REAR) 18 1440 B JUN

TO : 1 CDN DETN & F P BKS

A.2332 RESTRICTED (.) YOUR D/4 D/6 D/1 D/1064 (.)
AUTHORITY GRANTED TO RELEASE FOLLOWING PERSONNEL ON SUSPENDED SENTENCE ON DATES SHOWN (.)

B.41555	Pte	ANTONELLI	E	5 JUN 45
F.95507	Pte	THOMPSON	RE	5 JUN 45
M.8138	Pte	LEROUX	C	15 JUN 45
F.59997	Pte	STEWART	NJ	6 JUN 45
D.117358	Pte	PARR	R	15 JUN 45
B.70008	Gnr	ALLIN	RF	30 JUN 45
C.21367	Pte	CLOUTHIER	JH	15 JUN 45
C.4108	Pte	DUFFY	AE	11 JUN 45
B.52203	Pte	VILLENEUVE	GA	10 JUN 45
F.30530	Pte	LINTHORNE	C	20 JUN 45
E.11069	Pte	POMERLEAU	J	16 MAY 45
B.89152	Pte	COLBOURNE	CW	8 JUN 45

ARRANGE RELEASE WITH ADVICE THIS HQ

R.E. Clapperton Capt		

510/Duffy AE /1 (

CDN SEC 1 ECH HQ 21 ARMY GP 8 Jun 45.

1 Cdn Detn A FF Elm

Sentence Placed in Suspension
C 4100 Pte Duffy EA

1. The m/n soldier was sentenced by FGCM on 11 Apr 45 to undergo nine months detn for offences under AA Sec 15(1) and Sec 40.

2. This sentence was reviewed by CO i/c this HQ on 8 Jun 45 and the following direction was made:-

"Suspend unf 11 Jun 45."

3. Herewith AF A3104 bearing this direction. May Part VI be completed and the form returned to this HQ.

4. Cdn Sec 2 Ech HQ 21 A Gp will issue the necessary instrs to post and despatch this soldier to his appropriate ~~xx~~ bn where he will be made available as a ~~xxxxxxxxxxxx~~ volunteer ~~xxxxxxxxxxx

510/ Duffy E A /1 (AG 10)

5

WORK SHEET

REVIEW OF SENTENCE S AWARDED BY COURT-MARTIAL

1. PA to GO i/c Date

11. No C-4108 Rank Pte Name Duffy E A

Unit H P E R Age ~~25~~ 26

Date of Enlistment 4 Sep 39

Offence: AA Sec 15 (1) WOAS AWL 2 days 1½ hrs.
AA Sec 40 -

Sentence: nine months detn.

WEF 11 Apr 45 Last Reviewed FIRST REVIEW.

111. Extenuating Circumstances: See character evidence flagged

Rec by Court: None

No crimes since Feb 43 (acc'd in Italy)

Character (previous convictions): AA Sec 15 (1) 7 offences
AA Sec 19 3 offences
AA Sec 40 2 offences

Most severe punishment 28 detn.
Service in action (Italy)

IV. Rec by CO:

I recommend that this sentence should be reconsidered after six months.

V. Rec by next senior officer:

I recommend the sentence be served in full.

VI. Rec re review by AG.10: By Comd No 1 Cdn Detn & FP Bks.

A - Yes, Pacific
B - Satisfactory
C - Yes

1945 - FEB (C) MAR APR (A) MAY JUN JUL AUG SEP OCT (B) NOV DEC

1946 - JAN (B)

This man may be sent on a PCFEF draft. Take action with 2 Ech
E. [illegible]

J T Weir
(J T Weir) Capt
for AG 10
Cdn Sec 1 Ech 21 A Gp

ARMY FORM C 2136 (Large)
40/PRS/2414 (3150)

MESSAGE FORM

Register No.

Call	Srl No.	Priority	Transmission Instructions

ABOVE THIS LINE FOR SIGNALS USE ONLY

Office Date Stamp

Originator	Date—Time of Origin
FROM (A)	

For Action

TO

(W) For Information (INFO)

Message Instructions	GR

Originator's No.

Time	Systems	Op
THI or TOR		
Time Cleared		

This Message may be sent AS WRITTEN by any means except

Signed

If liable to be intercepted or to fall into enemy hands this message must be sent IN CIPHER

Signed

Originator's Instructions
Degree of Priority

No 1 Cdn Detn/ 1586
No 1 Cdn Detn & FP Bks Cdn Pro C

3

1 June 45

Work Sheet

Cdn Sec GHQ
1 Ech 21 A GP

SENTENCE UNDER REVIEW

C 4108 Duffy EA

1. Reference 510/Duffy EA/1(AG12)d 26 May 45 relative to sentence under review for the m/n soldier.

2. The u/m infm is appended:

(a)	Date sentenced by FGCM	11 Apr 45
(b)	Date admitted to detn bks	2 May 45
(c)	Number of days remission already lost	Nil
(d)	Number of marks already earned	424
(e)	Date of release with full remaining remission	1 Oct 45

3. Attentiveness to drill and parade square work . Attentive
Reaction to strict military discipline . Favourable
Appearance and bearing . Average
Cleanliness in person and clothing . Clean and Tidy

4. Application to work and ingenuity Not employed on details

5. Military employment upon release from detn . Desires service in CFEF

6.
(a) This soldier wishes to redeem himself and has volunteered for CFEF service.
(b) Conduct and deportment has been satisfactory since admission.
(c) It is felt that he will render useful service should his sentence be placed in suspension.

C.R.
4 JUN 1945
CDN SEC GHQ 1 ECH
21 ARMY GROUP

Lt Col
COMMANDANT (APM)
1 CDN DETN & FP BKS
CDN PRO COFFS

COR/er

R 190 24-3-45

510/Duffy A E /1 (AG 12)

CDN SEC 1 ECH HQ 21 ARMY GP

26 May 45

Comd
1 Cdn Detn & F P Barracks

Sentence Under Review
C-4108 Pte Duffy A E
HPER

1. The m/n soldier was sentenced by FGCM on 11 Apr 45 to undergo nine months detention, for an offence under Sec 64(1) of the Act.

2. May a report be forwarded to this HQ on his conduct and behaviour since date of commitment to assist in reviewing sentence.

(J.C. Harvey) Major
DAAG 'Dis'
Cdn Sec 1 Ech HQ 21 Army Gp

529/DUFFY AE/1 (DJA-Rev)

Cdn Sec 1 Ech HQ 21 Army Gp
20 May 45

DAAG (Dis)

FGCM - 11 Apr 45
C-4108 Pte Duffy, A.E.
HPER
Review of Sentence

1. Herewith copy of m/n proceedings together with APA 3104 for review of sentence and custody.

(W.P. Taylor) Major
DJA (Rev)
Cdn Sec 1 Ech
HQ 21 Army Gp

Encl
HAND

5X-143 Pte Duffy. J. Despatched to DND by AG;5A

5 21-76
Spr. Duffy, J. C.

7 Sep 45

Certified that M107039 Tpr Duffy, J.C.,
29 Gen Armd Recce Regt (S Alta R), has been examined
by me today and found fit to undergo trial by FGCM

A Blond Capt.
Medical Officer

CHARGE SHEET

The accused, M107039 Trooper Jack Charles DUFFY, 29 Cdn Armd Recce Regt (S Alta R), a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Haarle, Holland, on 5 Aug 45, improperly and without authority took and used a Cdn Mil Vehicle, No. CM5844272. for private purposes.

Second Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MIL DISCIPLINE

in that he

at Raalte, Holland, on 5 Aug 45, when in charge of WD Vehicle No. CM5844272, did so negligently drive the same as to become involved in an accident.

Third Charge
Sec 6 (2)(b)
Army Act

WHEN ON ACTIVE SERVICE, FORCING A SAFEGUARD

In that he

at Haarle, Holland, on 5 Aug 45, forced his way past H102261 Tpr McEachern J C at the exit from the Regimental Headquarters vehicle park into the public road, where H102261 Tpr McEachern J C had been placed as a safeguard, for the protection of the occupants and the property and vehicles in the said park.

(T B Nash) Lieut Col
Officer Commanding
29 Cdn Armd Recce Regt (S Alta R)

Haarle, Holland
27 Aug 45

To be tried by Field General Court Martial.

(J F R Akehurst) Lt col
A/Comd 10 Cdn Inf Bde

In the Field
4 Sep 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
M107509	Tpr		Jack Charles	DUFFY	29 Cdn Armd Recce Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has [illegible] committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 4Sep 45 endorsed by me, [illegible]. " To be tried by Field General Court-Martial ". "

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; [illegible]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj (Rank.)	F A MAYER *(Must be named. RP 106.)*	Alq R (Unit.)

MEMBERS.

Capt	J W KIDD	Linc & Welld R
Capt (Rank.)	D H MacDOUGALL *(Named or detailed. RP 106.)*	Alq R (Unit.)

WAITING MEMBER.

Lt (Rank.)	B G ELLIS *(Named or detailed, if any. RP 106.)*	A & S H of C (Unit.)

JUDGE-ADVOCATE.

Maj (Rank.)	E E WASSON *(Must be named, if any. RP 106.)*	4 Cdn Armd Div (Unit.)

On Active Service in the Fd

in HOLLAND (Country.) — F.K. Alexander (Signed personally. RP 105 fn 2.) — Lt col (Rank.)

Date 4 Sep 45 — Commanding 10 Cdn Inf Bde — Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A(Para 12a (iii) of AP 83 dd 9 & 5 1947 (Amdt))

E Ew

Pla[illegible] in mitigation by
[illegible] defending officer.

The accused [illegible] has been a good soldier and has a
clean crimi[illegible] sheet - no crime at all since he
has been [illegible] - S.
He is [illegible] 21 yrs of age and has been in the
Army for [illegible] yrs. He has attained his manhood
actually in the Army.
[illegible] has been a good soldier in action, has
He [illegible] his duties
[illegible] of 5 Aug 45 when offence took place,
[illegible] had been drinking in A.H.Q
Holland Tin. Social activities here are
few. After a few drinks he thought of
more active social activity. The Regt.
recreational centres are at Baalke - 20 km
away. The recreational veh. had all left.
He decided that any vehicle would be a
recreational one. He took the vehicle and
drove it 7 or 8 kms. along canal and
drove it in. He was alone. He was severely
injured. He spent 11 days in hospital.
[illegible] he did not want to steal vehicle but
[illegible] somewhere for recreation by means
[illegible] same.
[illegible] Court will take acct of his age,
[illegible] services in action, his purpose in
[illegible] vehicle and not be too severe
[illegible] passing sentence.

Character Evidence. Ew.

M49001 Sgt. Wolf G.L. 29 Can Armed Rece Regt having been duly sworn states:—

I was accused Tgt Sgt for 6 mos. When in action he was always on the job. Out of action our parade had no trouble with him he was reliable and soldierly. I never had to check him or put him under arrest.

He was a good soldier in action. I never had to worry about him. (R.P. 83B complied with)

Plea in mitigation by
Defending Officer.

The accused has been a good soldier and has a clean crime sheet — no crime at all since he has been O.S.

He is now 21 yrs of age and has been in the Army for 3 yrs. He has attained his manhood actually in the Army.

He is has been a good soldier in action, has carried out his duties

On nite of 5 Aug 45 when offence took place, the accused had been drinking in Ath area Holland Tin. Social activities here are very few, after a few drinks he thought of more active social activity. The Regt. recreational centres are at Raalte - 20 km away. The Recreational veh. had all left. He decided that any vehicle would be a recreational one. He took the vehicle and drove it 7 or 8 kms. along canal and drove it in. He was alone. He was severely injured. He spent 11 days in hospital.

He did not want to steal vehicle but get somewhere for recreation by means of same.

I hope Court will take acct of his age, his services in action, his purpose in stealing vehicle and not be too severe in passing sentence.

Exhibit "A"
~~[illegible]~~ Mayor May Pres:

Original

Summary of Evidence
in the case of
M107039 Tpr Jack Charles Duffy
29 Cdn Armd Recce Regt (S Alta R)

The Commanding Officer directs the evidence be taken on oath:

FIRST WITNESS

#102261 Spr Mc Eachern JC having been duly sworn states:

I am #102261 Spr Mc Eachern JC and on 5 Aug 45 I was on guard at the gate of Regt HQ 29 Cdo Armd Recce Regt. At approx 2100 hrs 6 Aug 45 I was standing at my post at the gate when a jeep approached me from the vicinity of the house - that is leaving the Regt HQ area. I signalled the jeep to stop in order to carry out my duty of checking the work tickets. The vehicle did not slow down and I was forced to jump out of its path in order to avoid being struck down. I then saw it disappear down the road.

Q Could you identify the jeep as it passed?

A I remember that it had a yellow gas can on the back and I caught a glimpse of the driver. Spr Duffy

Q When did you next hear anything of the incident

A At about 2145 hrs when Sgt 184636 Sgt Halsey and AC came in the gate and told me Spr Duffy had been in an accident at Raalte with a jeep.

J-6 Mc Eachern

The accused declines to cross-examine the witness.

SECOND WITNESS

Supervisor hS Elliot CAWS 9Cdn Fd Sqn RCE having been duly sworn states:

I am Supervisor hS Elliot CAWS and on 5 Aug 41 between 2000 hrs and 2100 hrs I was standing by my HVP on the marketstreet roadway between the market Square and the scene of the accident. A dutch civilian told me there was a Canadian soldier in the canal. I drove immediately to the canal. When I arrived there I saw a large crowd of civilians had gathered. I saw a jeep in the canal partly submerged in the water and a soldier lying face downward on the bank. Civilians who apparently had taken him out of the water were attending him. I dispersed the crowd and ~~took a note~~ taking note of the situation I observed that the Tactical number on the veh was 15. The soldier was semi-conscious. He knew that he could move his arms and legs and that his hair was being pulled. I asked him how he felt internally and he replied that he was ok but could not see. I noticed that his left eye was badly swollen and that his face was covered with blood. I recognize C M10039 Spr Duffy SC ~~whom~~ as the soldier who was injured. A Sgt of the SAHs ~~he~~ arrived and asked me if I knew the unit to which the soldier belonged. I pointed out the tactical number on the veh. The Sgt stated it was from his unit. I then asked him to take charge which he did and I departed having previously sent for a medical Officer.

Q Would it be possible to name any of the civilians who had seen the accident?
A No, there were too many present talking profusely in Dutch

hS Elliot Spr CAWS

The accused declines to cross examine witness.

THIRD WITNESS

L 84636 Sjt Halkyard AE 29 Edn and Recce Regt.

I certify that in my opinion the attendance of this witness is, owing to the loss of time involved in that he is away from his unit ~~and~~ not readily procurable, and a written statement of his evidence, signed by him has been read to the accused and is attached hereto as Exhibit "A".

John Acres Capt

I do not require the presence of L 84636 Sjt Halkyard AE for the purpose of cross-examination.

Pte Duffy JC.

FOURTH WITNESS

M45615 Sjt Walmsley J having been duly sworn states:

I am M45615 Sjt Walmsley J and on 5 Aug 45 L84636 Sjt Halkyard AE reported an accident to me at approx 2200 hrs. He told me that a jeep, which was later identified as WD Veh no CM5844272, had driven in to the canal on the rd to RAALTE and that Sjt Halkyard and Spr Leckie had brought the driver Spr Duffey to the RAP. I went down to where the accident occured - first stopping at the RAP to see how badly Spr Duffey was hurt. I then left for where the accident had occured - drew a diagram - ~~(Enclosed~~ which I tender (~~the~~ (~~the~~ Exhibit "B"). I put the bridge railings back up and took the veh to #2 LAD.

Q To whom was WD Veh no CM5844272 on charge

A K49155 Spr Hodge C

J Walmsley Sjt.

The accused declines to cross-examine the witness

FIFTH WITNESS

K49155 Spr Hodge C having been duly sworn states:

I am K49155 Spr Hodge C and on 5 Aug 45 I was in charge of WD Veh no CM5844272. The jeep was gone when I returned from a duty for the Adjt and I was informed it had been involved in an accident. I had given no one permission to take the jeep out that evening.

CB Hodge.

The accused declines to cross-examine the witness

SIXTH WITNESS

Lieut D J Kennedy 29 Cdn Armd Recce Regt having been duly sworn states:

I am Lieut D S Kennedy and on 5 Aug 45 I was acting as Adjt of the regt. I did not authorize a journey in a jeep for Jpr Duffy to Raalte. ~~at~~

DSKennedy LT.

The accused declines to cross-examine the witness

SEVENTH WITNESS

CAPT K E LINDSAY OC 42 Cdn LAD att 29 Cdn Armd Recce Regt having been duly sworn states:

I am Capt K E Lindsay and assess the cost of damages to WD Veh No C M 5844272 as follows:

Parts £ 14.0.0
Labour £ 1.0.0

K E Lindsay Capt.

The accused declines to cross-examine the witness.

QUESTION TO THE ACCUSED

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence

ANSWER BY THE ACCUSED

I have nothing to say at the present time.

J C Duffs.

Certified that the Rules of Procedure 4(C), (D), (E) (F) and (G) have been complied with.

Taken down by me in the Field in the presence and hearing of the accused this 22nd day of August 1945

[signature]
(JA CRR) Capt
29 Cdn Armd Recce Regt (S Alta R)
Offr detailed to take
Summary of Evidence

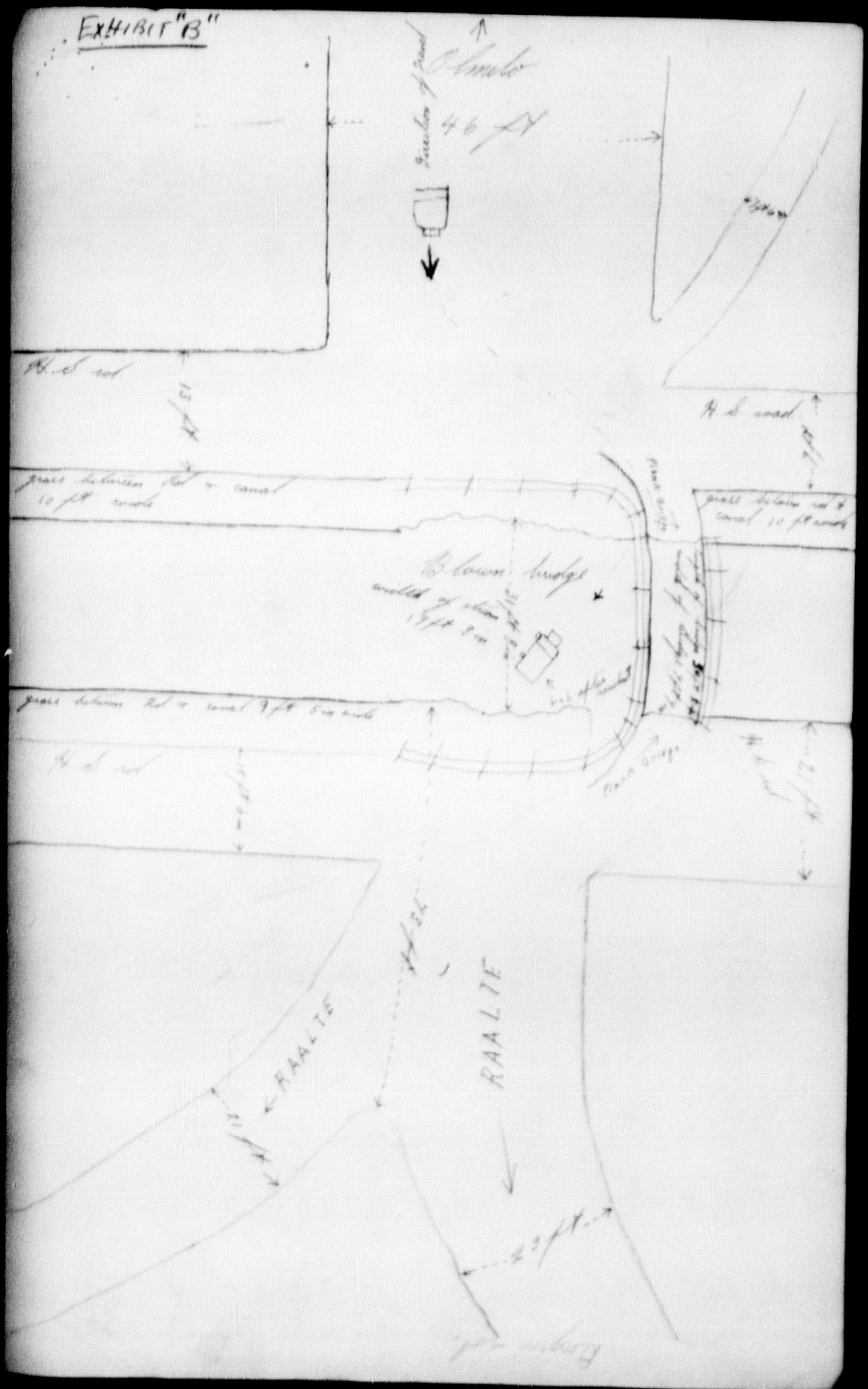


EXHIBIT "B"
RAALTE
RAALTE

EXHIBIT "A"

15 Aug. 45

SIR:-

1 L84636 Sgt. Halkyard A E . On the night of Aug. 5 /45 at appeoximately 2100hrs was standing outside R H Q Sqdn. Orderly room with Tpr.Leckie when civilians reported a Canadian vehicle in the canal at Raalte, Immediately 1 proceeded to the bridge which was the scene of the accident accompanied by Tpr. Leckie in the H.U.P. When 1 arrived the Aux. Officer from the 9TH FIELD ENGINEERS was there. Tpr. Duffy whom 1 recognized was laying on the bank of the canal and appeared to have been just taken from the water. The Jeep was partly submerged in water. Tpr.Duffy was suffering from slight injuries so we proceeded to the R A P with him in the H.U.P.

Then 1 reported the accident to Reg. Police , (Sgt Wamsley). Accompanied by him 1 returned to the scene of the accident and helped recover the vehicle.

L84636 Sgt Halkyard A E

A E Halkyard.

This unit is prepared to detail Capt R ROBINSON to rep
the accused at his forthcoming trial by Field General
Court Martial if the Convening Officer so desires.

W. Hughes

(F N Hughes) Captain
Adjutant
29 Cdn Armd Recce Regt (S Alta R)

In the field
27 Aug 45

In the field
27 AUG 45

I desire the Convening Officer to detail an officer
to represent me at my forthcoming trial by Field
General Court Martial.

Jas Duffy J C

Signature of accused

M.F.B. 355
225M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M 107039	Trooper	Jack Charles DUFFY	29 Can Armd Recce Regt (S Alta R)

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For		times	AWL	1 times
For	Nil	times	Conduct to the prej, etc	5 times
For		times		times
For		times		times

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted.

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and seven (7) days in military custody, making a total of seven (7) days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 21 yrs 11 months

6. The date of his attestation specified in his attestation paper is 20 Feb 43

9. The accused is in possession of or entitled to no military decoration, or military reward (or is in possession of or entitled to). State any military decoration or reward.

[illegible]

Permanent Force
unit

..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~24th~~ 7 day of ~~August~~ Sept, 1945 [illegible] Capt
Adjt, 29 Cdn Armd Recce Regt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "X" signed by the president, and annexed to the proceedings.

[illegible] Mayle Mg Pres.

No. R107039 Name Tpr DUFFY Jack Charles

Sqn., Battery, or Company

No. and date of last drunk

Corps RCAC

Period not reckoning towards freedom from extra fine

Date of enlistment 26 Feb 43

Sheet No.

G.C. Badges

Signature O.C. Company, etc.

Tradesman's Rates of Pay

Character

M.F.M. 6 (A.F.B. 122) 10SM—11-41 (3400) H.Q. 1772-10-1582

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	6-8-43	Tpr		Sec 15 AA A&L from 2200 hrs 6-8-43 to 0800 hrs 20-8-43 Total absence 11 days 10 hrs	Cpl Forester	14 days CB 14 days pay	20-8-43	Lt Col CF Smith	Forf 12 da pay RSAI 149(1)(a)
London Ont	14 Oct 43	Tpr		AA 40. Conduct to the prej. etc. did not report to the mess hall when ordered to do so	Cpl Graham	5 days CB	14 Oct 43	Capt C W Bawtell	
London Ont	15 Oct 43	Tpr		AA 40 Failed to appear at the place of parade appointed by his commanding officer. Failed to appear at defaulters' parade	Cpl McLaughlin	7 days CB 5 days pay	18 Oct 43	Capt CW Bawtell	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
London, Ont	15 Oct 43	Tpr		AA 40. Conduct to the prej, etc. Failed to answer defaulters' call and was absent from duty.	Cpl McLaughlin	7 days CB 2 days pay	18 Oct 43	Capt CW Sawtell	
Field	21-3-44	Tpr		AA Sec 40 Appeared on parade with a dirty rifle	Lt Boothroyd	7 days CB	22 Mar 44	Major AC Marshall	
Field	24-3-44	Tpr		AA 40. Neglect to the prej, etc. dirty rifle	L/Cpl Wheeler	7 days CB	26 Mar 44	Major F Garen	

CERTIFIED TRUE COPY OF ORIGINAL MFM 6 IN MY CUSTODY

(N Hughes) Capt, Adjt
Officer i/c Regt Records
29 Cdn Armd Recce Regt (S Alta R)

RECORDED AT CMHQ IN AB 160 / 5 12 46

FIELD GENERAL COURT-MARTIAL

Amend (or Cancel) Regs (1940) 40, 9 as in (1944) 4/38B

Convened by Order of Lt-Col J.F.R. Akehurst Comd 10 Cdn Int Bde dated 4 Sep 45

RECEIVED 24 OCT 1945 JAG BRANCH

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R.	(b) Apprnt, A/Rk or A/Apprnt.	Full Christian Names.	Surname.	Unit.
M107309	Tpr.		Jack Charles	Duffy	29 Cdn Armd Recce Regt

PROCEEDINGS REVIEWED
R Lawrence Capt
24 Oct 45
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 7 Sep 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to~~ as interpreter? Ans

The Interpreter is sworn.(1) ~~Do you object to~~ as shorthand writer? Ans

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 75, 98, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	P.A. Mayer	A/g. Regt
Member	Capt	J.W. Kidd	Linc. & Welld R.
Member	Capt	D.H. MacDougall	A/g. Regt
Judge-Advocate	Major	E.C. Wasson	H.Q. 4 Cdn Armd Div
Prosecutor	Major	G.L. Macdougall	29 Cdn Armd Recce Regt.
Defending Offr	Major	R. Robinson	29 Cdn Armd Recce Regt

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ~~_____~~ before arraignment make(s) (no) objection(s) (to) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See paras 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ 4 Cdn Div AB 160 Vol II p 114.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M/10730 9 Tpr. Nook Charles Duffy 19 Cdn Armd Recce Regt

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A. A. 40	Guilty	Guilty	
2nd A. A. 40	Guilty	Guilty	
3rd A. A. 6(2)(b)	Guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ——— beginning on (date) ——— [1]
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which Nil days were spent in hospital.[1]
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

to undergo detention for a period of one (1) year.

(Sgd) [illegible] Judge-Advocate, if any. 7 Sep 45 Date awarded. (Sgd) H. Mayo Maj President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ——— (Sgd) ——— Commanding ———

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

(Sgd) [illegible] Lt Col

Date 18 Sep 45 a/ Commanding 10 Cdn Inf Bde. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
M/10730 Tpr. Duffy JC	19 SEP 45	W. Hughes, Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 58, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans. No Sir.(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.~~(1) The Court decides (not) to advise accused to change his ~~(their)~~ plea(s) of Guilty to Not Guilty on the 3 charge(s). The accused is ~~(are)~~ so informed, ~~and he (they) changes his (their) plea(s) on charge(s).~~ ~~Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence to be read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, see second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. RP 113. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 845. Evidence for accused as to his character should, if on his own request, be given before the finding. See RP 46(A) fn 1, 86(C). Notes the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Character witness
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes Sir. Am serving Defending Officer.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused at his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL

MEDICAL OFFICER'S CERTIFICATE

(KR(Can)Para 557)

I certify that I have this day examined M-107309 Tpr Duffy J.C.

29 Cdn Armd Recce Regt (S Alta H. in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station In the Field. "S S Bland" Capt.

Date 7 Sep 45. Unit

"PAM" Pres

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/B or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-107309	Tpr		Jack Charles	DUFFY,	29 Cdn Armd Recce Regt.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 6 Sep 45, endorsed by me, (~~or by an offr of my staff (or us~~)), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reasons by a superior qualified offr~~.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto~~.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	P A MAYER	Alq R.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J W KIDD	Linc & Welld R.
Capt	D H MacDOUGALL	Alq R.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt.	B G ELLIS	A & S H of C.

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Maj	E E WASSON	4 Cdn Armd Div

On Active Service in the Fd

in	(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)
HOLLAND		"J F R Akehurst"	Lt-Col

Date ..... Commanding 10 Cdn Inf Bde.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38/A CPA86 (In lieu of AFA8) 40-P & S-1867 (4001)

"PAM" Pres

CHARGE SHEET.

The accused M-107309 Trooper Jack Charles DUFFY, 29 Cdn Armd Recce Regt (S Alta R) a soldier of the Canadian Army Overseas, is charged with:-

First Charge.
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Haarle, Holland, on 5 Aug 45, improperly and without authority took and used a Cdn Mil Vehicle, No. CM 5844272 for private purposes.

Second Charge
Sec 40
Army Act

WHEN ON ACTIVE SERCICE, NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MIL DISCIPLINE

in that he

at RAALTE, HOLLAND, on 5 Aug 45, when in charge of WD Vehicle No. CM 5844272 did so negligently drive the same as to bacome involved in an accident.

Third Charge
Sec 6(2)(b)
Army Act

WHEN ON ACTIVE SERVICE, forcing a safeguard

in that he

At Haarle, Holland, on 5 Aug 45, forced his way past H-102261 Tpr McEachern J C at the exit from the Regimental Headquarters vehicle park into the public road, where H-102261 Tpr McEachern J C had been placed as a safeguard, for the protection of the occupants and th e property and vehcilas in the said park.

Lt-
"T B Nash" Col
(T B Nash) Lieut-Col
Officer Commanding
29 Cdn Armd Recce Regt (S Alta R)

Haarle, Holland,
27 Aug 45,

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

"J P R Akehurst" Lt-Col
A/Comd 10 Cdn Inf Bde.

In the Field.

4 Sep 45.

SUMMARY OF EVIDENCE
in the case of

M107039 Trooper Jack Charles DUFFY
29 Cdn A rmd Recce Regt (S Alta R)

CHARGE: AA Sec 40

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS: M102261 Tpr McEachern J C, 29 Cdn Armd Recce Regt (S Alta R), having been duly sworn, states:

I am M102261 Tpr McEachern JC and on 5 Aug 45 I was on guard at the gate of Regimental HQ 29 Cdn Armd Recce Regt (S Alta R). At approximately 2115 hrs I was standing at my post at the gate when a jeep approached me from the vicinity of the house, that is, leaving the Regimental HQ area. I signalled the jeep to stop in order to carry out my duty of checking work tickets. The vehicle did not slow down and I was forced to jump out of its path in order to avoid being struck down. I then saw it disappear down the road.

Cross-examined by the Court

Q.1 Could you identify the jeep as it passed?
A.1 I remember that it had a yello w gas can on the back and I caught a glimpse of the driver, Tpr Duffy.

Q.2 When did you next hear anything of the incident?
A.2 At about 2145 hrs when L84636 Sgt Halkyard AE came in the gate and told me Tpr Duffy had been in an accident at HAALTE with a jeep.

The Accused declines to cross-examine this witness.

SECOND WITNESS: Supervisor M S Elliot, CLWS att 9 Cdn Fd Sqn RCE, having been duly sworn, states:

I am Supervisor M S Elliot CLWS and on 5 Aug 45 betweem 2000 hrs and 2100 hrs I was standing by my HUP on the Marketstraat midway between the Market Square and the scene of the accident. A Dutch civilian told me there was a Canadian soldier im the canal. I drove immediately to the canal. When I arrived there, I saw a large crowd of civilians had gathered. I saw a jeep in the canal partly submerged in the water and a soldier lying face downwards on the bank. Civilians, who apparently had taken him out of the water, were attending him. I dispersed the crowd and taking note of the situation I observed that the tactical number of the vehicle was "45". The soldier was semiconscious. He knew that he could move his arms and l legs and that his hair was being pulled. I asked him how he felt internally and he replied that he was OK but couldn't see. I noticed that his left eye was badly swollen and that his face was covered with blood. I recognise M107039 Tpr Duffy JC as the soldier who was injured. A Sgt of the RAFs arrived and asked me if I knew the unit to which the soldier belonged. I pointed out the tactical number on the vehicle. The Sgt stated it was from his unit. I then asked him to take charge, which he did, and I departed, having previously sent for a Medical Officer.

Crossx-examined by the Court

Q.3 Would it be possible to name any of the civilians who had seen the accident?
A.3 No, there were too many present talking profusely in Dutch.

The Accused declines to cross-examine this witness.

SUMMARY OF EVIDENCE in the case of M107039 Tpr Jack Charles DUFFY
29 Cdn Armd Recce Regt (S Alta R)

THIRD WITNESS: L84636 Sgt Halkyard AE, 29 Cdn Armd Recce Regt (S Alta R).

I certify that, in my opinion, the attendance of this witness is, owing to the loss of time involved in that he is away from his Unit not readily procurable, and a written statement of his evidence, signed by him has been read to the accused and is attached hereto as Exhibit "A".

I do not require the presence of L84636 Sgt Halkyard AE for the purpose of cross-examination.

FOURTH WITNESS: M45615 Sgt Walmsley J, 29 Cdn Armd Recce Regt (S Alta R), having been duly sworn, states:

I am M45615 Sgt Walmsley, J and on 5 Aug 45 L84636 Sgt Halkyard AE reported an accident to me at approximately 2200 hrs. He told me that a jeep, which was later identified as WD Veh No.CM5844272, had driven into the canal on the rd to RAALTE and that Sgt Halkyard and Tpr Leckie had brought the driver, Tpr Duffy to the RAP. I went down to where the accident occured, first stopping at the RAP to see how badly Tpr Duffy was hurt. I then left for where the accident had occurred,and drew a diagram which I tender here. (Exhibit "B") I put the bridge railings back up and took the vehicle to the 42 LAD.

Cross-examined by the Court:
Q.4 To whom was WD Veh No.CM5844272 on charge?
A.4 K49155 Tpr Hodge C.

The Accused declines to cross-examine this witness.

FIFTH WITNESS: K49155 Tpr Hodge C B, 29 Cdn Armd Recce Regt (S Alta R), having been duly sworn, states:

I am K49155 Tpr Hodge C and on 5 Aug 45 I was in charge of WD Vehicle No.CM5844272. The jeep was gone when I returned from a duty for the Adjutant and I was informed it had been involved in an accident. I had given no one permission to take the jeep out that evening.

The accused declines to cross-examine this witness.

SIXTH WITNESS: Lieut D S Kennedy, 29 Cdn Armd Recce Regt (S Alta R), having been duly sworn states:

I am Lieut D S Kennedy and on 5 Aug 45 I was acting as Adjutant of the 29 Cdn Armd Recce Regt (S Alta R). I did not authorize a journey in a jeep for Tpr Duffy to RAALTE.

The Accused declines to cross-examine this witness.

SUMMARY OF EVIDENCE in the case of M107039 Tpr Jack Charles DUFFY
29 Cdn Armd Recce Regt (S Alta R)

SEVENTH WITNESS: Capt K E Lindsay, Officer Commanding 42 Cdn LAD att 29 Cdn Armd Recce Regt (S Alta R), having been duly sworn, states:

I am Capt K E Lindsay and assess the cost of damages to WD veh No. CM 344272 as follows:

Parts - £14-0-0
Labour - £ 7-0-0

The Accused declines to cross-examine this witness.

QUESTION TO THE ACCUSED: "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

ANSWER BY ACCUSED: I have nothing to say at the present time

Certified that the Rules of Procedure 4(c), (D), (E), (F), and (G) have been complied with.

Taken down by me in the Field in the presence and hearing of the accused this 22nd day of August, 1945.

(J A Orr) Capt
29 Cdn Armd Recce Regt (S Alta R)
Officer detailed to take
Summary of Evidence.

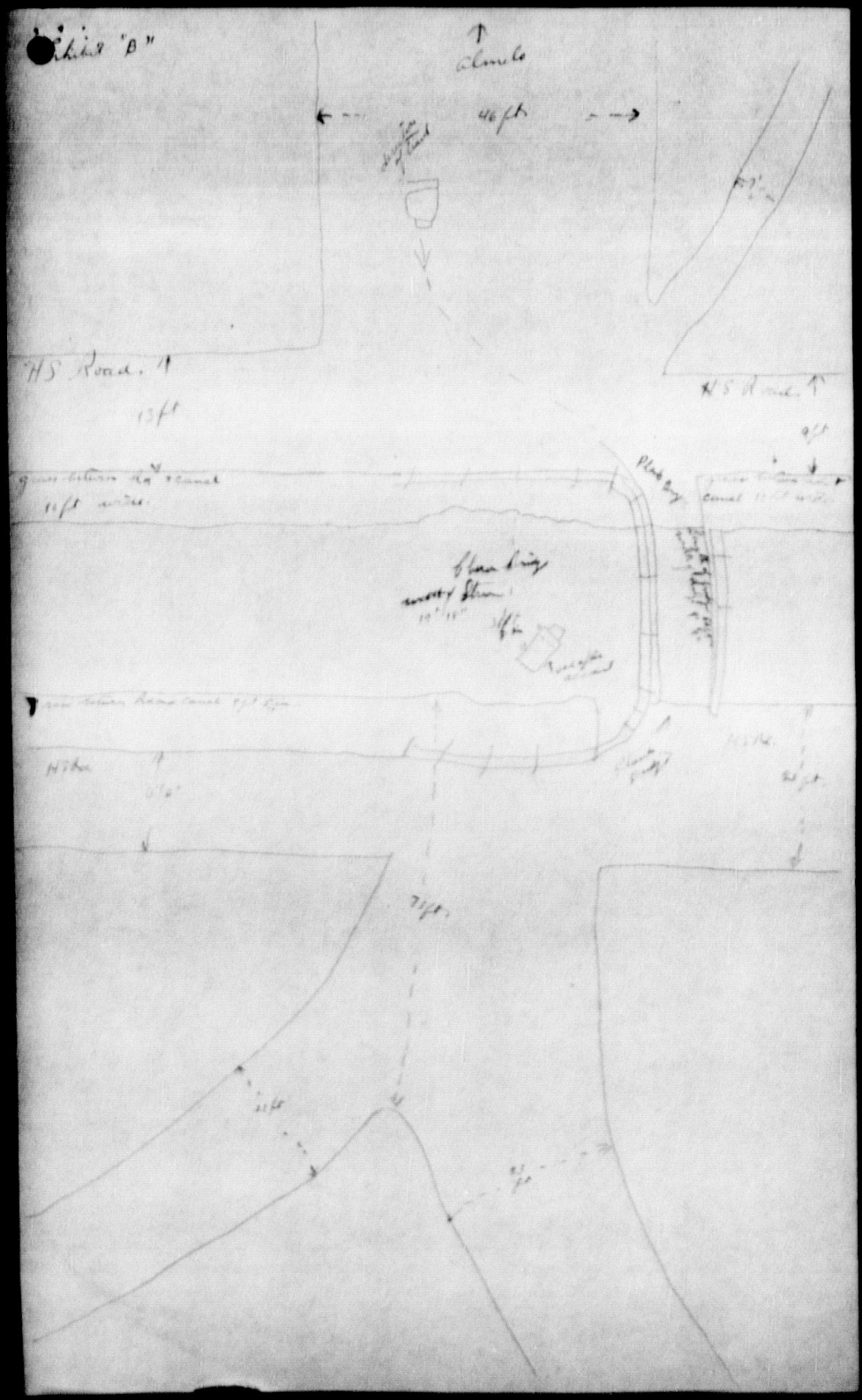


Exhibit "B"
Almelo
46 ft
HS Road
13 ft
HS Road
9 ft
Plank bridge
Plank bridge
HS Rd
HS Rd
75 ft
25 ft
25 ft

SECRET.

Exhibit "A".

SIR: 15 Aug 45.

I L-84636 Sgt Halkyard A E. On the Night of Aug 5 /45 at approximately 2100 hrs was standing outside RHQ Sqdn. Orderly room with Tpr Leckie when civilians reported a Canadian vehicle in the canal at Raalte, Immediately I proceeded to the bridge which was the scene of the accident accompanied by Tpr Leckie in the H U P. When I arrived the Aux Ser officer from the 9th Field Engineers was there.

Tpr Duffy whom I recognized was laying on the bank of the canal and appeared to have been just taken from the water. The Jeep was partly submerged in water. Tpr Duffy was suffering from slight injuries so we proceeded to the R A P with him in the H U P.

Then I reported the accident to Reg Police, Sgt Womsley Accompanied by him I returned to the scene of the accident and helped recover the vehicle.

L-84636 Sgt Halkyard A E
(A E Halkyard)

In the Field
27 Aug 45

I desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field, General Court Martial.

"Tpr Duffy J C "

Signature of accused.

This unit is prepared to detail Capt R ROBINSON to rep the accused at his forthcoming trial by Field General Court Martial if the Convening Officer so desires.

"N Hughes".
(N N Hughes) Captain.
Adjutant.
29 Cdn Armd Recce Regt (S Alta R)

In the Field.
27 Aug 45.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
M-107309	Trooper	Jack Charles DUFFY	29 Cdn Armd Recce Regt (S Alta R)

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry* or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

* Strike out if not applicable

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For AWL ..... 1 ..... times

For Conduct to the prej etc 5 ..... times

For .... times

For .... times

2. ~~Previous convictions of the accused by a court martial or civil court are set out in the Schedule overleaf.~~

3.* ~~The accused at the present time is under sentence for~~ .....

~~beginning on the~~ ..... day of .....

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 15 days in military custody, making a total of 15 days of which 00 days were spent in hosp.

5. The present age of the accused is 21 yrs 11 mos.

6. The date of his attestation is 26 Feb 43.

7. ~~The service which the accused is allowed to reckon is~~ .....

8. ~~The accused is in possession of~~ #

\# State the military decorations (if any) held by accused.

9. ~~(If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date -~~

	Date of Promotion
~~In the substantive rank of~~	.....
~~In the war substantive rank of~~	.....
~~In the acting rank of~~	.....

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Army Form B.296 (War)

No. M-10730 Name Tpr DUFFY Jack Charles.

Date of last entry in Company Conduct Sheet

Sqn, Battery, or Company

No. and date of last drunk

Corps RCAC

Period not reckoning towards freedom from extra fine

Date of enlistment 26 Feb 43.

OC Badges

Sheet No

Signature OC Company, etc

Service or Proficiency Pay

3/17 MFM 6 (APR 12) 4/FAS/130 13419

Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	8-8-43	Tpr		Sec 15 AA AWL from 2200 hrs 8-8-43 to 0800 hrs 20-8-43 Total absence 11 days 10 hrs.	Cpl Forester	14 days CB 14 days Pay	20-8-43	Lt-Col C F Smith	Forf 12 days pay FR&I 149)1)(a)
London Ont	14 Oct 43	Tpr		AA 40 Conduct to the prej etc did not report to the mess hall when ordered to do so	Cpl Graham	5 days CB	14 Oct 43	Capt C W Sawtell	
London Ont	15 Oct 43	Tpr		AA 40 Failed to a ppear at the place of parade appointed by his commanding officer. Failed to appear at defaulters parade.	Cpl McLaughlin	7 days CB 7 days Pay	18 Oct 43	Capt C W Sawtell.	

(PTO)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Londong Ont	15 Oct 43	Tpr		~~AA~~ 40 Conduct to the prej etc Failed to answer ~~ge~~faulters call and was absent from duty.	Cpl McLaughlin	7 days CB 7 days pay	18 Oct 43	Capt C W Sawtell.	
Field.	21-3-44	Tpr		AA Sec 40 Appeared on parade with a dirty rifle.	Lt-Boothroyd	7 days CB	22 Mar 44	Major A C Marshall	
Field	24-3-44	Tpr		AA 40 Neglect to the prej etc. dirty rifle.	L/Cpl Wheeler	7 days CB	26 Mar 44	Major F Garen.	
				CERTIFIED TRUE COPY OF ORIGINAL MFM 6 IN MY CUSTODY "N Hughes" (N Hughes) Capt, Adjt, Officer i/c Regt Records 29 Cdn Armd Recce Regt (S Alta H)					

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
M-107309	Trooper	Jack Charles DUFFY	29 Cdn Armd Recce Regt (S Alta R)

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry* or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

* Strike out if not applicable

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For AWL ..... 1 ..... times

For Conduct to the prej etc 5 ..... times

For .... times

For .... times

2. ~~Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.~~

3.* ~~The accused at the present time is under sentence for~~ .....

~~beginning on the~~ ..... day of .....

4. The accused has been awaiting trial on the present charges for Nil. days in civil custody; and for 15... days in military custody, making a total of ..15.. days of which ..no.. days were spent in hosp.

5. The present age of the accused is 21 yrs. 11 mos.

6. The date of his attestation is 26 Feb 43.

7. ~~The service which the accused is allowed to reckon is~~ .....

8. ~~The accused is in possession of~~ #

\# State the military decorations (if any) held by accused.

9. ~~(If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date -~~

	Date of Promotion
~~In the substantive rank of~~	.....
~~In the war substantive rank of~~	.....
~~In the acting rank of~~	.....

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Army Form B.296 (War)

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ....7..... day of .....Sep 45.....

"N Hughes" Capt.
Adjt, 29 Cdn Armd Recce Regt

"P A Mayer" Major Pres.

Plea in Mitigation by Defending Officer. "EEW"

The accused has been a good soldier and has a clean crime sheet no crime at all since he has been OS. It is not 21 years of age and has been in the army for 3 yrs. He has attained his manhood actually in the amy. He is has been a good soldier in action. has carried out his duties. On nite of 5 Aug 45 when offence took place, the accused had been drinking in SHQ area Holland Gin. Social activities here are very few. After a few drinks he thought of more active social activity. The Regt recreational centres are at Halle - 20 km away. The recreational veh had all left. He decided that any vehicle would be a recreational one. He took the vehicle and drove it 7 or 8 kms along canal and drove it in. He was alone. He was seriousaly injured. He spent 11 days in hospital. He did not want to steal vehicle but get somewhere for recreation by means of same. I hope court will take account of his age, his services in action, his purpose in stealing vehilce and not bee too severe in passing sentence.

Character Evidence. "EEW"

M-49001 Sgt Wolf G L 29 Cdn Ardm Recce Regt having been duly sworn states:-

I was accused Tpt Sgt for 6 mo nths. When in action he was always on the job. Out of action on parade had no trouble with him he was realiable and soldierly. I never had to check him or put him under arrest. He was a good soldier in action . I never had to worry about him. (RP 83(B) complied with.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M-107309 Tpr Jack Charles DUFFY, 29 Cdn Armd Recce Regt.

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 40	Guilty	Guilty	
2nd	AA 40	Guilty	Guilty	
3rd	AA 6(2)(b)	Guilty	Guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which No days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

to undergo detention for a period of one(1) year.

(Sgd) "E E Wasson" Major — Judge-Advocate, if any.
7 Sep 45 — Date awarded.
(Sgd) "P A Mayer" Major, President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally: AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED.

I direct that the accused be not required to undergo detention further than [illegible] (1)

(1. AA 57A. Delete if not used.)

(Sgd) "J F R Akehurst" Lt-Col
Date 18 Sep 45. A/Commanding 10 Cdn InfBde.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
M-107309 Tpr Duffy J.C.	19 Sep 45.	"N Hughes" Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5 Z-76

CPA86 (In lieu of AFA3)
40-P-N.S.-1666 (2004)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt Col JFR Akehurst Comd 10 Cdn Inf Bde dated 4 Sep 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M107309	Tpr	Jack Charles	Duffy	29 Cdn Armd Recce Regt

Certified true Copy

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 7 Sep 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(A) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1600 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 537. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

Pte Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No .....(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	PA Mayer	Alg Regt
Member	Capt	JW Kidd	Lic & Bdld Regt
Member	Capt	DH MacDougall	Alg Regt
Judge-Advocate	Major	EE Wasson	HQ 4 Cdn Armd Div
Prosecutor	Major	GL MacDougall	29 Cdn Armd Recce Regt
Defending Offr	Major	R Robinson	

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 111(B), or in bar of trial (RP 38), or as to accused's mental fitness to stand trial (AA 130, RP 57), or in case of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposit., the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.~~(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on 2 3 charge(s). The accused is ~~were~~ so informed, and he (~~they~~) ~~change(s) his (their) plea(s) to~~ [illegible]. Part I of the Schedule is amended accordingly. P.T.O.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D)(1).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence shall be read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A85. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B(c)(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(B).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 97(A). See Notes re Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
(*Or*, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2))
(*1. AA 54(3) (4), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No evidence to be given.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)
(*1. AFB 255 or AFB 256. 2. MCM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) and in mitigation of punishment ?(1) Ans. Yes. I do. [illegible] (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas RO 309, 1323, MML p 66, 737-739. As to sentences assigned for civil offences by the law of England see AA 44(5), MML p 135. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 367. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

41 E 42 E 43 E

Gm. Duffy J F.

CHARGE SHEET

The accused, H-24119 Gnr. Duffy, J.F., C-5685 Gnr. Butcher, W.J., and C-5686 Gnr. Pestel, E., Royal Canadian Artillery, on the strength of No. 1 Canadian Artillery Holding Unit, soldiers of the Canadian Army, (Overseas), are jointly charged with: WHEN ON ACTIVE SERVICE,

FIRST CHARGE
SEC 18 (4)
ARMY ACT

STEALING PUBLIC PROPERTY BELONGING TO A REGIMENTAL MESS,

in that they, at St. Lucia Barracks, Bordon, Hants., on Oct 31, 1941, stole from the Mess Secretary's office, Officers' Mess, a cash box and money contained therein, to the amount of £16-11-4, the property of the Officers' Mess, No. 1 Canadian Artillery Holding Unit.

OR
in the alternative,

SEC 40
ARMY ACT

AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that they, at St. Lucia Barracks, Bordon, Hants., on Oct 31, 1941 were in improper possession of property belonging to a Regimental Mess, to wit, a cash box and money contained therein, to the amount of £16-11-4, the property of the Officers' Mess, No. 1 Canadian Artillery Holding Unit

J. Roberts

(J. ROBERTS) Lieut.-Col.,
Commanding Officer,
No. 1 Cdn Artillery Holding Unit.
Canadian Army (Overseas).

Dated at Bordon,
Hants., this 6th
day of Nov., 1941.

To be tried by Field General Court Martial

(F.R. Phelan) Brigadier
Commanding Cdn Base Units.

Farnborough, Hants
This 13th day of Nov 41.

H-24119, GNR J.F. DUFFY, No. 1 CAMU
C- 5685, GNR W.J. BUTCHER, do.
C- 5686, GNR. E. PESTEL, do.

Tried by Field General Court Martial at BORDON, Hants. on the 18th day of November, 1941.

The order convening the Court, the charge sheet, summary of evidence and medical certificates are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused are brought before the Court.

Prosecutor: Lieut R.M. Evans, No. 1 CAMU.
Defending Officer: Lieut. S.B. Shepe, No. 2 CAMU.

At 1100 hrs the trial commences.

The order convening the Court is read, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1. DEFENCE: No, sir.

The President, members and Judge Advocate are duly sworn.

The officers under instruction are duly sworn.

Q2. Do you object to No. S-66985, Sgt. T. Byburn, R.Regt.C., acting as shorthand writer?
A2. No, sir.

The shorthand writer is duly sworn.

The charge sheet is signed by the President and annexed to the proceedings.

The accused are arraigned upon each charge in the above mentioned charge sheet.

Q3. Are you guilty or not guilty of the first charge against you, which you have heard read?
A3. DEFENCE: Not guilty.
Q4. Are you guilty or not guilty of the second charge against you, which you have heard read?
A4. DEFENCE: Not guilty. There is some question whether the plea on the first charge covers the second one or not.

JUDGE ADVOCATE: If they had pleaded guilty to the first charge it would have been within the power of the prosecutor to withdraw the second charge, but as they have pleaded Not Guilty to the first charge the second one must be proceeded with.

Q5. THE COURT: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A5. DEFENCE: We are moving for an adjournment on the grounds that the officer detailed this morning as prosecutor has had a hand in the defence and has knowledge of certain facts in the strategy of the defence, and as such it would be prejudicial to the accused to proceed on the

present basis. Lieut Langille, the legal officer at No 1 CAHU, is ill and cannot be here, so I would ask for an adjournment so as to enable Lieut Langille to act as prosecutor and not Lieut Evans.

THE COURT: The Court allow the defence motion, and this trial will be adjourned until a time to be set by the Court.

AT 1115 HRS THE COURT ADJOURNED SINE DIE.

ON THE 25th DAY OF NOVEMBER, 1941, AT 1000 HRS, THE COURT REASSEMBLE, PURSUANT TO ADJOURNMENT: PRESENT: THE SAME MEMBERS AS ON THE 18th DAY OF NOVEMBER, 1941.

The accused are brought before the Court.

Prosecutor:- Lieut. G.C. Langille, No 1 CAHU.
Defending Officer:- Lieut. S.H. Sheps, No 2 CAHU.

Q6. THE COURT: The last time the court sat the charges were read to you and you each pleaded Not Guilty to the first and second charges. Do you wish to change your pleas?

A6. ALL ACCUSED: Not Guilty to the first charge, sir.

Q7. And the second charge?

A7. Guilty to the second charge, sir.

Q8. Perhaps I had better start over again if you are going to change your pleas. I will read the charge sheet again.

The accused are again arraigned upon each charge in the above mentioned charge sheet.

Q9. Are you guilty or not guilty of the first charge against you, which you have heard read?

A9. ALL ACCUSED: Not Guilty.

Q10. Are you guilty or not guilty of the second charge against you, which you have heard read?

A10. ALL ACCUSED: Guilty.

The accused having pleaded Guilty to the second charge, the provisions of R.P. 36(2) are here complied with.

Q11. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A11. No, sir.

PROSECUTOR: I think the case will unfold itself as the witnesses are called, so I won't make any introductory remarks.

1st witness for prosecution) LIEUT. H.P. THOMSON, No. 1 Canadian Artillery Holding Unit, being duly sworn, is examined by the prosecutor:-

Q12. Give the court your rank, name and unit, please?

A12. I am Lieut H.P. Thomson, Mess Sec'y, St Lucia Officers' Mess.

Q13. Do you recognise the accused men?

A13. Yes, they are Gnr Duffy, Gnr Butcher and Gnr Postel.

Q14. These soldiers are charged with the theft of a cash box and contents. Will you tell the court the story connected with this: how you came upon it?

A14. It happened after the bar closed on the 31st of the month, and our usual routine is that the auditors come in then and check everything, check our cellar stock, bar stock and cash after the day's business at the end of each month. On this particular occasion we had been working in my office for some little time until about quarter after 11 or something like that on the 31 Oct 41. The auditor and I went down to the basement to check the cellar stock. We left our office, went

L.G.P.

out of the door into what we call the "glass room," which is an adjoining room where the stairs lead to the basement: it is only a one room basement specially designed for the storage of beer and spirits and other things. On our way through there the lights were lit. We proceeded to take an inventory of our stock there, and I had occasion to come up to our office for some papers, and on coming up through that room I noticed the light was out.

Q15. What time was that?

A15. Between 11.15 and 11.30, but I am not sure of the exact minute. The room was so situated that there was a table like here (indicating), with two iron trestles and a sink over there, with a passage between. On coming up, one of these trestles was across this passage and I naturally stumbled into it in the dark: I thought it odd at the moment and then I turned the light switch on and there was no bulb in the socket. Then I got suspicious that something was wrong. When I got into my office the cupboard door was open and the cash box was missing. It is possible I had left the cupboard door unlocked because I had been in there several times during the evening: the cash box is kept on a shelf in the cupboard and the door is locked with a hasp and a padlock. When I discovered the cash box was gone, I knew the C.O. was in the billiard room, and I was on my way to my room to get a torch to look around and see if I could find any sign of anybody who had taken the cash box. I reported to the C.O. that the cash box was missing and I went into my room to get a torch and then decided to look in the back area. I quickly assumed if anyone had taken it and were trying to get away they would go to the rear of the mess rather than the front, where it is quite open and where people are coming home frequently at that time. We have an ice box cut in the side of the hill, that is the first place I looked, and then I looked into the garages, which were open. When I got to the N.E. corner of the Mess I met Gnr Jeffrey, a cook in the officers' mess, and I told him what had happened and said, "Come along with me." There is a little hill there about 40 or 50 ft high, at the top of which are some concrete shelters. When we got up to that point I looked around, and there was nothing there, but we looked further up the hill and could see three silhouettes, soldiers apparently, and we immediately proceeded up there. They were about 50 or 60 or 70 ft outside the officers' mess enclosure. As we approached these three figures one left the group and started on further up the hill. When we got up to the other remaining two one of them was Gnr Pestel and the other Gnr Butcher: I didn't know who the third man was, but I had called "Halt!" to that man. He didn't halt: in fact on the order to "Halt!" he started to double, so I followed him up over the top of the hill and on the way there was a crash - I didn't know at that time what it was - and when we got opposite the point where we heard this crash we looked in the bushes and Gnr Jeffrey found the cash box and handed it to me.

Q16. Can you identify that cash box?

A16. Yes, this is the cash box, but at that time the key was not in it; the key to this cash box was on my ring.

Q17. What did that cash box contain?

A17. £16.11.4. I have the money here in my pocket.

--- EXHIBIT 1 - Cash Box.

Q18. All right: you heard this crash?

A18. Yes, and we proceeded further on, looking in the gorse and bracken, but it was rather hopeless. The fact was I had the cash box in my possession, apparently unopened, and we only continued our search for three or four mins. It would be quite easy for a person to be in that underbrush and be only about three ft from you and for you still not to know it. I proceeded back and reported to the Col that the cash box was found. In the meantime I told Gnr Pestel and Gnr Butcher to remain where they were, and on my return I instructed Gnr Jeffrey to take them to the kitchen. I immediately telephoned to the R.P. and had them up to search these two, and they were placed under arrest.

Q19. What condition were they in?

A19. Gnr Pestel was drunk; he couldn't stand still. Gnr Butcher was, well, I would just classify him as drunk.

Q20. Is there any way in which you can describe it?

66?

A21. One indication of the condition of Gnr Pestel was that when I was talking to him at first he bumped up against me and he said, "Give me a match," which was hardly the way to ask an officer for a light, and he was quite drunk; but Gnr Butcher didn't say anything, he didn't do anything to give you a clear indication of whether he was very drunk or only partially drunk.

Q22. How did he walk?

A22. I couldn't see.

Q23. All right, continue, please?

A23. During an evening like this at the mess we allow a little laxity amongst the staff there, they are allowed to purchase drinks, beer only, through the officers' mess bar on pay days and on the occasion of mess dinners and things like that, and I had noticed that Gnr Duffy was around there during the evening and was apparently doing some drinking, so I imagined he might be the third man. I proceeded to St Lucia House, where he works as night fireman, and he was in the room of an officer talking, sitting on the end of the officer's bed; this was about one o'clock in the morning. I questioned him as to his movements and he gave an explanation that was satisfactory, although he seemed to be a little worried as to why I was asking him questions, and I didn't tell him. That is all that was done. The following morning Gnr Duffy was placed under arrest.

Q24. In what condition was Gnr Duffy at one o'clock in the morning?

A24. Apparently sober.

Q25. How long did he talk to you?

A25. For a total of 10 mins; I stayed in for four or five mins, then I went away and came back in there for a couple of mins.

Q26. How long were you in the basement before you found this trestle placed across, and the light out?

A26. Not over 15 mins.

Q27. Now the third person who ran, can you describe that run, was it bright enough to notice how he ran?

A27. It was bright enough to notice he was running with some speed.

Q28. With steadiness or not?

A28. The following morning when checking the foot prints they were in a straight line.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q29. What were these men doing that afternoon and evening in the mess?

A29. Gnr Pestel works in the glass room, I think he was a bus boy then. Gnr Butcher was a batman in St Lucia. Gnr Duffy had worked for some considerable time in the mess as bus boy, moving the dishes from the door of the mess room down to where they are washed. That door of the mess room is probably 10 ft from the door of my office.

Q30. Were Butcher and Duffy working in the mess that day?

A30. That evening, yes.

Q31. This privilege of buying drinks in the officers mess, that would be extended to them?

A31. Oh, yes.

Q32. Do you know how long they were working that day or how long they were in the mess?

A32. It was a mess dinner and I don't know, but normally they would be there from the time the dinner started or probably a little before until the dinner was finished.

Q33. What time did the dinner start that evening?

A33. I don't remember.

Q34. Would it be six o'clock, seven o'clock, or what?

A34. I am trying to think. I am getting confused with another dinner. I will say seven o'clock or a little after. We had a guest and he had forgotten about it and we telephoned him.

Q35. How long before the dinner started would you have people such as these who were employed in the mess?

A35. Well, it depends on their job. If they were waiters they would have to be there some time ahead; if they were washing glasses they would not normally have to be there if the glasses were cleaned until they were dirty. The whole staff would probably be there about half an hour before the meal started.

Q36. That would be about 6.30?
A36. Or even before that.
Q37. How late would they have to stay there, until their wo
up? How late on that night, do you remember?
A37. I would say 10 o'clock would be ample time to get their
Q38. So they would be in there from 6 to 10 o'clock, and duri
hrs they would have the privilege of buying drinks in the
A38. The time they would finish would be determined by the amo
ing they did and the amount of chattering they did.
Q39. Did you notice much chatter from these three men that night
A39. There was chatter from all the staff; no more from these th
from the rest of them.
Q40. You said they were given the privilege of buying beer only; w
say they did not exceed that privilege?
A40. I wouldn't swear to it.
Q41. Would it be possible for them, in exceeding that privilege, to
spirits, or spirituous liquors against beer?
A41. It is possible, but if I knew about it somebody would be in trou
Q42. Would it be probable, to your knowledge?
A42. I would say improbable. Certainly if they were served with anyth
other than beer I wouldn't know about it; the man in the bar would
know I wasn't around at the time of serving it because it is a def
rule they get nothing but beer.
Q43. But there is a strong possibility they might have got something els
besides beer during those four hours?
A43. I could not deny that at all.
Q44. You said you were downstairs not over 15 mins?
A44. Yes.
Q45. Did you notice these three men when you went out of your office?
A45. Not particularly, no.
Q46. Were there any men around in the glass room or hallway?
A46. Yes, but there was nobody in the glass room when we went through.
Q47. In the hallway?
A47. There may have been, but it is only 10 ft from my door into the hall
and then into another door, so there might have been 10 people in the
hall and I might not even have looked at them.
Q48. About 10 mins after you went downstairs you came back upstairs, dis-
covered the lights out; now, from the time you discovered the lights
out until the time you discovered the cash box missing, about how long
would that take?
A48. I would say about 20 secs.
Q49. Then you went to find the C.O. and report to him?
A49. Yes.
Q50. And you went to get your torch?
A50. Yes.
Q51. How long did that take?
A51. Not very long. I may have talked to somebody, in fact I think I did,
one of the barmen; it would be under 5 mins.
Q52. From the time you went downstairs to the cellar until the time you went
outside would be a total of about 20 mins?
A52. It wouldn't be over that. I cannot swear to the number of mins I was
downstairs, but that is much the larger portion of the time.
Q53. Now, after you got outside you looked around the ice box let into the
hill and you met Chr Jeffrey, and then you went to look into the air
raid shelters; how long did that take you?
A53. Two or three mins.
Q54. Would you say that would add up to 25 mins from the time you left your
office?
A54. I imagine about that.
Q55. What sort of night was it - moonlight?
A55. A clear moonlight night.
Q56. You looked up and saw three figures silhoutted on the hill?
A56. Their background was the ground.
Q57. They were part way up the hill, were they?
A57. Yes.
Q58. I thought you said the three figures were silhoutted against the sky?
A58. No, but I had a fairly clear view. They were probably 100 ft from me
when I noticed them, but you could distinctly see three people.

Q36. That would be about 6.30?
A36. Or even before that.
Q37. How late would they have to stay there, until their work was cleaned up? How late on that night, do you remember?
A37. I would say 10 o'clock would be ample time to get their work cleaned up.
Q38. So they would be in there from 6 to 10 o'clock, and during that four hrs they would have the privilege of buying drinks in the mess bar?
A38. The time they would finish would be determined by the amount of drinking they did and the amount of chattering they did.
Q39. Did you notice much chatter from these three men that night?
A39. There was chatter from all the staff; no more from these three than from the rest of them.
Q40. You said they were given the privilege of buying beer only; would you say they did not exceed that privilege?
A40. I wouldn't swear to it.
Q41. Would it be possible for them, in exceeding that privilege, to buy spirits, or spirituous liquors against beer?
A41. It is possible, but if I knew about it somebody would be in trouble.
Q42. Would it be probable, to your knowledge?
A42. I would say improbable. Certainly if they were served with anything other than beer I wouldn't know about it; the man in the bar would know I wasn't around at the time of serving it because it is a definite rule they get nothing but beer.
Q43. But there is a strong possibility they might have got something else besides beer during those four hours?
A43. I could not deny that at all.
Q44. You said you were downstairs not over 15 mins?
A44. Yes.
Q45. Did you notice these three men when you went out of your office?
A45. Not particularly, no.
Q46. Were there any men around in the glass room or hallway?
A46. Yes, but there was nobody in the glass room when we went through.
Q47. In the hallway?
A47. There may have been, but it is only 10 ft from my door into the hall and then into another door, so there might have been 10 people in the hall and I might not even have looked at them.
Q48. About 15 mins after you went downstairs you came back upstairs, discovered the lights out; now, from the time you discovered the lights out until the time you discovered the cash box missing, about how long would that take?
A48. I would say about 20 secs.
Q49. Then you went to find the C.O. and report to him?
A49. Yes.
Q50. And you went to get your torch?
A50. Yes.
Q51. How long did that take?
A51. Not very long. I may have talked to somebody, in fact I think I did, one of the barmens; it would be under 5 mins.
Q52. From the time you went downstairs to the cellar until the time you went outside would be a total of about 20 mins?
A52. It wouldn't be over that. I cannot swear to the number of mins I was downstairs, but that is much the larger portion of the time.
Q53. Now, after you got outside you looked around the ice box let into the hill and you met Cpr Jeffrey, and then you went to look into the air raid shelters: how long did that take you?
A53. Two or three mins.
Q54. Would you say that would add up to 25 mins from the time you left your office?
A54. I imagine about that.
Q55. What sort of night was it - moonlight?
A55. A clear moonlight night.
Q56. You looked up and saw three figures silhoutted on the hill?
A56. Their background was the ground.
Q57. They were part way up the hill, were they?
A57. Yes.
Q58. I thought you said the three figures were silhoutted against the sky?
A58. No, but I had a fairly clear view. They were probably 100 ft from me when I noticed them, but you could distinctly see three people.

Q59. About how far from the mess were they?
A59. From the nearest part of the mess to the gate would probably be 150 ft; they were 50 to 60 ft outside the gate.
Q60. A total of about 200 ft from the exit of the back entrance of the mess?
A60. Probably a little more than that.
Q61. Certainly not much more than about 35 or 40 yds?
A61. As the crow flies.
Q62. You came outside about 40 or 50 yds away from the mess after wandering around and making a certain amount of noise in the dark, and you saw three figures standing there out in the open?
A62. Yes.
Q63. Did they look as though they tried to conceal themselves?
A63. No.
Q64. Did they look as if they were trying to get away?
A64. No.
Q65. In other words there were three fellows who got up there with something in their hands and they stayed there until you called?
A65. Until I approached them.
Q66. And when you approached them, one of them started to walk away?
A66. Yes.
Q67. You called to him to halt and he doubled?
A67. That is right.
Q68. How much money is there ordinarily in that mash box?
A68. Well, it varies from day probably seldom less than £10 and very seldom over £50.
Q69. Would you suggest, as far as they were concerned, there might have been nothing in it?
A69. No.
Q70. You are satisfied they knew there was a certain amount of money in it?
A70. Quite.
Q71. How many people have access to the cash box?
A71. One -- myself.
Q72. Would they get that information from you then, as to the contents of the cash box?
A72. No, it is that they study the routine. If the bar is open we do a certain amount of business and the money from the time it is handed to me and taken to the bank is kept in the cash box, and I would say these men knew that.
Q73. It would be impossible for them to think there was no money, or a very small quantity of money, in it?
A73. I hesitate to think that.
Q74. When you found the cash box, had it been opened at all?
A74. No.
Q75. Any signs of it having been attempted to force it open?
A75. Absolutely none.
Q76. The box was intact, was it?
A76. Intact.
Q77. You say Pestel was very drunk?
A77. Yes.
Q78. Butcher didn't say anything and did nothing to give any indication of exactly how drunk he was?
A78. That is right.
Q79. He could have been very drunk, too, so far as you know?
A79. He could have been.
Q80. Duffy you saw about two hrs later or one and a half hrs later, and you talked to him for about 10 mins and you suggest he was not very drunk?
A80. He was quite normal at 1.00 in the morning.
Q81. Are you acquainted with Duffy's drinking habits? By that I mean his reaction to quantities of liquor?
A81. I suggest you ask your client for an answer to that.
Q82. Do you know Duffy well enough so that you could distinguish between his normal conduct and his conduct when he had had quite a bit of drink?
A82. Yes.
Q83. And you are satisfied that his conduct at 1.00 in the morning was closer to his normal one?
A83. Yes.
Q84. Would you care to hazard an opinion as to what his condition was one hour or two hours earlier?
A84. I wouldn't; I wouldn't know.

RE-EXAMINED BY THE PROSECUTOR

Q85. What time did the mess dinner start, do you know approximately?
A85. I don't; I imagine it would be about 6.15.
Q86. Were you in the mess from 6.15 until the time you discovered this loss?
A86. All that time.
Q87. Did you see any of the accused during that period?
A87. Yes.
Q88. Did you notice them drinking anything but beer?
A88. I didn't notice what they were drinking.
Q89. Did you know they were drinking?
A89. I didn't actually see them take a drink of anything, but it was obvious they were drinking.

2nd witness for prosecution) No. F-1[illegible]319, GNR. F.H. JEFFREY, No. 1 Canadian Artillery Holding Unit, being duly sworn, is examined by the prosecutor:-

Q90. Give the court your number, rank, name and unit?
A90. I am No. F[illegible]319, Gnr F.H. Jeffrey, No. 1 CAHU.
Q91. What Bty are you with?
A91. HQ Bty.
Q92. How are you employed?
A92. Cook in the officers mess.
Q93. Do you recognise the accused?
A93. Yes, sir (indicating three accused).
Q94. There was a cash box allegedly stolen from the officers mess and I understand you found this cash box. Would you give the court the details as to what you did that night and all about it?
A94. As I was coming home from Bordon Village, I went up early in the evening, and on my way home about half past 11 I was stopped at the back of the mess by Lieut Thomson.
Q95. What date was that, do you remember?
A95. The 31 Oct 41. Lieut Thomson stepped me and told me the cash box had been stolen out of the mess and to the best of my knowledge he told me to go with him. We went up the back of the mess and after we had got up there about 100 yds I saw three men standing there. We went towards them, and one of them ran. As we stopped these two men, one of them was Pestel and one was Gnr Butcher, and Lieut Thomson started after this man than ran, and he threw the box away and I picked up the box and gave it to Lieut Thomson. After that we returned to Pestel and Butcher, and Lieut Thomson told me to take them to the kitchen.
Q96. You didn't see who this third man was, though?
A96. No, sir.
Q97. What condition were Pestel and Butcher in when you went back to them?
A97. I couldn't say Gnr Butcher was drunk.
Q98. Did you see him walking?
A98. Yes, sir.
Q99. Did he walk straight or did he stagger?
A99. I couldn't say, but I don't think he was drunk.
Q100. Did he talk to you?
A100. Yes, sir.
Q101. Did he talk like a drunken man or a sober man?
A101. He didn't talk to me as if he was drunk.
Q102. What about Pestel?
A102. Pestel was very drunk; I had to help him walk.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q101. You say you saw three men standing at the back of the mess. About how far from the back entrance of the mess were they?
A101. When I first saw them I was about 100 yds from them, I would say.
Q102. Where were you?
A102. I was outside the gate, about 50 yds outside the gate when I saw them.
Q103. Do you mean 100 yds or ft?
A103. About 100 yds.

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Q106. Were they up on top of the hill?
A106. Yes, sir.
Q107. Could you see them clearly?
A107. Yes, sir.
Q108. What sort of a night was it?
A108. Fairly moonlight.
Q109. They were standing out quite clear on top of the hill?
A109. Yes, sir.
Q110. Did you see what they were doing when you first saw them?
A110. They were kind of bunched together.
Q111. Did they look as if they were trying to hide?
A111. No, sir.
Q112. Did they look as if they were trying to get away from anywhere?
A112. No sir, just standing there.
Q113. When you and Lieut Thomson got up closer to them, two of them remained standing there?
A113. Yes, sir.
Q114. You say you could not say Butcher was drunk; what do you mean?
A114. When a man staggers I imagine he is drunk.
Q115. What did Butcher talk to you about?
A115. I just don't know; I can't remember what he was talking about.
Q116. From what he said to you could you gauge how his mind was working, whether regularly or might it have been a bit cock-eyed?
A116. I know him pretty well and I don't know that he was talking any different to any other time.
Q117. Does Butcher usually show his liquor?
A117. Yes sir, I think he does.
Q118. Were you around the mess that night during the mess dinner?
A118. Yes, sir.
Q119. Did you notice whether any of these three men were drinking?
A119. Yes, sir.
Q120. What were they drinking, do you know?
A120. Beer, sir.
Q121. Anything else?
A121. Not that I seen.
Q122. Would you say they were drinking a lot, or not very much, or do you know?
A122. I wouldn't say, sir: I don't know.

(3rd witness) LIEUT. D.K. REA, No. 1 Canadian Artillery Holding
for) Unit, being duly sworn, is examined by the prosecutor:-
prosecution)

Q123. Please give the court your rank, name and unit?
A123. I am Lieut. D.K. Rea, No. 1 CAHU.
Q124. Do you recognise the accused?
A124. I do (indicating three accused).
Q125. Do you recognise these documents (producing documents)?
A125. I do.

THE COURT: What are they?

PROSECUTOR: The confessions which Lieut Evans was to produce and I gave notice to the defence that they would be produced. This witness is the officer who took them.

THE COURT: Just have this witness swear that he took them, and we will read them ourselves.

Q126. PROSECUTOR: Tell the court the procedure and how it was carried out when you took these confessions?
A126. I was orderly officer on the day on which these confessions were taken, and I was approached by Lieut Evans, who was going on leave commencing the following Monday, the 28th. As I understand the confessions, they had already been signed before him, but not wishing to delay his leave he asked me if I would explain to the accused that he was leaving and obtain their signatures to duplicate documents exactly

the same as the ones he had taken, which I agreed to do. I then had the accused paraded before me and cautioned them that they need not sign this. I explained the circumstances as I have explained them to you, as to why they were signing them again, also Gnr Butche stated that Lieut Evans had already explained the situation to him. They agreed there was no reason why they should not sign them again, and voluntarily did so in my presence.

Q127. Will you produce these confessions to the court?
A127. (Witness produces documents which are filed as exhibits).

--- EXHIBIT B - Confession of Gnr Duffy.
--- EXHIBIT C - Confession of Gnr Pestel.
--- EXHIBIT D - Confession of Gnr Butcher.

No cross-examination.

The prosecution is closed.

Q128. THE COURT: Do the accused apply to give evidence themselves as witnesses?
A128. DEFENCE: Yes sir, all three of them.
Q129. Do they intend to call any other witness in their defence?
A129. Yes, sir.
Q130. Is he a witness as to character only?
A130. Yes, sir.

R.P. 40 & 41 duly complied with.

1st witness for the defence) The Accused, No. C-5686, GNR E. PESTEL, No. 1 CAHU, being duly sworn, is examined by the defending officer:-

Q131. How long have you been working at the officers mess?
A131. Approx about 10 mos.
Q132. On the 31 Oct 41 did you draw any pay?
A132. Yes, sir.
Q133. Did you get any other money?
A133. Yes sir, it wasn't pay day, but I got paid my mess fees for working in the officers mess.
Q134. When had you drawn your pay?
A134. The day before, on Thurs.
Q135. Had you had anything to drink during that day?
A135. Yes, sir.
Q136. Tell the court what you had to drink and when you had it?
A136. The amount I had I couldn't exactly say, but I started around noon and they closed down again at two o'clock. After that the bar opened again at 4.30 and I started drinking again from then on.
Q137. Did you drink fairly steady between 12 and 2?
A137. Yes, sir.
Q138. What?
A138. Beer mostly.
Q139. At 4.30 what did you have to drink when you started drinking again?
A139. Mostly beer, and as far as I remember I had a gin or two, maybe more, but I couldn't say exactly.
Q140. How were you feeling about 10.30 or 11 that night?
A140. I couldn't say.
Q141. Don't you know how you felt then?
A141. I know I felt pretty good, sir.
Q142. Explain to the court what you mean by feeling "pretty good?"
A142. I was in higher spirits probably than I would be in the ordinary course of events.
Q143. With regard to this box, Exhibit 1, tell the court exactly what you remember about that box?
A143. All I remember is we were all working up at the officers mess on the 31 Oct, and I am pretty sure that Gnr Butcher and Duffy were working up there around 2.30 or 3 in the afternoon getting every-

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thing prepared for the mess dinner at night, and when I came back from the laundry there were there and they were also there at two to get their mess fees also.

Q144. Had they been drinking with you?
A144. Yes.
Q145. Do you know what they had to drink?
A145. We were all drinking together but I couldn't say exactly what we had.
Q146. All right, continue?
A146. The first thing I really knew about a cash box was when we were all up on the hill, I was drunk enough and yet something in my mind seemed to - well, in the first place if I hadn't been drunk the whole thing would not have happened, but anyway, I coaxed them to come back and we were heading back towards the mess with the cash box when Lieut Thomson came along, and when Lieut Thomson shouted "Halt" I know I had two bottles of beer in my hand and I dropped them, and we were heading towards the mess when that happened.
Q147. Do you know what was in that cash box, how much was in it?
A147. No sir, no idea.

CROSS-EXAMINED BY THE PROSECUTOR

Q148. Did you try to open the cash box?
A148. I believe we did kind of play with the handle, sir.
Q149. You say the first thing you remember you were up on the hill: do you remember any of your actions before that?
A149. I remember Gnr Butcher coming from the office down the hall.
Q150. Where were you then?
A150. In the hall cleaning glassware.
Q151. That is just beside the office?
A151. Yes.
Q152. Did you know Gnr Butcher had gone in?
A152. I didn't know he had gone in, no sir.

Q153. THE COURT: In connection with the cash box, at any time in your work in the officers mess have you actually seen money in the box or have you seen money go into the box?
A153. Yes, sir.
Q154. You have perfect knowledge that the cash box was used to put cash in?
A154. Yes sir, I have, and probably 30 men working there have the same knowledge, around the kitchen - bus boys, waiters and so on.
Q155. You knew that box was used to contain cash?
A155. Yes, sir.

2nd witness) for) defence.) No. H-[illegible]119, (accused), GNR J.F. DUFFY, No. 1 CARU, being duly sworn, is examined by the defending officer:-

Q156. How long have you been working at No 1 CARU?
A156. For about five mos in the officers mess, until I got this job as night fireman.
Q157. At whose request were you made fireman?
A157. I got it through Lieut Thomson.
Q158. But did you ask for it or what?
A158. I wanted to get a change, and I went to Lieut Thomson: I went to the Sgt first and then to Lieut Thomson.
Q159. So it was at your request you changed from the mess to your fireman's job?
A159. Yes, sir.
Q160. What was your job on the 31 Oct 41?
A160. My duty was night work, but I was asked to go and work as bus boy in the officers mess on the 31 Oct.
Q161. How long were you there that day?
A161. We went over about two o'clock for our mess fees and then we had the silverware to shine and polish and little odd jobs to do.
Q162. You were collecting your fee for being night fireman?
A162. Yes, sir.

Q163. Had you anything to drink that day?
A163. I started about 4.30 when the bar opened.
Q164. What did you have to drink?
A164. I can't tell you how much, but quite a bit; I had a lot of Old English Ale and also some gin.
Q165. Any idea how much gin?
A165. I couldn't say exactly.
Q166. How much do you think you had?
A166. I had several drinks of gin.
Q167. How late did you keep up the drinking? When did you stop that day?
A167. There was no time I was looking at, and I couldn't be exact as to when we did finish, but according to other people, we were drinking pretty late.
Q168. Can you give any indication to the court as to what time it was you stopped drinking?
A168. It is quite possible I drank as long as the bar was open, and it was open until ten anyway.
Q169. What sort of shape were you in about 11 that night?
A169. Pretty tight.
Q170. Were you sober?
A170. No sir, I wouldn't consider myself sober.
Q171. Can you give any indication to the court about how tight you think you were?
A171. It just depends how people look at a person drinking.
Q172. From the way you look at it?
A172. It is pretty hard for me to remember that. The best I can say is that I was pretty tight, in my own estimation.
Q173. Can you tell the court whether or not you know clearly what you were doing that night?
A173. No sir, I can't remember everything I was doing, really.
Q174. Can you tell the court whether in your opinion your actions were normal that night? By that I mean were they the actions of a normal, sober person?
A174. It is pretty hard for a man to answer for himself when he is drinking; other people can see it different to what you can yourself, sir.
Q175. Do you suggest you were in no shape to know how you were?
A175. I figure I was pretty tight, pretty well away.
Q176. That box, Exhibit A, will you tell the court exactly what you know about that box, what happened to it on the 31 Oct?
A176. Well sir, I didn't have anything to do with it until we got outside, up on the hill.
Q177. Then what did you do?
A177. I had it in my hand on the hill.
Q178. Then what happened?
A178. We found out it was locked and we had nothing to open it with, and therefore didn't open it.
Q179. What were you thinking about when you were on that hill with that box in your hand?
A179. I didn't realise that I was doing really; had I been sober it would have been different; it wouldn't have happened as far as I am concerned.
Q180. You heard Lieut Thomson say you broke away when he came up?
A180. Yes, sir.
Q181. Any explanation for that action?
A181. It was because I got confused and didn't realise what I was doing.
Q182. What did you do after you left the group on the hill?
A182. I went back to St Lucia House and I had some fires to look after, and it was in St Lucia House I was talking to this officer.
Q183. How long after you left the group on the hill did you next see Lieut Thomson?
A183. I couldn't say, sir, because Mr Bond, who I was talking to, had no time on him either.
Q184. What sort of shape were you in when talking to Lieut Bond?
A184. I had a kind of talking jag on; I was doing a lot of talking, I guess.
Q185. Were you in any better shape than you had been in about 11.30?
A185. I figured I was because I had been out in the air considerably.
Q186. Were you doing any work in the interval?
A186. Yes sir, I fixed up three or four fires.

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CROSS-EXAMINED BY THE PROSECUTOR

Q187. What time was it that you took this box out of the office?
A187. I couldn't say.
Q188. Before or after you put the trestle across the passage way?
A188. I didn't do that either, sir.
Q189. Do you remember leaving the mess with the cash box, the three of you?
A189. It is like a dream to me, sir, a kind of a haze.
Q190. Where was the cash box when you saw Lieut Thomson approaching?
A190. On the ground beside us.
Q191. Then you ran?
A191. Yes, sir.
Q192. Why did you run?
A192. I got confused and I ran.
Q193. You thought you had done something wrong?
A193. Yes sir, I realised I was in the wrong.
Q194. You were not too drunk to realise you had done something wrong then?
A194. I fell two or three times when getting away.

RE-EXAMINED BY THE DEFENDING OFFICER

Q195. You say you realised you were in the wrong when you ran away. When did you first realise you were in the wrong?
A195. Right then, when Lieut Thomson came up towards us.

Q196. THE COURT: Why did you throw the cash box away then?
A196. I don't know what made me do it, sir.
Q197. Did you do anything that night and not remember doing it?
A197. I can't say to that, sir.

3rd witness for the defence } No. C-5685, CHR. W.J. BUTCHER, No. 1 CAHU, being duly sworn, is examined by the defending officer:-

Q198. How long have you been at No 1 CAHU?
A198. Just going on about 18 mos.
Q199. Did you work at the officers mess before the 31 Oct 41?
A199. I did.
Q200. As what?
A200. Bus boy.
Q201. What were you working at on the 31 Oct?
A201. I was batman at that time, and I got orders to go up to the officers mess, that was about 2 o'clock, to work up there for the day.
Q202. Did you draw any money that day?
A202. I did, my mess fees.
Q203. When you were working at the officers mess did you have anything to drink?
A203. I did.
Q204. What did you have to drink?
A204. I didn't have anything, sir, from 2 to 4.30.
Q205. Did you have anything before 2 o'clock?
A205. No, sir.
Q206. At 4.30 what did you have?
A206. Some beer and some double gins, I don't know just how much.
Q207. When did you have the gin?
A207. When the bar opened up I had a double gin and a pt of beer.
Q208. Were Duffy and Pestel working with you?
A208. Yes, sir.
Q209. How late did you keep up the drinking?
A209. I can't remember, I got so drunk.
Q210. What was the last thing you did in the mess that night, of which you have a clear recollection?
A210. I helped them to serve the supper from the kitchen to the dining room.
Q211. About what time was that?
A211. After 7 o'clock.
Q212. Did you help to clear up afterwards?
A212. Yes, sir.

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Q213. Do you remember doing that?
A213. No sir, I don't.
Q214. Now, that box on the table: tell the court exactly what you remember about that box on the table that night, the cash box?
Q215. All I remember about that box is when I was on the hill and Lieut Thomson came along, and that is really the first I remember about the box at that time.
Q216. You heard Pestel say that he saw you walking out of Lieut Thomson's office: do you remember that?
A216. No sir, I don't.
Q217. Do you remember what you were doing up on that hill?
A217. No sir, I can't remember, sir.
Q218. Did you see Lieut Thomson come up the hill to you?
A218. No sir, I can't remember, sir, not until he got right up, he was pretty close but I don't know just how far he would be.
Q219. What were your thoughts at that moment?
A219. So far as I can figure, sir, we were on our way back to the mess at that time.
Q220. Why?
A220. Well, we had the cash box, sir, and we were going to take it back to the officers mess and put it back where we got it.
Q221. Have you any knowledge of that intention?
A221. Now that it is spoken about I have.

CROSS-EXAMINED BY THE PROSECUTOR

Q222. Do you remember talking over with the other two about taking back this cash box?
A222. No sir, I don't.
Q223. And you don't remember Gnr Duffy grabbing the cash box?
A223. No, sir, I don't.
Q224. Do you remember saying that he did, in this confession you signed?
A224. That was after Lieut Thomson came up, sir.
Q225. You said, "Gnr Duffy and myself went into Lieut Thomson's office and Gnr Duffy grabbed the box from the office, and Pestel was keeping watch to see that nobody was coming down the hall."
A225. That is what I understood we did, but now I don't just remember who got the box or who went in after it.
Q226. What time of the night did this happen?
A226. I don't remember.
Q227. Was this done before or after you put the trestle across the passage way?
A227. I never put no trestle across there.
Q228. Did you take the light out of the socket?
A228. No sir, I never did that.

Q229. THE COURT: During the evening there was a mess dinner on?
A229. Yes, sir.
Q230. And you chaps were there to help with it?
A230. Yes, sir.
Q231. Did anyone complain during the evening that you were not doing your work properly?
A231. No, sir.
Q232. So apparently your services were quite satisfactory to the mess for the evening?
A232. As far as I know, yes sir.
Q233. Then as far as the mess steward is concerned you were sufficiently sober to do your work?
A233. I never heard anything about it, sir.

1st witness for prosecution) LIEUT H.P. THOMSON, No. 1 Canadian Artillery Holding Unit, being previously sworn, is recalled and examined by the defending officer:-

Q234. As mess sccy did these three men come under your direction, both as being employed at the mess and as batmen?
A234. Yes, they were directly under my supervision.
Q235. How long have they been under your supervision?

A235. They were all there when I took over in Aug of this year.
Q236. Could you indicate to the court what their general character is as you know it from your connection with them?
A236. All their characters as I know it have been lacking in nothing; they are very good workmen, each one doing his particular job. I don't know of Butcher first hand, but I understand he is a very good batman. I do know that Duffy is a very conscientious worker, he always did his job and was always on the job, and the same with Gnr Pestel; he was always there and always did very good work.
Q237. Since your connection with them has there been any occasion on which their honesty has been questioned?
A237. No, sir.

No cross-examination.

Q238. THE COURT: Have you ever had any trouble with them so far as drinking goes?
A238. No, sir.
Q239. Were these men kept working on the table after consuming so much liquor from two o'clock?
A239. None of these men were acting as waiters; they were assisting at the mess dinner, but not as waiters.
Q240. They were quite capable, though, of handling their job?
A240. So far as I know, and it was a very busy evening for me, and nothing was said by anybody else as to their incapability of the job they were on.

Upon completion of closing addresses by the prosecutor and defending officer, and summing up by the judge advocate, the court was closed for the consideration of the finding.

The Court being reopened, the accused is again brought before it.

The Prosecutor, LIEUT G.C. LANGILLE, No. 1 Canadian Artillery Holding Unit, being duly sworn, is examined by the Court:-

Q241. Have you any evidence to produce as to the character and particulars of service of the accused?
A241. Yes sir, I produce in the case of each of the accused AF B-296 and certified true copies of their MFM-6.

The above statement is read, signed by the President, and annexed to the proceedings.

Q242. Is the accused in each case the person named in the statement which you have heard read?
A242. Yes, sir.
Q243. Have you compared the contents of the above statement with the regimental books?
A243. Yes, sir.
Q244. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A244. Yes, sir.

No cross-examination.

THE COURT: Do you wish to address the court?

DEFENDING OFFICER: In arriving at the sentence on this charge I would ask the court to take into consideration first of all the circumstances of this offence. We have here three men who obviously had been drinking considerably, and as laid down in the A.M.L. I would ask the court to follow the suggestion therein contained that such drunkenness goes far in mitigating the offence. It was not a cold-blooded criminal act on the part of these three men, but it was rather in the nature of a

stupid bungle which they did only because they were drinking. I ask the court to take into consideration also the records of these three men. Pestel has had one and three-quarters year service with exemplary conduct, with no offences of any kind. Butcher has had one absence of two days about a year and a half ago out of a total of one and three-quarters years service. Duffy's conduct in the last 12 mos has been exemplary, with no offences of any kind; he had three offences of drunkenness at the end of 1939 and the beginning of 1940, over a year and a half ago, and two short periods of absence in Mar and Jul 40. Would the court also consider as well that these men have been in custody under close arrest, for which they will forfeit their pay, for a period of 24 days.

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE.

SUMMARY OF EVIDENCE in the case of Gnrs. Butcher, Duffy, and Pestel, Royal Canadian Artillery, on the strength of No. 1 Canadian Artillery Holding Unit, Canadian Army, (Overseas).

Statement of 1st Witness: Lieut. H.P. Thomson, No. 1 Canadian Artillery Holding Unit, having been duly sworn deposed as follows:

I am Lieut. H.P. Thomson, No. 1 Canadian Artillery Holding Unit, St. Lucia Officers' Mess, and I am Secretary of the Mess. Between 1030 and 11 P.M. on Friday 31 Oct 41 I put the cash box away in the cupboardin my office. I then left the office about 11.15 P.M. to go to the celllar with Lieut. A.M. Campbell, a member of the Unit Audit Board. Approximately 10 minutes later I had the occasion to go back to my office. I then discovered that the light in the Glass Room was out and a table trestle placed cross ways in the passage. I then became suspicious and proceeded to the light switch and turned it on, but no light came, and I found the cupboard door open and the cash box was missing. I reported the matter to Lieut.-Col. J. Roberts. I then went out to the back of the Officers' Mess, and began to search with my torch. It was a bright moon lit night and at the North West corner of the building I saw Gnr. Jaffrey of the same unit. He joinedm me in the search. About 75 ft. on the North side of the fence we saw three soldiers. On approaching them one broke away and the other two were Gnrs. Pestel and Butcher of No. 1 Cdn Artillery Holding Unit, whom I recognize. I called on the man who had broken away to halt, and then he ran. Gnr. Jaffrey and I both chased him and after going a short distance we heard a crash coming form the direction of the man who was running away. Here we found the cash box. Gnr. Jaffrey picked it up and we found that it had not been opened, and the contents, £16-11-4 still intact. We searched further for this man without any success, and then I returned to the Mess with the cash box. Gnr. Pestel and Butcher remained at the place where I had first seen them, as I had ordered them to stay there. Gnr. Jaffrey brought the 2 men back to the kitchen of the Mess. These men were later placed under close arrest by the Regimental Police. About 1 A.M. on the 1st. I saw Gnr. Duffy talking to Lieut. Tom Bond of the same unit, in the latters room, at St. Lucia House, Bordon, Hants. I questioned Duffy as to his movements. He said, "I left the Mess to fix the fires at the P.O. House, and then came over here". I said, "where did you leave Gnrs. Pestel and Butcher?" He answered, "I left them in the Officers' Mess. I suggested that this story did not agree with the other 2, he then said, "I left them at the corner of the Mess, outside the building". In my opinion Gnr. Pestel was very drunk. He was so drunk that he had difficulty in standing. Gnr. Butcher was drunk, though not as much as Pestel. When I saw Gnr. Duffy at 0100 hours 1 Nov 41 he was apparentlysober.

The accused soldiers each declined to cross- examine this witness.

H.P. Thomson Lieut

Statement of 2nd
2nd Witness: F-14319 Gnr. Jeffrey, F.H., "HQ" Bty. No. 1 Canadian Artillery Holding Unit, having been duly sworn deposed as follows:

I am F-14319 Gnr. Jeffrey, F.H., of "HQ" Battery, No. 1 Canadian Artillery Holding Unit, St. Lucia Barracks, Bordon, Hants. About 2330 hours, 31 Oct 41 I was returning to the Officers' Mess where I was employed as a cook, when Mr. Thomson stopped me at the back of the Mess. He asked me to go along with him to search for a stolen cash box. About 50 ft. inside the gate behind the Mess I saw 3 soldiers standing. We were about a 100ft. away. As we approached one of the soldiers ran. The 2 who remained were Gnr. Butcher and Gnr. Pestel, whom I recognize, and we chased the third man whom I did not recognize. I heard a noise and when I got there I found the cash box on the ground. We went back to Pestel and Butcher, and on Mr. Thomsons orders I took them to the kitchen. I would'nt say Gnr. Butcher was drunk. Pestel was very drunk, and I had to help him along.

The accused soldiers each declined to cross-examine this witness.

Jeffery F.H. F.14319

Statement of
3rd Witness: R-21859 Gnr. McMaster, R.L., HQ Battery, No. 1 Canadian Artillery Holding Unit, having been duly sworn, deposed as follows:,

I am R-21859 Gnr. McMaster, R.L., "HQ" Battery, No. 1 Canadian Artillery Holding Unit, St. Lucia Barracks, Bordon, Hants, employed as waiter in the Officers' Mess. I was returning to the Mess shortly before 0300 hours on Nov 1, 1941 when I met Gnr. Duffy whom I recognize, at the west side of the Mess. He was leaving the premises. I did not have much chance to observe him, but I think he was sober. He did'nt talk like he was drunk, nor was he staggering while walking.

The accused soldiers, each declined to cross-examine this witness.

R. McMaster

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Statement of
4th Witness: Lieut. R.H. Evans, No. 1 Canadian Artillery Holding Unit, having been duly sworn, deposed as follows:

I am Lieut. R.H. Evans, No. 1 Canadian Artillery Holding Unit, St. Lucia Barracks, Bordon, Hants. I produce in evidence a statement of H-24119, Gnr. Duffy, J.F., made to me Tuesday, 4 Nov 1941, (Marked Exhibit "A") It was signed by him in my presence. I further produce in evidence a statement of C-5686 Gnr. Pestel, E.E., made to me on the same date, (marked exhibit "B"), It was signed by him in my presence. I further produce in evidence a statement of C-5685 Gnr. Butcher, W.J., made to me on the same date, (marked exhibit "C"). It was signed by him in my presence.

The accused soldiers, each declined to cross-examine this witness.

R.H. Evans Lt.
.....

The accused soldiers having been cautioned in accordance with R.P. 4 (e), each declined to make statement.

Certified that R.P. 4 (d) (e) (f) & R.P. 16 have been complied with.

Taken down at Bordon,
Hants, in the presence and
hearing of the accused,
484 this 5th day of November,
1941.

G.C. Langille

(G.C. LANGILLE) Lieut. R.C.A.

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~~EXHIBIT "A"~~ GCL

NAME - DUFFY, J.F.

NO. - H-24119 RANK - GNR.

UNIT - HQ Bty. No. 1 Canadian Artillery Holding Unit.

S T A T E M E N T

I have been cautioned by Lieut. R.H. Evans, No. 1 Canadian Artillery Holding Unit, that I do not need to say anything unless I wish to do so, but that anything that I do say will be taken down in writing and may be used as evidence and to show that I understand this I sign my name here.

(Sgnd.)...J.F..Duffy.....

Gnr. Pestel, Butcher and myself were drinking at the Officers' Mess during the Mess dinner on Friday, 31 Oct 41. I was employed as bus biy, and we were drinking all right, sure. And about taking the cash box: I never laid hands on the box myself. We were drinking in the Glass Room. We went out together with the cahs box, and Gnr. Butcher had it. Butcher went into Lieut. Thomsons office himself, and Pestel and I were at the door. He came out with the cash box in his hand. He said then, "come on and we all ran out. We all ran up the hill, at the back of the Officers' Mess. We were standing and it was not long before Lieut. Thomson came out. I heard Lieut. Thomson shout, and I recognized his voice. The box was then on the ground. I took the box and threw it and then ran away into the bushes, and down the road. I went from there to the P.O. House, and from there to St. Lucia House to look after the fires. We all had the box in our hands, and saw it was locked, and tried to open it. - had been drinking heavily and did not realise the seriousness of what we were doing.

(Sgnd.)...J.F..Duffy.....

Witness to Signature, (Sgnd.).R.H..Evans,.Lieut.

(R.H. EVANS) Lieut. R.C.A.,
No. 1 Cdn Arty Holding Unit.
Canadian Army (Overseas).

Bordon, Hants.

4 Nov 41.

Certified by me to be a true copy of Exhibit "A".

G. C. Langille

(G.C. LANGILLE) Lieut. R.C.A.,
Legal Officer,
No. 1 Cdn Artillery Holding Unit.
Canadian Army (Overseas).

GP.

~~EXHIBIT "B"~~ G.C.L.

NAME - PESTEL, E.E.

NO. - C-5686 RANK - GNR.

UNIT - NO. 1 Canadian Artillery Holding Unit.

S T A T E M E N T

I have been cautioned by Lieut. R.H. Evans, No. 1 Canadian Artillery Holding Unit, that I do not need to say anything unless I wish to,do so, but that anything that I do say will be taken down in writing and may be used in evidence, and to show that I understand this I sign my name here.

(Sgnd)...Edward.Pestel.....

I was on duty as bus boy at the Officers' Mess on Friday 31 Oct 41. We were drinking all afternoon and evening. I was working with Butcher and Duffy. During the evening I remember Butcher coming out of Mr. Thomson's office, and I did not see that he had anything in his hand. He said, "come on, lets go". I did not know anything about the cash box until we were up on the hill, and then the whole three of us tried to open it. Then Mr. Thomson came along, and we were coming towards the Mess, and Duffy ran away and dropped the box. I had 2 bottles of beer in my hand and I dropped them, and Mr. Thomson took Butcher and myself to the Guard Room. I had been drinking quite heavily, and I did not realise the seriousness of what we were doing.

(Sgnd.)...Edward.Pestel.....

Witness to Signature, (Sgnd,).R.H..Evans,.Lieut.

(R.H. EVANS) Lieut. R.C.A.,
No. 1 Cdn Artillery Holding Unit.
Canadian Army (Overseas).

Bordon "ants

4 Nov 41

Certified by me to be a true copy of Exhibit "B".

G.C. Langille

(G.C. LANGILLE) Lieut. R.C.A.,
Legal Officer,
No. 1 Cdn Artillery Holding Unit.
Canadian Army (Overseas).

C47

EXHIBIT "C" G.C.L.

NAME - BUTCHER, WILBERT, JAMES.

NO. - C-5685 RANK - GUNNER

UNIT - NO. 1 Canadian Artillery Holding Unit.

S T A T E M E N T

I have been cautioned by Lieut. R.H. Evans, No. 1 Canadian Artillery Holding Unit, that I do not wish to say anything unless I wish to do so, but that anything I do say will be taken down in writing and may be used in evidence, and to show I understand this I sign my name here.

(Sgnd.)W.J..Butcher.....

I am C-5685 Gnr. Butcher, W.J., H.Q. Bty. No. 1 Canadian Artillery Holding Unit, Canadian Army, (Overseas). I was on duty as bus boy at the Officers' Mess, St. Lucia Barracks, Bordon, Hants, on 31 Oct 41. I was working with Gnr. Duffy And Gnr. Pestel, in the Glass Room in the Officers' Mess. The whole three of us were drinking the whole afternoon and evening. Gnr. Duffy, Pestel and myself made it up to get the cash box from Lieut. Thomson's office. Gnr. Duffy and myself went into Lieut. Thomsons office, and Gnr. Duffy grabbed the box from the office, and Pestel was keeping watch to see that nobody was coming down the hall. We went out to the Glass Room where we joined Pestel, and went out the back into the field behind the Officers' Mess, and that is where Mr. Thomson came up. We saw Pestel and I and also Duffy. Duffy ran with the cash box, and Mr. Thomson took Pestel and I to the Mess, and I do not know where Duffy went to with the cash box.

(Sgnd.)..W.J..Butcher.....

Witness to Signature, (Sgnd.)..R.H..Evans.....

(R.H. EVANS) Lieut. R.C.A.,
No. 1 Cdn Artillery Holding Unit.
Canadian Army (Overseas).

Bordon Hants.
4 Nov 41.

Certified by me to be a true copy of Exhibit "C".

G.C. Langille

(G.C. LANGILLE) Lieut. R.C.A.,
Legal Officer,
No. 1 Cdn Artillery Holding Unit.
Canadian Army (Overseas).

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Ex "C"

STATEMENT OF WITNESS

NAME - Pestel, E.E.

NO - C-5686 RANK - GUNNER

UNIT - No. 1 Cdn Artillery Holding Unit.

S T A T E M E N T

I have been cautioned by Lieut. D.K. Rea, No. 1 Canadian Artillery Holding Unit, that I do not need to say anything unless I wish to do so, but that anything that I do say will be taken down in writing and may be used in evidence, and to show that I understand this I sign my name here.

Edward Pestel.....

I was on duty as bus boy at the Officers' Mess on Friday, 31 Oct 41. We were drinking all afternoon and evening. I was working with Butcher and Duffy. During the evening I remember Butcher coming out of Mr. Thompsons' office, and I did not see that he had anything in his hand. He said, "come on lets' go". I did not know anything about the cash box until we were up on the hill, and then the whole three of us tried to open it. Then Mr. Thompson came along, and we were coming towards the mess, and Duffy ran away and dropped the box. I had two bottles of beer in my hand and I dropped them, and Mr. Thompson took Butcher and myself to the Guard Room. I had been drinking quite heavily, and did not realize the seriousness of what we were doing.

Signature..Edward Pestel.

Witness to Signature.....

(D.K. REA) Lieut. R.C.A.,
No. 1 Cdn Artillery Holding Unit.
Canadian Army (Overseas).

Gordon Hants,

21 Nov 41.

Exh B

STATEMENT OF WITNESS

NAME - DUFFY, J.F.

NO - H-24119 RANK - GUNNER

UNIT - HQ BTY. NO. I CDN ARTILLERY HOLDING UNIT.

I have been cautioned by Lieut. D.K. Rea, No. 1 Canadian Artillery Holding Unit, that I do not need to say anything unless I wish to do so, but that anything that I do say will be taken down in writing, and may be used in evidence and to shwo that I understand this I sign my name here.

J F Duffy

Gnr. Pestel, Butcher and myselfwere drinking at the Officers' Mess during the Mess dinner on Friday, 31 Oct 41. I was employed as bus boy, and we were drinking all right sure. And about taking the cash box: I never laid my hand on the box myself. We were drinking in the Glass Room. We went out together with the cash box, and Gnr. Butcher had it. Butcher went into Lieut. Thompsons' office himself, and Pestel and I were at the door. He came out with the cash box in his hand. He said then, "come on," and we all ran out. We all ran up the hill at the back of the Officers' Mess. We were standing and it was not long before Lieut. Thompson came out. I heard Lieut. Thompson shout and I recognized his voice. The box was then on the ground. I took the box and threw it and then ran away into the bushes and down the road. I went from there to the P.O. House, and from there to St. Lucia House to look after the fires. We all had the box in our hands, and saw it was locked and tied to open it. I had been drinking heavily, and did not realise the seriousness of what we were doing.

Signature J F Duffy

Witness to Signature D K Rea

(D.K. REA) Lieut. R.C.A.,
No. 1 Cdn Artillery Holding Unit.
Canadian Army (Overseas).

Bordon Hants,

21 Nov 41.

6475

E "D"

STATEMENT OF WITNESS

NAME - BUTCHER, Wilbert, James.

NO - C-5685 RANK - GUNNER

UNIT - H.Q. BTY. No. 1 Canadian Artillery Holding Unit.

S T A T E M E N T

I have been cautioned by Lieut. D.K. Rea, No. 1 Canadian Artillery Holding Unit, that I do not need to say anything unless I wish to do so, but that anything I do say will be taken down in writing and may be used in evidence, and to show that I understand this I sign my name here.

W.J. Butcher

I am C-5685 Gnr. Butcher, W.J., H.Q. Bty., No. 1 Canadian Artillery Holding Unit, Canadian Army, (Overseas). I was on duty as bus boy at the Officers' Mess, St. Lucia Barracks, Bordon, Hants., on 31 Oct 41. I was working with Gnr. Duffy and Gnr. Pestel, in the Glass Room in the Officers' Mess. The whole three of us were drinking the whole afternoon and evening. Gnr. Pestel, Duffy and myself made it up to get the cash box from Lieut. Thompsons' office. Gnr. Duffy and myself went into Lieut. Thompsons' office, and Gnr. Duffy grabbed the box from the office, and Pestel was keeping watch to see that nobody was coming down the hall. We went out to the Glass Room where we joined Pestel, and went out the back into the field behind the Officers' Mess, and that is where Mr. Thompson came up. He saw Pestel and I and also Duffy. Duffy ran with the cash box, and Mr. Thomson took Pestel and I to the Mess, and I do not know where Duffy went to with the cash box.

Signature W.J. Butcher

Witness to Signature D.K. Rea

(D.K. REA) Lieut. R.C.A.,
No. 1 Cdn Artillery Holding Unit.
Canadian Army (Overseas).

Bordon Hants,

21 Nov 41.

No. 1 Canadian Artillery Holding Unit.
Canadian Army
(Overseas).

22 Nov 41.

I have been informed today that Lieut. D.K. Rae, No. 1 Canadian Artillery Holding Unit, will be a witness at my Court Martial, and as such will produce in evidence a confession I have made to him on the 21st day of Nov. 41.

C.G.P.

Edward Pesetti

No. 1 Canadian Artillery Holding Unit.
Canadian Army
(Overseas).

22 Nov 41.

I have been informed today that Lieut. D.K. Rae, No. 1 Canadian Artillery Holding Unit, will be a witness at my Court Martial, and as such will produce in evidence a confession I have made to him on the 21st day of Nov. 41.

C.G.P.

W.L. Butcher

No. 1 Canadian Artillery Holding Unit.
Canadian Army
(Overseas).

22 Nov 41.

I have been informed today that Lieut. D.K. Rae, No. 1 Canadian Artillery Holding Unit, will be a witness at my Court Martial, and as such will produce in evidence a confession I have made to him on the 21st day of Nov. 41.

J. F. Duffy

C.G.P.

MFB 246. 1 CAHU 141.

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN) PARA 557.

I certify that I have, this morning, examined

No...H-24118 Gnr. Duffy, J.F.....

of No. 1 Can Arty Holding Unit and in my opinion he

is fit ~~xxxxxx~~ to undergo Trial by Court Martial.

Station...Bordon Hants.....

Date....25 November 1941..

.....
Medical Officer
No. 1 Can Arty Holding Unit.

1. Attachment of eyepieces - (facepiece Mark V) When the facepiece, Mark V, is folded as for replacement in the haversack it may appear in some cases that the rubber tends to pull away from the eyepieces.

The same effect may be noticed when the facepiece is turned inside-out for airing.

This does not indicate that the facepiece is in any way defective or that it is not gas-tight.

The eyepieces are held in place by binding wire and rubber tape.

It is therefore important that, when the facepiece is turned inside out for airing, such strength should not be used on the eyepieces as to force them out of their seating as the facepiece then becomes beyond local repair.

2. Application of anti-dimming compound. In order to maintain the respirator in a fit condition for immediate use, the insides of the eyepieces must be treated with anti-dimming compound at least once a week, and in any case before the facepiece is returned to the haversack after use. To reduce

MFB 246. 1 CAHU 141.

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have, this morning, examined

No.....C-5685 Gnr. Butcher. W.J.....

of No. 1 Cdn Arty Holding Unit and in my opinion he

is fit to undergo Trial by Court Mariial.

Station..Borden. Hants.....

Date..25 November. 1941....

.....
Medical Officer
No. 1 Cdn Arty Holding Unit.

64 P.

the strain placed upon the facepiece by frequent treatment, it will not in future be turned completely inside-out when anti-dimming compound is applied. The head-harness only will be folded back over the outside of the facepiece.

3. Care of Respirators. Containers, type E, are being damaged through careless treatment of respirators. The attention of all ranks will be drawn to the effects of such treatment, which may result in the air inlet slots becoming closed, thus restricting breathing and possibly reducing the protection afforded by the container. In particular, respirators must not be thrown about or dropped on hard surfaces.

R. D. Ramsay

(R.D. Ramsay) Lieut. & Adj.
for C.O. No. 1 Cdn. Artillery Holding Unit.
R.C.A. C.A.S.F.

MFB 246. 1 CAHU 141.

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557.

I certify that I have, this morning, examined

No. ....C-5886 Gnr. Pastel, E.....

of No. 1 Cdn Arty Holding Unit and in my opinion he

is fit to undergo Trial by Court Martial.

Station..Bordon, Hants.....

Date..25 November 1941.....

V M Kentzcapt

.....

Medical Officer

No. 1 Cdn Arty Holding Unit.

C.G.S.

No. 1 Arty. H.U.	5	2	3	0	11	19	1
M.T.V.R.D.	3	1	2	0	0	11	1
No. 2 Infantry	5	1	4	0	0	23	2
No. 1 General	3	0	3	0	1	27	2
							0

No. 1 Infantry leads without a loss.

8. TELEPHONE (TRUNK CALLS)

Attention is directed to Aldershot Command Order No. 2814 which is republished herein for information of all concerned.

Trunk Calls. "Officers ALONE are allowed to initiate trunk calls and before doing so will consider whether a telegram or letter will serve the purpose. Demands on the telephone service by other Government Depts., in the national effort are heavy".

9. TOUR TO WINDSOR CASTLE.

Os.C. Batteries will submit [illegible] of personnel to proceed on this [illegible] Wednesday, 20 November 40.

No. H24119 Name Duffy J.P. Sqn., Battery, or Company R.C.H.A. Corps

Date of enlistment 4-9-39 G.C. Badges

Service or Proficiency Pay

M.F.M. 6 (A.F.B. 123)

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No.

Signature O.C. Company, etc.

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Winnipeg	15-10-39	Gnr.	1.	1. Drunkeness.	L/Sgt. McJacobs				
			2	AWL from 2200 hrs. 14-10-39 to 1510 hrs. 15-10-39. (abs. 17 hrs. 10 mins.) A.A. Sec 15 (1)	Gnr. Watson Gnr. Miller	7 days C.B.	17-10-39	C.A.Bishop Lt.Col.	Ffts. 1 days pay P&A Regs.
				On the 4 March 1940 this soldier completed 6 months service, and according to R.O. 319, (Canadian Army, Overseas) a new sheet was issued and the old one destroyed. The foregoing regimental entries were transferred from the previous sheet.					
Kingston	17-3-40	Gnr.		Absent from Church parade at 0945 hours 17-3-40	Bdr. Grey	Admonished	18-3-40	P.A.S.Todd Lt.Col.	
			2.	2.Drunkeness.	Lt. Ostrim. L/B.Miller Gnr.Adams. Gnr.Coll	Fined $5.00	3-4-40	P.A.S.Todd Lt.Col.	

Place	Date of offence	Rank	Corps of Regiment	Offence	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Kingston	16-4-40	Gnr.	3.	Drunkenness.	L/Bdr. Guy Gwesey Sgt. Reid	Fined $10.00	17-4-40	F.A.S. Todd Lt.-Col.	
Petawawa	16-7-40	"		AWL. from 0100 hrs. 16-7-40 until 0700 hrs. 17-7-40. (Abs. 1day 6 hrs.)	Sgt. Mulroney	4 days C.B.	18-7-40	P.P.Maunder Major.	Pfts. 2 days pay under F.R.&I.

CERTIFIED TRUE COPY

(R.D. RAMSAY) Capt. & Adj.,
No. 1 Cdn Artillery Holding Unit.
Canadian Army (Overseas).

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

H-24119 Gnr. Duffy, J.F. of the No. 1 Can Artillery Holding Unit.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Para. 664, K.R. 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets* of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For Drunkenness		times	3	times.
For Absent Without Leave	0	times	3	times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct,

NIL.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7th day of November, 1941

F.J. Cross

(F.J. CROSS) Lieut. R.C.A.,
Officer i/c Records,
No. 1 Cdn Artillery Holding Unit,
Canadian Army (Overseas).

3. The accused is not under sentence at the present time.

XX

4. The accused has been in confinement, awaiting trial on the present charges

for 1 days in Civil Custody,

and 23 days in Military Custody.

Total 24 days.

Of which 0 days were spent in hospital.

5. The present age of the accused according to his attestation paper is 44 yrs.

6. The date of his attestation specified in his attestation paper is 4 Sep. 1939.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs. 2 mos.

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs. 2 mos. service.

9. The accused is entitled to reckon 2yrs.9 mos. service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward

In the rank of GUNNER , years, NIL

In the rank of GUNNER , years, NIL

In the rank of GUNNER , years, NIL

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name H-24119 Gnr. Duffy, J.P. of the No. 1 Cdn Artillery Holding Unit.

NOTE.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
		NIL.		

(Continued overleaf.

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 9th day of September, 1945

(F.J. CROSS) Lieut. R.C.A.,
Officer i/c Records,
No. 1 Cdn Artillery Holding Unit.
Canadian Army (Overseas).

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

C-5685 Gnr. Butcher, W.J. of the No. 1 Cdn Artillery Hldg. Unit.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Para. 686, K.R. 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For Absent Without Leave	0	times	1	times.
For		times		times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct,

NIL

xx

[redacted]

xx

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time,

[redacted]

4. The accused has been in confinement, awaiting trial on the present charges

for 1 days in Civil Custody,

and 23 days in Military Custody.

Total 24 days.

Of which 0 days were spent in hospital.

5. The present age of the accused according to his attestation paper is 37

6. The date of his attestation specified in his attestation paper is 26 March, 1941

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr. 9 mos.

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr. 9 mos. service.

9. The accused is entitled to reckon 1¾ years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [redacted]

[redacted]

Date of Promotion.

In the rank of GUNNER , years, NIL

In the rank of GUNNER , years, NIL

In the rank of GUNNER , years, NIL

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name C-5685 Gnr. Butcher, W.J. of the No. 1 Canadian Artillery Holding Unit.

Note.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer dispensing with Trial	Date and place of Trial or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted
		NIL.		

(Continued overleaf

No. C5685 Name Butcher, W.J. Sqn., Battery, or Company Depot Corps H.Q. P.E. Date of enlistment 26-3-40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

M.F.M. 6 (A.F.B. 133)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Ottawa Ont.	3-6-40	Gnr.		Absent Without Leave from 0600 hrs. 3-6-40 to 0915 hrs. 5-6-40 (2 days 3 hrs. 15 mins.)		Forfeits 3 days pay, PRI for CASF	7-6-40		

CERTIFIED TRUE COPY

(R.D. RAMSAY) Capt. & Adj.,
No. 1 Cdn Artillery Holding Unit.
Canadian Army (Overseas).

No. C5686 Name Pestel, E.D. Sqn., Battery or Company Depot Corps H.Q. P.E. Date of enlistment 26-3-40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.W. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine nil | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with same	By whom awarded	Remarks
	26								

CERTIFIED TRUE COPY

R. D. Ramsay

(R.D. RAMSAY) Capt. & Adj.,
No. 1 Cdn Artillery Holding Unit.
Canadian Army (Overseas).

C.G.P.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

C-5686 Gnr. Pestel, E. of the No. 1 Canadian Artillery Hldg. Unit.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

†See Para. 664, R.R., 1935.

*The numbers herein stated should correspond with the number of *Entries* in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For	NIL	times	NIL	times.
For	NIL	times	NIL	times.
For	NIL	times	NIL	times.
For	NIL	times	NIL	times.

Number of instances of gallantry or distinguished conduct,

NIL

~~XX~~,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or,

~~Previous convictions of the accused by a court martial or a civil court [illegible]~~

[illegible]

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7th day of December, 1942.

(F.J. CROSS) Lieut. R.C.A.,
Officer i/c Records,
No. 1 Cdn Artillery Holding Unit.
Canadian Army (Overseas).

3 The accused is not under sentence at the present time.

XX

4 The accused has been in confinement, awaiting trial on the present charges

for 0 / days in Civil Custody,

and 23 days in Military Custody.

Total 24 days.

Of which 0 days were spent in hospital.

5 The present age of the accused according to his attestation paper is 37

6 The date of his attestation specified in his attestation paper is 26 March, 1940

7 The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr. 9 mos.

8 The accused is entitled to deferred pay or gratuity in respect of 1 yr. 9 mos. service.

9 The accused is entitled to reckon 1¼ years' service for the purpose of determining his pension &c.

10 The accused is in possession of, or entitled to, no military decoration or military reward

12

In the rank of , years.

In the rank of , years.

In the rank of , years.

(Instruction.—*If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through.*)

The above statement with the schedule of convictions and of cases in which trial has been dispensed with is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name C- 5686 GUNNER PESTEL, E. of the No. 1 Cdn Artillery Holding Unit.

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
		NIL.		

(Continued overleaf.

H-24119 Gnr. Duffy, J.F.
C-5685 Gnr. Butcher, W.J.
C-5686 Gnr. Pester, E.
No.1 C.A.H.U.

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 13th day of November, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

*[illegible]

Judge-Advocate Lieut. S.G. Parent, C.M.H.Q.

President.

Rank.	Name.	Regiment.
Major	C.G. Pirie	No.1 Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	D.B. Shutt	No.1 Cdn Ord Hldg Unit
Lieutenant	T.E. Rogers	No.1 Cdn Inf Hldg Unit
Lieutenant	F.G. Dowle	No.2 Cdn Arty Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding Cdn Base Units, Cdn Army.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
H-24119 GNR. DUFFY, J.F. C-5685	First Charge			Findings and sentence confirmed but sentence remitted to sixty days
GNR. BUTCHER, W.J. C-5686	A.A. sec 18(4) Alternative	Not guilty	Guilty	
GNR. PESTEL, E. No.1 Cdn Arty Hldg Unit.	Second Charge A.A. sec 40	~~Not~~ guilty Admitted	Not Guilty	

See charge sheet attached.

Gnr Duffy J.F, Gnr Butcher W.J, Gnr Pestel E. are all sentenced to 90 days detention

Lt-Col Pirie

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) Brigadier (Signed) Lt-Col Pirie

Commanding Cdn Base Units, Cdn Army. President.
Convening Officer (d)

(a) Appointment, acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 25th day of Nov, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~ The shorthand reporter,
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 25th day of Nov 19 41

Lt-Col Pirie
President, Court Martial.
A.A. Parent, Lieut. J.A.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

* ~~I certify that the terms of A.A. s. 19(1) 1940 have been~~ complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has an authority to commit to prison, or having such authority, recommends suspension.

* ~~I direct that the soldier named in the margin be not committed to prison until further orders.~~

Signed this 3rd day of December 19 41.

A.B. Matheson Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of
D.O. No 283 of 9/12/41
(a) (Dated) 10/12/1941 (Signed) A.A. Parent Lieut

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

4S-80

Pte Duffy M. G.

The accused, No G-47400, Pte
Murray Gregory Duffy, 2 Armd Bde Coy
(84 Coy) R.C.A.S.C., a soldier of the
Canadian Army Overseas, is charged with:

First Charge
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT
LEAVE

in that he

In the Field, at 1700 hrs on 31st December
1944 did absent himself without leave
till 0700 hrs on 1st January 1945.
(Absent 14 hrs).

Second Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE
AN ACT TO THE PREJUDICE OF
GOOD ORDER AND MILITARY
DISCIPLINE

in that he

In the Field, on 31st December 1944
did use WD Veh # CL 4270019 and
petrol for private purposes.

(NORMAN ALLAN) Maj
Officer Commanding
2 Armd Bde Coy (84 Coy)
R.C.A.S.C.

In the Field
8 Jan 45.

To be Tried by Field General Court-Martial

(G.N. Robinson) A/Brig
Comd 2 Cdn Armd Bde

18 Jan 45

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA2)
40/FA95/1697 (2068)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(6).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M.63127	Pte		Harold Melvin	WRIGHT	2 Cdn Armd Bde Coy (84 Coy) RCASC
G.47400	Pte		Murray Gregory	DUFFY	2 Cdn Armd Bde Coy (84 Coy) RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, did (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 18 Jan 45 endorsed by me, (~~or on copies thereof for convenience~~)" To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~or that it is not practicable that it should be tried by the authority by whom alone the accused could be lawfully committed for trial~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I authorize the approval of any sentence which may be passed by the Court, or any finding of guilty thereof, notwithstanding that~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

A/Major (Rank.)	W.H. Welsh (Must be named. RP 106.)	27 Cdn Armd Regt (SPR) (Unit.)	

MEMBERS.

A/Capt	W.A. Beatty	10 Cdn Armd Regt (FGH)	
Lt (Rank.)	R.H. Pimblett (Named or detailed. RP 106.)	6 Cdn Armd Regt (1H) (Unit.)	

WAITING MEMBER.

Lt (Rank.)	A.E. Gendron (Named or detailed, if any. RP 106.)	X-4 List, att C Sqn 25 Cdn Armd Del Regt (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	R.P. Millican (Must be named, if any. RP 106.)	HQ 2 Cdn Corps (Unit.)

On Active Service in the Fd

in Holland (Country.)

Fw Robinson Brig (Signed personally. RP 105 (n 2.)) A/Brig (Rank.)

Date 18 Jan 45

Commanding 2 Cdn Armd Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

WHW Welsh A/Maj Pres.

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this date examined G-47400 Pte Duffy, M.G., 2 Armd Bde Coy (84 Coy) R.C.A.S.C. and that he is fit... to undergo trial by Court-Martial.

22 Jan 45

N. N. Reaciany Capt.
.....
(Medical Officer)

Before the Court assembled, Capt W.A. Beatty not being available the waiting member. Lieut. A.E. Fendron took his place.

E.1. B 86552 Sgt. Cunningham, F.E., 84 Coy R.C.A.S.C. sworn states:
The accused Pte Duffy has been in my platoon for approx 5 to 6 mos & during that time to my knowledge he has been a good soldier, never had to put him on charge. Did his work well, a good driver.
R.P. 83 (B) Complied with.

B 3641 Cpl. Boccongelle, A.J. 84 Coy R.C.A.S.C. sworn states:
The accused Pte Duffy is a very good worker and a capable driver. I always got good service from him and never had any trouble with him. He is a willing soldier.
R.P. 83 (B) Complied with.

The accused Pte Duffy addresses the Court in mitigation:
I just got a little browned off. We came in off work about 16 30 hrs and we had to clean our lorries. So we did not have time to get washed up before dark. I thought I would have a little time on myself. So went

to Belgium. Hots about all sir.
I am a single man
R.P. 83 B1 Complied with

For Summary of evidence see
proceedings in case of M63127
Pte Harold Melvin Wright, 84 Coy
R.C.A.S.C. A joint summary.

AM.

Plea is Mitigation.

EVIDENCE GIVEN BY DEFENDING OFFR ON BEHALF OF M-63127 PTE WRIGHT, H.M. & G-47400 PTE DUFFY, M.G.

G-47400 Pte Duffy, M.G.

With your permission Sir may I on behalf of the accused G-47400 Pte Duffy M.G. say a few words regarding the position this man was in in respect to the offences for which he has admitted full guilt. Pte Duffy was somewhat depressed owing to the lack of social entertainment and when his friend M-63127 Pte Wright, H.M. suggested having a couple of drinks to celebrate New Years Eve he was in a most acceptable frame of mind as it appeared to be the most satisfactory way to do something a little different. I also ask the court to consider that this man has been in the army approx two years and up until this time has had a perfect record. His senior offrs are well satisfied with his ability as a soldier and he has apparently made a very satisfactory contribution to the army in general. I also ask the court to consider that his present age of 21 years is an age at which an occasional amount of entertainmet must be blended with hard work and monotonous routine in order to "carry on". For the reasons already mentioned if for none other may I ask the court to consider this mans position when awarding sentence.

Kenneth Rackley

Exhibit "C"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F-47400	Pte	Duffy, M.G.	2 Armd Bde Coy(84 Coy)RCASC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

N I L For ..... times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

~~[illegible]~~ Spd Cpl

~~[illegible]~~ Spd Cpl

~~[illegible]~~ Spd Cpl ~~[illegible]~~ Spd Cpl

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 23 days in military custody, *i.e.*, 2 days in open arrest, 21 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 21 years, 4 months.

6. The date of his attestation is 28 Apr 43.

~~[illegible]~~ Spd Cpl

7. The service which the accused is allowed to reckon is 1 239/365 yrs

8. The accused is in possession of‡ C.V.S.M. and Clasp.

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) Wt.8670/668 100,000 4/43 A.S.E.W.Ltd. Gp.696
(22450) Wt.29256/1873 60,000 9/43 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 8th day of January, 1945.

(H.F. WALTON) CAPT.
Adjt, 2 Armd Bde Coy (84 Coy) RCASC

Exhibit "D"

No. G-47400 Name DUFFY, M.G. Sqn, Battery, or Company Corps R.C.A.S.C. Date of enlistment 28-4-43 GC Badges

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 2. Signature OC Company, etc Service or Proficiency Pay

MFM 6 (AFB 121)

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				SHEET DESTROYED 28 Oct 43; No entries; No cases of drunkenness.					

CERTIFIED TRUE COPY

(W.T. WALTON) CAPT.

Adjt, 2 Armd Bde Coy(64 Coy) R.C.A.S.C.

I, G-47400 Pte Duffy, M.G. wish to have Capt Christie, S & T Branch, H.Q. 2 Can Corps assigned to represent me at Trial by Court-Martial.

(G-47400 Pte Duffy, M.G.)

RECORDED AT CMHQ IN AB 160 45-80

CFA&R (In lieu of AFAR) 40/F & R/1696 (6144) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Maj F.W. Robinson Comdg 2 Can Armd Bde dated 18 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.77400	Pte	Murray Percy Griffin	Lapp	2 Armd Bde Def Pl Can S.C.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 22nd Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, ~~and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1220 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. ~~President to accused: Do you object to ..... as interpreter ? Ans .....~~

~~The Interpreter is sworn.(1)~~ Do you object to ..... as shorthand writer ? Ans .....

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, ~~and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj F.W. Robinson, 2 Can Armd Bde
Member	Lieut A.B. Jenson, 8 Recce Regt (25 Can Armd Bde)
Member	Lieut K.H. Einstett, 6 Can Armd Regt (1 Can Armd Bde)
Judge-Advocate	Capt A.F. Mulligan, H.Q. 2 Can Corps
Prosecutor	Lieut C. Black, 8 Recce Regt (25 Can Armd Bde)
Defending Offr	Capt F.W. Peck, H.Q. 2 Can Armd Bde

Questions by President: Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (not) (~~no~~) plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(4), 117b), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : G-47400 Pte Duffy, M.G. 2 Armd Bde Coy

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

~~At present~~ under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital.(2)

(2. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To forfeit all ordinary pay for a period of sixty (60) days.

(Sgd) A.R. Miller Maj 27 Jan 45 (Sgd) [illegible] A/Maj
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

~~A.R.~~

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 120(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to [illegible] or detention barracks until further orders.~~ (3)
(3. If not confirmed, or not used.)

(Sgd) E.A. Robinson Brig

Date 29 Jan 45 Commanding 2 Cdn Armd Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. G-47400 Pte Duffy, M.G. Date. 26 Jan 45 Signature of Offr.

(M.I. WALTON) CAPT
Adjt 2 Armd Bde Coy (P4 Coy) RCASC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to pleas when evidence may be dealt with see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 90, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. Nil Stet.(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex [illegible], initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 13-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, see second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans..... Do you intend to call witnesses on your behalf? Ans..... Are they witnesses as to character only? Ans.....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CP A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(B).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. Accused to call Character Evidence.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (as) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex [illegible] and Ex [illegible] respectively.(3)
(1. AFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Nil Stet.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HHH30

PTE DUFORT JTM

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 135648 Pte J J MARCEL DUFART, FUS MR

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	Except that offence occurred
2nd	Not Guilty	Not Guilty	the 19 Mar 44
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

NK ~~At present under sentence for ..... beginning on (date) .....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo 9 months Detention ~~and to forfeit all ordinary pay for a period of 9 months &c~~

(Sgd) ..... 27 Mar 44 (Sgd) .....

Judge-Advocate, if any. Date awarded. President. (RP 45, 46)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence of the court.

I direct that the accused be not committed to prison or detention barracks until further orders.(1) Early

(1. AA 57A. Delete if not used.)

Date 29 Mar 44 (Sgd) .....

Commanding 6 Can Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D-135648 Pte J.J. Marcel Dufart	29 Mar 44	Fe Baker Capt

1 C.R. Serial 80A of 29 Mar 44 1

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF C.M. HHH 30

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA3) 40 P & R 1698 (3864)

Convened by Order of Brig HA Young Comd 6 Can Inf Bde dated 25 Mar 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D135648	Pte	J.J. Marcel	Dufart	Fus MR

PROCEEDINGS REVIEWED

PROCEEDINGS REVIEWED

Date 12 Apr 44

PROCEEDINGS OF TRIAL.

Held in the Fd (country) at or near Camp No 10 on (date(s)) 27 MAR 44 AJAG for FIRST CDN ARMY

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns. RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Nil ~~the~~ his interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to Nil ~~the~~ his shorthand writer? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 31, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	F B COURTNEY	S Sask R
Member	Capt	J B BEADOIN	Fus M R.
Member	Capt	E R TALBOT	Cameron of C.
Judge-Advocate			
Prosecutor	Lieut	L.P. BERGERON	FMR
Defending Offr	Capt	MH CHEVALIER	FMR.

Questions by President: Is the Prosecutor a lawyer? Ans Nil Is the Defending Offr a lawyer? Ans Nil (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See fn 2 p 3.)

A8. The accused D 135648 Pte J.J. MARCEL DUFART before arraignment make(s) (no) (a) plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet: see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty to [illegible] or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused: Do you wish to make a statement ? Ans ..... (4)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) IAW RP* paras *D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No Sir (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).~~(2) The Court is closed, and considers the submission.(3) The Court is re-opened, ~~and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Intends to make Statement only. Do you intend to call witnesses on your behalf ? Ans Yes Sir. Are they witnesses as to character only ? Ans No Sir.
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later; or~~ The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed (1)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes I wish to give evidence.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No Sir. (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 34(B). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 13R, 18Z, RP 46-50, 49F, 118, 119(A), KR Can 30R, 33C, 54-5-56e. Overseas RO 309, 2323. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1E), 56B(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

(Substitute for A.F.B. 296)
or M.F.B. 355

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. D 135648 Rank Pte Name J.J.Marcel DUFORT Unit Fus M R C A (O).

Age 20 ~~xxxxxx~~ or Single Single No of Dependants NIL

Date of Attestation 17 APR. 42

No. of Days spent in close Arrest (To date of Trial)

Civil Nil Military 11 Hospital Nil Total 11 days

Dates of Promotions, Appointments and Confirmation of Rank, if any

Nil.

A CERTIFIED TRUE COPY OF M.F.M. C MUST ACCOMPANY THIS FORM

Peter R. E. Charlton
(Officer i/c Records) Capt & Adjt
(P.R.E.Charlton) Capt & Adjt
Fus M R C A (O).
.....Unit

Dated at: In the Field

This 27th. day of Mar 1944.

To be dated and signed as for date of trial)

[illegible signature]
Pres

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 Jan 44	Pte		WOAS AA Sec 40 left parade without permission	Sgt De Lese leuc Sgt Deschambault				
	20 Jan 44	Pte		WOAS AA Sec 40 indisciplinary action on parade	Sgt Deschambault				
	20 Jan 44	Pte		WOAS AA Sec 40 failed to obey an order given by a superior offr	Sgt Deschambault	14 day CB	21 Jan 44	Major H.N. Langlois	

Certified to be a true copy from the original in my custody

Peter R E Carlton
Capt Adjt Hus Mt R CA(1)

D-135648 Dufort J.J.M. D Coy

No. Name Sqn., Battery, or Company Corps C.I.C. FusMR Date of enlistment 17 Apr 42 O.C. Badges N/A Service or Proficiency Pay

M.F.M. 6 (A.F. B.122) 40/P.S./8136 (2968)

Date of last entry in Company Conduct Sheet 25 Jul 42 No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. J.A. Dextrase Capt 4 Feb 44 Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (Sponsing with this)	By whom awarded	Remarks
				Sheet Destroyed 4 Feb 44 Ref	R.O. 2084	A.J. Brochu Lt			
Camp Borden	28 Dec 42	Pte		WOAS AA Sec 15 AWL 13 day 21 13 day 21 hrs	Evidence	14 days C.B. 7 days Pay	15 Jan 43	Lt-col Roberge	14 days Pay & Cost of appreh
Camp Borden	15 Jan 43	Pte		WOAS AA Sec 40 refused to obey an order	Cpl Poirier C Balanger J.	3 day C.B.	16 Jan 43	Maj Lapointe	
Aldershot NS	23 May 43	Pte		WOAS AA Sec 40 was in possession of veh without permission	Sgt Guilbort	3 day C.B.	24 May 43	Capt C.C. Tachereau	
Field	8 Jan 44			WOAS AA Sec 40 failed to appear on parade	L/Sgt Tailleur R. Sgt De Le Seleuc	14 day Pay. 14 days CB	11 Jan 44	Lt-col Gauvreau	A.B.

LIST OF WITNESSES

In the case of D-135648 Pte Dufort, J.J.Marcel, Les Fusiliers Mont-Royal, a soldier of the Cdn Army Overseas.

PROSECUTION

D-61002 C S M Nantel, M. Les Fusiliers Mont-Royal C.A. (O).

Major J.A. Dextraze, Les Fusiliers Mont-Royal C.A. (O).

DEFENSE

N I L

STATEMENT BY THE ACCUSED

I, undersigned, D-135648 Pte Dufort, J.J.Marcel, Les Fusiliers Mont-Royal , C.A. (O). desire to have an officer to represent me at my trial by F.G.C.M.

I desire the services of if available.

I certify that I have been given free of charges copy of the proceedings, documents, etc., relating to my trial by F.G.C.M.

J J M Dufort

(D-135648 Pte Dufort, J.J.Marcel
Les Fusiliers Mont-Royal C.A.(O

SUMMARY OF EVIDENCE IN THE CASE OF

D-135648 Pte Dufort, J.J.Marcel, Les Fusiliers Mont-Royal, a soldier of the Cdn Army Overseas.

The accused is informed of his rights.

The accused demands and the C.O. directs that the evidence be taken under oath.

First Witness for Prosecution — D-61002 C S M Nantel, M. Les Fusiliers Mont-Royal, having been duly sworn states:

On the 19 Mar 44 at about 1330 hrs I ordered D-135 648 Pte J.J.M. Dufort, to report to the kitchen for fatigue work but he replied "No". I explained to him that it was an order and he replied that he knew; so I placed him under close arrest.

The accused declines to cross-examine the witness.

Marcel Nantel CSM

(D-61002 CSM M. Nantel)
Les Fusiliers Mont-Royal C.A.(O)

Second Witness for Prosecution — Major J.A. Dextraze O.C. 'D' Coy, Les Fusiliers Mont-Royal C.A. (O). having been duly sworn states:

I was present when CSM M. Nantel gave Dufort an order to go and wash the dishes in the kitchen. Dufort, J.J.M. flatly refused to obey the order and said "I won't wash any dishes and I don't care if it is an order."

The accused declines to cross examine the witness.

J.A. Dextraze Maj

(J.A. Dextraze) Major,
Les Fusiliers Mont-Royal C.A.(O)

The accused , having been duly cautioned in accordance with R P 4 (e) says

"I have nothing to say".

J J M Dufort

(Sgd) J.J.M. Dufort

Certified that R P 4 have been complied with

In the Field
22 Mar 44

A J Brochu Capt

(Sgd) A.J. Brochu Capt

3rd Witness having been duly sworn states:-

I am C 97252 Cpl Vachon L
a sec comd 16 pl D Coy Ins M.R.
Q. Will you

on the 19 Mar 44 I was acting as COS D Coy.
Q. Do you recognize the accused
A I do sir.
Q. Tell the court what happened on 19 Mar 44 at approx 1315 hrs.

On the 19 Mar 44 as COS at approx 1315 I detailed Pte Dufois to go and work in the kitchen. Five minutes later the cook came to me and said that Pte Dufois would not wash dishes. I then took Pte Dufois myself into the kitchen and ordered him to wash the dishes, an order which he definitely refused in saying "I refuse to wash dishes" I then took Pte Dufois to the CSM's office.
X Exer by defence.
X Q Cpl Vachon Dufois did report to the kitchen previously when detailed to do so.
A. He did sir
Q Did he refuse to work in the kitchen.
A. "He said "he would work in the kitchen but would not wash dishes that why I ordered him to wash dishes."

Q Were you present when CSM wanted ordered him to go and wash dishes?
A. I was Sir.
Q Was Maj Dextraze present?
A. He was Sir.
Q. Did Maj Dextraze order him to carry out.
A. I was not present then because I had gone to get any escort Sir.
Q Therefore you are not aware if Maj Dextraze spoke to the accused?
A. I am not Sir.

Prosecution has no more witnesses. Witness for the Defense.

D 135648 Pte Dufort J J M. having been duly sworn states.
I am D 135648 Pte Dufort J J M of 17 pl Tus M R. - I was on the sidewalk talking with of afriend, when Cpl Vachon came and asked Pelletier to work in the kitchen. Pelletier told him that he was going on pass, so he turned to me and told me to work in the kitchen, so I went to the kitchen as the Regime told me I was to wash dishes, so I said "I'll do any kind of work but the dishes." Then he said that all there is to work as here. Then I went out on the sidewalk again then Cpl Vachon came again, & told me you don't

want to work in the kitchen, then as you are charged with refusing an order, then I went up to my room. Five minutes later Cpl Vachon came back & told me the CSM wanted to talk to me. I went to the CSMs office and he was going out when he got in the office. He came back five minutes after. He told me "What's the matter you don't want to work in the kitchen?" I said "I want to work in the kitchen but not washing pots" Then he said "it's an order I am giving you" and I said "I won't wash no dishes." Maj Dextraze was there and he said "What's the matter with you Dufort, we take you try to treat you nicely and roughly it's all the same.

Q Did Maj Dextraze say any more to you in front of the CSM?
A. No that's all he said Sir.

Statement in Mitigation of Punishment.

I believe that the accused is willing & that he might have made an error and I thereby appeal to the court for clemency.

want to work in the kitchen, then all right you are charged with refusing an order, then I went up to my room five minutes later Cpl Vachon came back & told me the CSM wanted to talk to me. I went to the CSMs office and he was going out when he got in the office. He came back five minutes after. He told me "Whats the matter you don't want to work in the kitchen?" I said "I want to work in the kitchen but not washing pots" Then he said "its an order I am giving you" and I said "I won't wash no dishes." Maj Dextrage was there and he said "What the matter with you Dufort, we take you try to treat you nicely and roughly its all the same.

Q Did Maj Dextrage say any more to you in front of the CSM?
A. No thats all he said sir.

Statement in Mitigation of Punishment.

I believe that the accused is willing & that he might have made an error and I thereby appeal to the court for clemency.

Evidence in the case of
D 135648 Pte. J J M Dufort. Fus MR.
Fish witness. – CSM Nantel M Stats: –
I am D 61002 CSM Nantel M
CSM of D Coy Fus MR.

Q. Do you recognize accused.
A. Yes Sir I do.
Q Will you tell the Court exactly what happened on 19 Mar 44 at approx. 1330 hrs.
A. On 19 Mar 44 one of my cpls asked Pte Dufort to do some fatigues (wash dishes). and then the cpl reported to me the cpl ~~for~~ that Dufort did not want to work in the kitchen. So I asked the cpl to bring Pte Dufort in my office and I gave him an order to go to the kitchen and wash dishes. He refused the order so I explained to him that it was an order and he replied "I don't care I don't want to wash any dishes". I had him arrested and put in the guard room.

Remained by defence.
Q CSM Nantel in the statement you have just made, I notice that it differs to quite some extent from the statement which you gave in the summary of evidence pertaining to this case. In the summary of

evidence, there is no illusion to any of your epls involved. You say Pte Dufold refused to report to the kitchen for fatigue work but he replied "NO". I wish to state that Pte Dufold did report to the kitchen for fatigue work, then in the summary of evidence again you state; "I explained to him that it was an order and he replied" I know which is quite different to the reply which you give in your statement before to court today, as he having said "I won't wash any dishes & I don't care if it is an order. There was no question of washing dishes in the fact that you told him to report to the kitchen for fatigue work. C. S.M. Nantel did Pte Dufold.

A. Not when I gave him the order. He said he did not want to go to work in the kitchen and he did not want to wash any dishes.

Q. Did the accused refuse work of any kind in the kitchen.

A. Well, he refused when I asked him to work there.

Q. Did he actually say "I don't want to work in the kitchen

A. He said "I don't want to work in the kitchen, I don't want to wash any dishes." Those were his

exact words.

Q. As soon as Pte Dufold said "I will not wash any dishes" you placed him under close arrest.

A. When he said that to me yes.

Q. Being under close arrest he could (Struck out by court) & when the accused received his order from you was he given ample time to make his decision before he was placed under close arrest.

A. After when a man refuses an order he refuses an order, I placed him under close arrest.

Second Witness.

Major J.A. Dextraze. Fus M.R. having been duly sworn state.

I am major J.A. Dextraze, OC A Coy Fus M.R.

Q. Do you recognize the accused before the court.

A. I do.

Q. Will you tell the court what you saw & overheard on the 19 mar 44 at approx 1330 hrs.

A. On that day at approx. 1330 hrs. I was in my car office. There were quite a number of ORs & officers in the office at that moment. Dufour who was brought into the office by one

of my cpls acting as cos flatly refused an order ~~which~~ given by the CSM which order was "You go to the kitchen & wash dishes." The accused said "No I don't wash any dishes. Then CSM Nantel explained to him that it was an order, Dufois replied "I don't care if it is an order, I'm not washing any dishes." Up to that point I hadn't said a word. I then told Dufois "Why don't you want to wash any dishes" "I'm not washing any dishes thats all". I then said "is you deliberately refusing an order, he did not reply to that. Then the CSM put him under close arrest, which move I approved knowing for a fact that Dufois had previously been taken to the kitchen by my cpl acting cos. This cpl was bringing Dufois to the kitchen for washing dishes.

Q. You overheard the whole discussion

A. I came into the office in time to hear the start of things.

Q. Do you think the CSM gave the accused plenty of time to consider.

A. There was plenty of time given. There were too many people in the office, I couldn't not have allowed any more time to make any further ~~dis~~ decisions

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) 557

I certify that I have this morning examined

No D-135684 Pte. Dufort, J.J.M.

of LES FUSILIERS MONT-ROYAL and in my opinion

is F I T ~~or U N F I T~~ to undergo Trial by Court-Martial

Station In the field

Date 27 Mar 44

G. Soucie Capt.
MEDICAL OFFICER

EXHIBIT "H"

[illegible signature]
Pres

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D135648	Pte		J. J. Marcel	Dufort	Fus M R.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 Mar 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ Hay
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court; (b) a Fd Offr as President, for the reasons I have attached hereto.~~ Hay
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ Hay
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj (Rank.)	F. B. Courtney (Must be named. RP 106.)	S. Sask R (Unit.)

MEMBERS.

Capt	J. F. Beaudoin	Fus M R
Capt (Rank.)	E. R. Talbot (Named or detailed. RP 106.)	Camerons of C. (Unit.)

WAITING MEMBER.

Lt (Rank.)	R. J. A. Dorion (Named or detailed, if any. RP 106.)	Fus M R (Unit.)

~~JUDGE ADVOCATE.~~

~~Capt (Rank.)~~	~~E. K. McDougall (Must be named, if any. RP 106.)~~	~~HQ 2 Cdn Inf Dn (Unit.)~~

On Active Service in the Fd

in U. K (Country.) [signature] (Signed personally. RP 105 fn 2.) Brig (Rank.)

Date 25 Mar 44 Commanding 6 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

F. B. Courtney Maj R
Res

THE ACCUSED ELECTED TO BE TRIED BY F.G.C.M.

CHARGE SHEET

D-135648 Private J.J. Marcel DUFORT, Les Fusiliers Mont-Royal, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
AA Sec 9 (2)

WHEN ON ACTIVE SERVICE,
DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,

in that he,

In the Field, at 1330 hrs 17 Mar 44, refused to report to the kitchen for fatigue work when ordered to do so by D-61002 CSM M. Nantel and did not do so.

ALTERNATIVE CHARGE

SECOND CHARGE
AA Sec 8 (2)

D-135648 Pte J.J.Marcel DUFORT, Les Fusiliers Mont-Royal, a soldier of the Canadian Army Overseas, is charged with:

WHEN ON ACTIVE SERVICE,
USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

in that he,

In the field at 1330 hrs 17 Mar 44 when ordered by D-61002 CSM M. Nantel to report to the kitchen for fatigue work said:"I won't wash any dishes and I don't care if it is an order"

In the field
22 Mar 44

(H.N. Langlois) E.D., Lt-col,
Officer Commanding,
Les Fus M R - C A (O)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
25 Mar 44

(H.A.Young) Brigadier
Commander 6 Cdn Inf Bde

44 B.

10/D/403

Pte A. Dufour.
No. 1 R.C.A.S.C. Hdq Unit.

C H A R G E S H E E T.

The accused A14538, Pte Dufour, A., No. 1. R. C. A. S. C. Holding Unit, a soldier of the Canadian Army Overseas is charged with While On Active Service

CHARGE
SECT 41
ARMY ACT

Committing a civil offence - that is to say - Stealing -

In that he at New Martinique Barracks, Bordon, Hants - on the night of March 28th 1941 - stole One brown leather wallet - containing photographs, the property of one Miss Doris Wright, a person not subject to Military Law.

J.M.Pocock

.....

(J.M.Pocock). Lt: Col:
Commanding
No. 1. R. C. A. S. C. Holding Unit,
Canadian Army (Overseas).

Bordon, Hants:

To be tried by Field General Court Martial

.....Brigadier
Commanding C&M Base Units.

Bordon, Hants
This 2nd day of May 41.

Date 10th May 41

This is to certify that:-

No. E/14532. Name Pte Dufour, H. D.

is fit to Undergo Court Martial.

Signed [signature]

Medical Officer.

A 14532 Pte Dufour, A., No. 1 R.C.A.S.C. Holding Unit, tried by Fiel General Court-Martial at Bordon, Hants., May 10, 1941.

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

Prosecutor: Lieut. W.D.S. Careless.
Defending Officer: Lieut. J. A. Bedard.

At 1000 hours the Trial commences.

The names of the president and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No, sir.

The President and members are duly sworn.

Q2 - Do you object to B 88521 Sgt. James Lonergan, R.C.A., C.M.H.Q., acting as Court Stenographer?
A2 - No, sir.

The Court Stenographer is duly sworn.

The Charge-sheet is signed by the President and annexed to the proceedings.

Q3 - Are you guilty or not guilty of the charge against you, which you have heard read?
A3 - Not guilty, sir.

Miss Doris Wright, 16 Townsend St., Godalming, Surrey, is sworn.

Q4 - You were at a dance at the N.A.A.F.I. on a certain night and you lost some personal effects?
A4 - Yes. I was sitting out when one of the soldiers asked if I would dance with a friend of his, as this friend could not speak English When I found out that this man could not dance I sat down and I finished the dance with another soldier. As this other soldier wa escorting me back to my seat after the dance I saw the accused.
Q5 - Do you recognize him here?
A5 - I do. Q6 - What then?
A6 - I saw him hand my hand bag to another soldier. I took it and to them it was my bag. I came back to look for the other man but h was gone. I reported it to Staff Sergeant Fisher and he went to Lieut. Simons, and later on we found the accused and Pte. Paradi
Q7 - What was missing?
A7 - One compact and my purse with 8 shillings in it, and some letter and photographs and my identity card and a few odds and ends.
Q8 - Do you recognise this as being lost out of your purse?
A8 - Yes, those are my photographs.
Q9 - (Prosecutor) I present them in evidence.
A9 - Could I have it back, sir.
President: They will be handed back to you at the end of the hearing but I ask that you hold them for a period of two weeks.
Q10 - That wallet was definitely in your purse?
A10 - Yes.

DEFENDING OFFICER: No cross-examination now.

Prosecutor: May I ask some more questions?
President: You may.
Q11 - When you got up to dance where did you leave the purse?
A11 - There were a number of handbags on top of the radiator and I mine among them.
Q12 - Just exactly where was your purse with the others?
A12 - Well, there were seven or eight and I put mine half way down pile.

Q13 - When you got up to dance with Dufour you were sitting besides who
A13 - Pte. Paradis.
Q14 - Would it be possible for the accused to have seen you put your bag down when you got up to dance?
A14 - Yes.
Witness is excused, for the present.
DEFENDING OFFICER: In order to better present the facts I would like to examine Pte. Paradis first before I cross-examine this witness.
PRESIDENT: You may do so.

B 82560 Staff Sergeant A. Fisher, No. 1 R.C.A.S.C. Holding Unit, was sworn.

Q15 - Will you please tell the court in your own words what happened on the night in question?
A15 - I was detailed on Police duty at the Mens dance. During the course of my duties a complaint was made by one of the girls attending the dance that she recognized two men going through her bag. She said that one man had a scar on the back of his hand. We looked around and she pointed out the accused, whom I recognize. I questioned him but found he didn't understand, as he didn't speak English, so I called the officer in charge of the dance, as he speaks French, and I heard him asking the questions to the accused. The officer's name was Lieutenant Simons. I judged from the way they spoke that the accused had mentioned some other man, so I was sent over to the Men's quarters in company with the accused to find this man. On the way over I saw him put his hand in his pocket and drew something out and try to drop that something on the floor. I recognized this as the wallet which is in this count. I took it off him. The accused was placed under arrest by the officer.
Q16 - You are absolutely certain that the accused is the person who tried to dispose of the wallet?
A16 - Yes.
Q17 - And when you got that wallet just exactly where did you find it?
A17 - In his hand. He had taken it out of his pocket.

Cross-examination by Defending Officer.
Q18 - You say that a girl came over and informed you that she had noticed two soldiers going through her bag?
A18 - Yes.
Q19 - And she said there was a man with a scar on the back of his hand?
Q20 - When you found Pte. Dufour with the wallet was that in the dance hall?
A20 - He denied that he was in the dance hall.
Q21 - Had he been drinking?
A21 - Yes, but he didn't appear to be drunk.
Q22 - When you saw him being questioned by Mr. Simons did you hear what was said?
A - No, I don't speak French. Of course, I heard the words, but didn't know what they meant.
Q - So all you can say is that you saw him trying to dispose of the w
A - Yes.
Q - Would you say that he might have felt embarrassed having such a thing in his possession and might have been trying to dispose of
A - I don't know.
WITNESS IS EXCUSED.

Prosecution closes.
Q - Do you wish to give evidence yourself?
A - Yes, sir.
Q - Do you wish to call witnesses in your defence?
A - Yes, sir.
Q - As to character or as to fact?
A - As to fact, sir.

E 14500 Pte. Paradis, G. M., 14th Troop Carrying Co., is sworn.

Q28 - Did you see the accused, Pte. Dufour, that night at the dance?
A28 - Yes.
Q29 - Was he sitting alongside you that night?
A29 - Not when I first saw him.
Q30 - While dancing say whether or not you saw a bag on the floor and did you pick it up and throw it to Pte. Dufour?
A30 - Yes.
Q31 - Did you notice what was in the bag?
A31 - No, I didn't see anything.
Q32 - While you were dancing how was the accused sitting on his chair? Had he been dancing before?
A32 - He kept getting up and down and seemed to be intoxicated.
Q33 - He was right there when you threw the bag to him?
A33 - He happened to be standing up at the time.
Q34 - When you picked the bag from the floor while dancing did you mean to throw it to Pte. Dufour in particular?
A34 - No, it could have been anyone at all.
Q35 - Had you noticed where Miss Wright had put her bag while she was dancing?
A35 - No.
Q36 - You had not noticed that there were a few bags on the radiator?
A36 - There were hand bags lying all around the dance hall.
Q37 - After you threw the bag to the accused have you seen him since?
A37 - No.
Q38 - That's the last time you saw him?
A38 - Yes.
PROSECUTOR: No questions.

DEFENDING OFFICER: May I ask this witness a few more questions?
PRESIDENT: Yes, you may.
Q39 - How close were you to Dufour when you through the hand bag to him?
A39 - About six feet away.
Q40 - Where was he?
A40 - Right besides the piano.
Q41 - Why did you pick up the bag?
A41 - Because people who were dancing were stepping on it.
Q42 - Was the bag closed when you picked it up.
A42 - I don't think it was open.
Q43 - How do you know that this bag is the one you threw to Dufour?
A43 - I don't know, sir.
Q44 - Did you see what the accused did with the bag?
A44 - I didn't.
Q45 - Did you see this particular wallet in the hands of the accuse
A45 - No.

MISS WRIGHT IS RECALLED.
Q46 - (Defending Officer cross-examines): After you were done danci when you came back to your chair did you see the accused thr the bag back to Paradis?
A46 - Yes.
Q47 - Whose hands did you take the bag out of?
A47 - Paradis'
Q48 - Did you know Pte. Dufour prior to this dance?
A48 - No, I never saw him before.
Q49 - Was he sitting or standing close to Paradis at the time you took the bag from Paradis?
A49 - He saw me coming back and he was standing up when he handed hand bag to Paradis and he then moved away. When I saw that the contents had gone I couldn't find him. I looked for bot of them and they had both gone. I asked Paradis when I saw him what had happened to Dufour. He then saw Staff Sergean Fisher and he moved off.

Uee

Q50 - As you saw this hand bag being passed to Paradis was it open or closed?
A50 - It was open, with one letter sticking out.
Q51 - And you saw you saw Dufour give the bag to Paradis?
A51 - I saw him drop it on Paradis and go away.

Questions by court.
Q52 - Who returned your identify card:
A52 - Staff Sergeant Fisher.
Q53 - Was the card in your wallet?
Q53 - It was with the wallet.
Q54 - Did he return anything else?
A54 - He gave me 8 shillings of his own money.
Q55 - He told you at this time that it was hiw own money?
A55 - Yes, he did.

STAFF SERGEANT FISHER RECALLED
Q56 - In Miss Wright's evidence she stated that she received her identity card from you. Where did you get it?
A56 - It was in the walld.
PRESIDENT: Sgt. Fisher, in the Summary of Evidence you stated (Here the president reads Sgt. Fisher's statement in the Summary of Evidence
Q57 - Is that statement correct?
A57 - That was the evidence I gave when here before. That she stated that she saw two men going through her hand bag and that one of the men had a sore on the back of his hand.
Q58 - Was it your previous evidence with regard to the sore that you recognized the man by that?
A58 - I did.
Q59 - Did you examine the right hand of the accused?
A59 - I did.
Q60 - Did he have a scar or sore on it?
A60 - No.
Q61 - Did you examine the hand of Paradis?
A61 - He couldn't be found. However, I found him the next day and he did have a sore on the back of his hand.

WITNESS EXCUSED.
Accused is sworn.
I arrived at the canteen about 7 o'clock, going there before going into the dance hall and I had a few drinks, and was feeling pretty good. I danced the same as the rest of them. I don't recall if I was sitting down or standing up when Paradis picked up a purse or wallet. I wasn' the one who took it.
PROSECUTOR: No questions.

Court is closed for the consideration of the findings.

Court is reopened.

The Prosecutor is sworn.
Q62- Have you any evidence to produce as to the character and particulars of service of the accused?
A62 - I produce A.F.B. 296 and M.F.M. 6, sir.
Q63 - Is the accused the person named in the statement which you have just read?
A63 - Yes, sir.
Q64 - Have you compared the contents of the above statement with the regimental books?
A64 - Yes, sir.
Q65 - Are they true copies from the regimental books, and is the statment of entries in the conduct sheet a fair and true summary of those entries?
A65 - Yes, sir.
Accused declines to cross-examine.
The Court is closed for the consideration of the sentence.

D.C. [illegible] [illegible] + Bos -

SUMMARY OF EVIDENCE IN THE CASE OF ~~A1432~~ 14532 UDC, Pte Dufour, A.
OF No.3 Coy, No. 1. R.C.A.S.C. HOLDING UNIT, Cdn: ARMY (O-S).

THE COMMANDING OFFICER DIRECTS THAT EVIDENCE SHALL BE TAKEN ON OATH.

1st WITNESS. Miss Doris Wright of 16, Town End St, Godalming, Surrey having been duly sworn - states:-

I came over to the dance of the R.C.A.S.C. at the N.A.A.F.I, on the night of March 28th, 1941. I was sitting out when a French Canadian came up to me and spoke and asked me in English if I would dance with a friend of his, but when I got up to dance I found out that his friend could not dance - so I sat down again and another soldier asked me to dance, which I did. On returning to my seat I saw Pte Dufour, whom I recognise, with my handbag open and on my ap;roach I saw Pte Dufour hand the bagto Pte Paradis, whom I recognise. I immediately took my bag from Pte Paradis and looked to see if anything was missing and found everything gone - but one letter. Missing was one wallett with Pictures, one leather address book and a green compact and purse with approximately 7/9d in it and one letter, also some Canadian change. The Wallett and Pictures produced here in this Court I recognise as mine. I reported the theft to the Provost Sergeant.

Doris Wright

Accused declines to cross-examine this Witness.

2nd WITNESS. S/Sgt: Fisher, A. of No. 1. R. C. A. S. C. Holding Unit, Canadian Army (O-S) having been duly sworn, states:-

On the day and date mentioned I was Provost Sgt: on duty at the men's dance, held in the N. A. A. F. I. One of the girls at this dance reported to me that she had seen two soldiers going through her handbag. I asked the girl if she could identify either of them - or both -. She stated that one of the soldiers had a sore or a scaf on the back of his left hand. Onlooking for this man she recognised Pte Dufour as being one of the soldiers concerned. I questioned the accused and found out that he did not understand English. I then called the officer in charge of the Dance, Lt: Simons, who questioned the accused in his own language. After Lt: Simons had finished questioning him - we proceeded to the men's quarters. On the way to the quarters the accused Pte Dufour tried to dispose of a Wallet - which I recognise as Exhibit "A". Pte Dufour stated that this wallet had been given to him by Pte Paradis. He was placed on charge by the Corporal of his Section - which was done on Lt: Simon's order.

Accused declines to cross-examine this witness.

S/Sgt A. Fisher.

Dt Camera [illegible]

3rd.WITNESS. E-14500 Pte Paradis,J.M. of No.1.R.C.A.S.C. HOLDING UNIT.Cdn.Army (O-s).,having been duly sworn states:-

I left the Barracks at 1930 hrs,Friday 28th of March,1941.,and went to the Beer Canteen and stayed there for 2 hours,at approximately 2130 hrs I went into the dance. Not knowing how to dance Pte Perron started to show me how,after dancing with Pte Perron I sat down with Pte Dufour and there were girls on both sides of us. I got up when the next dance started and and danced with an English soldier (I dont know his name or number) it was then that I saw the purse,- not the wallet in question-lying on the floor beside the band. I picked it up as I was dancing by and not seeing anyone nearby who seemed to own it I threw it to Pte Dufour,as he was the nearest person to me that I knew. I did not see Pte Dufour again that evening. That is all I know about the case.

The accused declines to cross-examine this witness.

(J.M.Paradis)Pte.

4th Witness, Lieut. E.A.D. Simons, No. 1 R.C.A.S.C. Holding Unit, Cdn. Army, (O), having been duly sworn states:-

On the night of March 28th, 41, at about 2200 hrs, I was called to the bar at the NAAFI where I found S/Sgt. Fisher speaking to two ladies and Pte. Dufour, whom I now recognize,

Miss Wright, one of the ladies, identified Pte. Dufour as being one of two men she had seen handling her purse in the Dance Hall. She told me that on approaching them the two soldiers left, leaving her with the empty purse. I questioned Pte. Dufour in French and he denied any knowledge of the affair and said he had a chum who could prove it. This chum being Pte. Paradis, whom he said could be found in his quarters. Pte. Dufour, S/Sgt. Fisher and myself proceeded to the men's quarters to locate Pte. Paradis, en route Pte. Dufour attempted to throw away in the darkness the wallet marked as exhibit "A" which he had apparently concealed in his Battle Dress blouse. S/Sgt. Fisher saw the attempt and took charge of the wallet. On arrival at the men's quarters we were unable to locate Pte. Paridis whereupon S/Sgt. Fisher placed Pte. Dufour under open arrest and left him in charge of the Barrack Room N.C.O.

Miss Wright also told me that her handbag was one of several which had been placed on top of one of the radiators against the wall being underneath all the others, and she does not believe it could have fallen to the floor. ~~Several articles were missing from the other handbags as well.~~ Her handbag was out of her sight for no longer than 10 minutes.

No search was made of Pte. Dufour nor was the money claimed to have been missing ever found. That is all I know in regards to this case.

(E.A.D.Simons)Lieut.

The accused declines to cross-examine this witness.

SUMMARY OF EVIDENCE IN THE CASE OF A-14532 PTE. DUFOUR, A.
NO.I R.C.A.S.C. HOLDING UNIT, CANADIAN ARMY (OVERSEAS).

The accused is duly cautioned M.M.L. R.P.4 (e) and declines to make any statement.

I hereby certify that the foregoing Summary of Evidence was taken down by me in writing in the presence of the accused and that R.P. 4 (e)(d)(e) and (f) have been complied with.

W.D.S. Careless
(W.D.S. Careless) Lieut.
Officer taking down Summary.

21 April, 1941.
Bordon, Hants.

W.D.S. Careless

List of Witnesses for Prosecution.

Miss. D. Wright, 16 Town End St, Godalming.

Lt: E. A. Simons, - No. 1. R. C. A. S. C. Holding Unit.

S/Sgt: Fisher. A. " " " " "

Pte Paradis, J. M. " " " " "

For Defence:-

List of Exhibits.

One Brown Leather Wallet - containing Photographs.

Wallet and contents returned to owner immediately after trial

(M. A. MacPHERSON) Lieutenant
Courts Martial Officer,
Canadian Base Units.

Certified True Copy. Sheet No. 1

No. E.14532 Name Armand DUFOUR. Sqn., Batty., or Company } Corps R. C. A. S. C. C. A. S. F. Long Service and G.C. Pay } Date of enlistment } 18.10.1940 Sheet No.

Date of last entry in Company Conduct Sheet } No. and date of last drunk } G.C. Budget } Signature O.C. Company, etc. }

Army Form B.122

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or if offender proceeding with Unit	By whom awarded	Remarks
				T. O. S. R. C. A. S. C. - T. S.O.S. on posting to General		C. eff: 26.10.40. D.O. Pt 2#275. Holding Unit. D.O.#29D/		d/28.10.40 Feb: 2nd - 1941. G.Walker.Lt.	

Certified true copy

J.R. Wilson, Capt. Officer i/c Records
No.1 R.C.A.S.C. Holding Unit,
Cdn Army Overseas.

P.T.O.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

A. 14532. Pte. Dufour, A. of the No. 1 RCASC. Holding Unit (CAO)

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

†See Para. 564, R.R. 1935.

*The numbers herein stated should correspond with the number of *Entries* in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

DISTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	*Within last 12 months.	*Since Enlistment.
For	None. times	None. times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or,

~~There are no entries in the Conduct sheets of the accused.~~ NONE

2. ~~The accused has not been previously convicted.~~ NONE

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

[illegible]

D. C. [illegible]

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
			WDL	

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22. day of April. 1941

W D Blanchard. Lieut

3. The accused is not under sentence at the present time,

or,

~~The accused at the present time is under sentence for~~

~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges

for none days in Civil Custody,

and 20 days in Military Custody.

Total 20 days.

Of which none days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 29y 3m 15D

6. The date of his ~~commission~~ / attestation specified in his record of service / attestation paper is Oct 18/40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of years' service.

9. The accused is entitled to reckon years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to

]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of , years,

In the rank of , years,

In the rank of , years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer dispensing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

UBR.

(*Continued overleaf.*)

Statement by the accused in accordance with R.P. 14 (B).

I, Pte Dufour, A. No. A. 14538, desire to have an officer assigned to represent me at my Court Martial.

Osmond Dufour

No. A. 14538, Pte Dufour, A.

Original

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 6th day of May, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~[illegible]~~]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[~~[illegible]~~ —

*(1. ~~[illegible]~~)

*(2. ~~[illegible]~~

*(3. ~~[illegible]~~

~~[illegible]~~ —]

President.

Rank.	Name.	Regiment.
Major	D.C. Cameron	No.1 Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	J.P.W. Taylor	No.2 Cdn Inf Hldg Unit
Lieutenant	R.F. Wodehouse	No.1 Cdn Inf Hldg Unit
Lieutenant	A. Lefroy	No.3 Cdn Inf Hldg Unit

*Signed [signature], Brigadier

Commanding Cdn Base Units, Cdn Army.

Convening Officer.

[illegible]ust be [illegible]ed personally [illegible] the Officer [illegible]ally in [illegible]mand at the [illegible], and all [illegible]ations in [illegible] composition [illegible] the Court to [illegible]tialled [illegible]

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A-14532 PTE. DUFOUR, A. No.1 R.C.A.S.C. Hldg Unit.	First Charge A.A. Sec 41 as per charge sheet	Not Guilty	Guilty SENTENCE To undergo detention for a period of 40 days.	Confirmed L

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— no

(*Signed*) L. R. Rutherford Brigadier (*Signed*) H. C. Cameron Lieut.
Commanding Cdn Base Units, Cdn Army. *President.*
Convening Officer (*c*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10th day of May 41, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The interpreter) The Court Stenographer
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 10th day of May 19 41.

H. C. Cameron Lieut.
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 370 of 1918 have been complied with.~~

* See footnote (b) on page 762 M.M.L. 1929.

Signed this 10th day of May 19 41

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ L

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 13th day of May 19 41

L. R. Rutherford Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of A14532 Pte Dufour A.
(*a*) (Dated) 16 May 41 (Signed) J. Graham Lieut.

Promulgated and extracts taken in the case of
(Dated) (Signed)

Promulgated and extracts taken in the case of
(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] W5 40123—940 [illegible] Kiel P.Bl. G.Ltd.

4T-90.

Pte. Dufour A.

CHARGE SHEET

S-11099 Private Albert DUFOUR, Les Fusiliers Mont Royal, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he,

In the Field at about 1800 hrs on the 18th Nov 44, absented himself without leave until surrendering himself to the Military Police in LILLE at about 2130 hrs on the 2nd Jan 45.

Absence: 45 days, 3 hrs, 30 mins.

In the Field
This 14th day of Jan 1945

J.A. Dufresne (DSO) Lt-Col
Officer Commanding
Les Fusiliers Mont Royal

To be tried by a Field General Court Martial.

In the Field
18 Jan 45

(E.P. Thompson) Lt-Col
A/Comd 6 Cdn Inf Bde

A. I. Stadard
1 of

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E 11099	PTE	—	ALBERT.	DUFOUR	FUS. M. R.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 15 JAN 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (at least three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	H. P. FALLOON	CAM. OF C.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
LT	E. R. A. LEVIN	CAM. OF C.
LT	J. D. CADE	S. SASK. R.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
LT	M. BISSONNETTE	FUS. M. R.

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
—	—	—

On Active Service in the Fd

in HOLLAND (Country.) — (Signed personally. RP 105 fn 2.) — (Rank.)

Date 18 JAN 45 — Commanding 6 CDN INF BDE. — Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA85 (1st Impl. of AFA3) 80/F & E/1897 (6601)

(See overleaf for oaths and notes for use in trial.)

MEDICAL OFFICER'S CERTIFICATE

N. 1

This is to certify that, this morning, I have examined E-11099

PTE Defour A of Lss Fus M R - C A (O) and found fit/~~unfit~~

to undergo trial by F.G.C.M.

In the Field

Date 14 Jan 45

[illegible] Collingford [illegible]

Medical Officer

Plea for Mitigation

H.S.J.

My defending Officer Lt. Curran R.A.T.

I wish to draw two the attention of the court that Pte Dufour was in Action from 7 July 44 until 18 Nov 44. and was also at "A" Ech. when he absented himself without leave. He also gave himself up to the Military Police at Lill at app. 2100 hrs 2 Jan 45.

SUMMARY OF EVIDENCE

N 14 D

In the case of E-11099 Pte DUFOUR, A., Les Fusiliers Mont Royal, a soldier of the Canadian Army Overseas.

The accused is informed of his rights

The Commanding Officer directs and the accused demands that the evidence be taken on oath,

---

FIRST WITNESS for the prosecution: Capt G.Gamache, Adjt, Les Fusiliers Mont Royal, having been duly sworn, makes the following statement:

" I present.

(a) Certified true copy of a Declaration of a Ct of Inq dated 16 Dec 44 (att Exh A)

(b) Certificate of surender in accordance with AA Sec 163(i)(j) dated 2 Jan 45 (Exh B)

both of which relate to the accused whom I recognize.

THE ACCUSED DECLINES TO CROSS-EXAMINE.

G. Gamache, Capt & Adjt
G.Gamache, Capt&Adjt
Les Fus M R

SECOND WITNESS for the prosecution: L/C 1 JAMES, J.R., of 242 HQ Provost Coy CM Police.

" A written statement of this witness' evidence purporting to be signed by him has been read to the accused and is included in this Summary (Att as Exh C) having regard to his surrender. The attendance of this witness cannot in my opinion be readily procured.

THE ACCUSED DOES NOT DEMAND THE ATTENDANCE OF THIS WITNESS FOR CROSS-EXAMINATION

Jean Leduc Capt.
J.Leduc, Capt
Offr detailed to take the Summary.

The accused, having been duly cautioned in accordance with RP 4(e) says:

" I HAVE NOTHING TO SAY."

A. Dufour
A. Dufour, Pte Jet

Certified that RP 4 have been complied with.

Jean Leduc Capt.
J.Leduc, Capt
Offr detailed to take the Summary

14 Jan 45.

N-14

LIST OF WITNESSES

In the case of R-11099 Pte DUFOUR, A., Les Fusiliers Mont Royal, a soldier of the Canadian Army Overseas.

PROSECUTION

Capt G.Gamache, Adjt Les Fusiliers Mont Royal
L/Cpl James J.R. 242 HQ Provost Coy CA Police.

DEFENCE

Nil

LIST OF EXHIBITS

Exh A Certified true copy of a Declaration of a Ct of Inq dated 10 Dec 44.

Exh B Certificate of surrender in accordance with AA Sec 163(1)(3) dated 2 Jan 45.

Exh C Written statement of L/Cpl JAMES J.R. of 242 HQ Provost Coy of CM Police.

STATEMENT BY ACCUSED

I, R-11099 Pte DUFOUR, A., hereby that I have been given free-of-charge copy of documents, proceedings, etc, relating to my trial by Field General Court Martial.

I request the services of an offr to defend me at my trial by Field General Court Martial.

I desire the services of Lt Gamache P.R.J. if he is available.

A. Dufour Pte

N 14 A

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 16th day of Dec 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. E-11099 PTE DUFOUR A.

DECLARATION

The Court declare that No. E-11099 PTE DUFOUR A.

illegally absented himself without leave ~~from Les Fus M R~~ from Les Fus M R at 1800 hrs on the 18 th day of Nov 44, that he is still so absent, and that on the 10th Dec 44 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE		ARTICLES	VALUE	
1 battle blouse	5	25	Less 25%	3	94
1 battle trousers	5	39		3	97
1 pr boots ankle	5	46		4	02
1 pr socks		37			27
1 short underwear		43			33
1 shirt angola	2	05		1	53
k beret kaki		56			42
100%	19	49	75%	14	48

Geo Balcer, Capt
Les Fus M R ..... President

R Chalifoux, Lt
Les Fus M R ..... Member

Signed at In the field

this 16th day of Dec 1944 ..... Member

Signature of Commanding Officer J.M.P. SAUVE, Lt-Col
Les Fus M R

Certified true copy G Ganache, Capt & Adjt
G. Ganache, Capt&Adjt
Les Fus M R CA(O?

Signature of Officer having custody of original record

M.F.B. 373
A.F.B. 135
MM-4-41 (750)
H.Q. 1771-13-247

STATEMENT OF **EVIDENCE** IN THE CASE OF:-
E. 11099. PTE. DUFOUR. A.
S.P. COy,
THE FUSILIER MONTROYAL REGT.
2ND CANADIAN DIVISION.

Sir.

At LILLE on the 2ND JAN 1945 at about 2130 hrs I was on duty at PROVOST H.Q. in company with L/CPL. BOSTON. H. C.M.POLICE. when the above named soldier reported to me saying " I am an absentee without leave and I wish to surrender."

I took his particulars from his M.B. 1. arrested him and conducted to the TOWN GUARD ROOM LILLE where he was handed over to the N.C.O. i/c Guard to be detained.

Handing over certificate and certificate of arrest attached.

L/Cpl.
242. H.Q. PROVOST COMPANY, C.M.POLICE.

I have read over and corroborate the above statement

LILLE. W H Boston L/Cpl.
2nd JAN 1945 242. H.Q. PROVOST COMPANY, C.M.POLICE.

REMARKS

CERTIFICATE UNDER SECTION 163 (i) (j) OF THE ARMY ACT

I, CAPTAIN H. JEFFREY certify that No. E. 11099.
Rank DUFOUR. A. of THE FUSILIER MONTROYAL Regt.
himself to No. A031738. Rank L/Cpl. Name JAMES. J.R. L/
242. H.Q. Provost Company, C.M.POLICE at LILLE at 2130.
as a absentee without leave). He was dressed in unifo

(Signature)

122B.

Date 2nd Jan 45 O.C. 242 H.Q. PRO

N14 E

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
E-11099	Pte	DUFOUR, A	Fus M R

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	AA sec 15(1) three times	nine times.
For	AA sec 40 times	one times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct.~~

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations of trial under section 75 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~or the sentence at the present time of under sentence for~~ _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for 13 days in civil custody, and nil days in military custody, making a total of ~~nil~~ 13 days, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 97

6. The date of his ~~[illegible]~~ / attestation specified in his ~~[illegible]~~ / attestation paper is 11 Jul 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is Duration

8. The accused is entitled to deferred pay or gratuity in respect of _____ service.

9. The accused is entitled to reckon _____ service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of _____

12. (*In the case of an officer.*) The accused holds in the army the rank of _____ dated _____, and in his regiment (*or* corps *or* department) the rank of _____ dated _____

(*[illegible]) Wt.[illegible] [illegible] [illegible] A.S.E.W.Ltd. Gp.[illegible]
([illegible]) Wt.[illegible] [illegible] [illegible] " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-11099 Rank Pte Name Dufour, A of Pus E R Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 16 Jan day of 1945

R Damache, Capt & Adjt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of , years, ...

In the rank of N/A , years .....

In the rank of , years, ...

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

STATEMENT OF **EVIDENCE** IN THE CASE OF:-
E. 11099. PTE. DUFOUR. A.
S.P. COy,
THE FUSILIERS MONTROYAL REGT.
2ND CANADIAN DIVISION.

Sir.

At LILLE on the 2ND JAN 1945 at about 2130 hrs I was on duty at PROVOST H.Q. in company with L/CPL. BOSTON. H. C.M.POLICE. when the above named soldier reported to me saying " I am an absentee without leave and I wish to surrender."

I took his particulars from his M.B. 1. arrested him and conducted to the TOWN GUARD ROOM LILLE where he was handed over to the N.C.O. i/c Guard to be detained.

Handing over certificate and certificate of arrest attached.

L/Cpl.
242. H.Q. PROVOST COMPANY, C.M.POLICE.

I have read ove[r] and corroborate the above statemen[t]

LILLE.
2nd JAN 1945 242. H.Q. PROVOST COMPANY, C.M.POLICE. L/Cpl.

REMARKS

CERTIFICATE UNDER SECTION 163 (1) (d) OF THE ARMY ACT

I, CAPTAIN H. JEFFREY certify that No. E. 11099 DUFOUR. A. of THE FUSILIER MONTROYAL Regt. [illegible] No. [illegible] Rank. L/Cpl. Name. DUFOUR. A. L/Cpl. 242. H.Q. Provost Company, C.M.POLICE at LILLE at 2130 [illegible] absentee without leave). He was dressed in uniform ([illegible]

(Signature)

1228.

2nd Jan 45.

(H. JEFFREY)
C.O. 242 H.Q. PROVOST [illegible]

On completion to be disposed of in accordance with
CHARGE K.Rs 1940 para 562 (b) Army Form [illegible]252
(See King's Regulations)

THE FUSILIERS MONTROYAL Regiment

S.P. Battery / Squadron / Troop / Company

CHARGE against NE.11099. Rank Pte.

Name DUFOUR. A.

Place LILLE. Date of Offence

OFFENCE W.O.A.S. Absent from [illegible]
until surrendering to the MILITARY POLICE
at PROVOST H.Q. on the 2nd JANUARY 1945 at
about 2130 hours.

Names of Witnesses:— [illegible]AMES., C.M.POLICE.
L/CPL H. BOSTON. C.M.POLICE.
CPL. T. JONES (N.C.O.i/c Guard)

[illegible] O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Folio 122

1943

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16 May	Pte		AWL from 0700 hrs 16 May till 1500 hrs 20 May 43(4 days 8 hrs) AA sec 15(1)	Capt Gauvin Sgt Rioux	Forf 7 days pay 7 days C.B.	22 May 43	F. Mathieu Lt-Col	Forf 5 days pay
Field	31 May	Pte		WOAS AWL from 0630 hrs 31 May 43 till 1200 hrs 2 Jun 43 (absent 2 days 15 hrs 30 mins) AA Sec 15(1)	Cpl Pelletier Cpl [illegible]	Forf 14 days pay and 14 days C.B.	4 Jun 43	F. Mathieu Lt-Col	Forf 3 days pay
Field	1 Jul 43	Pte		AWL from 2300 hrs 1 July 43 till 0810 hrs 3 Jul 43(Abs:1 day 9 hrs)	Cpl Lapierre	14 days C.B.	7 Jul 43	Major Barre	Forf 2 days pay
Field	3 Jul	Pte		AWL WOLS from 0930 hrs 3 Jul 43 till 2400 hrs 4 Jul 43(Abs:1 day 14 hrs 30 mins)AA sec 15(1)	" "	14 days F.P.	14 Jul 43	Lt-Col Mathieu	Forf 2 days pay
Field	29 Jul 43	Pte		WOAS AWL from 2300 hrs 29 jul 43 till appr by Cdn Pro Corps at Piccadilly Tube Station London at about 2350 hrs 4 Aug 43 (abs: 6 days 50 mins AA Sec 15(.)	Sgt Derosiers Documentary	28 days F.P.	9 Aug 43	Lt-Col Mathieu	Forf 7 days pay and to make good cost of appl.10-8-9.

NE-11099 Name Dufour, A | Sqn, Battery, or Company | Corps Inf Fus M R | Date of enlistment 11 Jul 40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/F&B/126 (3438)

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No one | Signature OC Company, etc G. Sevigny Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sussex	1941 30 May	Pte		AWL fr 2359 hrs 30 May till 1220 14 Jun 41 - AA sec 15(1)		7 days C.B.	10 Jun 41	Major L'esperance	Forf 5 days pay
Field	1942 16 Feb	Pte		AWL fr 0730 hrs 16 Feb till 1445 hrs 16 Feb 42 (7 hrs 15 m)AA 15(1)		7 Days C.B.	21 Feb 42	Major Lesperance	Forf 1 day pay
Field	13 Dec	Pte		AWL fr 2230 hrs 13 Dec to 0700 hrs 14 Dec 42 (8 hrs 30m)AA k5(1)		Admonished	14 Dec 42	Major Lesperance	Forf 1 day pay
Field	1943 14 Apr	Pte		Conduct to prejudice etc..in that he ask for a lift from a civilian AA 40-Detained by police fr 14 Apr 2100 hrs till 1100 hrs 15 Apr 43	Documentary	Forf 2 days pay	15 Apr 43	F.Mathieu Lt-Col	Nil
Field	27 Apr	Pte		AWL fr 2230 hrs 27 Apr till 1900 hrs 5 May 43(7 days 20 hrs 30 m) AA sec 15(1)	L/Cpl Jacques Sgt Godin	Forf 4 days pay-7 days C.B.	11 May 43	R. Audet Major	Forf 8 days pay

(FTO)

On completion to be disposed of in accordance with
CHARGE K.Rs 1940 para 562 (b) Army Form
(See King's Regulations

THE FUSILIERS MONTROYAL Regiment

S.P. 34 Battery / Squadron / Company

CHARGE against No. 11099. Rank Pte.

Name DUFOUR. A.

Place LILLE. Date of Offence

OFFENCE W.O.A.S. Absent from [illegible]

until surrendering to the MILITARY POLICE

at PROVOST H.Q. on the 2nd JANUARY 1945 at

about 2130 hours.

Names of Witnesses:—

L/CPL. J.R.JAMES., C.M.POLICE.
L/CPL. H. BOSTON. C.M.POLICE.
CPL. T. JONES (W.O.C.A/c Guard)

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

[illegible] G.H.Q.F.P. [illegible] P.T.O.

STATEMENT OF **EVIDENCE** IN THE CASE OF:-
E. 11099. PTE. DUFOUR. A.
S.P. COY,
THE FUSILIER MONTROYAL REGT.
2ND CANADIAN DIVISION.

Sir. At LILLE on the 2ND JAN 1945 at about 2130 hrs I was on duty at PROVOST H.Q. in company with L/CPL. BOSTON. H. C.M.POLICE. when the above named soldier reported to me saying " I am an absentee without leave and I wish to surrender."

I took his particulars from his M.B. 1. arrested him and conducted to the TOWN GUARD ROOM LILLE where he was handed over to the N.C.O. i/c Guard to be detained.

Handing over certificate and certificate of arrest attached.

L/Cpl.
242. H.Q. PROVOST COMPANY, C.M.POLICE.

I have read over and corroborate the above statemen

L/Cpl.
242. H.Q. PROVOST COMPANY, C.M.POLICE.

LILLE.
2nd JAN 1945

CERTIFICATE UNDER SECTION 163 (i) (j) OF THE ARMY ACT

I, CAPTAIN...H. JEFFREY..... certify that No...E. 110[illegible]

[illegible] DUFOUR...A..... of THE FUSILIER MONTROYAL.....Regt.

[illegible] to No. A031738..... Rank..L/Cpl..... Name..JAMES. J.R.,

242. H.Q. Provost Company, C.M.POLICE at ...LILLE..... at 21[illegible]

as a [illegible] absentee without leave). He was dressed in unif[illegible]

(Signature)

122B.

Date 2nd Jan 45.... O.C. 242 H.Q. PRO[illegible]

STATEMENT OF **EVIDENCE** IN THE CASE OF:-
E. 11099. PTE. DUFOUR. A.
S.P. COY,
THE FUSILIER MONTROYAL REGT.
2ND CANADIAN DIVISION.

Sir.

At LILLE on the 2ND JAN 1945 at about 2130 hrs I was on duty at PROVOST H.Q. in company with L/CPL. BOSTON. H. C.M.POLICE. when the above named soldier reported to me saying " I am an absentee without leave and I wish to surrender."

I took his particulars from his M.B. 1. arrested him and conducted to the TOWN GUARD ROOM LILLE where he was handed over to the N.C.O. i/c Guard to be detained.

Handing over certificate and certificate of arrest attached.

L/Cpl.
242. H.Q. PROVOST COMPANY, C.M.POLICE.

I have read over and corroborate the above statement

LILLE.
2nd JAN 1945

L/Cpl.
242. H.Q. PROVOST COMPANY, C.M.POLICE.

CERTIFICATE UNDER SECTION 163 (i) (j) OF THE ARMY ACT

I, CAPTAIN H. JEFFREY ..... certify that No. E. 11099.
DUFOUR. A. ..... of THE FUSILIER MONTROYAL ..... Regt.
himself to No. A031738 .... Rank L/Cpl. ..... Name JAMES. J.R. L/
242. H.Q. Provost Company, C.M.POLICE at ... LILLE ..... at 2130
as a ~~[illegible]~~ absentee without leave). He was dressed in unifo

(Signature)

(H.
O.C. 242 H.Q. PRO

122 B.

Date 2nd Jan 45 ....

STATEMENT OF **EVIDENCE** IN THE CASE OF:-
E. 11099. PTE. DUFOUR. A.
S.P. COy,
THE FUSILIERS MONTROYAL REGT.
2ND CANADIAN DIVISION.

Sir.

At LILLE on the 2ND JAN 1945 at about 2130 hrs I was on duty at PROVOST H.Q. in company with L/CPL. BOSTON. H. C.M.POLICE. when the above named soldier reported to me saying " I am an absentee without leave and I wish to surrender."

I took his particulars from his M.B. 1. arrested him and conducted to the TOWN GUARD ROOM LILLE where he was handed over to the N.C.O. i/c Guard to be detained.

Handing over certificate and certificate of arrest attached.

L/Cpl.
242. H.Q. PROVOST COMPANY, C.M.POLICE.

I have read over and corroborate the above statement

L/Cpl.
LILLE.
2nd JAN 1945 242. H.Q. PROVOST COMPANY, C.M.POLICE.

REMARKS

CERTIFICATE UNDER SECTION 163 (1) (j) OF THE

I, CAPTAIN...H. JENSEN..... certify that No...
DUFOUR...A..... of THE FUSILIER MONTROYAL.....
.A931738..... Rank..L/Pte..... Name.....
242. H.Q. Provost Company C.M.POLICE at ...LILLE..... on
absentee without leave). He was dressed in uni

(Signature)

1228. O.C. 242 H.Q. PROVOST COMPANY, C.M.P.

STATEMENT OF **EVIDENCE** IN THE CASE OF:-
E. 11099. PTE. DUFOUR. A.
S.P. COy,
THE FUSILIER MONTROYAL REGT.
2ND CANADIAN DIVISION.

Sir.

At LILLE on the 2ND JAN 1945 at about 2130 hrs I was on duty at PROVOST H.Q. in company with L/CPL. BOSTON. H. C.M.POLICE. when the above named soldier reported to me saying " I am an absentee without leave and I wish to surrender."

I took his particulars from his M.B. 1. arrested him and conducted to the TOWN GUARD ROOM LILLE where he was handed over to the N.C.O. i/c Guard to be detained.

Handing over certificate and certificate of arrest attached.

L/Cpl.
242. H.Q. PROVOST COMPANY, C.M.POLICE.

I have read over and corroborate the above statemen

LILLE. W H Boston L/Cpl.
2nd JAN 1945 242. H.Q. PROVOST COMPANY, C.M.POLICE.

REMARKS

CERTIFICATE UNDER SECTION 163 (i) (j) OF THE ARMY ACT N.F.B

I, CAPTAIN H. JEFFREY ..... certify that No. E. 11099 ... Rank. Pte. ..... Name DUFOUR. A. ..... of THE FUSILIER MONTROYAL ..... Regt. surrendered himself to No. A031738 ..... Rank L/Cpl. ..... Name JAMES. J.R. L/Cpl. ..... of 242. H.Q. Provost Company, C.M.POLICE at ... LILLE ..... at 2130 .. hrs on 2nd Jan 45. (date) as a ~~[illegible]~~ absentee without leave). He was dressed in uniform (~~[illegible]~~).

(Signature)

122B.

Date. 2nd Jan 45 ....

(H.JEFFERY) Capt.,
O.C. 242 H.Q. PROVOST COMPANY, C.M.P.

MFM 6
(AFB 122)
(Ref 128 (3439))

No E-11099 Name Dufour A | Sqn, Battery, or Company | Corps Inf Fus M R | Date of enlistment 11 Jul 40 | GC Badges N/A | Service or Proficiency Pay 1 Jan 44

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine | Sheet No two | Signature OC Company, etc G.L. Labreque Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with Glad	By whom awarded	Remarks
Field	6 Oct 43	Pte		WOAS AWL from 1200 hrs 6 Oct 43 till 1845 hrs 6 Oct 43 (abs:6 hrs 45 mins)AA Sec 15(1)	L/Cpl Labrie Documentary	Forf 7 days pay	7 Oct 43	Lt-Col Mathieu	Forf 1 day pay
Field	31 Mar 44	Pte		AA sec 15(1) WOAS AWL from 2359 hrs 31 Mar 44 to 2200 hrs 5 Apr 44 (Abs:4 days 22 hrs 1 min)	Sgt Deleseleuc Sgt Moreau,U	14 days pay 14 days C.B.	10 Apr 44	Lt-Col MN Langlois	For 5 days pay FR&I 149(1)(a)
Field	13 May 44	Pte		AA15(1) WOAS AWL from 0700 hrs 13 May 44 until apprehended by the Mil Police at Preston Park Rly Stn at approx 1630 hrs 13 Nov 44(Abs9 hrs 30 mins	Sgt Deleseleuc Documentary	14 days pay FR&I 149(2) 14 days C.B. £1-2-2 Cost of appre	18 May 44	Lt-Col MN Langlois	Forf 1 day pay 149(1)(a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6 Jun 44	Pte		AA sec 15(1) WOAS AWL from 1700 hrs 6 Jun 44 till 1700 hrs 7 Jun 44 (absent 1 day)	Sgt Benoit Sgt Graham	7 days C.B.	9 Jun 44	JMPSauve Major	1 days pay Paid 14[illegible]11)(a)

CERTIFIED TRUE COPY

G. Gamache, Capt & Adjt.
(G. Gamache) Capt
Adjt - Fus M R

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E 11099 Pte ALBERT DUFOUR FMR

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 69 12 (b)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 752, and in lieu of Kit see RP 44 fn 6.)

At present under sentence for n/k beginning on (date) n/k (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which n/k days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer 2 years imprisonment with hard labour and to be dishonourably discharged from H.M. Forces with ignominy 19 Jan 45 (Sgd) N. P. Falcon Lt
(Sgd) Judge-Advocate, if any. Date awarded. President (RP 45, 50)
(See back of Convening Order as to disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 8, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.)

(Sgd) Brampton, Col
Date 19 Jan 45 Commanding 6 Can Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
E-11099 Pte DUFOUR A.	20 JAN 45	Commander, Cdg 3 Cdn Armd Bde

CR 124 of 20 Jan 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 160. LT-90

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AF A21) 40/P & S/1696 4/38B

Convened by Order of Lt Col i/c Tanyard Comd 6 C I B dated 18 Jan 45

RECEIVED MAR 1945 JAG BRANCH CMHQ

PROCEEDINGS REVIEWED

R K Lambert Capt
REVIEWING OFFICER, JAG BRANCH CMHQ

ACCUSED.

(Separate trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank Cpl, L/Cpl, Pte, Gnr, Spr, Trpr, Rfn, Dvr, Sgmn, Lt, Capt, Maj, Lt-Col, Col, Brig, Maj-Gen, Lt-Gen, Gen, Field Marshal, Appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number. (a) Permt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E 11099	Pte	Albert	Dufour	FMR

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland. on (date(s)) 18 Jan 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 20/19.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cautions do NOT include all relevant fms RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for units and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Instrs". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. RP 45, 50, RP 105-107. 3. RP 11-13, 22, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100A hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 562(c). Delete, if not applicable.)

A5. President to accused: Do you object to Lt E. DEPATIE as interpreter? Ans NO.
The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO.(1)
(1. RP 110. 2. If no objection, waiting member retires. RP 98(B). If objection, see procedure AA 51, RP 23, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	N. P. FALCON	C of C
Member	LT	E. A. LEVIN	C of C
Member	LT	J. D. CADE	S & R
Judge-Advocate			
Prosecutor	LT	J. DEPATIE	FMR
Defending Offr	LT	P. A. CARON	FMR

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NIL.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv. Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (b) and fn 2 were not followed. See Dir p 3.)

A8. The accused E 11099 Pte ALBERT DUFOUR before arraignment make(s) (no) (a) plea (1)
(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposed, the evidence, if any, and finding are recorded per Instrs. For forms of record see references in fns to RP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use prescribed forms of CF 496 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record (per Instrs p 2).)

A10. The Court ~~(in closed court)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. N O .(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ... charge(s). The accused is (are) informed that his (their) plea(s) to ... charge(s) will (not) be changed.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex X D initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such pleas and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any pleas is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(2)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114. *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 80(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*d*), *RP* 42, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. ... and Ex. ... respectively.(3)
(1. *MFB* 255 *or AFB* 294. 2. *MJM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. .....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*c*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (2)). *One sentence only, comprised of the punishment or punishments laid down in AA* 40, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-55, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566. *Overseas AO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 58(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E-11099 Pte Albert Dufour F M R

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court: To serve 2 years imprisonment with hard labour and to be discharged from His Majesty's Forces with ignominy.

(Sgd) 19 Jan 45 (Sgd) H.P. Falloon, Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be put committed to prison or detention barracks until further orders.~~ (1) P.P.J.

(1. AA 57A. Delete if not used.)

(Sgd) E.P. Thompson, Lt-Col

Date 19 Jan 45

Commanding 6 Cdn Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
E-11099 Pte Dufour, A.	20 Jan 45	
CR 12 of 20 Jan 45		G.Gamanche, Capt., Adjt.,

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4T-90

FIELD GENERAL COURT-MARTIAL

CPA66 (1st Issue) (For APA81 40/P & S/5/Gp 4/6061) 4/38B

Convened by Order of Lt-Col E.P. Thompson Comd 6 C.I.B. dated 18 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
E-11099	Pte		Albert	Dufour	FMR

Certified true copy
[signature]
A.D.J.A.
Cdn Sec G.H.Q. 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 19 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cautions do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc., which insert are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ✓ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3) WPF

(1. As to use of Summary of Evidence see RP 17 fn 6, 22. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court at 1100A hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the C.O.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Lt J.Depattie as interpreter? Ans No

The Interpreter is sworn.(1) Do you object to ——— as shorthand writer? Ans ———

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H.P. Falloon	C of C
Member	Lt	E.A. Levin	C of C
Member	Lt	J.D. Cade	S S R
Judge-Advocate			
Prosecutor	Lt	J. Depatie	FMR
Defending Offr	Lt	P.R.J. Caron	FMR

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Qs p 3.)

A8. The accused E-11099 Pte Albert Dufour before arraignment make(s) (no) ✓ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 128), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (severally) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record here.)

A10. The Court (adjourns) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) Plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole if part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex D , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (b).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above, but only such parts thereof as relate to the charges dealt with under C2.
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof as a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, but you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1. 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3), (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copies (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E and Ex F respectively.(3)
(*1. MFB 355 or MFB 296. 2. MFW 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

E-11099 Private Albert Dufour, Les Fusiliers Mont Royal, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
~~AA~~ Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he,

In the Field at about 1800 hrs on the 18 Nov 44, absented himself without leave until surrendering himself to the Military Policein Lille at about2130 hrs on the 2 Jan 45.

Absence: 45 days, 3 hours, 30 minutes.

In the Field
this 14th day Jan 1945

(sgd) J.A.Dextraze, (DSC) Lt-Col
Officer Commanding
Les Fusiliers Mont Royal

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

IN THE FIELD
18 Jan 45

(sgd) E.P. Thompson, Lt-Col
A/Comd 6 Cdn Inf Bde

M.P. Falloon, Maj
Pres

H.P. Falloon, Maj

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-11099	Pte		Albert	Dufour	Fus M.R.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 18 Jan 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) H.P. Falloon (Must be named. RP 106.) Cam of C (Unit.)

MEMBERS.

Lt E.A. Levin Cam of C

Lt (Rank.) J.D. Cade (Named or detailed. RP 106.) S Sask R (Unit.)

WAITING MEMBER.

Lt (Rank.) M. Bissonnette (Named or detailed, if any. RP 106.) Fus M.R. (Unit.)

JUDGE-ADVOCATE.

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in Holland (Country.) E.P. Thompson (Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Dat 18 Jan 45 Commanding 6 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (6143)

H.P.F.
Pres

MEDICAL OFFICERS CERTIFICATE

This is to certify that, this morning, I have examined E-11099 Pte Dufour, A. of Les Fus M R CA(O) and found Fit to undergo trial by court martial.

In the Field

Date 19 Jan 45

(sgd) F.Fallingford, Capt
Medical Officer

SUMMARY OF EVIDENCE

In the case of E-11099 Pte Dufour, A., Les Fusiliers Mont Royal, a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs that and the accused demands that the evidence be taken on oath.

FIRST WITNESS for the Prosecution: Capt G. Gamanche, Adjt, Les Fusiliers Mont Royal, having been duly sworn, makes the following statement:

" I present.

(a) Certified true copy of a Declaration of a Ct of Inq dated 16 Dec 44 (att exh "A")

(b) Certificate of surrender in accordance with AA Sec 163(1)(j) dated 2 Jan 45 (Exh B)

both of which relate to the accused whom I recognize.

THE ACCUSED DECLINES TO CROSS-EXAMINE

(sgd) G.Gamanche, Capt&Adjt
Les Fus M R

SECOND WITNESS for the prosecution: L/Cpl James, J.R., of 242 H.Q. Provost Coy CW Police.

" A written statement of this witness' evidence purporting to be signed by him has been read to the accused and is included in this Summary (Att as Exh C) having regard to his surrender. The attendande of this witness cannot in my opinion be readily procured.

THE ACCUSED DOES NOT DEMAND THE ATTENDANCE OF THIS WITNESS FOR CROSS EXAMINATION

(sgd) J.Leduc, Capt
Offr detailed to take
Summary

The accused, having been duly cautioned in accordance with RP 4(e) says:

" I have nothing to say "

(sgd) A.Dufour, Pte

Certified that RP 4 have been complied with.

(sgd) J. Leduc, Capt
14 Jan 45. Offr detailed to take the Summary

H.P.F. A.

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 16th day of Dec 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. E-11099 Pte Dufour, A.

DECLARATION

The Court declare that No. E-11099 Pte Dufour, A.

illegally absented himself without leave from Les Fus M R

at 1800 hrs on the 18th day of Nov 44,

that he is still so absent, and that on the 10th Dec 44 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE		ARTICLES	VALUE	
1 battle blouse	5	25	Less 25%	3	94
1 battle trousers	5	39		3	97
1 pr boots ankle	5	46		4	02
1 pr socks		37			27
1 short underwear		43			33
1 shirt angola	2	03		1	53
1 beret kaki		56			42
100%	19	49	75%	14	48

Geo Balcer, Capt
Les Fus M R — President

R Chalifoux, Lt
Les Fus M R — Member

Signed at in the Field

this 16th day of Dec 1944 — Member

Signature of Commanding Officer J.M.P. Sauve, Lt-Col
Les Fus M R.

Certified true copy G.Gamanche, Capt&Adjt
Les Fus M R CA(O)

Signature of Officer having custody of original record

M.F.B. 273
A.F.B. 115
25M—4-43 (750)
H.Q. 1773-38-237

H.P.F. Ex B

CERTIFICATE UNDER SECTION 163 (1)(j) OF THE ARMY ACT

I Captain H. Jeffery certify that No. E-11099 Rank Pte Name Dufour, A. of Les Fus Mont Royal Regt Surrendered himself to No. 4031738 Rank L/Cpl Name James, J.R. of 242 H.Q. Provost Coy CM Police at Lille at 2130 hrs on 2nd Jan 45 as an absentee without leave. He was dressed in uniform

Date 2nd Jan 45

(sgd) H.Jeffery, Capt
O.C. 242 H.Q. Provost Coy, C.M.P.

M.P.F. 8x C

On completion to be disposed of in accordance with K.Rs 1940 Para 562 (b)

Army Form B 252

CHARGE

The Fusiliers Mont Royal — Regiment

S.P. — Coy

Charge against No. E-11099 Rank Pte

Name Dufour, A.

Place Lille — Date of offence

Offence W.O.A.S. Absent from until surrendering to the Military police at Provost H.Q. on the 2nd January 1945 at about 2130 hrs.

Names of witnesses:-

L/Cpl J.R. James, C.M. Police
L/Cpl W. Boston C.M. Police
Cpl T. Jones (N.C.O. i/c Guard)

(sgd) ??????????? for
D.A.P.M. 15 L of C

Statement of EVIDENCE in the case of :-

E-11099 Pte Dufour, A.
S.P. Coy
The Fusiliers MontRoyal Regt
2nd Canadian Division

Sir,

At Lille on the 2nd Jan 1945 at about 2130 hrs I was on duty at Provost H.Q. in company withL/Cpl Boston, W. C.M. Police. When the above named soldier reported to me saying "I am an absentee without leave and I wish to surrender"

I took his particulars from his A.B. 1. arrested him and conducted him to the Town Guard Room Lille where he was handed over to the N.C.O. i/c Guard to be detained.

Handing over certificate and certificate of arrest attached.

(sgd) J.R. James, L/Cpl
242 H.Q. Provost Coy C.M. Police

I have read over and corroborate the above statement.

Lille
2nd Jan 1945

(sgd) W.W. Boston, L/Cpl
242 H.Q. Provost Coy, C.M. Police

No E11099 Name Dufour, A. | Sqn, Battery, or Company | Corps Inf Fus M R | Date of enlistment 11 Jul 40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3430)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No one | Signature OC Company, etc G. Sevigny, Capt | Character P.F. Ex F

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sussex	30May41	Pte		AWL from 2359 hrs 30 may till 1220 14 Jun 41 AA Sec 15(1)		7 days C.P.	10Jun41	Major L'esperance	forf 5 days pay
Field	16 Feb42	Pte		AWL fr 0730 hrs 16 Feb till 1445 hrs 16 Feb 42 (7hrs 15mins) AA15(1)		7 days C.H.	21Feb42	Major L'esperance	forf 1 days pay
Field	13Dec42	Pte		AWL fr 2230 hrs 13 Dec to 0700 hrs 14 Dec 42(8hrs 30m) AA 15(1)		Admonished	14Dec42	Major L'esperance	forf 1 days pay
Field	14Apr43	Pte		Conduct to prej etc in that he ask for a lift form a civilian AA 40 Detained by police fr 14 Apr 2100 hrs till 1100 hrs 15 Apr 43	Documentary	Forf 2 days pay	15 Apr 43	Lt-Col P. Mathieu	NIL
Field	27Apr	Pte		AWL fr 2230 hrs 27 Apr til 1900 hrs 5 may 43(7 days 20hrs 30m) AA Sec 15(1)	L/Cpl Jacques Sgt Godin	forf 4 days pay 7 days C.H.	11May 43	R. Audet Major	forf 8 days pay

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 16	May43	pte		AWL from 0700 hrs 16 may till 1500 hrs 20 may 43(4dys 8 hrs)	CaptGauvin Sgt Rioux	Forf 7 dayspay 7dys C.B.	22 May 43	P.Mathieu Lt-Col	Forf 5 days pay
Field 31	May43	Pte		WOAS AWL from 0630 hrs 31 may 43 till 1200 hrs 2 Jun 43(absent 2 days 15hrs 30mins)AA Sec 15(1)	Cpl Pelletire L/Cpl Croix	forf 14 days 14 dys C.B.	4 Jun43	P.Mathieu Lt-Col	Forf 3 days pay
Field 1	Jul 43	Pte		AWL from 2300 hrs 1 Jul 43 till 0810 hrs 3 Jul 43(Abs.1 day9hrs)	Cpl Lapierre	14 days C.B.	7 Jul43	Major Barre	For 2 days pay
Field 3	Jul43	Pte		AWL WOAS from 0930 hrs 3 Jul 43 till 2400 hrs 4 Jul 43(Abs: 1 dy 14 hrs 30 mins) AA Sec 15(1)	" "	14 days F.P.	14Jul 43	Lt-Col P.Mathieu	Forf 2 days pay
Field 29	Jul 43	Pte		WOAS AWL from 2300 hrs 29 Jul 43 till appr by Gdn Pro Corps at Picadilly Tube Station London at about 2350 hrs 4 Aug 43(Abs: 6 days 50 mins AA Sec 15(1)	Sgt Desrosiers Documentaru	28 days F.P.	9 Aug 43	Lt-Col P.Mathieu	Forf 7 days pay and to make good cost of [illegible] £0/8/9

No. E11099 Name Dufour A | Sqn, Battery, or Company | Corps Inf Fus M R | Date of enlistment 11 Jul 40 | GC Badges N/A | Service or Proficiency Pay 1 Jan 44 | 3/17 MFM 6 (AFB 122) 80/P&S/136 (1413)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine | Sheet No two | Signature OC Company, etc G.L. Labreque Capt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6 Oct 43	Pte		WOAS AWL from 1200 hrs 6 Oct 43 till 1845 hrs 6 Oct 43 (Abs: 6 hrs 45 mins) AA Sec 15(1)	L/Cpl Labrie Documentary	Forf 7 days pay	7 Oct 43	Lt-Col Mathieu	Forf 1 day pay
Field	31 Mar 44	Pte		AA Sec 15(1) WOAS AWL from 2359 hrs 31 Mar 44 to 2200 hrs 5 Apr 44 (Abs: 4 days 22 hrs 1 min)	Sgt Deleseluuc Sgt Moreau	14 days pay 14 days C.B.	10 Apr 44	Lt-Col H.N.Langlois	Forf 5 days pay FR&I 149(1)(a)
Field	13 May44	Pte		AA Sec 15(1) WOAS AWL from 0700 hrs 13 May 44 until apprehended by the Mil Police at 1630 hrs 13 Nov 44 (Abs: 9 hrs 30 mins.)	Sgt Delleseleuc Documentary	14 days pay FR&I 149(2) 14 days C.B. £1 -2-2 Cost of appre	18 May 44	Lt-Col HN Langlois	Forf 1 day pay 149(1)(a)

(PTO)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6 Jun 44	Pte		AA Sec 15(1) WOAS AWL from 1700 hrs 6 Jun 44 till 1700 hrs 7 Jun 44 (absent 1 day)	Sgt Benoit	7 days C.B.	9 Jun 44	JMPSauve	1 days pay FR&I 149(1)(a)

CERTIFIED TRUE COPY

(Sgd) G. Gamache Capt
Adjt - Fus M.R.

PLEA FOR MITIGATION

I wish to draw to the attention of the Court that Pte Dufour was in action from 7 July 44 until 18 Nov 44 and was also at A Ech when he absented himself without leave He also gave himself up to the Military Police at Lille at approx 2100 hrs 2 Jan 45.

(R.A.J. Caron) Lieut
Defending Officer.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E-11099 Pte Albert Dufour F U R

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To serve 2 years imprisonment with hard labour and to be discharged from His Majesty's Forces with ignominy.

(Sgd) _____ Judge-Advocate, if any. 19 Jan 45 Date awarded. (Sgd) W.P. Falloon, Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(2) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be sent committed to prison or detention barracks until further orders.~~(1) (1. AA 57A. Delete if not used.)

(Sgd) E.P. Thompson, Lt-Col

Date 19 Jan 45

Commanding 6 Cdn Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
E-11099 Pte Dufour, A.	20 Jan 45	C.Camanche, Capt., Adjt.,
CR 12 of 20 Jan 45		

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CPA86 (In lieu of APA8) 40/P & D/1068 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col E.P. Thompson Comd 6 C.I.B. dated 13 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
E-11099	Pte		Albert	Dufour	FUR

Certified true copy

D.J.A.

Cdn Sec G.H.Q. 1st Cdn Army Gp.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 19 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1100A hours trial commences.

A4. The Prosecutor produces a Medical Certificate(1) that accused is (~~not~~) fit to undergo trial by court-martial.(2) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(3)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Lt J.Depattie as interpreter? Ans No

The Interpreter is sworn.(1) Do you object to _____ as shorthand writer? Ans _____

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W.P. Falloon	C of C
Member	Lt	E.A. Levin	C of C
Member	Lt	J.D. Cade	R S R
Judge-Advocate			
Prosecutor	Lt	J. Depattie	FUR
Defending Offr	Lt	P.F.J. Caron	FUR

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused E-11099 Pte Albert Dufour before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or for one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~proceeds with the trial~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) to ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex D, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) to which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charge(s) on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*b*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 93(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D6.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 40(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answer recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf AA* 95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 84(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*b*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 114(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(*3*) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(*3*), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. NO

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E and Ex F respectively.(3)

(1. *MFB* 255 *or MFB* 296. 2. *MRM* 8. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. YES (2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 363-366. *Overseas RD JCR* 2323, *

CHARGE SHEET

E-11099 Private Albert Dufour, Les Fusiliers Mont Royal, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
~~AA Sec 15(1)~~

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he,

In the Field at about 1800 hrs on the 18 Nov 44, absented himself without leave until surrendering himself to the Military Policein Lille at about2130 hrs on the 2 Jan 45.

Absence: 45 days, 3 hours, 30 minutes.

In the Field
this 14th day Jan 1945

(sgd) J.A.Dextraze, (DSO) Lt-Col
Officer Commanding
Les Fusiliers Mont Royal

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

IN THE FIELD
18 Jan 45

(sgd) R.P. Thompson, Lt-Col
A/Comd 6 Cdn Inf Bde

W.P. Falloon, Maj
Pres

H.P. Falloon, Maj

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-11099	Pte		Albert	Dufour	Fus M.R.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 18 Jan 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	H.P. Falloon	Cam of C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Lt	E.A. Levin	Cam of C
Lt	J.D. Cade	S Sask R

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	M. Bissonnette	Fus M.R.

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland (Country.) E.P. Thompson (Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Date 18 Jan 45 Commanding 6 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 98 (In lieu of AFA 3) 40/F & E/1697 (6143) *(See overleaf for oaths and notes for use on trial.)*

H.P.F.
Pres

MEDICAL OFFICERS CERTIFICATE

This is to certify that, this morning, I have examined E-11099 Pte Dufour, A. of Les Fus M R CA(C) and found Fit to undergo trial by court martial.

In the Field

Date 19 Jan 45

(sgd) F.Wallingford, Capt
Medical Officer

SUMMARY OF EVIDENCE

In the case of K-11099 Pte Dufour, A., Les Fusiliers Mont Royal, a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs that and the accused demands that the evidence be taken on oath.

FIRST WITNESS for the Prosecution: Capt G. Gamanche, Adjt, Les Fusiliers Mont Royal, having been duly sworn, makes the following statement:

" I present.

(a) Certified true copy of a Declaration of a Ct of Inq dated 16 Dec 44 (att exh "A")

(b) Certificate of surrender in accordance with AA Sec 163(1)(j) dated 2 Jan 45 (Exh B)

both of which relate to the accused whom I recognize.

THE ACCUSED DECLINES TO CROSS-EXAMINE

(sgd) G.Gamanche, Capt&Adjt
Les Fus M R

SECOND WITNESS for the prosecution: L/Cpl James, J.E., of 242 H.Q. Provost Coy CM Police.

" A written statement of this witness' evidence purporting to be signed by him has been read to the accused and is included in this Summary (Att as Exh C) having regard to his surrender. The attendance of this witness cannot in my opinion be readily procured.

THE ACCUSED DOES NOT DEMAND THE ATTENDANCE OF THIS WITNESS FOR CROSS EXAMINATION

(sgd) J.Leduc, Capt
Offr detailed to take
Summary

The accused, having been duly cautioned in accordance with RP 4(e) says:

" I have nothing to say "

(sgd) A.Dufour, Pte

Certified that RP 4 have been complied with.

(sgd) J. Leduc, Capt
14 Jan 45. Offr detailed to take the Summary

M.P.F.
Pres

LIST OF WITNESSES

In he case of E-11099 Pte Dufour, A., Les Fusiliers Mont Royal, a soldier of the Canadian Army Overseas.

PROSECUTION

Capt G. Gamanche, Adjt — Les Fusiliers Mont Royal
L/Cpl James J.R. — 242 M.P. Provost Coy CW Police

DEFENCE

NIL

LIST OF EXHIBITS

Exh A — Certified true copy of a Declaration of a Ct of Inq dated 16 Dec 44.

Exh B — Certificate of Surrender in accordance with AA Sec 163(1) dated 2 Jan 45.

Exh C — Written statement of L/Cpl James J.R. of 242 FQ Provost Coy of CW Police.

STATEMENT OF ACCUSED

I, E-11099 Pte Dufour, A., Certify that I have been given free-of charge copy of documents, proceedings, etc, relating to my trial by Field General Court Martial.

I request the services of an Officer to defend me at my trial by Field General Court Martial.

I desire the services of Lt. Caron, P.R.J.
if he is available.

(sgd) A. Dufour, Pte.

H.P.F. A.

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 16th day of Dec 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. E-11099 Pte Dufour, A.

DECLARATION

The Court declare that No. E-11099 Pte Dufour, A.

illegally absented himself without leave from Les Fus M R

at 1800 hrs on the 18th day of Nov 44,

that he is still so absent, and that on the 10th Dec 44 he was deficient, and

that he is still deficient of the following articles:—

ARTICLES	VALUE		ARTICLES	VALUE	
1 battle blouse	5	25	Less 25%	3	94
1 battle trousers	5	39		3	97
1 pr boots ankle	5	46		4	02
1 pr socks		37			27
1 short underwear		43			33
1 shirt angola	2	03		1	53
1 beret kaki		56			42
100%	19	49	75%	14	48

Geo Balcer, Capt
Les Fus M R — President

R Chalifoux, Lt
Les Fus M R — Member

Member

Signed at in the Field

this 16th day of Dec 1944

Signature of Commanding Officer J.M.P. Sauve, Lt-Col
Les Fus M R.

Certified true copy G.Gamanche, Capt&Adjt
Les Fus M R CA(O)

Signature of Officer having custody of original record

H.F.B. 375
A.F.B. 115
ISM—6-41 (750)
H.Q. 1773-28-287

W.P.F. Ex B

CERTIFICATE UNDER SECTION 163 (1)(j) OF THE ARMY ACT

I Captain W. Jeffery certify that No. H-11099 Rank Pte Name Dufour, A. of Les Fus Mont Royal Regt Surrendered himself to No. 4031738 Rank L/Cpl Name James, J.W. of 242 W.Q. Provost Coy CM Police at Lille at 2130 hrs on 2nd Jan 45 as an absentee without leave. He was dressed in uniform

Date 2nd Jan 45

(sgd) W.Jeffery, Capt
O.C. 242 W.Q. Provost Coy, C.W.P.

On completion to be disposed of in accordance with K.Rs.1940 Para 562 (b)

W.P.F. Ex C

Army Form B 252

CHARGE

The Fusiliers Mont Royal

C.P. Regiment

Coy

Charge against No. H-11099 Rank Pte

Name Dufour, A.

Place Lille

Offence W.C.A.S. Absent from Date of offence until surrendering to the military police at Provost H.Q. on the 2nd January 1945 at about 2130 hrs.

Names of witnesses:-

L/Cpl J.R. James, C.M. Police
L/Cpl W. Boston C.M. Police
Cpl P. Jones (M.C.C. i/c Guard)

(sgd) ??????????? for
D.A.P.M. 15 L of C

Statement of EVIDENCE in the case of :-

H-11099 Pte Dufour, A.
C.P. Coy
The Fusiliers MontRoyal Regt
2nd Canadian Division

Sir,

At Lille on the 2nd Jan 1945 at about 2130 hrs I was on duty at Provost H.Q. in company withL/Cpl Boston, M.C.M. Police. When the above named soldier reported to me saying "I am an absentee without leave and I wish to surrender"

I took his particulars from his C.P. 1. arrested him and conducted him to the Town Guard Room Lille where he was handed over to the M.C.O. i/c Guard to be detained.

Handing over certificate and certificate of arrest attached.

(sgd) J.R. James, L/Cpl
242 H.Q. Provost Coy C.M. Police

I have read over and corroborate the above statement.

Lille
2nd Jan 1945

(sgd) W. Boston, L/Cpl
242 H.Q. Provost Coy, C.M. Police

No. E11099 Name Dufour, A. Sqn, Battery, or Company Corps Inf Fus M R Date of enlistment 11 Jul 40 GC Badges Service or Proficiency Pay 3/17 MFM 6 (APR 132)

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No one Signature OC Company, etc G.Sevigny,Capt Character P.F. Ex F

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing with trial	By whom awarded	Remarks
Sussex	30May41	Pte		AWL from 2359 hrs 30 may till 1220 14 Jun 41 AA Sec 15(1)		7 days C.B.	10Jun41	Major L'esperance	forf 5 days pay
Field	16 Feb42	Pte		AWL fr 0730 hrs 16 Feb till1445 hrs 16 Feb 42 (7hrs15mins)AA15(1)		7 days C.N.	21Feb42	Major L'esperance	forf 1 days pay
Field	13Dec42	Pte		AWL fr 2230 hrs 13 Dec to 0700 hrs 14 Dec 42(8hrs 30m)AA 15(1)		Admonished	14Dec42	Major L'esperance	forf 1 days pay
Field	14Apr43	Pte		Conduct to prej etc in that he ask for a lift form a civilian AA 40 Detained by police fr 14 Apr 2100 hrs till 1100 hrs 15 Apr 43	Documentary	Forf 2 days pay	15 Apr 43	Lt-Col P,Mathieu	NIL
Field	27Apr	Pte		AWL fr 2230 hrs 27 Apr til 1900 hrs 5 may 43(7 days 20hrs 30m) AA Sec 15(1)					
					L/Cpl Jacques Sgt Godin	forf 4 days pay 7 [illegible]	11May [illegible]	R.Audet	Forf 8 days

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16 May 43	Pte		AWL from 0700 hrs 16 may till 1500 hrs 20 may 43(4dys 8 hrs)	Capt Gauvin Sgt Rioux	Forf 7 dayspay 7dys C.B.	22 May 43	P.Mathieu Lt-Col	Forf 5 days pay
Field	31 May 43	Pte		WOAS AWL from 0630 hrs 31 may 43 till 1200 hrs 2 Jun 43(absent 2 days 15hrs 30mins)AA Sec 15(1)	Cpl Pelletier L/Cpl Sroix	forf 14 days 14 dys C.B.	4 Jun43	P.Mathieu Lt-Col	For f 3 days pay
Field	1 Jul 43	Pte		AWL from 2300 hrs 1 Jul 43 till 0810 hrs 3 Jul 43(Abs.1 day9hrs)	Cpl Lapierre	14 days C.B.	7 Jul43	MajorHarre	For 2 days pay
Field	3 Jul43	Pte		AWL WOAS from 0930 hrs 3 Jul 43 till 2400 hrs 4 Jul 43(Abs: 1 dy 14 hrs 30 mins) AA Sec 15(1)	" "	14 days F.P.	14Jul 43	Lt-Col P.Mathieu	Forf 2 days pay
Field	29 Jul 43	Pte		WOAS AWL from 2300 hrs 29 Jul 43 till apprh by Cdn Pro Corps at Picadilly Tube Station London at about 2350 hrs 4 Aug 43(Abs: 6 days 50 misn AA Sec 15(1)	Sgt Desrosiers Documentary	28 days F.P.	9 Aug 43	Lt-Col P.Mathieu	Forf 7 days pay and to make good cost of AFB £0/8/9

No. E11099 Name Dufour A

Date of last entry in Company Conduct Sheet N/A

Sqn, Battery, or Company

No. and date of last drunk N/A

Corps Inf Fus M R

Period not reckoning towards freedom from extra fine

Sheet No two

Date of enlistment 11 Jul 40

GC Badges N/A

Signature OC Company, etc G.L. Labreque Capt

Service or Proficiency Pay 1 Jan 44

3/17 MFM 6 (AFB 122) 46/1 (38 15418)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6 Oct 43	Pte		WOAS AWL [illegible] 6 Oct 43 till 1845 [illegible] 6 Oct 43 (Abs: 6 hrs 45 mins) AA Sec 15(1)	L/Cpl Labrie Documentary	Forf 7 days pay	7 Oct 43	Lt-Col Mathieu	Forf 1 day pay
Field	31 Mar 44	Pte		AA Sec 15(1) WOAS AWL from 2359 hrs 31 Mar 44 to 2200 hrs 5 Apr 44 (Abs: 4 days 22 hrs 1 min)	Sgt Deleseluuc Sgt Moreau	14 days pay 14 days C.B. 14 days pay FR&I 149(2)	10 Apr 44	Lt-Col H.N.Langlois	Forf 5 days pay FR&I 149(1)(a)
Field	13 May44	Pte		AA Sec 15(1) WOAS AWL from 0700 hrs 13 May 44 until apprehended by the Mil Police at 1630 hrs 13 Nov 44 (Abs: 9 hrs 30 mins.)	Delleseleuc Documentary	14 days C.B. £1 -2-2 Cost of appre	18 May 44	Lt-Col HN Langlois	Forf 1 day pay 149(1)(a)

(PTO)

Place	Date of offence	Rank	Corps of Regiment	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6 Jun 44	Pte		AA Sec 15(1) WOAS AWL from 1700 hrs 6 Jun 44 till 1700 hrs 7 Jun 44 (absent 1 day) CERTIFIED TRUE COPY (Sgd) G. Gamache Capt Adjt - Fus M.R.	Sgt Benoit	7 days C.B.	9 Jun 44	JMPSauve	1 days pay FR&I 149(1)(a)

PLEA FOR MITIGATION

I wish to draw to the attention of the Court that Pte Dufour was in action from 7 July 44 until 18 Nov 44 and was also at A Ech when he absented himself without leave He also gave himself up to the Military Police at Lille at approx 2100 hrs 2 Jan 45.

(R.A.J. Caron) Lieut
Defending Officer.

5 m - 37

Pte. Dufour, A.

"BD"

EXHIBIT H

STATEMENT AS TO SERVICE AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
..E-13173.....	Pte.....	DUFOUR, A.	Le Regiment de la Chaudiere

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For ..Nil..... ..... times

For .... times

For .... times

For .... times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* XXXX

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
		NIL		

I Certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody

"HJ Rutledge" Capt Adjt
(HJC Rutledge) Capt Adjt
Le Regiment de la Chaudiere

Signed this 22 day of May 45.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ..... day of .....

.....

REQUEST BY THE ACCUSED

I want and officer to represent me at my forecoming FGCM

"A. DUFOUR"
E-13173 Pte Dufour A
Le Regiment de la Chaudiere

"BD"

Serial No. 1.

CASUALTIES (OTHER THAN BATTLE, ACCIDENT AND SICKNESS) - ORs

STRENGTH INCREASE

T.O.S. on surrendering rom des. WEF 2200 hrs 17 May 45.

HQ	D-121999	Pte DASTOUS P.	Cook "B"	RCASC
D	E-13173	Pte DUFOUR A.		

Certified true copy

"HJ Rutledge"
(HJ Rutledge) Capt Adjt
Le Regiment de la Chaudiere

This is Exhibit "F" as referred to in the Summary of Evidence in the case of E.13173 Pte Dufour, A.

"E. Ouellet" Lieut
E. Ouellet Lieut
Le Regiment de la Chaudiere

(Date) 18 May 45 J.A. Drapeau Capt
(Signature and appointment of Offr)

Le Regiment de la Chaudiere
8 CIB 3rd Can Bde
(Bde, Divn, Area etc., with which unit.)

"BD"

Le Regiment de la Chaudiere
Page 3

No. 26.
14 Apr 45

9. ABSENT WITHOUT LEAVE

(c) AWL from 1800 hrs 12 Mar 45. Still absent 1800 hrs 3 Apr 45 (22nd day)

E-13173 Pte DUFOUR, A.

(J.R. Fenelon) Capt
For Officer I/C
Can Sec 2 Ech HQ 21 Army Gp

Certified true extract of Part II orders.

"HJ Rutledge"
(HJC Rutledge) Capt. Adjt.
Le Regiment de la Chaudiere.

This is Exhibit "E" as referred to in the Summary of Evidence in the case of E-13173 Pte Dufour A.

"E Ouellet" Lieut
E. Ouellet Lieut
Le Regiment de la Chaudiere

"BD"

LE REGIMENT DE LA CHAUDIERE

Part 11 Order issued by
Canadian Section 2 Echelon Headquarters
21 Army Group

No. 23
April 2 45.

"B" Other Ranks.

3. ABSENT WITHOUT LEAVE

(a) AWL from 1800 hrs 12 March 45. Still absent 20 March 45 (8th day)

E-13173 Pte Dufour A.

(J.R. Fenelon) Capt
For Officer IC
Cdn Sec 2 Ech HQ 21 Army Gp

Certified true extract of Part 11 Orders

"HJ Rutledge"
(HJ Rutledge) Capt. Adjt
Le Regiment de la Chaudiere

This is Exhibit "D" as referred to in the summary of evidence in the case of E-13173 Pte DUFOUR A.

"E. Ouellet" Lieut
E. Ouellet Lieut
Le Regiment de la Chaudiere

"BD"

LE REGIMENT DE LA CHAUDIERE

Part 11 Order issued by
Canadian Section 2 Echelon Headquarters
21 Army Group

No. 19
March 10 45.

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4. ABSENT WITHOUT LEAVE

(A) AWL from 1800 hrs 28 Jan 45. Ret. from AWL 1015 hrs 9 Mar 45.

E-13173 Pte Dufour A.

(J.R. Fenelon) Capt
For Officer IC
Cdn Sec 2 Ech HQ 21 Army Gp

Certified true extract of Part 11 Orders

"HJ Rutledge"
(HJ Rutledge) Capt. Adjt
Le Regiment de la Chaudiere

This is Exhibit "C" as referred to in the summary of evidence in the case of E-13173 Pte DUFOUR A.

"E. Ouellet" Lieut
E. Ouellet Lieut
Le Regiment de la Chaudiere

"BD"

LE REGIMENT DE LA CHAUDIERE

Part 11 Order issued by
Canadian Section 2 Echelon Headquarters
21 Army Group

No. 12.
March 3 45.

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9. ABSENT WITHOUT LEAVE

(A) AWL from 1600 hrs 28 Jan 45. Still absent 1600 hrs 19 Feb 45 (22nd day)

E-13173 Pte Dufour A.

(J.R. Fenelon) Capt
For Officer IC
Cdn Sec 2 Ech HQ 21 Army Gp

Certified true extract of Part 11 Orders

"HJ Rutledge"
(HJ Rutledge) Capt. Adjt
Le Regiment de la Chaudiere

This is Exhibit "B" as referred to in the summary of evidence in the case of E-13173 Pte DUFOUR A.

"E. Ouellet" Lieut
E. Ouellet Lieut
Le Regiment de la Chaudiere

"BD"

LE REGIMENT DE LA CHAUDIERE
Part 11 Order issued by
Canadian Section 2nd Echelon Headquarters
21 Army Group

No. 10
18 Feb 45

---

9. ABSENT WITHOUT LEAVE

(a) AWL from 1800 hrs 28 Jan 45. Still absent 1800 hrs 5 Feb 45. (8th day)

E-13173 Pte DUFOUR A.

(J.R. Fenelon) Capt
For Officer I/C
Cdn Sec 2 Ech - HQ 21 Army Gp

Certified true extract of Part 11 Orders.

"HJ Rutledge"
(H.J. Rutledge) Capt. ADJT.
Le Regiment de la Chaudiere.

This is Exhibit "A" as referred to in the Summary of Evidence in the case of E-13173 Pte Dufour, A.

"E. Ouellet"Lieut
E. Ouellet Lieut
Le Regiment de la Chaudiere

These following exhibits, produced as documentary evidence, were read over to the accused, marked Exhibit "A" "B" "C" "D" "E" and "F" signed by me and attached hereto.

Exhibit A True Extract of Part 11 Order No. 10.
Exhibit B True Extract of Part 11 Order No. 12.
Exhibit C True Extract of Part 11 Order No. 19.
Exhibit D True Extract of Part 11 Order No. 23.
Exhibit E True Extract of Part 11 Order No. 26.
Exhibit F Certified true copy of C.B. Dated 18-5-45

"E. Ouellet" Lieut
E. Ouellet Lieut
Le Regiment de la Chaudiere

I certify that the foregoing Summary of Evidence, consisting of two pages was taken down by me in the presence and hearing of the accused and that R.P. 4 C/D/E/F/G have been complied with.

Signed in the Field
this 22 of May 45

"E Ouellet" Lieut
E. Ouellet Lieut
Le Regiment de la Chaudiere
Officer taking Summary

Exhibit "A" "BD"

SUMMARY OF EVIDENCE

In the case of E-13173 Pte DUFOUR Andre Le Regiment de la Chaudiere.

The CO directs that the evidence to taken under oath.

First Witness — Sgt E. Leblanc, le Regiment de la Chaudiere having been duly sworn states.

I am Sgt E. Leblanc Le Regiment de la Chaudiere R.P. at approx 1800 hrs on the 28 of Jan 45 I noticed the absence of E-13173 Pte Dufour, A., in taking the Roll Call.

On the 17 of May 45 at approx 2200 hrs the accused Pte Dufour reported back to me at the Guard room.

The accused declines to cross-examine the witness.

"Sgt LeBlanc, E."
Sgt LeBlanc, E.
Regiment de la Chaudiere

Second Witness — Sgt M Goding of Le Regiment de la Chaudiere having been duly sworn states:

I am Sgt Godin, M., R.P. of Le Regiment de la Chaudiere. At approx 1015 hrs on the 9 Mar 45 I was on duty at the Guard room and the accused Pte Dufour A., reported back to me.

On the 12 March at approx 1800 hrs when I made a roll call of the prisoners, I noticed the absence of Pte Dufour A., who was under close arrest.

The accused declines to cross-examine the witness.

"Sgt Godin, M."
Sgt Godin, M.
Le Regiment de la Chaudiere

Question to the accused

Desirez vous faire une declaration ou rendre temoignege sous serment Vous n'etes pas oblige de rendre temoignage ni de dire quoi que ce soit a moins que vous ne le desiriez Mais tout ce que vous direz et toutes declarations que vous ferez seront pris par ecrit et pourront servir de preuve.

Answered by the accused

No Sir I have no statement to make.

Question to the accused

Do you want to call any witness on your behalf.

Answer by the accused

No, Sir.

"A. Dufour"

PLEA OF MITIGATION

Re: E-13173 Pte DUFOUR, Andre.

Mr President, Members of the Court,

The accused, Pte Dufour, A., has pleaded guilty to both charges laid against him but before any decision is reached as to his sentence, I pledge the court to consider his long time of good service with the unit and the willingness he put at the fulfillment of his duties.

This man joined the R de Chaud on the 13th of August 1940, with it he landed in France and served to the best of his ability throughout the French campaign until seven months after D-day.

On the 28 Jan his unit was resting and feeling that his services were not required for the time he took the leave that many times was refused to him.

This man believing that he still has a debt toward his country has signed for service in the Far East hoping to repair his fault!

I beg the court to take all those points into consideration before punishing too severely a man who is repentant, who is ready to prove it.

It's his first offence and I believe that the accused should be given the chance to repair his fault!

"JP Bellavance" Lt

Defending Officer

Questions to Accused:

President to accused - Do you wish to make a statement?
Accused - I do.

President to accused - Do you wish to make your statement under oath?
Accused - Yes, I do.

E-13173 - Pte Dufour, Andre being duly sworn states:

I joined the unit on 13 Aug 40. I went to England with them and have been with them ever since. I landed with the unit on D-day

I asked for my leave. They said my turn would come but I never heard anything about it.

This is the first time that I have been in trouble. I have volunteered for the Far East and am quite willing to go there as soon as possible.

CHARGE SHEET

The accused B-13173 Pte DUPOUR Andre of Le Regiment de la Chaudiere (CAC) a soldier of the Canadian Army placed on active service, is charged with;

FIRST CHARGE
A.A. Sec. 15 (1) WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE.

In that he,

In the field, absented himself without leave from Le Regiment de la Chaudiere, from 1800 hrs 28 Jan. 45, until he surrendered himself to Sgt. Godin M. R.P. of Le Regiment de la Chaudiere at 1015 Hrs, 9 March 45.
(Total Abs. 39 days, 16 hrs, 15 mins.)

SECOND CHARGE
A.A. Sec. 15 (1) WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE.

In that he,

In the field, when under close arrest, absented himself without leave from 1800 hrs 12 March 45 until he surrendered himself at 2200 hrs 17 May 45.
(Total Abs. 66 days 4 Hrs.)

Signed in the field
this 22 day of May 45

.....
(G.O.Taschereau) Lt/Col.
Commanding
Le Regiment de la Chaudiere.

TO BE TRIED BY F.G.C.M.

Signed in the field
This 24 day of May 45

.....
(J.A.Roberts) Brigadier
Commanding
8 Cdn Inf. Bde.

"BD"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-13173	Pte		Andre	DUFOUR	R de Chaud

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 29 May 45 endorsed by me, (~~or proposed to be endorsed by me for me~~). "To be tried by Field General Court-Martial". "JAR"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable that the trial be deferred to a superior qualified offrs~~. "JAR"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. "JAR"

4. ~~Some member(s) named to serve on the Court by a Fd Offr as President, for the purpose of hearing application for an adjournment.~~ "JAR"
(AA 49, RP 104(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~Duties of prosecutor and defending officer detailed.~~ "JAR"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	H. Dunleelsan	QOR of C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A/Capt	C.W. Fullerton	QOR of C
Capt	W.G. Harvey	NSR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland (Country.)

Dat 29 May 45

"Jas A Roberts" (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding 6 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA-56 (In lieu of AFA-3) (See overleaf for notes and notes for use on trial.)

LE REGIMENT DE LA CHAUDIERE

MEDICAL REPORT

Date - 2 Jun 45

I certify that I have this morning examined No. E-13173
Rank - Pte Name - DUFOUR, A., and in my opinion
is fit to undergo trial by Court-Martial.

"JJ O'Neill" Capt
P. GAUTHIER Capt RCAMC
MO R de Chaud

CERTIFIED TRUE COPY [illegible]

5M-37

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P & S/1698 (6144) 4/38B

Convened by Order of Brigadier J.A. Roberts Comd 8 Cdn Inf Bde dated 29 May 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-13173	Pte		Andre	DUFOUR	R de Chaud

Certified True Copy

Proceedings Reviewed
"WAD Gunn" Major
23 Jun 45 DJA

PROCEEDINGS OF TRIAL.

Cdn Sec 1 Ech HQ 21 A Gp HOLLAND on (date(s)) 2 Jun 45

Held in the Fd in (country)

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 33/121

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) "BD" The Court is satisfied that it is properly convened and constituted(2), accused is (XX) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (XX) brought before the Court. At 0925 hours trial commences. "BD"

A4. The Prosecutor produces a Medical Certificate that accused is [illegible] fit to undergo trial by court-martial.(1) [illegible] "BD"

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: Do you object to Capt JG Gagnon as interpreter? Ans No

The Interpreter is sworn.(1) [illegible] "BD"

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	B. Dunlselman	QOR of C
Member	A/Capt	C.W. Fullerton	QOR of C
Member	Capt	WG Harvey	NSR
Judge-Advocate			
Prosecutor	Lieut	E OUELLET	R de Chaud
Defending Offr	Lieut	JP Bellavance	R de Chaud

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) (X) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by use of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (XX) arraigned (separately) on all charges in the charge sheet.(1) The accused does (XX) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB 160 G2 p.27

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : E-13173 Pte DUFOUR Andre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	Guilty	Guilty	
2nd AA 15(1)	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~AF forfeits~~ XXXXXXXXXXXXXX XXXXXXXX (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which Nil days were spent in hospital.(2)

(2. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be imprisoned without hard labour for two (2) years

(Sgd) ..... Judge-Advocate, if any. 2 Jun 45 Date awarded. (Sgd) "B. Dunlseman" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

"JAR"

~~I HEREBY CANCEL AND ANNUL THE FINDING AND SENTENCE OF THE COURT IN THE CASE OF THE ACCUSED~~ (1. AA 57A. Delete if not used.)

Date 11 Jun 45 (Sgd) "Jas A Roberts" Brig Commanding 8 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
E-13173 Pte DUFOUR Andre	13 Jun 45	"JFL Esperany" Major OC R de Chaud

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No!(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para L3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. [redacted] "BD"
(1. Court may be cleared to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty has (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1) "BD"
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A), (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form E above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. If "Yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans.....Do you intend to call witnesses on your behalf?
Ans.....Are they witnesses as to character only? Ans.....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF 895. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 80(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No Sir
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 255 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Exhibit "J"

No. E-13173 Name DUFOUR A

Sqn, Battery, or Company

Corps

Date of enlistment 13.8.40

GC Badges

Service or Proficiency Pay

3/17 MFM 6 (AFB 122) 40/P4S/136 (5413)

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No

Signature OC Company, etc

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Temporary Sheet					
				Original sent to 2 Echelon					
				"HJ Rutledge" Capt & Adjt					

(PTO)

COUNTER NUMBER 559493

HOUR 11 55

OPERATOR'S INITIALS Sm

RELIEVING OPERATOR HL

4D26

PTE DUFOUR A.G.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E 14049 Pte Alphonse Gerard Dufour 3 Cdn Inf Coy Regt

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrn p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.W.O.L.	[illegible]	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

Sentence: ~~Nil~~ beginning on (date) (1)

~~Nil~~ under sentence for: [illegible]

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which ~~nil~~ days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for a period of two years

(Sgd) [illegible] Capt 27 Oct 44 (Sgd) H. C. Craig Brig
Judge-Advocate, if so) Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION ON CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the record be not submitted to [illegible] (2. AA 57A. Delete if not use.)

(Sgd) D Hand Lt-Col
HQ RCASC
Commanding FIRST CDN ARMY TAC Confirming Officer

Date 27 Oct 44

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
E 14049 Pte Alphonse Gerard Dufour	29 Oct 44	T. Hodgson Capt. for Lt-Col i/c Adm Wing Camp Coy HQ RCASC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 (In lieu of AFA3)
RECEIVED 14 NOV 1944 JAG BRANCH OTTAWA
PROCEEDINGS REVIEWED 15 NOV 44 Capt
REVIEWING OFFICER, JAG Branch, CMHQ
PROCEEDINGS REVIEWED 15 NOV 44 Capt
REVIEWING OFFICER, Canadian Base Sub-Area, CMHQ

FIELD GENERAL COURT-MARTIAL

Convened by Lt-Col P.H. Seward Comd HQ RCASC 1 Cdn Army Tps dated 25 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanently confirmed rank, and (b) appmt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names	Surname
E 14049	Pte	Alphonse Gerard	Dufour

Unit 3 Cdn Inf Coy RCIA

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 27 Oct 44

RECORD FORM A--OPENING PROCEEDINGS AND ARRAIGNMENT. 1 2 3

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0945 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to RCAF John Rogers as interpreter? Ans No.

The Interpreter is sworn.(1) ~~Do you object to [illegible] as shorthand writer?~~ Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No

(1. RP 110. 2. If no objection, waiting member retires. RP 56(B). If objective, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President Major F.R. Dewey HQ RCASC 1 Cdn Army Tps
Member Capt. A.K. Davidson 35 Cdn Armd Regt (AGS)
Member Capt. R.W. Robinson HQ RCASC 1 Cdn Army Tps
Judge-Advocate Capt. D.V. Pitcher HQ Atty Gen Can
Prosecutor Capt. J.H.N. Poitras 3 Cdn Inf Div Coy RCIA
Defending Offr Lt. W.H. Harper

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused [illegible] before arraignment make(s) (no) [illegible] plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (GE), or as to the jurisdiction of the Court (RP 34, 35(A), (1)), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. Where more than one Charge Sheet see RP 62, when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form [illegible].

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (~~not~~) to advise accused to change his (~~their~~) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (~~are~~) so informed, and he (~~they~~) change(s) his (~~their~~) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

~~B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1).~~
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

~~B5. The Summary of Evidence is marked Ex ..... initialled and read aloud by the President.(1)~~
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such pleas and, if changed to Not Guilty, try such charge(s) by son of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

~~B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.~~

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~an~~) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is reopened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), ~~and that~~, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the~~ latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 41, 101(*b*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) ~~The President announces that the accused is found Not Guilty on all charges and so to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. *AA* 54(3) (*a*), *RP* 43, 120(*A*). 2. *AA* 54(3), *RP* 43, (*d*). *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

~~President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character.(1)~~
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *AFB* 103 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witness to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. *When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 306, 330, 563-566. *Overseas RO* 109, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1*B*), 60(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

760.

CHARGE SHEET

The accused E-14045 Pte DUFOUR, A.G. 36 Cdn A Tps Comp Coy, a soldier of the Canadian Army Overseas, placed on active service, is charged with:

FIRST CHARGE

A.A. Sec 40 CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he in the Field on 4 Oct 44 improperly and without lawful authority sold to a civilian Marcel Van der Winckel, the following public property:
About 95 cans of oil (Various types)

Field
19 Oct 44

(D.W.NEWLANDS) Major
Officer Commanding
36 Cdn A Tps Comp Coy

To be tried by Field General Court Martial.

Field
25 OCT 44

(P.H. SAVARD) Lt.-col.,
HQ RCASC First Cdn A Tps

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B14045	Pte		Alphonse, Gerard	DUFOUR	36 Cdn A Tps Comp Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has XXXX committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 OCT 44 endorsed by me, ~~[illegible]~~ be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable that the trial for offences of a superior character with RP 105(C).~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~I am unable to appoint [illegible]~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder. (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	F.G. DONEY	HQ RCASC First Cdn A Tps

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	R.K. DAVIDSON	35 Cdn A Tps Comp Coy
Capt	R.W. ROBINSON	HQ RCASC First Cdn A Tps

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	J.E. FORBES	HQ RCASC First Cdn A Tps

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	D.G. DEAN	HQ A Tps Area, First Cdn Army

On Active Service in the Fd

in BELGIUM (Country.)

Date 25 OCT 44

(Signed personally. RP 108 fn 2.) (Rank.)

(P.H. SAVARD) Lt-col.

Commanding HQ RCASC First Cdn A Tps

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

27 Oct 44

MEDICAL OFFICER'S CERTIFICATE

I certify that No. E14045 Pte DUFOUR A.G.

Of 36 Cdn A Tps Comp Coy Regiment

is X fit to undergo trial by Court Martial

Signature of the Medical Officer

X Insert "fit" or "unfit"

Statement of P to W of our -

The statement I made is not exactly correct. Despite the warning at the top, there was somebody, Lt Kenyon, who asked me a lot of questions first. Later he took me to the civil jail where I was identified by the 2 civilians. Then he took me to his H.Q. On the way, he said I had better watch myself or the white Brigade would shoot me. He said the civil court had already condemned me to 20 years imprisonment for housebreaking & sheeting. This was about something quite different from the oil business. He asked me to make a statement. My hand was in a cast at the time. A Br. soldier had asked me to interpret for him to sell his load of oil. I found a civilian & went to his house & we unloaded the oil there. If I hadn't been drinking I wouldn't have done it. I gave the statement because the officer said that what I said wasn't true

1st Witness
for Prosec.

T. 352886, Cpl. Worrell J. 290 Corp Tps Corp Coy
RCASC, duly sworn

I was Sect Comf. the rec. to which accused was attached in Aug Sept. 44 and a couple of days in October. I would detail the accused & others to their loads, including petrol.

Defence declines to X examine

RP 83 (B) is complied with

Second Witness
for Pros

Marcel Vander Winckel, duly sworn.
states.

I live in the Town of Malines, Belgium. About a week before this incident I saw the accused Dufour in a Cafe. I became friendly with him. On 4 Oct. about 11 in the evening I saw Dufour talking with 2 men at a lorry in Malines. I went to thank him for something he had done for me. I asked him what he had on his lorry. He said he had oil & that he would like to give it to me & get payment later, as I had no money left. Dufour suggested to this after talking to the other men. Dufour asked 150 frcs per drum but later agreed on less. Dufour said there were 95 drums. I found later there were about 68. On Friday 6 Oct Dufour came & asked for some of the money. I gave him 3000 francs & asked when I would see him again. Accused said he might

be back in a fortnight
Defence declines to X examine.
RP & 3 (B) is complied with

third witness
for Prosecution
307524 Lt G Kenyon; 54 CM Police detachment,
duly sworn -
On 27 Oct 44, I visited the home of Marcel
Vander Windle in Maline & found on his
premises 13 - 4 gal tins of WD petrol.
9 - 10 gal containers of Flame thrower fuel

About 4 ~~[illegible]~~ drums of oil.
the accused Pte Dufour was brought
to my office on 8 Oct 44. I cautioned him
and he denied all knowledge of the offence.
On 9 Oct Marcel Vander Windle made
a statement which I produce as Ex A
~~[illegible]~~ which was translated & read to
~~[illegible]~~ in the presence of the accused & translated to him
the accused. I cautioned him after which
he told me he clearly understood the
statement & my caution. He then made
a statement which I produce as Ex B.
Accused & Wd. Officer say they are not
objecting to admissibility of Ex B.

X examined
When I cautioned Dufour, the caution was
in accordance with R.P.
By the file
+ 2 drums of oil I found were clearly
marked HP 30 U.S. navy. that means oil
purchased under lease lend. the petrol

was clearly marked M.T. 100 and
bore the English lettering on the carton I.O.P.
the flame throwing fuel was marked
in English & had a W.D. arrow. In my
opinion it was definitely W.D. property.
It may have been issued to the
Can. forces, but I can't tell if it was.
RP 83(B) is complied with.

Accused, duly sworn states.
On the night of this incident,
I was drinking since noon. I had been
working with a British unit and working
day & night. We went to the Havre &
worked from 6 in the morning until 8 or 9
at night. We moved up in convoy to
Belgium & I had no spare driver. I was
very tired & sleepy. It took 2½ days to reach
Malines. We then moved up to Rhine & were
working very hard from there. I was drinking
in order to keep going. My hand was poisoned
& I went on sick parade 3 times, but could
never see the doctor. I rid a civilian downtown
lame it for me. Because of my hand I was
excused duty for the day & went to see my girlfriend
I wanted to get married but found I
couldn't, so went on a drunk. This was the
4th O.T. I spent all afternoon in a cafe, drinking
with 2 civilians. After supper we returned to
the cafe. I drank cognac & drank a lot of it. I spent
the night in the cafe. Marcel Vander Vinckle was
there. About 1030, a soldier came up to me
and asked me if I could find someone who
would buy his load of oil. I went out with

him & looked at his load. then Vander Vinckle came up & I was arguing with the soldier about how much my fee would be for helping him. He said he would give me about 50%. & Vander Vinckle asked me what I had in the truck. He said he had no money so I went & told the soldier so. He said he didn't mind & we drove around for a while & finally went to Vander Vinckle's house where he said we had better unload the oil. I asked the soldier how much he wanted & he said 150 fr. per barrel. Vander Vinckle agreed on the price & said he would probably pay in the morning. I told the soldier I would try to collect & arranged to meet him at the cafe to give him the money. He took me back & left me at the pub where I slept. In the morning I returned to my unit, still partly drunk. On Friday I returned to ~~the~~ Vander Vinckle's house. I asked him for some money & he gave me 3000 francs. I returned to the unit, but apparently had lost the 3000 fr. on the way.

X examined.

~~[illegible]~~

~~had~~ It was really the other soldier who ~~[illegible]~~ the oil but I ~~[illegible]~~ sold it for him & the price I asked was 150 fr. per barrel or drum.

By the J.A.

The soldier was a Br. soldier. I presumed it was public property as the army is the only place you can get oil. The lorry on which the oil was, was a Br. military vehicle. We unloaded the oil at Vander vinckles. I took part in the unloading.

(P 83 B) is complied with

Summing up

the prosecutor - The evidence shows the accused guilty of the offence.
Defending Officer declines to sum up

Jet sums up -
(1) Reviews evidence
(2) Onus of proof & reasonable doubt.

Defending Officer in Mitigation

This man has been in army since 1934, and in England since Dec. 1940. He received a good conduct stripe in 1942, and lost it for the one offence on his conduct sheet. He has been working very hard since the strain caused him to drink for relaxation. He is single, but his father & mother are dependent on his

9 Oct. 44

Statement of: E-14045 Pte. DUFOUR, A.G.
36 Cdn A. Tpt Comp. Bay, R.C.A.S.C.

I have been cautioned by Sgt. J. A. Sherwood of No. 1 S.I.S. First Cdn Army that I do not need to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be used as evidence

Dufour

When I arrived in France I was with 36 Comp. Bay then I was attached to Unit #290 R.A.S.C. (Cr) with 4 Cpl. King, Ptes, Martin, Kulag & Schacter. I drove a Denis truck hauling all types of supplies.

We moved to Maline about 18 days ago where I was hauling supplies from the station to the Dumps. One day, I think it was either Sun. or Mon. a week

Dufour

ago, I went to the cafe where my girl friend worked. A civil I had seen before, buy me a drink and then offer me three bottles of cognac for six Jerry cans of gasoline. About that time the driver Martin came up to the pub in his truck for get me back to the unit for duty. I told Martin my truck was stuck & I needed petrol, which was not true. ~~[illegible]~~ I asked him to lend me six cans of petrol, and he said he would and then Martin drove me & the civilian to a house where I said I wanted the petrol left until morning. I received three bottles of cognac from the civilian. Martin knew nothing about this.

Last Wed. night I was hauling supplies from the station. I was drinking all day. In my

Gustave

drunkenness I thought I will stop at the cafe & see my girl friend, at this time I had a load of oil, about 95 cans, of all different kinds of oil. I drank with a few men in the cafe. Some told me I could share a good deal on that. I asked one who I know, if I could put it in his house until I found a customer, he said yes. I was hard up for money.

I put it in his house that night with the help of the civilian & a Fr. soldier who asked me for a lift, I know nothing about him. I told him, the civilian, not to get less than 140,000 Frs. for the load. Then I left. That morning they told us we were moving back to my unit, ~~[illegible]~~ I slept at the cafe the night before and Martin came down that morning to tell me & any others of our band.

Spencer

that we were moving. My truck was broke at the camp. I asked him to stop at the house where I had left the oil the night before as it is on the way back to camp. I didn't get any money then and I wanted to take the oil away, but I wasn't able to as we left too soon for the unit. That night I came back from Gent with my truck and the morning after I went to the house and they gave me 3000 FRS for the oil. I was very drunk and don't remember what I told the civilian about the rest of the money, but I left the oil there.

I don't remember ever selling any other petrol or oil.

I have had this statement read over to me & it is true.

WITNESS: [signature]

J. A. Sherwood Sgt.

After being duly cautioned by Lieut Benson, C.M.P. this is the

Additional Statement of E-14045

Pte. DUFOUR, A.G.

36 Cdn A. Tps Comp. Bay.

I have had the statement of VAN DER WINCKEL read over to me and I agree with what he has said with the exception of the part where he states I have ~~[illegible]~~ knowledge of Cpl. King selling petrol

Witness: J. A. Sherwood, Sgt. [signature]

EXHIBIT "A" - Statement by Marcel Van der WINCKEL of the Town of Malines, Belgium.

9 Oct 44

Marcel Van der WINCKEL, at present in Civil Prison, Malines, Belgium, having been sworn, states through an interpreter: PC 63 - Jan Seyers, Malines Town Police:

I am Marcel Van der Winckel, and I live in the Town of Malines, Belgium. I am at present in the Civil Prison, Malines, Belgium, awaiting trial for illegal possession and selling of petrol.

On Wednesday 4 Oct 44 at about 1400 hrs, a soldier who I have now recognized, brought a tipper lorry loaded with cartons (94) of petrol. He asked me if I would like to buy petrol and I asked him why he had been so late as I had arranged with him to let me know a week in advance. I had made this arrangement when talking tohim in the cafe Nieuwe Hock about the end of September. I had heard the soldier asking several people if they wished to buy petrol and I told him that when he had any I would buy it. I agreed to buy the petrol, then I jumped in the lorrywith him and went to look for a place to hide the petrol. We went to several places and eventually hid it in a garage in Lemmens Street, owned by Kero. We counted 102 cans and I agreed to pay him 125 Frs. per can. I paid him 14,750 Frs. The soldier then left with the lorry. Between 2000 hrs and 2100 hrs same evening I saw the soldier whom I now recognize as Pte DUFOUR. I told him that I had bought petrol from KING and had given him 2000 Frs too much. DUFOUR then went over to KING and in the cafe asked him to pay back the 2000 Frs. KING then paid me back the 2000 Frs.

The same night about 2300 hrs I left the cafe in company with my wife and child when I heard DUFOUR arguing with another person in a foreign language. I crossed over and I thanked DUFOUR and then asked him what he had on his lorry and DUFOUR then asked me if I would like to buy oil and I said yes but I have no more money left. DUFOUR consulted some other person and came back to me and said, you can have the oil and pay for it when you are able. I agreed to buy the oil and arrange the price later. I then got in the truck and accompanied him to the house of Mme. Vleminckx, where we unloaded the truck, there were between 63 and 67 barrels and DUFOUR asked that I pay 150 Frs. per barrel. Not having the money to pay then I arranged to pay later.

On Thursday morning my wife went to look at the oil and found that some of it was other fluid. On Friday the 6 Oct 44 between 0900 hrs and 1000 hrs DUFOUR came to my house alone and told me he was going away to the front line and wanted the money, he asked me for 3000 Frs, I paid him this sum and DUFOUR went away in the lorry.

Marcel Van der WINCKEL

160.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-14045	Pte	DUFOUR, A.G.	36 Cdn A Tps Comp Coy

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For An Act to the prejudice of good order and Military discipline. One times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 8 Oct 44

Date of last entry in Field Conduct Sheet 8 Oct 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. ~~The accused at the present time is undergoing~~ XXXXXXXXXXXX

~~beginning on the~~ XXXXXXXXXXX

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		- - N I L - -		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 19th day of October 1944

(M.R.COOKE) Capt
Adm.Offr. 36 Cdn A Tps Comp Coy

No E14045 Name DUFOUR, A.G. Sqn, Battery, or Company Corps RCASC Date of enlistment 9 Sep 39 GC Badges 29 Jul 43 Service or Proficiency Pay NA

MFM 6 (AFB 122) 40/P&R/136 (3438)

Date of last entry in Company Conduct Sheet 28 Jul 43 No and date of last drunk NA Period not reckoning towards freedom from extra fine NA Sheet No 2 Signature GC Company, etc SGD ?????? Capt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On the 28th day of July 1943 this soldier completed two years service with no entries on his MFM 6 and in accordance with RO CASF (Overseas) 71 no entries were transferred from previous sheet which was destroyed 28 Jul 43									
		Awarded Good Conduct Badge 28 Jul 43						SGD ?????? Lt	
Field	6 Oct 44	Pte		AA Sec 40 An act to the prej etc smoking while driving WD veh	Major D.W. Newlands	21 days forf of pay	8 Oct 44	Major D.W. Newlands	Forf 21 days pay FR&I 149 (2)
Field				Forf one GOOD CONDUCT BADGE wef	8 Oct 44				

CERTIFIED TRUE COPY OF DOCUMENT
HELD IN MY POSSESSION

(M.R. COOKE) Capt
Adm Offr 36 Cdn A Tns Comp Coy

(PTO)

350.

SUMMARY OF EVIDENCE in the case of E.14045 Pte DUFOUR, A.G., 36 Cdn A Tps Comp Coy, a soldier of the Canadian Army Overseas, charged with improperly and without lawful authority selling to a civilian, Marcel Van der Winckel, public property as follows:(About 95 cans of oil, vsrous types. (A.A.Sec. 40).)

By direction of the Commanding Officer, the evidence is taken on oath.

FIRST WITNESS: Lieut. A. KENYON, O.i/c #59 C.M.Police Detachment, Malines, Belgium, having been duly sworn, states:

I am Lieut. A. KENYON, O.i/c #59 C.M.Police Detachment.

As the result of information received on 4 Oct 44, accompanied by Inspector Opdebeck of the Malines Town Police, I proceeded to the home of Marcel Van der WINCKEL, Fransh Ola, Yest No.35, Town of Malines, Belgium, to search for Canadian Military petrol and oil, suspected of being illegally stored in the above-mentioned house. As the result of this search I found the following [redacted] Military property in the premises occupied by Marcel Van der Winckel:

13 - 4 gal tins of petrol
9 -10 gallon containers of Flame-Thrower fuel
3 - 5 gallon drums of oil

I confiscated this Cdn Military property and removed it to the Detachment HQ in the Town of Malines. Marcel Van der Winckel was then cautioned by PC Seyers of the Malines Town Police in my presence, and made a statement which involved a Pte. DUFOUR and a Pte (L/cpl) KING, both of 36 Cdn A Tps Comp Coy, which I now produce as Exhibit "A".

Sjt. Sherwood of the SIS Cdn Provost Corps was present at the time the statement was made by Marcel Van der Winckel, and after which he proceeded to the HQ of 36 Cdn A Tps Comp Coy at my request, to have the above two personnel returned to this office for further questioning in this case.

Sjt. Sherwood returned with all the above-mentioned personnel as requested, and after being duly warned in accordance with R.P.4(e), the accused made the following statement, which I produce as Exhibit "B".

After making the above statement, Pte. DUFOUR was shown the statement made by Marcel Van der Winckel, which I now produce as Exhibit "A", and as a result of this, made the following additional statement, which I now produce as exhibit "C".

The accused declines to cross-examine this witness.

A. Kenyon

. . . . . .
(A.KENYON) Lieut.
O.i/c #59 C.M.P.Det.

760.

SECOND WITNESS Marcel Van der WINCKEL, at present in Civil Prison, Malines, Belgium, having been sworn, states through an interpreter; PC 63 - Jan Seyers, Malines Town Police:

I am Marcel Van der Winckel, and I live in the Town of Malines, Belgium. I am at present in the Civil Prison, Malines, Belgium, awaiting trial for illegal possession and selling of petrol.

On Wednesday 4 Oct 44 at about 1400 hrs, a soldier who I have now recognised, brought a tipper lorry loaded with cartons (94) of petrol. He asked me if I would like to buy petrol and I asked him why he had been so late as I had arranged with him to let me know a week in advance. I had made this arrangement when talking to him in the cafe Nieuwe Hoek about the end of September. I had heard the soldier asking several people if they wished to buy petrol and I told him that when he had any I would buy it. I agreed to buy the petrol, then I jumped in the lorry with him and went to look for a place to hide the petrol. We went to several places and eventually hid it in a garage in Lemmens Street, owned by Kero. We counted 102 cans and I agreed to pay him 135 Frs. per can. I paid him 14,750 Frs. The soldier then left with the lorry. Between 2000 hrs and 2100 hrs same evening I saw the soldier whom I now recognise as Pte. DUFOUR. I told him that I had bought petrol from KING and had given him 2000 Frs too much. DUFOUR then went over to KING ~~and~~ in the cafe and asked him to pay back the 2000 Frs. KING then paid me back the 2000 Frs.

The same night about 2300 hrs I left the cafe in company with my wife and child when I heard DUFOUR arguing with another person in a foreign language. I crossed over and I thanked DUFOUR and then asked him what he had on his lorry and DUFOUR then asked me if I would like to buy oil and I said yes but I have no more money left. DUFOUR consulted some other person and came back to me and said, you can have the oil and pay for it when you are able. I agreed to buy the oil and arrange the price later. I then got in the truck and accompanied him to the house of Mdme. Vleminckx, where we unloaded the truck, there were between 65 and 67 barrels and DUFOUR asked that I pay 150 Frs. per barrel. Not having the money to pay then I arranged to pay later.

On Thursday morning my wife went to look at the oil and found that some of it was other fluid. On Friday the 6 Oct 44 between 0900 hrs and 1000 hrs DUFOUR came to my house

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SECOND WITNESS (Cont'd) alone and told me he was going away to the front line and wanted the money, he asked me for 3000 Frs, I paid him this sum and DUFOUR went away in the lorry.

. . . . . .
Marcel Van der WINCKEL

CROSS-EXAMINED BY THE ACCUSED

QUESTION 1. When did you ask me to speak to KING about the petrol business and the 2000 Frs?

ANSWER 1. All this happened at between 2030 hrs and 2100 hrs on 4 Oct 44, in the kitchen of the Cafe Nieuwen Hoek, in the presence of my Mother-in-law Madame Geisenfeld.

QUESTION TO THE ACCUSED The accused was cautioned as follows: "Do you wish to make any statement, or to give evidence on oath? You are not obliged to say anything or to give evidence, unless you wish to do so, but whatever you may say or any evidence you give, will be taken down in writing and may be given in evidence."

ANSWER BY THE ACCUSED I do not want to make a statement.

. . . . . .
(E-14045 Pte DUFOUR, A.C.)
36 Cdn A Tps Comp Coy

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

. . . . . .

Field
19 Oct 44

4D-26

FIELD GENERAL COURT-MARTIAL

(Army Act, 1881, and Acts amending the same)

Convened by Order of Lt- Col SAVARD Comd HQ RCASC First [illegible] 30 Oct 44

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E-14045 Pte Alphonse Gerard DUFOUR 36 Cdn A Tps Comp Coy

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	Not Guilty	Guilty.	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

Sentence awarded and to take effect from XXbeginning on (date).(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of two years.

(Sgd) W G Dean Capt. — Judge-Advocate, if any. 27 Oct 44 — Date awarded. (Sgd) F G Doney Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Intimate of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the findings and sentence set forth in Part I is:

Confirmed.

I direct that the accused be discharged to prison for Reception Institute with Hard Labour.(1)

(1. AA 57A. Delete if not used.)

(Sgd) F H SAVARD Lt-Col

Date 27 Oct 44. Commanding HQ RCASC 1 Cdn A Tps. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
E-14045 Pte L.G. Durfour.	28 Oct 44	W F Dean Capt. a/OC 36 Cdn A Tps Comp Coy

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

(PRINTED IN THE NAME OF ARMY) [illegible]

Cdn Sec G H Q 21 Army Gp

PROCEEDINGS [illegible] Date 27 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or substantive rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-14045	Pte	Alphonse Gerard	DUFOUR	36 Cdn A Tps Comp Coy

CERTIFIED TRUE COPY

[signature] AJAG

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 27 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereinafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet[1] attached thereto. The Court is satisfied that it is properly convened and constituted[2], accused is subject to military law, and each charge discloses an offence.[3]

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [illegible] brought before the Court. At 10 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.[1] [illegible] elected to be tried by court-martial instead of being dealt with summarily by [illegible].[2]

(1. KR Can 537. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: [illegible] as interpreter? Ans No [illegible] as shorthand writer? Ans [illegible].

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.[1] President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir.[2]

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.[1] The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F G Doney	HQ RCASC 1 Cdn A Tps
Member	Capt	R K Davidson	36 Cdn A Tps Comp Coy
Member	Capt	R W Robinson	HQ RCASC 1 Cdn A Tps
Judge-Advocate	Capt	W G Dean	1st Cdn A Tps.
Prosecutor	Capt	E R Cooke	36 Cdn A Tps Comp Coy
Defending Offr	Lieut	E E Harper	36 Cdn A Tps Comp Coy

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans [illegible].[2]

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Confirming Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused E/14045 Pte Dufour, before arraignment make(s) (no) (a) plea [illegible].[1]

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused [illegible] arraigned [illegible] on all charges in this charge sheet.[1] The accused does [illegible] not object to any charge.[2] There is no amendment to be made to the Charge Sheet.[3] The President records pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B D A2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alterna[illegible] (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [illegible] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans Yes Sir .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides ~~not~~ to advise accused to change his ~~his~~ plea(s) of Guilty to Not Guilty on ~~the~~ charge(s). The accused is ~~not~~ so informed, and he ~~then~~ changes his (~~their~~) plea(s) on ~~the~~ charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. ~~On the charge(s) to which the plea(s) of Guilty~~ is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. ~~The Summary of Evidence is marked Ex ..... initialled and read aloud by the President etc.~~
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by~~ using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No Sir .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. ~~The Prosecution is closed.(1) The Defending Offr~~ submits that the evidence for the Prosecution does not establish a prima facie case against the accused ~~on the~~ charge(s).(2) The Court is closed, and considers the submission.(3) The ~~Court is re-opened~~, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Sworn Evidence ..... Do you intend to call witnesses on your behalf ?
Ans Yes ..... Are they witnesses as to character only ? Ans .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the Finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statements, evidence and any summing up by the JA under RP 103(m).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty,~~ and states to the accused that the finding(s) of the Court on the ~~the~~ charge(s), being subject to confirmation, will be promulgated later.(1)
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is amended accordingly.~~(2)
(1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. ~~President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?~~
Ans .....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(1. MFB 253 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes Thank my Defending Officer.(2)
(1. RP 37(C), 44(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 363-366, Overseas HC 309, 1323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 40(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 364. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET.

The accused B-14045 Pte DUCUR A.J.
36 Cdn A Tps Comp Coy, a soldier of the Canadian Army Overseas, placed on active service, is charged with:

FIRST CHARGE
AA Sec 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he in the Field on 4 Oct 44 improperly and without lawful authority sold to a civilian, Marcel Van der Wincket, the following public property.

About 95 cans of oil(Various types)

Field
19 Oct 44

"D W NEWLANDS" Major
(D W NEWLANDS) Major
Officer Commanding
36 Cdn A Tps Comp Coy

To be tried by Field General Court Martial.

Field
25 Oct 44.

"P H SAVARD"
(P H SAVARD) Lt-Col.,
HQ RCASC First Cdn A Tps.

758

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
3-14045	Pte	Alphonse, Gerard	DUPOUR.	36 Cdn A Tps Comp Coy.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~s~~ named above as the accused, being subject to military law, has (have) committed the offence~~s~~ set forth in the Charge Sheet~~s~~ attached and on (*date*) 25 Oct 44 endorsed by me, (~~A/Offr Comdg~~) "To be tried by Field General Court-Martial";

2. And whereas I am of opinion that it is not practicable that such offence~~s~~ should be tried by an ordinary General Court-Martial; ~~[illegible]~~
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person~~s~~ and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	F G DONEY		HQ RCASC First Cdn A Tps

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	R K DAVIDSON		35 Cdn A Tps Comp Coy.
Capt	R W ROBINSON		HQ RCASC First Cdn A Tps

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt	J E FORBES		HQ RCASC First Cdn A Tps

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	D G DEAN		HQ A Tps Area, First Cdn Army.

On Active Service in the Fd

in BELGIUM (*Country.*)

Date 25 Oct 44.

"P H SAVARD" Lt-Col (*Rank.*)
(*Signed personally. RP 105 fn 2.*)
(P H Savard) Lt-Col.
Commanding HQ RCASC FIRST CDN A Tps.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

4/38A (FAAS 12b (as) of AFAI 60/F & S/1697 (4601))

930

27 Oct 44

MEDICAL OFFICER'S CERTIFICATE

I certify that No. E-14045 Pte DUFOUR A.G..

of 36 Cdn A Tps Comp Coy. Regiment.

is fit to undergo trial by Court Martial.

W R C Dickson Capt.

Signature. of the Medical Officer

Insert "fit" or "unfit".

Statement of Pte DUPOUR.

The statement I made is not exactly correct. Despite the warning at the top, there was somebody, Lt Kenyon who asked me a lot of questions first later he took me to the civil jail where I was identified by the 2 civilians. Then he took me to his HQ. On the way he said I had better watch myself or the while brigade would shoot me. He said the civil court had already condemned me to 20 years imprisonment, for housebreading and stealing. This was about something quite different from the oil business He asked me to make a statement. My hand was in a cast at the time. A Br soldier had asked me to interpret for him to sell his load of oil. I found a civilian and went to his house and we unloaded the oil there. If I hadn't been drinking I wouldn't have done it. I gave the statement because the officer said that what I said wasn't true.

Witness for Prose.
T-352[illegible]61 Cpl Worrall J 230 Corps Coy RCASC duly sworn

I was Sect Comd of the sec to which accused was attached in Aug or Sep. 44 and a couple of days in Oct. I would detail the accused and others to their loads, including petrol.

Defence declines to X-examine

R.P. 82 (3) is complied with.

Second Witness for Pros.

Marcel Van der Winchel duly sworn states.

I live in the town of Malines Belgium about a week before this incident I saw the accused DUPOUR in a Cafe. I became friendly with him. On 4 Oct about 11 in the evening I saw DUPOUR talking with 2 men at a lorry in Malines I went to thank him for something he had done for me. I asked him what he had on his lorry. He said he had oil and that he would like to give it to me get payment later as I had no money left. after talking to the other men. DUPOUR suggested to sell me 40 drums at 1500 frs per drum but later agreed on less. DUPOUR said there were 60 drums. I found later there were about 68 . On Friday 6 Oct DUPOUR came and asked for some of the money I gave him 30000 frs and asked when he would return again. Accused said he might be back in a fortnight.

Defence declines to X-examine

R.P. 82(3) is complied with.

Third witness for prosecution

307524 Lt[illegible] Kenyon CS CMP police detachment duly sworn
On 7 Oct 44 I visited the home of Marcel Van der Winckel in Malines and found on his premises 13-4 gal tins of 87 D Petrol
9-10 Gal containers of Flame Thrower fluid.
About 4 [illegible] drums of oil.
The accused Pte DUPOUR was brought to my office on 8 Oct 44. I cautioned him and he denied all knowledge of the offence. On 9 Oct Marcel Van der Winckle made a statement which I produce as Ex "A". In the presence of the accused I translated it to him. He cautioned him after which he told me he clearly understood the statement and my caution. He then made a statement which I produce as Ex "B". Accused and Def officer say they are not objecting to admissibility of Ex "B".

X-examined.
When I cautioned DUFOUR the caution was in accordance with RP.
By the JA.

1. The drums of oil I found were clearly marked HQ 30 US Navy. that means oil purchased under lease lend. The petrolwas clearly marked MT 100 and gore the English lettering on the carton TOP. The flame thrower fuel was marked in English and had a WD arrow. In my opinion it was definitely WD property. It may have been issued to the Can forces but I can't tell if it was.

R.P. 83(b) is complied with.

Accused duly sworn states.

On the night of this incident I was drinking since noon. I had been working day and night. We went to Le Havre. Worked from 6 in the morning until 8 or 9 at night. We moved up in convoy to Belgium. and I had no spare driver. I was very tired and sleepy. It took 2½ days to reach Malines. We then moved up to here and were working very hard from there. I was drinking in order to keep going. My had was poisoned and I went on sick parade. 3 times out could never see the doctor. I had a civilian downtown lance it for me. Because of my hand I was excused duty verbally by the Sjt for the day and went to see my girl friend.

I xxxxxxxx wanted to get married but found I couldn't so went on a drunk. This was the 4 Oct. I spent all afternoon in a Cafe drinking with 2 civilians. After supper we returned to the cafe. I drank cognac and drank a lot of it. I spent the night in the cafe Marcel Vande Winclke was there and about1030 a soldier came up to me and asked me if I could find someone who would buy his load of oil. I went out and looked at his load. Then Van der Winckle came up and I was arguing with the soldier about how much my fee would be for helping him He said he would give me about 50%. Vander Winckle asked me what I had in the truck. He said he had not any money so I went and told the soldier so. He said he didn't mind and we drove around for a while and finally went to Vander Winckle's house where he said we had better unload the oil. I asked the soldier how much he wanted and he said 150 Frs per barrel Vander Winckle agreed on the price and said he would probably pay in the morning. I told the soldier I would try to collect and arranged to meet him at the cafe to give him the money. He took me back and left me at the pub where I slept. In the morning I returned to my unit, still partly drunk. On the Friday I returned to Vander Winckle's house. I asked him for some money and he gave me 3000 francs I returned to the unit but apparently had lost the 3000 fr on the way.

X-examined.
It was really the other soldier who had the oil but I sold it for him. The price I asked was 150 fr per barrel or drum.

By the J.A. The soldier was a Br soldier . I presumed it was public property as the army is the only place you can get oil. The lorry on which the oil was was a Br military vehicle. We unloaded the oil at Vander Winckle's I took part in the unloading.
R.P. 83(3) is complied with.

Summing Up.
The prosecutor . The evidence shows the accused guilty of the offence. Defending Officer declines to sum up.
JA Sums up. 1. Reviews evidence.
2. Onus of proofs and reasonable doubt.

EXHIBIT "A"

EXHIBIT "A" Statement by Marcel Van der Winckel
of the town of Malines, Belgium
9 Oct 44.

Marcel Van der WINCKEL, at present in Civil Prison, Malines, Belgium, having been sworn, states through an interpreter: PC 63 Jan SEYERS, Mali es Town Police:

I am Marcel Van der WINCKEL, and I live in the Town of Malines, Belgium. I am at present in the Civil Prison, Malines Belgium, awaiting trial ofr illegal possessio n and selling of petrol.

On Wednesday 4 Oct 44 at about 1400 hrs, a soldier who I have now recognized brought a tipper lorry loaded withcartons (94) of petrol, He asked me if I would like to buy petrol and I asked him why he had been so late as I had arranged with tim to let me know a week in advance. I had made this arrangement when talking to him in the cafe Miewue Hock about the end of September. I had heard the soldier asking several people if they wished to buy petrol and I told him that when he had any I would buy it. I agreed to buy the petrol, then I jumped in the lorry with him and went to look for a place to hide the petrol. We went to several places and eventually hid it i n a garage in Lemmens Street, owned by Kero. We counted 102 cans and I agreed to pay him 125 Frs. per can. I paid him 14750 Frs. The soldier then left with the lorry. Between 2000 hrs and 2100 hrs same evening I saw the soldier whom I now recognise as Pte DUFOUR. I told him that I had bought petrol from KING and had given him 2000 frs too much. DUFOUR then went over to KING and in the cafe asked him to pay back the 2000 frs. KING then paid me back the 2000 Frs.

The same night about 2300 hrs I left the cafe in company with my wife and child when I heard DUFOUR arguing with another person in a foreign language. I crossed over and I thanked DUFOUR and then asked what he had on his lorry and DUFOUR then asked me if I would lke to buy oil and I said "Yes" but I have no more money left." DUFOUR consulte d some other person and came back to me and said, "You can have the oil and pay for it when you are able", I agreed to buy the oil and arrange the price later. I then got in the truck and accompanied him to the house of Mdme Vleminckx, where we unloaded the truck, there were between 65 and 67 barrels and DUFOUR asked that I pay 150 Frs per barrel. Not having the money po pay then I arranged to pay later.

On Thursday morning my wife went to look at the oil and found that some of it was ot er fluid. On Friday the 6th Oct 44between 0900 hrs and 1000 hrs DUFOUR came to my house alone and told me he was going away to the front line and wanted the money, he asked me for 3000 frs. I paid him this sum and DUFOUR went away inthe lorry.

Vdn der Wyncel
Marcel Van der WINCKEL

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1773-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E-14045	Pte	DUPOUR A.G.	36 Cdn A Tps Comp Coy

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	An act to the prejudice of good order and military disc times	one. times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act / Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 21 days in Air Force / military custody, making a total of 21 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 25 years 10 months attestation paper is XXXXXXX

6. The date of his commission specified in his record of service is attestation attestation paper 9 Dec 39.

7. The service which the accused is allowed to reckon towards discharge is 5 yrs 1 month.

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward. military military military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number..... Rank..... Unit Regiment of.....

Name.....

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 19 th day of October, 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked [illegible] signed by the president, and annexed to the proceedings.

No. -14045 Name DUFOUR A.G. Sqn. Battery, or Company 920 Corps rcasc. Date of enlistment 9 Sep39 GC Badges 29 Jul43 Service or Proficiency Pay NA

MFM 6 (AFB 122) 45/PAS/136 (3485)

Date of last entry in Company Conduct Sheet 28 Jul 43 No and date of last drunk NA Period not reckoning towards freedom from extra fine NA Sheet No 2 Signature OC Company, etc ?????Capt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order discussing with trial	By whom awarded	Remarks
On the 28th day of July 1943 this soldier completed two years service with no entries on his MFM 6 and in accordance with PC CASF (Overseas) 71 no entries were transferred from previous sheet which was destroyed 28 Jul 43.									
				Awarded good conduct Badge 28 Jul 43.				Sgd ??????Lt.	
Field.	6 Oct 44	Pte		AA Sec 40 An act to the prej etc smoking while driving WD Vh.	Major D.W. Newlands	21 days forf of pay	8 Oct44	Major D.W Newlands	forf 21 days. pay PRI 149 (2)
Field				Forf one GOOD CONDUCT BADGE wef 8 Oct 44					

CERTIFIED TRUE COPY OF DOCUMENT
PLD IN MY POSSESSION
" M RCooke"
(M RCooke) Capt.
Adm Offr 36 Cdn A Tps Comp Coy.

(PTO)

J-41

SUMMARY OF EVIDENCE in the case of F-14045 Pte DUFOUR A.J., 36 Cdn A Tps Comp Coy, a soldier of the Canadian Army Overseas, charged with improperly and without lawful authority selling to a civilian, Marcel Van der Winckel, a public property as follows:

By direction of the Commanding Officer, the evidence is taken on oath.

FIRST WITNESS

Lieut A KENYON, Oi/c #59 C.M. Police Detachment, Malines, Belgium, having been duly sworn states:

I am Lieut A KENYON Oi/c #59 C.M. Police Detachment.

As the result of information received on 4 Oct 44 accompanied by Inspector Opdebeck of the Malines Town Police, I proceeded to the home of Marcel Van der WINCKEL, Fransh ols, Yest No. 35, Town of Malines, Belgium, to search for Canadian Military petrol and oil, suspected of being illegally stored in the above-mentioned house. As the result of this search I found the following Military property in the premises occupied by Marcel Van derWinckel:

13 - 4 Gal Tins of petrol
9 - 10 Gallon containers of Flame thrower fuel.
3 - 5 galon drums of oil.

I confiscated this Cdn Military property and remived it to the Detachment HQ in the Town of Malines. Marcel Van der Winckel was then cautioned by PC Seyers of the Malines Town Police in my presence, and made a statement which involved a Pte DUFOUR And a Pte (L/Cpl) KING, both of 36 Cdn ATps Comp Coy, which I now produce as Exhibit "A".

Sjt Sherwood of the SIS Cdn Provost Corps was present at the time the statement was made by Marcel Van der Winckel, and after which he proceeded to the HQ of 36 Cdn A Tps Comp Coy at my request, to have the above two personnel returned to this office for further questioning in this case.

Sjt Sherwood returned with all the above-mentioned personnel as requested, and after being duly warned in accordance with R.P. 4(e) the accused made the following statement, which I produce as Exhibit "B".

After making the above statement, Pte DUFOUR WAS shown the statement made by Marcel Van der Winckel, which I now produce as Exhibit "A", and as a result of this, made the following additional statement, which I now produce As Exhibit "C".

The accused declines to cross-examine this witness.

A Kenyon Lieut.
Oi/c #59 C M P Det.

SECOND WITNESS

Marcel Van der WINCKEL, at present in CIVIL Prison, Malines, Belgium, having been duly sworn states through an interpreter: PC 63 JAN SEYERS, Malines Town Police:

I am Marcel Van der Winckel and I live in the Town of Malines, Belgium. I am at present in the Civil Prison, Malines, Belgium, awaiting trial for illegal possession and selling of petrol.

On Wednesday 4 Oct 44 at about 1400 hrs a soldier who I have now recognized, brought a tipper lorry loaded with cartons (94) of petrol. He asked me if I would like to buy petrol and I asked him why he had been so late as I had arranged with him to let me know a week in advance. I had made this arrangement when talking to him in the cafe Nieuwe Hoek about the end of September. I had heard the soldier asking several people if they wished to buy petrol and I told him that if they wished to, when he had any I would buy it I agreed to buy thepetrol, then I jumped in the lorry with him and went to look for a place to hide the petrol. We went to several places and eventually hid it in a garage in Lemmens Street, owned by Kero. We counted 102 cans and I agreed to pay him 125 frs per can. I paid him 14750 frs. The soldier then left with the lorry. Between 2000 hrs and 2100 hrs the same evening I saw the soldier whom I now recognize as Pte DUFOUR. I told him I had bought petrol from KING and had given him 2000 Frs too much. DUFOUR then went over to KING and in the cafe asked him to pay back the 2000 frs. KING then paid me back the 2000 Frs.

The same night about 2300 hrs I left the cafe in company with my wife and child when I heard DUFOUR arguing with another person in a foreign language. I crossed over and I thanked DUFOUR and then asked him what he had in his lorry and DUFOUR then asked me if I would like to buy some oil and I said "Yes" but I have no more money left". DUFOUR consulted some other person and came back to me and said "You can have the oil and pay for it when you are able". I agreed to buy the oil and arrange the price later. I then got in the truck and accompanied him to the house of Wdme Vleminckx where we unloaded the truck, there were between 63 and 67 barrels and DUFOUR asked that I pay 150 Frs per barrel. Not having the money to pay them, I arranged to pay later.

On Thursday morning my wife went to look at the oil and found some of was other fluid On Friday 6 Oct 44 between 0900 hrs and 1000 hrs DUFOUR came to my house alone and told me he was going away to the front line and wanted the money. he asked me for 3000frs I paid him this sum and DUFOUR went away in the lorry.

Marcel Van der WINCKEL

SECOND WITNESS (Cont'd)

CROSS EXAMINED BY THE ACCUSED.

Question 1. When did you ask me to speak to KING about the petrol business and the 2000 frs?

Answer 1. All this happened at between 2030 hrs and 2100 hrs on 4 Oct 44 in the kitchen of the Cafe Nieuwen Hock, in the presence of my Mother-in-law Madame Geisenfeld.

Van der Wynckel.

QUESTION TO THE ACCUSED. The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence, unless you wish to do so, but whatever you may say or any evidence you give, will be taken down in writing any may be given in evidence".

ANSWER BY THE ACCUSED. I do not wish to make any statement.

Enquiry Pte De Four AG
~~"J A King"~~
(~~S-81634 Pte L/Cpl King. J.A.~~)

I certify that the forgoig Summary of Evidence consisting of four pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c)(e)(d)(f) and (g) have been complied with.

Field
19 Oct 44.

H CCookd
Capt.

9 Oct 44 328

Statement of S-14045 Pte DUFOUR A.G. 36 Cdn A Tps Comp Coy RCASC.

I have been cautioned by Sjt J A Sherwood of No. 1 SIS First C Cdn Army that I do not need to say anything unless I wish to do so but that whatever I do say will be taken down inwriting and may be used as evidence.

G DUFOUR.

When I arrived in France I was with 36 Comp Coy then I was attached to Unit #200 RASC (Br) with L/Cpl King, Ptes Martin, Kulac, and Schacter. I drove a Demis truck hauling alltypes of supplies. We moved to Waline about 18 days ago where I washauling supplies from the station to the dump. One day, I think it was on either Sun or Mon a week ago, I went ot the cafe where my girl friend worked. A civie I had seen before, buy me a drink and then offer me three bottles of cognac for six jerry cans of gasoline. About that time the driver Martin came up to the pub in his truck for get me back to the unit for duty. I told Martin my truck was stuck and I needed petrol, which was not true. I asked him to lned me six cans of petrol, and he said he would and then Martin drove me and the civilian to a house where I said I wanted the petrol left until morning. I received three bottles of cognac from the civilian. Martin knew nothing about this.

Last Wed night I was hauling supplies from the station. I was drinking all day. In my drunkenness I thought I will stop at the cafe and see my girl friend at this time I had a load of oil, about 85 cans, of all different kinds of oil. I drank with a few men in the cafe. Some xx told me I could have a good deal on that I asked one who I knew, if I could put it in his house until I found a customer, He said yes. I was hard up for money. I put it in his house that night with the help of the civilian and a Br soldier who asked me for a lift. I know nothing about him. I told him the civilian, not to get less than 14000 Frs for the load Then I left. Next morning they told us we were moving back to my unit I slept at the cafe the night before and Martin came down that morning to tell me and any otheresof our bunch that we were moving My truck was broke at the camp, I asked him to stop at the house where I had left the oil the night before as it is on the way back to camp. I didn't get any money then and I wanted to take the oil away, but I wasn't able to as we left too soon for the unit. That night I came back from Sect with my truck and the morning after I went to the house and they gave me 5000 frs for the oil I was very drunk and don't remember what I told the civilian about the rest of the money, but I left the oil there.

I don't remember ever selling any other petrol or oil.

I have had this statement read over to me and it is true.

Witness J A Sherwood Sgt. G DUFOUR.

AFTER BEING DULY CAUTIONED by Lieut ZEEVOR C W this is the additional statement of S.14045 Pte DUFOUR A.G. 36 Cdn A Tps Comp Coy.

I have had the statement of VAN DER STUYFEL read over to me and I agree with what he has said with the exception of the part where he states I have knowledge of L/Cpl King selling petrol.

Witness J A Sherwood Sgt G Dufour.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : **E-14045 Pte Alphonse Gerard DUPOUR 36 Cdn A Tps Comp Coy**

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	Not Guilty	Guilty.	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~XXXX

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. Yes Sir (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (~~not~~) to advise accused to change his (~~their~~) plea(s) of Guilty to Not Guilty on the charge(s). The accused is (~~are~~) so informed, and he ~~has~~ change(s) his (~~their~~) plea(s) on the charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

~~B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty as in Part I of the Schedule.(1)~~

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

~~B5. The Summary of Evidence is marked Ex ..., amplified and read aloud by the President.(1)~~

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

~~B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.~~

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (ii).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No Sir (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~will make~~) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s).~~(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Give Evidence Do you intend to call witnesses on your behalf? Ans. Yes Are they witnesses as to character only? Ans.

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~

(1. *AA 54(7) (a), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Forms B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. ~~President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?~~(1)

Ans.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(2) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. C and Ex. D respectively.(3)

(1. *MFB 251 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes in the way of Extenuation (2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to answer on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 7(2)(i). One sentence only, comprised of the punishment or punishments laid down in AA 47, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3)(b), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET.

The accused E-14045 Pte DUNDUR A G 36 Cdn A Tps Comp Coy, a soldier of the Canadian Army Overseas, placed on active service, is charged with:

FIRST CHARGE
AA Sec 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he in the Field on 4 Oct 44 improperly and without lawful authority sold to a civilian, Marcel Van der Wincket, the following public property.

About 95 cans of oil (Various types)

Field
19 Oct 44

"D W NEWLANDS" Major
(D W NEWLANDS) Major
Officer Commanding
36 Cdn A Tps Comp Coy

To be tried by Field General Court Martial.

Field
25 Oct 44.

"P H SAVARD"
(P H SAVARD) Lt-Col.,
HQ RCASC First Cdn A Tps.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
B-14045	Pte	Alphonse, Gerard	DUFOUR.	36 Cdn A Tps Comp Coy.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has (have) committed the offence(s) set forth on the Charge Sheet(s) attached and on (date) 25 Oct 44 endorsed by me, (as) an offr empowered by [illegible] "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s) and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(L). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	P G D'NEY		HQ RCASC First Cdn A Tps

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	R K DAVIDSON		36 Cdn A Tps Comp Coy.
Capt	R W ROBINSON		HQ RCASC First Cdn A Tps

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt	J E FORBES		HQ RCASC First Cdn A Tps

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	D G DEAN		HQ A Tps Apos, First Cdn Army.

On Active Service in the Fd

in BELGIUM (Country.)

Date 25 Oct 44.

"J E SAVARD" Lt-Col (Rank.)

(J E Savard) Lt-Col.

Commanding HQ RCASC FIRST CDN A Tps.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (Formerly (b) (iv) of AFAS) 60/FAS/187 (4021)

94

27 Oct 44

MEDICAL OFFICER'S CERTIFICATE

I certify that No. E-14045 Pte DUBOUR A.T..

of 36 Cdn A Tps Comp Coy. Regiment.

is fit to undergo trial by Court Martial.

W B C Dickson Capt.
Signature. of the Medical Officer

Insert "fit" or "unfit".

Statement of PteDUFOUR. 34A

The statement I made is not exactly correct. Despite the warning at the top, there was somebody, Lt Kenyon who asked me a lot of questions first later he took me to the civil jail where I was identified by the 2 civilians. Then he took me to his HQ. On the way he said I had better watch myself or the white brigade would shoot me. He said the civil court had already condemned me to 20 years imprisonment, for housebreading and stealing. This was about something quite different from the oil business He asked me to make a statement. My hand was in a cast at the time. A Br soldier had asked me to interpret for him to sell his load of oil. I found a civilian and went to his house and we unloaded the oil there. If I hadn't been drinking I wouldn't have done it. I gave the statement because the officer said that what I said wasn't true.

Witness for Prose.
T-3529861 Cpl Worrell1 J 290 Corptps Coy RCASC duly sworn

I was Sect Comd of the sec to which accused was attached in Aug & Sep. 44 and a couple of days in Oct. I would detail the accused and others to their loads, including petrol.
Defence declines to X-examine

R.P. 83 (B) is complied with.

Second Witness for Pros.

Marcel Van der Winchel duly sworn states.

I live in the town of Malines Belgium about a week before this incidetn Isaw the accused DUPOUR in a Cafe. I became friendly with him. On 4 Oct about 11 in the evening I saw DUFOUR talking with 2 men at a lorry in Malines I went to thank him for something he had done for me. I asked him what he had on his lorry. He said he had oil and that he would like to give it to me get payment later as I had no money left. DUFOUR suggested to this after talking to the other men. DUFOUR asked 150 Frs per drum but later agreed on less. DUFOUR said there were 95 drums. I found later there were about 68 . On Friday 6 Oct DUFOUR came and asked for some of the money I gave him 5000 Frs and asked when he would return again. Accused said he mightbe back in a fortnight.

Defence declines to X-examine
R.P: 83(B) is complied with.

Third witness for prosecution

307524 Lt A Kenyon 59 CMP Police detachment duly sworn
On 7 Oct 44 I visited the home of Marcel Van der Winckel in Maline and found on his premises 13-4 gal tins of W D Petrol
9-10 Gal containers of Flame Thrower fluid.
About 4 ~~barrels~~ drums of oil.
The accused Pte DUFOUR was brought to my office on 8 Oct 44. I cautioned him and he denied all knowledge of the offence. On 9 Oct Marcel Van der Winckle made a statement which I produce as Ex "A". In the presence of the accused I translated to him. We cautioned him after which he told me he clearly understood the statement and my caution. He then made a statement which I produce as Ex "B". Accused and Def Officer say they are not objecting toadmissibility of Ex "B".

X-examined.
When I cautioned DUFOUR the caution was in accordance with RP.
By the JA.

1. The drums of oil I found were clearly marked HQ 30 US Navy. that means oil purchased under lease lend. The petrolwas clearly marked MT 100 and wore the English lettering on the carton TOP. The flame thrower fuel was marked in English and had a WD arrow. In my opinion it was definitely WD property. It may have been issued to the Can forces but I can't tell if it was.

R.P. 83(b) is complied with.

Accused duly sworn states.

On the night of this incident I was drinking since noon. I had been working day and night. We went to Le Havre. Worked from 6 in the morning until 8 or 9 at night. We moved up in convoy to Belgium. and I had no spare driver. I was very tired and sleepy. It took 2½ days to reach Malines. We then moved up to here and were working very hard from there. I was drinking in order to keep going. My had was poisoned and I went on sick parade. 3 t mes but could never see the doctor. I had a civilian downtown lance it for me. Because of my hand I was excused duty verbally by the Sjt for the day and went to see my girl friend.

I ~~xxxxxxxx~~ wanted to get married but found I couldn't so went on a drunk. This was the 4 Oct. I spent all afternoon in a Cafe drinking with 2 civilians. After supper we returned to the cafe. I drank cognac and drank a lot of it. I spent the night in the cafe Marcel Vande Winclke was there and about1030 a soldier came up to me and asked me if I could find someone who would buy his load of oil. I went out and looked at his load. Then Van der Winckle came up and I was arguing with the soldier about how much my fee would be for helping him He said he would give me about 50%. Vander Winckle asked me what I had in the tmuck. He said he had not any money so I went and told the soldier so. He said he didn't mind and we drove around for a while and finally went to Vander Winckle's house where he said we had beater unload the oil. I asked the soldier how much he wanted and he said 150 Frs per barrel Vander Winckle agreed on the price and said he would probably pay in the morning. I told the soldier I would try to collect and arranged to meet him at the cafe to give him the money. He took me back and left me at the pub where I slept. In the morning I returned to my unit, still partly drunk, On the Friday I returned to Vander Winckle's house. I asked him for some money and he gave me 3000 francs I returned to the unit but apparently had lost the 3000 fr on the way.

X-examined.
It was really the other soldier who had the oil but I sold it for him.
The price I asked was 150 fr per barrel or drum.

By the J.A. The soldier was a Br soldier . I presumed it was public property as the army is the only place you can get oil. The lorry on which the oil was was a Br military vehicle. We unloaded the oil at Vander Winckle's I took part in the unloading.
R.P. 83(B) is complied with.

Summing up.
The prosecutor . The evidence shows the accused guilty of the offence. Defending Officer declines to sum up.
JA Sums up. 1. Reviews evidence.
2. Onus of proofs and reasonable doubt.

EXHIBIT "A" Statement by Marcel Van der Winckel
of the town of Malines, Belgium
9 Oct 44.

Marcel Van der WINCKEL, at present in Civil Prison, Malines, Belgium, having been sworn, states through an interpreter: PC 63 Jan SEYERS, Malines Town Police:

I am Marcel Van der WINCKEL, and I live in the Town of Malines, Belgium. I am at present in the Civil Prison, Malines Belgium, awaiting trial ofr illegal possessio n and selling of petrol.

On Wednesday 4 Oct 44 at about 1400 hrs, a soldier who I have now recognized brought a tipper lorry loaded with cartons (94) of petrol. He asked me if I would like to buy petrol and I asked him why he had been so late as I had arranged with tim to let me know a week in advance. I had made this arrangement when talking to him in the cafe Mlewue Hock about the end of September. I had heard the soldier asking several people if they wished to buy petrol and I told him that when he had any I would buy it. I agreed to buy the petrol, then I jumped in the lorry with him and went to look for a place to hide the petrol. We went to several places and eventually hid it in a garage in Lemmens Street, owned by Kero. We counted 102 cans and I agreed to pay him 125 Frs. per can. I paid him 14750 Frs. The soldier then left with the lorry. Between 2000 hrs and 2100 hrs same evening I saw the soldier whom I now recognise as Pte DUFOUR. I told him that I had bought petrol from KING and had given him 2000 frs too much. DUFOUR then went over to KING and in the cafe asked him to pay back the 2000 frs. KING then paid me back the 2000 Frs.

The same night about 2300 hrs I left the cafe in company with my wife and child when I heard DUFOUR arguing with another person in a foreign language. I crossed over and I thanked DUFOUR and then asked what he had on his lorry and DUFOUR then asked me if I would like to buy oil and I said "Yes" but I have no more money left." DUFOUR consulte d some other person and came back to me and said, "You can have the oil and pay for it when you are able". I agreed to buy the oil and arrange the price later. I then got in the truck and accompanied him to the house of Mdme Vleminckx, where we unloaded the truck, there were between 63 and 67 barrels and DUFOUR asked that I pay 150 Frs per barrel. Not having the money po pay then I arranged to pay later.

On Thursday morning my wife went to look at the oil and found that some of it was ot er fluid. On Friday the 6th Oct 44 between 0900 hrs and 1000 hrs DUFOUR came to my house alone and told me he was going away to the front line and wanted the money, he asked me for 3000 frs. I paid him this sum and DUFOUR went away in the lorry.

Van der Wynicel
Marcel Van der WINCKEL

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E-14045	Pte	DUFOUR A.G.	36 Cdn A Tps Comp Coy

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For An act to the prejudice of good order and military Disc	times	one. times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act / A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time

or,

The accused at the present time is under sentence for beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody and 21 days in military Air Force custody, making a total of 21 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is / attestation paper is 25 years 10 months

6. The date of his commission specified in his record of service is / attestation paper is 9 Sep 39.

7. The service which the accused is allowed to reckon towards discharge is 5 yrs 1 month.

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military / military possession of or entitled to). State any air force decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated , and in his regiment (or corps), the rank of dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	NIL.			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 19 th day of October.1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "M R Cooke" (M R Cooke) Capt. signed by the president, and annexed to the proceedings.

Adm Offr 36 Cdn a Tps Comp Coy.

No E-14045 Name DUPOUR A.G. Sqn, Battery, or Company — Corps rcasc. Date of enlistment 9 Sep39 GC Badges 29 Jul43 Service & Proficiency Pay NA MFM 6 (AFB 122)

Date of last entry in Company Conduct Sheet 28 Jul 43 No and date of last drunk NA Period not reckoning towards freedom from extra fine NA Sheet No 2 Signature OC Company, etc ?????Capt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On the 28th day of July 1943 this soldier completed two years service with no entries on his MFM 6 and in accordance with RO CASF (Overseas) 71 no entries were transferred from previous sheet which was destroyed 28 Jul 43.									
				Awarded good conduct Badge 28 Jul 43.				Sgd ??????Lt.	
Field.	6 Oct 44	Pte		AA Sec 40 An act to the prej etc smok ing while driging WD Vh.	Major D W Newlands	21 days forf of pay	8 Oct44	Major D.W Newlands	forf 21 days pay FRI 149 (2)
Field				Forf one GOOD CONDUCT BADGE wef 8 Oct 44					

CERTIFIED TRUE COPY OF DOCUMENT HELD IN MY POSSESSION
" M RCooke"
(M RCooke) Capt.
Adm Offr 56 Cdn A Tps Comp Coy.

(PTO)

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SUMMARY OF EVIDENCE in the case of E-14045 Pte DUFOUR A.G., 36 Cdn A Tps Comp Coy, a soldier of the Canadian Army Overseas, charged with improperly and without lawful authority selling to a civilian, Marcel Van der Winckel, a public property as follows:

By direction of the Commanding Officer, the evidence is taken on oath.

FIRST WITNESS

Lieut A KENYON, Oi/c #59 C.M. Police Detachment, Malines, Belgium, having been duly sworn states:

I am Lieut A KENYON Oi/c #59 C.M. Police Detachment.

As the result of information received on 4 Oct 44 accompanied by Inspector Opdebeck of the Malines Town Police, I proceeded to the home of Marcel Van der WINCKEL, Franshols, West No. 35. Town of Malines, Belgium, to search for Canadian Military petrol and oil, suspected of being illegally stored in the above-mentioned house. As the result of this search I found the following Military property in the premises occupied by Marcel Van derWinckel:

13 - 4 Gal Tins of petrol
9 - 10 Gallon containers of Flame thrower fuel.
3 - 5 galon drums of oil.

I confiscated this Cdn Military property and remived it to the Detachment HQ in the Town of Malines. Marcel Van der Winckel was then cautioned by PC Seyers of the Malines Town Police in my presence, and made a statement which involved a Pte DUFOUR And a Pte (L/Cpl) KING, both of 36 Cdn ATps Comp Coy, which I now produce as Exhibit "A".

Sjt Sherwood of the SIS Cdn Provost Corps was present at the time the statement was made by Marcel Van der Winckel, and after which he proceeded to the HQ of 36 Cdn A Tps Comp Coy at my request, to have the above two personnel returned to this office for further questioning in this case. Sjt Sherwood returned with all the above-mentioned personnel as requested, and after being duly warned in accordance with R.P. 4(e) the accused made the following statement, which I produce as Exhibit "B".

After making the above statement, Pte DUFOUR WAS shown the statement made by Marcel Van der Winckel, which I now produce as Exhibit "A", and as a result of this, made the following additional statement, which I now produce as Exhibit "C".

The accused declines to cross-examine this witness.

A Kenyon Lieut,
Oi/c #59 C M P Det.

SECOND WITNESS

Marcel Van der WINCKEL, at present in CIVIL Prison, Malines, Belgium, having been duly sworn states through an interpreter: PC 63 JAN SEYERS, Malines Town Police:

I am Marcel Van der Winckel and I live in the Town of Malines, Belgium. I am at present in the Civil Prison, Malines, Belgium, awaiting trial for illegal possession and selling of petrol.

On Wednesday 4 Oct 44 at about 1400 hrs a soldier who I have now recognized, brought a tipper lorry loaded with cartons (94) of petrol. He asked me if I would like to buy petrol and I asked him why he had been so late as I had arranged with him to let me know a week in advance. I had made this arrangement when talking to him in the cafe Nieuwe Hoek about the end of September. I had heard the soldier asking several people if they wished to buy petrol and I told him that if they wished to, when he had any I would buy it I agreed to buy thepetrol, &hen I jumped in the lorry with him and went to look for a place to hide the petrol. We went to several places and eventually hid it in a garage in Lemmens Street, owned by Kero. We counted 102 cans and I agreed to pay him 125 frs per can. I paid him 14750 frs. The soldier then left with the lorry, Between 2000 hrs and 2100 hrs the same evening I saw the soldier whom I now recognize as Pte DUFOUR. I told him I had bought petrol from KING and had given him 2000 Frs too much. DUFOUR then went over to KING and in the cafe asked him to pay back the 2000 frs. KING then paid me back the 2000 Frs.

The Same night about 2300 hrs I left the cafe in company with my wife and child when I heard DUFOUR arguing with another person in a foreign language. I crossed over and I thanked DUFOUR and then asked him what he had in his lorry and DUFOUR then asked me if I would like to buy some oil and I said "Yes" but I have no more money left". DUFOUR consulted some other person and came back to me and said "You can have the oil and pay for it when you are able". I agreed to buy the oil and arrange the proce later. I then got in the truck and accompanied him to the house of Mdme Vleminckx where we unloaded the truck, there were between 65 and 67 barrels and DUFORU asked that I pay 150 Frs per barrel. Not having the money to pay then, I arranged to pay later.

On Thursday morning my wife went to look at the oil and found some of was other fluid On Friday 6 Oct 44 between 0900 hrs and 1000 hrs DUFOUR came to my house alone and told me he was going away to the front line and wanted the money. he asked me for 3000frs I paid him this sum and DUFOUR went away in the lorry.

Marcel Van der WINCKEL

CROSS EXAMINED BY THE ACCUSED.

Question 1. When did you ask me to speak to KING about the petrol business and the 2000 frs?

Answer 1. All this happened at between 2030 hrs and 2100 hrs on 4 Oct 44 in the kitchen of the Cafe Nieuwen Hock, in the presence of my Mother-in-law Madame Geisenfeld.

Van der Wynckel.

QUESTION TO THE ACCUSED. The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence, unless you wish to do so, but whatever you may say or any evidence you give, will be taken down in writing any may be given in evidence".

ANSWER BY THE ACCUSED. I do not wish to make any statement.

E/HUYT Pte Du Four AG.
~~"J A King"~~
(~~B-81634 Pte L/Cpl King. J.A.~~)

I certify that the forgoig Summary of Evidence consisting of four pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c)(e)(d)(f) and (g) have been complied with.

Field
19 Oct 44.

H CCookd
Capt.

9 Oct 44

Statement of E-14045 Pte DUFOUR A.G. 36 Cdn A Tps Comp Coy RCASC.

I have been cautioned by Sjt J A Sherwood of No. 1 SIS First C Cdn Army that I do not need to say anything unless I wish to do so but that whatever I do say will be taken down inwriting and may be used as evidence.

G DUFOUR.

When I arrived in France I was with 36 Comp Coy then I was attached to Unit #290 RASC (Br) with L/Cpl King, Ptes Martin, Kulag, and Schacter. I drove a Denis truck hauling alltypes of supplies. We moved to Maline about 18 days ago where I washauling supplies from the station to the dump. One day, I think it was on either Sun or Mon a week ago, I went ot the cafe where my girl friend worked. A civie I had seen before, buy me a drink and then offer me three bottles of cognac for six jerry cans of gasoline. About that time the driver Marin came up to the pub in his truck for get me back to the unit for duty. I told Martin mh truck was stuck and I needed petrol, which was not true. I asked him to lned me six cans of petrol, and he said he would and then Martin drove me and the civilian to a house where I said I wanted the petrol left until morning. I received three bottles of cognac from the civilian. Martin knew nothing about this.

Last Wed night I was hauling supplies from the station. I was drinking all day. In my drunkenness I thought I will stop at the cafe and see my girl friend at this time I had a load of oil, about 95 cans, of all different kinds of oil. I drank with a few men in the cafe. Some one told me I could have a good deal on that I asked one who I knew, if I could put it in his house until I found a customer, He said yes. I was hard up for money. I put it in his house that night with the help of the civilian and a Br soldier who asked me for a lift. I know nothing about him. I told him the civilian, not to get less than 14000 Frs for the load Then I left. Next morning they told us we were moving back to my unit I slept at the cafe the night before and Martin came down that morning to tell me and any otheresof our bunch that we were moving My truck was broke at the camp. I asked him to stop at the house where I had left the oil the night before as it is on the way back to camp I didn't get any money then and I wanted to take the oil away, but I wasn't able to as we left too soon for the unit. That night I came back from Gent with my truck and the morning after I went to the house and they gave me 3000 frs for the oil I was very drunk and don't remember what I told the civilian about the rest of the money, but I left the oil there.

I don't remember ever selling any other petrol or oil.

I have had this statement read over to me and it is true.

Witness J A Sherwood Sgt. G DUFOUR.

AFTER BEING DULY CAUTIONED by Lieut KENYON C M P this is the additional Statement of E.14045 Pte DUFOUR A.G. 36 Cdn A Tps Comp Coy.

I have had the statement of VAN DER WINCKEL read over to me and I agree with what he has said with the exception of the part where he states I have knowledge of L/Cpl King selling petrol.

Witness J A Sherwood Sgt G Dufour.

9 Oct 44

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I have had the statement of VAN DER WINCKEL read over to me and I agree with what he has said with the exception of the part where he states I have knowledge of L/Cpl King selling petrol.

Witness J A Sherwood Sgt G Dufour.

36 - 39.

Pte. Dufour, J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E-29492 Pte Jeffrey DUFOUR 18 Cdn Fd Amb, RCAMC, att 1 Cdn Disciplinary Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.W.L.	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and on loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1) See

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on Mf B335 or Mf B296.)

Time in confinement awaiting present trial—a total of 11 days, of which No days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on Mf B335 or Mf B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Six months detention.

(Sgd) ..... Judge-Advocate, if any. 8 Mar 45 Date awarded. (Sgd) G.B.H. Cox Major President. (RP 46, 90)

(See back of Convening Order as to custody and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 716)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 34, 37, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 719-741, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Remitting back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign in ink personally. AA 171 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I withhold the Rule granted to the said accused [illegible] and direct that the sentence be carried into execution.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date 9 Mar 45 (G.S.N. Gostling), Brigadier, Commanding 2 Cdn Base Rft Gp

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
E 29492 Pte Dufour J	12 Mar 45	A Allard Lt-Col. Comdg 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

E-29492 Pte Dufour J 12 Mar 45

RECORDED AT CBRG HQ AS No. 5C-39

FIELD GENERAL COURT-MARTIAL

CFA06 (To item of AFA3) 40/P Af B/1868 (2) 4/38B

Convened by Order of Lt-Col V.W. Hugman A/Comd 2 CBRG dated 6 Mar 45

RECEIVED 11 APR 1945 [illegible]

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 162, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-29492	Pte	Jeffrey	DUFOUR	18 Cdn Fd Amb RCAMC att 1 Cdn Disciplinary Centre

PROCEEDINGS REVIEWED 13 Apr 45 K.G. Aich, Capt REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS RECEIVED 10 Apr 45 Major 21 Army Gp Ech

Cdn Sec 6 Apr 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 6 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

2c15.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any, assemble~~, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, Cf AFB, for some amd instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

~~The Interpreter is sworn.(1)~~ Do you object to ..... as shorthand writer? Ans See

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 116. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G.B.H. Cox CAC	HQ 2 CBRG
Member	Capt	J.G.G. Robichaud CIC	4 CBRB
Member	Capt	J.K. Fabris CIC	HQ 2 CBRG
Judge-Advocate			
Prosecutor	Lieut	C. Lemieux Adjt Asst	10 CBRB
Defending Offr	Lieut	J.P. Gougeon CIC	10 CBRB

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 1 were not followed. See DI p 32.)

A8. The accused E-29492 Pte Jeffrey DUFOUR before arraignment makes ~~no~~ (a) plea (s) to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ plead to each charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 35, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of Cf AB6 to record proceedings. 2. RP 52, RP 53. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2CBRG vol 4 P130

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. N/C .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* AA5. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*b*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form* B *or* C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. N/C
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para.* *RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E and Ex — respectively.(3)
(1. *AFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 538. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes : no more than I have already said in my defence.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *Where several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its powers, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 1323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see insert on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, E-29492 Pte J Jerry DUFOUR, 18 Cdn Fd Amb, RCAMC, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT
LEAVE
in that he

In the Field, absented himself without leave from 1715 hrs 29 Nov 44 until apprehended at ANTWERP, Belgium at 1525 hrs 19 Feb 45.
(Absent 81 days 22 hrs 10 minutes)

(A O Hood) Lt col
Comd 1 Cdn
Disciplinary Centre

In the Field
5 Mar 45

To be tried by Field General Court-Martial

~~(G S H Gostling) Brig~~
A Comd
2 Cdn Base R&T Gp

In the Field
6 Mar 45

Exhibit D. [illegible]

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined NE 29492 (No.)

Pte (Rank) Dufour J (Name) and in my opinion he is

fit to undergo trial by Court-Martial.

~~Unfit~~

[illegible] Capt (Sgd)
(Medical Officer)

Station 1 Cdn Disc C.

Unit 1 Cdn Disc Centre

Date 8 Mar/45

GRL

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2663)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-29492	Pte		Jeffery	DUFOUR	18 Cdn Fd Amb RCAMC att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 6 Mar 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	[illegible]	[illegible]
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Captain	to be detailed by OC 13 CBR Bn	13 CBR Bn
CAPT. ~~Lieutenant~~	to be detailed by O C HQ 2 CBRG. ~~10 CBR Bn~~	HQ 2 CBRG. ~~10 CBR Bn~~
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.) — [signature] (Signed personally. RP 105 fn 2.) — Lt-Col (Rank.)

(V.E. Hugman)

Date 6 Mar 45 — A/Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Exhibit "F" GBS

E-29492 Pte Jeffry Dufour RCAMC

Plea for Mitigation of Sentence

Age 30 - Single. Enlisted 12 Apr 42

Came in England 18 Mar 43.

Came in France 6 July 44 — 2 Nov 44 (4 months) with unit

The accused had some trouble with one of the N.C.O. of his unit while he was in England, and when they came in France this N.C.O. never missed an opportunity of pinning him down, in ordering him to all sorts of duties and furthermore taking him from Med. orderly that he was to change him to stretcher bearer. The accused never refused any order as there was not much he could do about it. At one time the accused suffered from shell shock and was not sent to the rear for a rest. The accused never had a leave during all the time he was in action and came a day when he could not endure any more and decided to leave.

As far as he knew his med. category is "A".

The accused is willing to join back his unit at the earliest opportunity. He first ask to be treated fairly.

J. Goodman
Lt. Col.

Exhibit A GBC

Summary of Evidence in the case of E-29492 Pte DUFOUR J , 18 Cdn Fd Amb, RCAMC, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave.

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 53 dated 15 Dec 44.

Exhibit "B" - Certificate of apprehension dated 19 Feb 45.

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

W D Hungerford Capt

(W D Hungerford) Capt
Officer detailed to take Summary of Evidence.

Dated in the Field
5 Mar 45.

PART II ORDER EXTRACT FORM

99/20/ 18 Cdn Fd Amb/1 (A 5e)

TO: D & P.

28 FEB 19 45

EXTRACTS FROM: UNIT 18 CDN FD AMB., RCAMC.

Part II Order No. 53 dated 15 DEC 44

ABSENT WITHOUT LEAVE
AWL from 1715 hrs 29 NOV 44 Still absent 1715 hrs 7 DEC 44 (8th day)
E29492 Pte DUFOUR J

This is Exhibit "A"
W.D. Hunter Capt

Certified to be a true extract from the regimental books and documents in my custody

G. E. Marin Lt
Officer IC Records
Cdn Sec 2 Echelon A Gp.

~~Please acknowledge receipt on attached copy~~
~~required Please forward same~~

Info.

Originating Clerk's Initials WSC

(G E MARIN) Lt. for
Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70

SCHEDULE F.

I, 29492 ..... Pte. ..... Dufour, D? .....
B.Sec.H.Coy. 18 Fld.Ambulance 2.Div. Antwerp
Unit ..... was arrested at ..... (Place)
1525 ..... (Hours) on 19.Feb.45 (Date) and at that time of his arrest
he was wearing (Military Uniform) or (xxxxxxxxxxxxxxxx)

xxxxxxxxxxxxxxx

exhibit "E"

ARMY FORM B.296 (WAR) BBC

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
E-29492	Pte	DUFOUR Jeffery	18 Cdn Fd Amb, RCAMC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For ..... times.

For ..... times.

(No records soldiers ..... times.

For ..... times.

(word only) ..... times.

Date of first entry in Field Conduct Sheet 29 Jan/42

Date of last entry in Field Conduct Sheet 27 Nov/44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for no days in civil custody; and for 13 days in military custody, *i.e.*, no days in open arrest, 13 days in close arrest; of which no days were spent in hospital.

5. The present age of the accused is 30

6. The date of his attestation ~~calling up for military service~~ is 12 Apr/42

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of‡ no

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27633) Wt.24938-3404 24,000 7/44 A.S.E.W.Ltd. Gp.698 Forms/B.296(War)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		Soldier states no		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 25th day of March 1945

Admin. Offr
1 Cdn Disciplinary Centre

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

Certified true copy of Extract from Pt 11 Order No 53 dated 15 Dec 44	"A"
Certificate of apprehension dated 19 Feb 45	"B"

I, E-29492 Pte DUFOUR J, acknowledge having received one copy of the Charge Sheet and one copy of the Summary of Evidence, free of charge on 5 Mar 44.

E-29492 Pte Dufour J

5H-141

Pte Dufour J P

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-142598 Pte John Paul Dufour

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 15(1) A.A.	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; Findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 8.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(4). Information should be found on AAF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of 18 days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on AAF B.355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for 90 days.

(Sgd) ..... Judge Advocate, if any. Date awarded: 11 April 45 (Sgd) D. MacDougall Maj. President. (RP 45, 46)

(See back of Convening Order etc re disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 768.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 54–56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sentence, inside: Finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed.

I ~~direct that the accused be released from custody (or detention) forthwith (or until further orders)~~ (1) (In AA 57A Power if not cnfd.) JH

(Sgd) ..... Commanding ..... Confirming Officer.

Date 13 Apr 45

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

D142598 Pte John Paul DUFOUR, 9 CBRBn

APR 16 1945 — CMHQ — CART & MAIL — 9 BN 3 C.B.R. GP

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 54-141

CPA86 (to Dup of AFA3) 40/P & S/1098 (40/D)

FIELD GENERAL COURT-MARTIAL 4/38B

RECEIVED 21 MAY 1945 JAG BRANCH C.M.H.Q.

Convening Order of Brig J.S.B. Lord: Comd 3 Can Inf Bde K/F Gp, dated 10 Apr 45

ACCUSED.

(For trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

No. (a) Prmnt R. (b) Apptmt, A/R or A/Appmt. Full Christian Names. Surname. Unit.

D142598 Pte John Paul Dufour 9 CBR Bn

PROCEEDINGS REVIEWED

D. Adams Capt 21 May 45

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Held in the F/d in (country) Belgium on (date(s)) 11 April 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~AA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this Form arises, see Form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereon. See back of Convening Order, CF A95, for costs and instrs on how to record addresses, evidence etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1300 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter? Ans~~ ~~Does accused/prosecutor/witness (1) do you object to ..... as shorthand writer? Ans~~ ~~Does all/accused make a sworn.~~ (1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans: Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~AA, if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D. MacDougall	9 CBR Bn
Member	Lieut	A.D. Cpl.	9 CBR Bn
Member	Lieut	A.T. Lester	9 CBR Bn
Judge-Advocate			
Prosecutor	Lieut	J.R. Firth.	9 CBR Bn
Defending Offr	Lieut	J.D. Belfour	9 CBR Bn.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv. Offr.)
(2. If Pros a lawyer and Def Offr non-, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment make(s) (no) ~~No~~ plea. (1)

(1. If a special plea is made (bar: separate trial on one or more charges (RP 62(E), (GB)), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposit, the evidence, if any, and finding are recorded per Notes. For forms of record see references on this to Ref cited. Insert in A8 rank and name of the accused making other pleas.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge (2). Thereupon no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use appropriate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared~~ and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 90(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*I. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. Nil. (5)
(*I. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) to charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (2).*)

C2. The charges on which accused pleaded GUILTY to be read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "Yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(D) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....
Do you intend to call witnesses on your behalf ?
Ans.....
Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CA 185. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 45(A) fn 1, 86(C). Make the further opportunity or paras E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (b), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Nil Both
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 255 or AFE 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Nil in addition to my commencement (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(5), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the ~~JA, if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its gravity, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A)(i), KR Con 358, 330, 543-566, Overseas RO 8069, 2322, MML p 60, 737-739. As to sentences assigned for civil offences to the law of England see AA 41(5), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Officers under Instruction

Lieut R. B. Hunt
H. C. Burritt
E. H. Chamberlin
L. A. Davis
R. V. Barrett.

MEDICAL OFFICERS CERTIFICATE

(KR(Can)Para 557)
CMHQ CL 173

ertify that I have this day examined D 142598
(Number)

DUFOUR J.P. and in my opinion he is
(Name)

undergo trial by Court Martial

P. Field

11 Apr.

K. Palanek Capt (Sgd)
Medical Officer

(Unit) 9 Bn. 3 CBR Gp.

Almac Dougall Mol
Pres.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(b).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-142598	Pte		John, Paul,	DUFOUR	9 CBRBn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[illegible] named above as the accused, being subject to military law, has [illegible] committed the offence[illegible] set forth in the Charge Sheet[illegible] attached and on (date) 10 Apr 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence[illegible] should be tried by an ordinary General Court-Martial; [illegible]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person[illegible], and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) D. C. MacDougall (Must be named. RP 106.) 9 CBRBn (Unit.)

MEMBERS.

Capt or Lieut to be detailed by 9 CBRBn

Capt or Lieut (Rank.) to be detailed by 9 CBRBn (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

Capt or Lieut (Rank.) to be detailed by 9 CBRBn (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 10 Apr 45

(Signed personally. RP 105 fn 2.)
(J S H LIND)
Commanding 3 Cdn Base Rft Gp
Convening Officer.

Brig (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A [illegible]

Private Dufour may
Please submit

CHARGE SHEET

The accused, D-142598 Pte. John, Paul, DUFOUR, 9 C.B.R. Bn. a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he,

In the Field, at 0940 hours, 4 March 1945 absented himself without leave until surrendering himself at 2350 hours, 24 March 1945.

(Total time absent: 20 Days 14 hours 10 minutes.)

(H.W. RICK) - Lieut.-Col.
Commanding,
9 Bn. 3 C.B.R.G.

In the Field,
7 April 1945

To be tried by F.G.C.M.

In the field 10 APR 45

(J S H LIND) Brig
Comd 3 Cdn Base Rft Gp.

Thomas Dingall Mag.
President

Plea of Mitigation
in the case of D-142598 Dufour P.

The Accused has been in the Army 18 months, eight months of which he has spent overseas. He was attached to 7th Coy Provost attached to 1st Cdn Army. He has been stationed in Tilburg Holland. The Accused is a married man and has just learned he has become a father. This news in part caused his A.W.H. due to celebrating.

The Accused during his service has had no leave other than five days embarkation leave in Canada. He had been drinking quite heavily and it is the cause of his being before this Court. He is very sorry for what he has done.

Signed J.W. Dufour Lt.

SUMMARY OF EVIDENCE

In the case of D-142598 Pte. DUFOUR J.P. of 64 Coy 9 C.B.R. Bn., Canadian Army Overseas.

By direction of the Commanding Officer all the evidence is taken on Oath.

FIRST WITNESS B-93869 CSM COHAN R.W. of 64 Coy, 9 C.B.R. Bn., having been duly sworn states:-

I am B-93869 CSM Cohan R.W., C.S.M. of 64 Coy. 9 CBR Bn. On the 4 March 1945 a muster parade was held in 64 Coy at approximately 0940 hours. I called the roll personally and found that D-142598 Pte Dufour J.P. was absent I ordered a check made of the quarters to find if the accused was in barracks but had not attended the parade. He could not be located and I did not see him again or on any parade until he voluntarily reported back to 64 Company at 2350 hours 24 March 1945. He was then placed under close arrest.

The accused declines to cross examine the witness.

R.W. Cohan
.....
(B-93869 CSM COHAN R.W.)
9 Bn. 3 C.B.R.G.

SECOND WITNESS Documentary.

The Certificate of Surrender in accordance with Army Act Section 163(i)(j) produced as Documentary Evidence marked Exhibit "A", read over to the accused, signed by me and attached hereto.

A.H. Ralfs Lieut.
.....
(A.H. RALFS) - Lieut.
Officer detailed to take
Summary of Evidence.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:-

Do you wish to make a statement or to give any evidence on Oath ? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be used as evidence.

The accused declines to make any statement.

The accused declines to call any witnesses.

I certify that the foregoing Summary of Evidence consisting of one page was taken down in the presence of the accused and that R.P. 4(c)(d)(e)(f) have been complied with.

A.H. Ralfs Lieut
.....
(A.H. RALFS) - Lieut
Officer detailed to take
Summary of Evidence.

In the Field,
7 April 1945

Ex A. D. Macdonald Dougall maj
President

Exhibit "A"

CERTIFICATE UNDER ARMY ACT. SECTION 16B (i) (j)

Certified that No D-142598 ..... Rank.. Pte ..... Name. Dufour, J.P. .....

of the.. 64 Coy. 9 Bn. 3 C.B.R.Gp. ... Regt., surrendered to No B-93869..

Rank.. CSM ..... Name. Cohan, R.W. ..... of the. 64 Coy. 9 Bn. .....

..3 C.B.R.GP ..... at 64 Coy Reception Room at. 2350 ... hrs., on the. 24th .....

day of.. March, 1945 ..... as an absentee without leave.

He was wearing Military Uniform at the time of his surrender

Place.. the Field .....
Date... 4 Apr 45 .....

H.W. Rick

(H.W. Rick) Lt.-Col.,
Commanding,
9 Bn, 2 C.B.R. Bn.

This is Exhibit 'A' referred to in the Summary of Evidence in the case of D 142598 Pte Dufour J. P taken before me this seventh day of april 1945

A D Ralfs Lieut

OFFICER TAKING SUMMARY.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-142598	Pte.	DUFOUR J.P.	9 Bn. 3 C.B.R.G.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers hereto stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	A.W.L.	3 times.
For	Drunkenness (9-Nov. 44.	1 times.
For	Breaking out of Barracks	1 times.
For	Offences under Sec 40 AA	2 times.

Date of first entry in Field Conduct Sheet 1 March 44

Date of last entry in Field Conduct Sheet 4 March 45

2. ~~Previous convictions of the accused by a court martial or civil court are set out in the schedule hereto.~~ (NIL)

*Strike out if not applicable.

*3. ~~The accused at the present time is under sentence for ..... imposed on the ..... day of .....~~ (NIL)

4. The accused has been awaiting trial on the present charges for NIL ~~days in civil custody~~ and for 18 days in military custody, *i.e.*, NIL days in open arrest, 18 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 25 (Born 22 Aug 19)

6. The date of his attestation is 13 Sept. 43

~~enlisting or re-engaging~~

7. The service which the accused is allowed to reckon is .....

†State the military decorations to which held by accused.

8. The accused is in possession of† C.V.S.M.

9. (*If the accused is a warrant officer or N.C.O.*) ~~The accused has served continuously without reduction, to the present date,~~ (NIL)

Date of Promotion.

~~in the substantive rank of .....~~ (NIL)

~~in the war substantive rank of .....~~ (NIL)

~~in the acting rank of .....~~ (NIL)

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27351) W1249/8/5404 24,500 7/44 S.B.K.W.Ltd. Gp.666 Forms/B.296(War)/2

Lt. B. Tremblay
Adjutant

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 11 day of April [illegible]

[illegible]

3

No. D-142596 Name DUFOUR J.P. Sqn, Battery, or Company Corps CANADIAN PROVOST CORPS List (CPD) CA Enlistment 13-9-43 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFD 122) 40(F)28/136 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No one | Signature OC Company, etc F Gudette Capt | Character ????

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Westmount Bks	1-3-44	Pte		Neglect to the prejudice of good order and military discipline AA Sec 40 neglected to perform duty properly as station picquet	Lt E Belle	7 days CB	2-3-44	2 i/c	
Westmount Bks	19 Mar 44	Pte		AWL from 0700 hrs 19 March to 0910 hrs 20 March 44	Sgt Gilbert	7 days C.B.	20 March 44	????	Forfeits 1 days pay
Field	29 Aug 44	Pte		Sec 40 A.A. In that he allowed his weapon to become unserviceable, due to rust as found at Ordnance S.A. inspection on 29 Aug. 44.	Documentary	7 days CB	31 Aug 44	(BR Ker) Colonel	WM

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9-11-44	Pte		WOAS: DRUNKENNESS, in that he at BOUGHOUT, BELGIUM on 9 Nov 44, was DRUNK. Sec 19 AA	RSM Rae, JM L/Cpl DENNISON, DG	Awarded 14 Days C.B.	10 Nov 44	Captain E. Porter	
FIELD	17 Feb 45			WOAS AWL from 0630 hrs 17 Feb 45 till 2130 hrs 18 Feb 45. Total time absent:- 1 day 15 hrs Sec AA 15(1)	Sgt Scott Sgt Irwin	Awarded 7 days F.P.	19 Feb 45	Capt E.F. Putnam	

CERTIFIED TRUE COPY OF ORIGINAL HELD IN MY CUSTODY

Signd;..E.F..PUTNAM).....CAPT.
Mr. (E.F. PUTNAM) Commanding,
No. 7 Provost Company,
First Canadian Army Troops

Released from No 1 Fd Punishment Camp 25 Feb 1945
Days remission earned:- NIL

Cert. [illegible]

COPY

CANADIAN PROVOST COY

No. D-14259 Name DUFOUR JP. Sqn, Battery, or Company Corps G. LIST (CPD)CA Date of enlistment 13-9-43 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/F&S/130 (5412)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No one | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3-3-45	Pte		(1) Breaking Out of Barracks 3 Mar 45.	DOCUMENTARY				
Field	4-3-45			(2) AWL from 0330 hrs 24 Mar 45. until 2350 hrs 24 Mar 45. Total absence 20 days 21 hrs 20 mins. AA Sec 22	Sgt Newell Bdr Steele CSM Cohan				

CERTIFIED TRUE COPY OF ORIGINAL HELD IN MY CUSTODY

[signature]

(C.L. NELSON) - Capt. & Adjt.
9 Bn. 3 C.B.R.G.

Ex. C
[illegible]

(PTO)

RECEIPT FOR CHARGE SHEET AND SUMMARY OF EVIDENCE (MML Ch 5 Sec 5 SS 24)

I hereby acknowledge that I have this date 8 April 1945 received from 9 CBR Bn (Unit) one copy of Charge Sheet and Summary of Evidence referring to charge(s) of AWL from 0940 hrs 4 March 45 to 2350 hours 24 March 1945 for which I was remanded for Court-Martial.

J. P. Dufour
(Signature of Accused)

REQUEST FOR DEFENDING OFFICER (MML Ch 5 Sec 5 SS 27)

I hereby request that Lieut Firth if available, act in my defence. If this officer is not available, I request that the Commanding Officer of 9 CBR Bn (UNIT) appoint an officer to act on my behalf.

J. P. Dufour
(Signature of Accused)

I hereby certify that Lt J D Balfour (rank and name) was appointed to defend D142598 Pte Dufour J.P. (number, rank and name) at his forthcoming trial by Court-Martial and that the said Lt J D Balfour (rank and name) was notified that he was to act as Defending Officer on 9 Apr 45 (date).

[illegible] 3
(Adjt of Unit)

WHEN PROSECUTING OFFICER POSSESSES LEGAL QUALIFICATIONS (MML Ch 5 Sec 5 SS 25)

I hereby certify that I have been duly warned that the Prosecutor is an officer possessing legal qualifications.

J. P. Dufour
(Signature of Accused)

Date _____

_____

1. I hereby acknowledge receipt of one copy of Charge Sheet and one copy of the Summary of Evidence delivered to me

_____

2. (a) I request that _____

if available, be appointed, OR

(b) I request that an officer be appointed as my Defending Officer at my trial by Court-Martial.

_____

I hereby certify that _____ was appointed to defend

_____ at his forthcoming trial

by Court-Martial and that the said _____

was notified that he was defending officer on _____

_____ Captain.

WW-114

PTE DUFOUR L.E.

WW-114

FIELD GENERAL COURT-MARTIAL

CFA86 (To Beg of AFA3)
40/P&S/1698 (2864)

Convened by Order of Brigadier J. S. Sage C.B.E. Comd 4 Cdn. Inf. Bde dated 26 Nov. 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A116647	Pte.	Louis Edward	Dupuis	Essex Scot.

Proceedings Reviewed

P. C. Mitchell Lieut.

14 Dec. 43

Reviewing Officer (J.A.G. / M.F.F.C.)

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*) 27 Nov. 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0955 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to an interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to a shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans Nil. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 187 MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs composing the Court, etc:

President	Major	D. A. Dreamon	1 R. Regt C.
Member	Capt.	W. H. Burton	1 R. H. L. I.
Member	Capt.	A. J. Watters	1 R. Regt C.
Judge-Advocate			
Prosecutor	Lt.	D. S. C. Ritchie	1 Essex Scot.
Defending Offr	Capt.	J. W. Burgess	1 Essex Scot.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No. (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) (~~a~~) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or on bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A116647 Pte. Dupuis L. E. 1 Essex Scot.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	NOT GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (*date*) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial: a total of~~ days, of which days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

NOT GUILTY.

(Sgd) ..... 27 Nov. 43 (Sgd) A. A. Dreamon
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-76i, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....
Date .....
Commanding .....
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ■ *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (E) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 4.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D2 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No, Sir.(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~(an)~~ (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the first charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the first charge(s) ~~and allowed on the charge(s)~~ and that, accordingly, the trial will proceed on the former, ~~but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans I wish to give evidence. Do you intend to call witnesses on your behalf ? Ans Yes. Are they witnesses as to character only ? Ans No Sir.
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

~~D8. The President announces the finding(s) [a copy of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s) being subject to confirmation, will be promulgated later.(1)~~

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(1. *AA 54(2) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

~~D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or add anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *Where several accused tried separately see RP 29(F). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-366. Overseas RO 309, 1223, MML p 60, 737-739. As to sentences assigned for civil offences to the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(E), 68(1), KR Can 364.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

The accused elected trial by F.G.C.M.

CHARGE SHEET

The accused A 116547 Pte Louis Edward Dufour, 1st Bn., The Essex Scottish Regiment, a soldier of the Canadian Army Overseas is charged with:

First Charge
Army Act
Section 24 (2)

When on active service, losing by neglect his arms,

in that he,

On 3 SEP 43, was deficient of one No. 4 Mk.1 Rifle, Serial No. 18L6073, on charge to him valued 10 pounds, 3 shillings and 6 pence.

In the Field
23 NOV 43

J Thungay Maj
~~(B.C.S. MACDONALD) Lt.Col.~~,
Officer Commanding,
Essex Scottish Regiment.

To be tried by Field General Court-Martial

J.E. Sager
(JE SAGER ED) Brig.,
Comd., 4 CDN INF BDE

26 Nov 43

I desire to be represented by Capt. J.W. Burgess at my proposed trial by Field General Court Martial. If this officer is not available, I then desire to be represented by .....

L E Dufour

Signed L.E. Dufour,
A 116547, Pte.

MEDICAL OFFICER'S REPORT

I certify that No. A 116547 Pte Dufour L.E.

of Essex Scottish is in a good state of health,

and fit to undergo Trial by Court martial.

R D Thompson Capt
Medical Officer

Station Field

Date 27th Nov 43 0900 hrs R D Thompson

M. F. B. 246

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A116547	Pte		Louis Edward	DUFOUR	Essex Scot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Nov 43 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~[illegible]~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~[illegible]~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) A.A. DUNCANSON (Must be named. RP 106.) R Regt C (Unit.)

MEMBERS.

A Capt to be detailed by O.C., R Regt C.

A Capt to be detailed by O.C., RHLI.
(Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

A Capt to be detailed by O.C., Essex Scot.
(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

~~[illegible]~~

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in ENGLAND (Country.) (JE SAGER ED) (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 26 Nov 43 Commanding 4 CDN INF BDE
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

27 Nov. 43.

Witness No. 1 (Crosse)
A. 22207 Pte H.T. Agnew. Storeman
Sp. Coy. 1 Bn. Cross Scots.

Produces Coy. records and reads. Ex.
Accused signed for rifle No. 18 L 6073
Charged again with rifle No. 29 L 7758 which
he has now in his possession. He has
now rifle No. 29 L 7758 and could not
produce rifle No. 18 L 6073 on 1st inspection.

Witness No. 2. (Crosse)
A. 22313 R.S.M. S. Hunter St. A.
1 St Bn. Cross Scots
Procedure on checking rifles following
scheme Harlequin and result —
Upon return to Camp from scheme, a check
was made by all Coys. R.S.M.'s to determine
lost and switched weapons within regiment.
Each Coy. R.S.M. turned into the R.S. list of
rifles not belonging to Coy. They were
checked against other ledgers and returned
to owners. It was found that accused was
holding a rifle belonging to another soldier
and returned to rightful owner. Result of
check found rifle 18 L 6073 rifle still missing.

Cross examined by Defence.
Def — Any rifle lost by Sp. Coy.
Wit — Yes.
Def — Do you remember on scheme, C.S.M.'s reporting loss
to you of rifle 18 L 6073?
Wit — Don't remember for sure.
Def. — You checked all rifles in Bn. at Camp some
days later?
Wit — Yes sir. We also had rifles switched between Ex.

units and brought back four rifles from from other units. 5 S R & Royal Regt were units concerned. Did not receive rifles from any other units.

Witness No. 3. (Prosec)

A. 76119 Pte Harnock H. M. Essex Scots.

Pros - What happened at noon 3 Sept 43 on scheme Harlequin?

Ans - Accused and myself dined together with some other fellows whom I didn't know. Accused placed his rifle at the end of the table while I put my Sten Gun on table beside me. There were other rifles leaning on table with accused's rifle. After dinner accused started to leave but accused found the rifle left there was not his. He noticed this mistake and reported it to the C.L.M.S. immediately. We were the last ones at table therefore there was only the one rifle left (which was not his).

Cross Ex by Defence:-

Barrack tables lined up in rows. Did not know men who dined with us. We were by the tent wall. Accused was sitting in centre of bench which meant that there was a man between him and his rifle. I did not go with him to report his loss.

Witness No. 3. (Prosec)

Capt. T. A. Wilston Adjutant Essex Scots.

On 25 Aug 43 Coy (Ex Scots) were in area of Hiltonbury Camp during scheme Harlequin. Verbal order from Bde H.Q. personal arms to be carried by everyone at all times

except on walking out. Order conveyed to troops verbally through Coy. Cmdrs. and carried out.

Cross Ex by Defence.

I attended some meal parades and saw all men carrying rifles to mess tents and some piled them at end of dining table. I knew of accused's loss. Upon checking rifles on returning to Camp after Haulgum, accused had same rifle he had piled up on scheme in place of his own.

Defence Officer submits evidence that prosecution does not establish a prima facie case against accused on following grounds.

Sec 24 - 2 A.A., the fact that a soldier cannot produce arms etc upon inspection is evidence of loss by neglect but the producing of evidence by the accused or on his behalf showing that neglect was not culpable and that it was mere carelessness is complete answer to charge under this section. That statement will be found in notes to Sec 24 2. In this case, I submit that the Prosecution has not shown anything greater than carelessness as has been testified by the Asst that troops were required to carry arms to meals by Bde order — was common practice at meals to pile arms at end of table — also testified that loss was reported as at Hiltonbury Camp. — Pte Hamack testified that accused reported loss of weapon immediately after meal and during meal, only one man separated accused from his rifle and that immediately

Q.

upon picking up weapon, left at table recognised it was not his own. I submit that all the evidence is not consistent with finding of culpable neglect and does not even show Carelessness on accuds' part. At meal, he followed common practice of placing rifle at end of table, was familiar enough with his own rifle to notice it wasn't his own and was conscientious enough to report loss immediately and also looked after rifle left him which is seldom done in many cases. As prosecution, Court should feel justified in dismissing case against accused.

Court:- No Prima Facie Case proved. Not proven Carelessness no neglect but the fact that he did not have arms upon inspection is reason enough for Court to have it proved that weapon was not lost by neglect or Carelessness

Witness No 1. for Defence

Capt. Burgess Sp. Coy 7th Cdn Scots.

I am Coy Cmdr. of Sp. Coy and was with Coy on scheme Harlequin. On 3 Sept 43 after the noon meal parade accused came and reported loss of his rifle to C.S.M.S. At this time he had another rifle in place of his own. I reported loss to Adj. immediately and held a check in my Coy. suggesting a similar check be made in other Coys. Found two rifles missing in my Coy one of which was the accused's. The check was not made in rifle Coys. until after the scheme and we were back in

D

Camps. therefore a period of several days had lapsed before a check of all the rifles in the Bn. was made. In Harlequin it was common for men to place rifles at end of table as I saw them doing it on my meal inspections. It was possible for more than one coy to be eating in the same tent at one time during this scheme. I know that the rifle which accused found in place of his own on 3 Sept 43 remained in his possession until claimed by a rifleman in a rifle Coy of that unit.

2nd Witness for Defence (Questioned by Def. Off)

(Accused evidence on oath.) A 116547 Pte Dufour R.E. Ex Instr
On 3 Sept 43 I was eating in mess with Pte Harnack and other men but don't know who other men were nor what unit they belonged to. Some were at table when we arrived and some came later. I knew it was not my rifle by the rust on the barrel so looked it over carefully then reported to my C. Q. M. S. immediately.

Cross by Prosecutor.

Were you in habit of placing your rifle at end of table during scheme?

Answer — Yes Sir.

Defending Officer's Address

I submit that the prosecution has failed to establish the degree of neglect necessary to justify conviction under AW 24(c). The neglect, as a matter of fact, must start at some particular time and if we examine Pte Dupont's conduct up to the time he got up from the table and found his rifle missing and another one in its place, we find that he had done only what was common practice in the unit. That is, pursuant to brigade order, he carried his rifle on meal parades, and in common with all other riflemen, piled his rifle at the end of the table in the mess hall while he was eating. The evidence establishes that he could not have been more than three feet away from his rifle at any time as he was seated in the middle of an ordinary table folding.

I would also like to point out that Dupont's actions after he found his rifle missing were consistent with those of a reasonable and careful soldier in that he immediately reported the loss to his C.Q.M.S. and took care of the rifle that had been left in place of his, until it was claimed by the man charged with it, several days later.

I therefore respectfully submit that the onus imposed upon the defence when the prosecution established that Dupont could not produce the rifle charged to him, has by the above evidence, been shifted to the prosecution and that the prosecution has not adduced any proof capable of neglect or even carelessness on the part of the accused.

SUMMARY OF EVIDENCE

In the case of A 116547 Pte. Dufour, Louis Edward, 1st Bn., The Essex Scottish Regiment, a soldier of the Canadian Army (Overseas)

The accused is informed of his rights.

The Commanding Officer directs that the evidence be taken on oath.

First Witness For the Prosecution

Capt. J.W. Burgess, Officer Commanding, Support Coy 1st Bn., The Essex Scottish Regiment, being duly sworn states:

"On 3 SEP 43 while the Bn was on Exercise Harlequin after the noon meal, C.Q.M.S. Duignan reported to me that A 116547 Pte Dufour of the Mortar Pl had reported the loss of his rifle in the mess tent during the meal hour. I immediately reported the loss to the adjutant and told him that to prevent further complications I was having all rifles in Support Coy checked at once and suggested that if the rifle coys would also have a rifle check the missing rifle would in all probability be located. All rifles in Support Coy were checked that afternoon and it was found that only Pte. Dufour and one other person were in possession of rifles whose numbers did not correspond to the numbers of the rifles charged to them in the coy rifle register. I do not believe the rifles in the rifle coys were checked until after the completion of the scheme Harlequin and the Unit had returned to the Unit camp. On this check Pte Dufour's rifle was not located, but someone claimed the rifle then in Dufour's possession. I do not consider that Pte Dufour was in any way negligent in the loss of the rifle charged to him and think that all reasonable steps were taken immediately upon the loss of the rifle to effect the recovery."

I recognize the accused as A 116547 Pte. Dufour, L.E.

The accused declines to cross-examine the witness.

Signed J.W. Burgess, Capt.

Second Witness For the Prosecution

A 76119 Pte. Harnock, H.M., 1st Bn., The Essex Scottish Regiment, Canadian Army Overseas, being duly sworn states:

"On 3 SEP 43 while on the Exercise Harlequin, Pte. Dufour and I had lunch together in the same tent and at the same table. At the table were several other fellows whom I do not recognize. I had a Sten Gun and laid it on the table beside me. Pte. Dufour had his rifle and left it at the end of the table on a pile with several other rifles. After eating Dufour and I each had a cigarette and were the last to leave the table. When Dufour picked up the only rifle left, he

Continued Page 2

noticed that it was not his own rifle and immediately reported this to the Quartermaster."

I recognize the accused as A 116547 Pte. Dufour, L.E.

The accused declines to cross-examine the witness.

Signed H.M. Harnock, A76119 Pte.

√ Third Witness For the Prosecution

A 22207 Pte. Szvero, W.T., Storeman Support Coy., 1st Bn., The Essex Scottish Regiment, Canadian Army Overseas, having been duly sworn states:

"On the Company Records at present in my possession it is shown that there are two rifles on charge to A 116547 Pte. Dufour, L.E., Rifle #18L6073 and the rifle he now possesses # 29L7758."

I recognize A 116547 Pte. Dufour, L.E. the accused as being present at this time.

The accused declines to cross-examine the witness.

Signed W.T. Szvero, A 22207, Pte.

√ Fourth Witness For the Prosecution

A 22313 RQMS Hunter, W.A., Regimental Quartermaster Sergeant, 1st Bn., The Essex Scottish Regiment, Canadian Army Overseas, being duly sworn states:

"After we returned to Unit Camp at the conclusion of the Exercise Harlequin, all coy C.Os. checked their weapons to ascertain if rifle #18L6073 charged to Pte. Dufour was in their possession and also Regimental Stores were checked and the rifle was not in our possession. Pte. Dufour was in possession of a rifle belonging to a man in another company."

I recognize A 116547 Pte. Dufour, L.E. as being present at this hearing.

The accused declines to cross-examine the witness.

Signed W.A. Hunter, A 22313, RQMS

√ Fifth Witness For the Prosecution

A/Capt. F.A. Tilston, Adjutant, 1st Bn., The Essex Scottish Regiment, Canadian Army Overseas being duly sworn states:

"On occupation of the Hiltingbury area during scheme Harlequin verbal orders were received on 25th AUG 43 from commander 4 Cdn Inf Bde that personal weapons were to be carried by all ranks at all times except when walking out. In interpreting this order, all ranks were permitted to attend movies and shows in the Y.M.C.A. tents without their weapons and these orders were made known to all ranks."

The accused declines to cross-examine the witness.

Signed F.A. Tilston, Capt.

The accused having been duly cautioned in accordance with R.F. 4 (E) declines to make a statement.

Signed L.E. Dufour, A116547 Pte

The accused does not wish to call any witnesses for defence.

I certify that the foregoing Summary of Evidence was taken down by me in the presence of the accused and that Rules of Procedure 4 (c),(d),(e) and (f) have been complied with.

Signed S.C. Ritchie, Lieut.,
1st Bn., Essex Scottish Regiment,
Officer detailed to take the Summary
of Evidence.

2.

Summary of Evidence
in the case of

A 116547 Pte Du Four Louis Edward, 1st Bn. The Essex Scottish Regiment of Dalcot of the Canadian Army (Overseas)

The accused is informed of his right.
The Commanding Officer directs that the witnesses be taken on oath.

First witness for prosecution — Capt J. H. Burgess, Officer Commanding Support Coy. 1st Bn The Essex Scottish Regiment. being duly sworn states

On 3 Sept 43 while the Bn was on exercise Harlequin, after the noon meal CQMS Duggan reported to me that A 116547 Pte Du Four of the mortar Pl. had reported the loss of his rifle in the mess tent during the meal hour. I immediately reported the loss to the Adjutant & told him that to prevent future complications I was having all rifles in Support Coy checked at once. He suggested that if the rifle Coys. would also check a rifle check for missing rifle would in all probability be located. All rifles in Support Coy were checked that afternoon & it was found that only Pte Du Four & one other person were in possession of rifles whose number did not correspond to the numbers of the rifles charged to them in the Coy rifle register. [redacted]

[redacted] SCR
[redacted] SCR
[redacted] SCR
[redacted] SCR
[redacted] SCR
[redacted] SCR
[redacted] SCR
[redacted] SCR
[redacted] SCR
[redacted] SCR

[redacted] I do not believe the rifle in the rifle Coy's were checked until after the completion of the scheme Harlequin & the unit had returned to the unit camp. On this check Pte. Du Four's rifle was not located, but someone claimed the rifle then in Du Four's possession. I do not consider that Pte Du Four was in any way negligent in the loss of the rifle charged to him & think that all reasonable steps were taken immediately upon the loss of the rifle to effect its recovery

I recognize the accused as A116547 Pte Du Four L.F.

The accused declines to cross-examine the witness

Jno Burgess Capt

Second witness for Prosecution

A76119 Pte Harnock, H. M 1st Bn The Essex Scottish Regiment, Canad'n Army Overseas - being duly sworn state

On 3 Sept 43 while on the Exercise Harlequin Pte Du Four & I had lunch together in the same tent & at the same table. At the table were

Fourth Witness for Prosecution

A22313 RQMS Hunter W A Regimental Quarter Master Sergeant 1st Bn Essex Scottish Regiment Canadian Army Overseas being duly sworn states.

After we returned to Unit Camp at the Conclusion of the exercise Harlequin all Coy CQ's checked their weapons to ascertain if rifle # 18 L 6073 charged to Pte Du Four was in their possession & also Regimental stores were checked & the rifle was not in our possession. Pte Du Four was in possession of a rifle ~~the~~ belonging to a man in another Company.

I recognize A116547 Pte Du Four L E as being present at this hearing.

The accused declines to cross examine the witness

F. A. Hunter
A22313 RQMS.

Fifth Witness for Prosecution

A/Capt F. A. Tilston Adjutant 1st Bn Essex Scottish Reg't Canadian Army Overseas being duly sworn states

On occupation of the Hillingbury area during scheme Harlequin verbal orders were received on 25th Aug 43 from Commander 4 Cdn Inf Bde that personal weapons were to be carried by all ranks at all times except when walking out. In interpreting this order all ranks were permitted to attend movies & shows in the YMCA tents without

several other fellows whom I did not recognize. I had a Stengun & laid it on the table beside me. Pte Du Four had his rifle & left it at the end of the table on a pile with several other rifles. After eating Du Four & I each had a cigarette & were the last to leave the table. When Du Four picked up the only rifle left he noticed that it was not his own rifle & immediately reported this to the Quartermaster

I recognize the accused as A116547 Pte Du Four L.E.

The accused declines to cross examine the witness.

H.M. Harnock
A76119 Pte

Third Witness for Prosecution

A22207 Pte Szvero W.T. Storeman support Coy. 1st Bn Essex Scottish Regiment Canadian Army Overseas being duly sworn states

On the Company Records at present in my possession it is shown that there are two rifles on charge to A116547 Pte Du Four L.E.
Rifle # 18 L 6073 & the rifle he now possesses #29 L 7758

I recognize A116547 Pte Du Four L.E. The accused as being present at this time
The accused declined to cross examine the witness

W.T. Szvero
A22207 Pte

their weapons & these orders were made known to all ranks.

The accused declines to cross-examine the witness.

F.A. Tilstone Capt.

The accused having been duly cautioned in accordance with R.P. 4 (E) declines to make a statement

L.E. Dufour
A116547 PTE

The accused does not wish to call any witnesses for defence.

I certify that the foregoing Summary of Evidence was taken down by me in the presence of the accused & that Rules of Procedure 4 (C) (D), (E) & (F) have been complied with.

S.C. Ritchie Lieut
1st Bn Essex Scottish Reg't
Officer detailed to take the Summary of Evidence

I desire to have Capt J.W. Burgess represent me at my proposed Field General Court Martial.

L.E. Dufour
A116547 PTE

Y-74 (case #5)

Pte DUFOUR, M.

See 153 for 1st case
B-361 " 2nd "
I-46 " 3rd "
I-47 " 4th "

10/Dufour, M./1
A.G.5.

28 Aug 43.

C.R.U.,
D.J.A.G.,
A.G.2.,
A.M.D.2,
Officer i/c Records,
1 Cdn N.E.T.D.

E 4127 Pte Dufour, M.
6 Cdn Inf Bft Unit.

1. The m/n soldier was sentenced on 11 Feb 43 to 18 months detention, having been convicted by F.G.C.M. of a.w.l. and related offences.

2. On 24 Mar 43 he was reboarded Category "E" on a diagnosis of psychopathic personality (inadequate). The Board consider him totally unfit for military service; they add that he has done very little soldiering while in England and has spent a total of almost two years in detention. He has a long conduct sheet which shows a continuous history of a.w.l. and detention.

3. His sentence was reviewed 26 Aug 43 when it was directed that there be no remission, and that he be returned to Canada in custody. It is intended that he should serve his full sentence and on release be discharged by reason of his Category.

4. Pursuant to the regulations under which this soldier was committed to undergo detention in the U.K. his earliest date of release will be 11 Feb 44.

5. May the following action please be taken:-

(a) By C.R.U.: May the usual arrangements please be made to have this soldier removed from Cdn Det Bks and delivered to 1 Cdn N.E.T.D in custody. This letter will be sufficient authority for his removal.

(b) By D.J.A.G.: Herewith original proceedings F.G.C.M. and A.F.A3104 together with letter addressed to the Secretary, Department of National Defence. Please prepare a certified copy of the proceedings, and despatch enclosed letter and originals to N.D.H.Q.

(c) By A.G.2. This soldier will already have been posted to 1 Cdn N.E.T.D. by reason of his category. May N.D.H.Q. please be notified when cabling concerning the appropriate draft that this soldier is being returned to Canada in custody.

(d) By A.M.D.2.: May this soldier please be included in the earliest possible medical draft.

(e) By Officer i/c Records: Enclosed is a copy of a letter to the Secretary, Department of National Defence, Ottawa, for inclusion with the soldier's documents. It will be noted that proceedings F.G.C.M. and A.F.A3104 are being forwarded direct.

(f) By 1 Cdn N.E.T.D. For your information and necessary action, please.

(L.M.McDonald) Major
for D.A.G.
Canadian Military Headquarters

Quote No.
10/Dufour, M./1
A.G.5.

CANADIAN MILITARY HEADQUARTERS

CANADA

TELEPHONE: ABBEY [redacted]
TELEGRAPHIC ADDRESS: "CANMILITRY," LESQUARE
CABLE ADDRESS: "CANMILITRY" LONDON

2. COCKSPUR STREET
(TRAFALGAR SQUARE)
LONDON. S.W.1

28 Aug 43.

The Secretary,
Department of National Defence,
Ottawa,
Canada.

E 4127 Pte Dufour, M.
6 Cdn Inf Rft Unit.

1. The m/n soldier was sentenced on 11 Feb 43 to 18 months detention, having been convicted by F.G.C.M. of a.w.l., and related offences.

2. On 24 Mar 43 he was reboarded Category "E" on a diagnosis of psychopathic personality (inadequate). The Board consider him totally unfit for military service; they add that he has done very little soldiering while in England, and has spent a total of almost two years in detention. He has a long conduct sheet which shows a continuous history of a.w.l.and detention.

3. His sentence was reviewed 26 Aug 43 when it was directed that there be no remission, and that he be returned to Canada in custody. It is intended that he should serve his full sentence and on release be discharged by reason of his category.

4. Pursuant to the regulations under which this soldier was committed to undergo detention in the U.K. his earliest date of release will be 11 Feb 44.

5. Enclosed herewith are original proceedings F.G.C.M., and A.F.A3104. The soldier will be despatched on the earliest possible sailing.

for (P.J.Montague) Major General
Senior Officer
Canadian Military Headquarters

Encls (2)

Army Form A3104.

REVIEW OF SENTENCES AWARDED BY COURT MARTIAL.

I.—Case of No. E.4127, Pte. Marcel DUPCUR Unit 6 C.I.E.U.

Sentenced to serve 18 months detention. on 11 Feb., '43

Age on, and date of enlistment 22 yrs - 14 Sep.39 Term of service 3 years,5 month

FIRST TRIAL.

For details of offences, see paragraph VII. For C.O.'s remarks, see paragraph IX.

II.—To .....

Superior Military Authority.

I have directed that the above-named be not committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) for reasons given in paragraph X.

Place .....

Date .....

Confirming Authority.

III.—I direct that the sentence (which I hereby commute to .....) (of which I remit .....) (1) (2) (be suspended) (be put into execution) (1) and be reviewed on ..... (3).

Place .....

Date .....

Superior Military Authority (4).

(For action on review, see paragraph VI.)

SECOND TRIAL.

For details of offence, see paragraph VIII. For C.O.'s remarks, see paragraph XII.

IV.—(5) To .....

Superior Military Authority.

This man was again convicted on ..... and sentenced to ..... and I have directed that he shall not be committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) and run (concurrently) (consecutively) (1) with the previous (6) sentence for the reasons given in paragraph XIII.

Place .....

Date .....

Confirming Authority.

V.—(5) I direct that the sentence (which I hereby commute to .....) (of which I remit .....) (1) (2) (be suspended) (be put into execution) and that it run (concurrently) (consecutively) (1) with the previous (6) sentence of ..... and be reviewed on ..... (3).

Place .....

Date .....

Superior Military Authority (4).

(1) Erase words not required, and initial erasures.

(2) A sentence of penal servitude or imprisonment, combined with Discharge with Ignominy, cannot be suspended unless the Discharge with Ignominy is remitted.

(3) A suspended sentence must be reviewed at least once every three months, and a sentence put into execution should be reviewed in not more than six months.

(4) An order directing a sentence to be put into execution must be signed by the Superior Military Authority personally.

(5) This paragraph to be left unused until required. If the man is convicted a third time, a fresh form, using only paragraphs IV. and V., will be made out and attached to this form, and all further reviews will be on the attached form.

(6) A previous sentence of imprisonment or detention on a state of suspension is avoided by the award of a subsequent sentence of penal servitude.

(39948) W.4805/5376 300,000 6/42 A.& E.W.Ltd. Gp.4/6 Forms/A.3104/12

VI.—Action on Review.

(Whether the sentence or sentences are suspended or in execution.)

Any Reviewing Authority *under Section 57 of the Army Act* may under that Section mitigate, remit or commute a sentence which is in execution, and if the sentence as commuted or mitigated is penal servitude, imprisonment or detention, it will remain subject to the powers granted by Section 57A. of the Army Act. A partial remission of a sentence in suspension is not legal.

All recommendations, etc., considered upon review, should be pasted here.

Date	Directions	Signature and Appointment of Authority giving the directions	If sentence suspended, actual date of release and marks earned to count towards remission and signature of O.C. Prison or Detention Barracks
	No remission	P Montague (P. J. Montague) Major-General Senior Officer Canadian Military Headquarters 30 APR 1943	
	No remission Return to Canada in Custody	P [illegible] Apr 26	

(Continued on page 4.)

If further space required, an additional slip should be pasted here.

Charge or Charges giving particulars	Date of Offence	Date of Trial
VII.—First Trial.		
1st CHARGE A.A.Sec.15(1) - A.W.L. 28 days, 3 hours, 45 minutes.	7/1/43	10/2/43
2nd CHARGE A.A.Sec.24(2) - Losing by neglect his clothing, equipment and regimental necessaries, valued at £1-15-10½.	"	"
J. V. Chicoine Capt. Signature of Officer making entry.		
VIII.—Second Trial. Signature of Officer making entry.		

IX.—C.O.'s remarks and recommendations on First Trial.

Date		Signature
12/1/43	This man is 25 years of age - Cat. "A" - has been in the Army since Sep., '39. He has a continuous record of absences without leave. Has been found guilty on 2 charges of assaulting and one of stealing in a Civilian Court in London. This man has a very bad character. He will not soldier. Is not likely to become an efficient soldier and I recommend that sentence be served as promulgated.	[signature] (W.E.[illegible]) Lt-Col A/Officer Commanding #6 C.I.R.U.

X.—Confirming Officer's remarks and recommendations on First Trial.

Date		Signature
13 Feb 43	In view of the remarks of the C.O. 6 C.I.R.U. and of this man's record I do not recommend any remission of sentence.	[signature] (J.R. Stewart Lough) - Brigadier, Commanding, "A" Group Cdn Reinf Units, C.A.(O)

E-4127 Pte. Marcel DUFOUR
R.22e R. 6 C.I.R.U.

Y 74

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 10th day of FEBRUARY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "A" GROUP CANADIAN REINFORCEMENT UNITS, C.A.(O). , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[redacted]

*(1. [redacted]

*(2. [redacted]

[redacted]

*Omit if not applicable.

Proceedings Reviewed

J. A. Campbell Major

Reviewing Officer, C.A.(O.) Ltd.

22 Feb 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	P.F. PIRIE, MM, ED (Westmr.R.)	5 C.I.R.U.

Members.

Rank.	Name.	Regiment.
Captain	E.S. Catherwood (Westmr.R.)	5 C.I.R.U.
Captain	J.R. Woods (Fus.M.R.)	6 C.I.R.U.
Waiting Member Lieutenant	J.T. Ramsey (S.Sask.R.)	6 C.I.R.U.

*Signed [signature] Colonel,

Commanding "A" Group Cdn. Reinf. Units, C.A.(O).

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E-4127 Pte. Marcel DUFOUR R.22e R. 6 C.I.R.U.	First Charge A.A. Sec. 15(1)	Guilty	Guilty	Confirmed J. R. Stewart Lough Colonel
	Second Charge A.A. Sec. 24(2)	Guilty	Guilty	
	To be put under stoppages of pay until he has made good the sum in respect of shortages of kit etc. SEE CHARGE SHEET		£1-15-10½ To undergo detention for a period of 18 months. 11 Feb. 43 Peter F. Pierce Maj President	

"I have satisfied myself that none of the Officers detailed as members of this Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charge (charges) before this Court Martial."

Peter F. Pierce Maj
President of the Court.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):— No.

(Signed) J. R. Stewart Lough Colonel, (Signed) Peter F. Pierce Maj
Commanding "A" Gp.Cdn.Reinf.Units, Western Dept. 5 C.I.R.U.
Convening Officer C.A.(O). President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Eleventh day of Feb 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~ P.F.P.
~~*(4. The officers under instruction)~~ P.F.P.

were duly sworn.

* Omit if not applicable.

Signed this day of Eleventh Feb. 1943

Peter F. Pierce Maj
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 11th day of February 1943.

J. R. Stewart Lough Colonel
Confirming Officer.

Promulgated and extracts taken in the case of (E.4127 Pte. DUFOUR Marcel (R. 22 e. R., 6 C.I.R.U. (Part II Order # 12 dated 12 feb. 1943

(a) (Dated) 12 February 1943 (Signed) J. H. Chicoine Capt. & Adjt. (J.H.Chicoine)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, No.B-4127, Private Marcel DUFOUR, of the Royal 22e Regiment, on the strength of a Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas), is charged with:

FIRST CHARGE When on active service, absenting himself without leave,
A.A. Sec.15 (1)

In that he,

at Algonquin Camp, Witley, Surrey, did absent himself without leave from 2400 hours on the 7th of January, 1943, until he was apprehended by the Canadian Provost Corps in London at 0214 hours on the 2nd of February, 1943.

(Total absence 25 days, 2 hours, 40 minutes).

Lost by neglect his clothing, equipment and regimental
A.A. Sec. 76 (g) necessaries,

in that he,

at Algonquin Camp, Witley, Surrey, on the 8th of February, 1943, was deficient of the following articles of an aggregate value of one pound, fifteen shillings, less wear and tear allowance (21.2.10): one beret, cap, 5 d; 2 pr socks, 3 d; 2 pr boot laces, 2 d; 1 dressing, iron, 1 d; 1 dressing, fire, field, 10 d; 1 pr gloves, woollen, 2 d; 1 knife, clasp, 4 s 2 d; 1 knife, table, 2 d; 1 knife, clasp, 4 s 2 d; 1 knife, table, 2 d; 1 razor, safety, 2 s 2 d; 1 razor, safety, 2 s 2 d; 1 tape, waist, 1 d; 1 towel, face, 1 s 2 d; 1 towel, face, 1 s 2 d; 1 towel, face, 1 s 2

1. 341

Medical Officer's Certificate.

I certify I have examined this morning E-4127 Pte. Dufour M. and declare he is fit to undergo trial by a Court-Martial.

February 11th 1943.

Jas Fleming Capt
RCAMC

PTP

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT Laurentide McKelly ON THE 11 DAY OF Oct 43

TRIAL OF:-No E-4127 Pte. Marcel Dufour R.22 R. 6 C.I.R.U.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) C.E. Lavesque R.22 (Unit) 6 C.I.R.U.

Defending Officer:- (Name) G. Beauchamp R.22 (Unit) 6 C.I.R.U.

At 1945 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings. complied with

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names. complied with

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 - No

The President, members and judge advocate (if any) are duly sworn.

The following constitute the Court:

President Major [illegible] Western Regt (Unit) 5 C.I.R.U.

Members Capt. C.J. Calkinson Western Regt (Unit) 5 C.I.R.U.

Capt. J.R. Wood Thos. M.R. (Unit) 6 C.I.R.U.

~~The officers under instruction are duly sworn.~~ PTP

Q2 ~~Do you object to.....acting as short-hand writer? A2 -~~ PTP

~~The shorthand writer is duly sworn.~~ PTP

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with. yes

The summary of evidence is read, signed by the President, and attached to the proceedings. Complied with.

Court is closed to consider its finding. Court is re-opened.

Name C.E. Lavesque (Unit) R.22 R. 6 C.I.R.U. sworn, produces AFB 296 and MFM 6 and upon being questioned by the Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3 (To accused) - Do you wish to make any statement in mitigation of punishment? A3 - No. my defending Officer

Q4 Do you wish to give evidence yourself or to call any witnesses as to character? A4 - No. Just my defending Officer.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

Statement made by defending Officer.

The explanation which the accuse wishes to lay before the court are the following:

1° He received a cable from Canada telling him the death of his mother. This upset him, and it was in that state of mind that he left without permission.

2° The accuse wishes to go in the field. He promesse to give no more trouble and become a good and efficient soldier.

Fr. Beauchamp Lt.

Vu et transmis Maj
President

SUMMARY OF EVIDENCE

In the case of No E-4127, Private Marcel DUFOUR, of the Royal 22e Regiment, on the strength of 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas).

By direction of the Commanding Officer, this Summary of Evidence was taken under oath.

FIRST WITNESS FOR THE PROSECUTION

Lieut C. Gagnon, Royal 22e Regiment, 6 CIRU, having been duly sworn, states:

I am Lieut C. Gagnon, of the Royal 22e Regiment, 6 CIRU. I produce herewith the following documents concerning the accused, whom I now recognise:

(a) Copy of the Declaration of a Court of Inquiry, dated 3 Feb 43.

(b) Certificate of Arrest in Accordance with PC 2997 of 10 Apr 42, dated 3 Feb 43.

The accused declines to cross-examine this witness.

C Gagnon ..... Lieut.

SECOND WITNESS FOR THE PROSECUTION

P-48713 L/Sgt Vezina, P.G., Royal 22e Regiment, 6 CIRU, having been duly sworn, states:

I am P-48713 L/Sgt Vezina, P.G., of the Royal 22e Regiment, 6 CIRU. On 9 Feb 43, I inspected the kit of the accused, whom I now recognise, and found him to be deficient of the following articles of an appraised value of one pound, fifteen shillings, ten pence halfpenny (£1.15.10½):

ARTICLES		VOCABULARY PRICE £ s d	APPRAISED VALUE £ s d
Badges, [illegible]	1	0. 0. [illegible]	0. 0. [illegible]
Badges, [illegible]	2	0. 0. [illegible]	0. 0. [illegible]
Laces, [illegible]	4	0. [illegible]	0. 0. [illegible]
Brasses, button	1	0. 0. [illegible]	0. 0. [illegible]
Dressing, field	1	0. 1. [illegible]	0. 0.10
Gloves, [illegible]	1	0. 2. [illegible]	0. 1.12
Knife, [illegible]	1	0. [illegible]	0. [illegible]
Shorts, PT	1	0. 1. [illegible]	0. 1. [illegible]
Knife, table	1	0. [illegible]	0. 0. [illegible]
Shirts, PT	2	0. 3. 6	0. [illegible]
Belt, waist, web	1	0. [illegible]	0. 4. [illegible]
Braces, web	2	0. 6. 2	0. 4. [illegible]
Pouches, [illegible]	2	0.17. 4	0.13. 2
Eyeshields	4	0. 2. 3	0. 1. 7
TOTAL	£	2. 7.10½	£ 1.15.10½

The accused declines to cross-examine this witness.

P. G. Vezina ..... L/Sgt.

The accused, having been duly cautioned in France in accordance with RP 5 (E) and CARO 1414, reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused, at Algonquin Camp, Witley, Surrey, this 9th day of February, 1943, and that Rules of Procedure 4 (C), (D), (E), (F) and (G) have been duly complied with.

Charles E. Lewisque ..... President
(Officer taking Summary)

Algonquin Camp,
Witley, Surrey,
9th day of February, 1943.
CEL/JLB

Peter Stirling Maj President

1970

APPENDIX "A"

4 Feb. 43.

R. 22e R. Coy Stores,
No. 6 C.I.R.U.

Certified that a kit inspection of the u/m OR was held this date and the articles listed below were found to be deficient:

E-4127 Pte. Dufour, M.

ARTICLES		VOCABULARY PRICE. £	s	d	APPRAISED VALUE. £	s.	d.
Badges, cap	1	0	0	6½	0	0	4½
Boot laces, prs.	2	0	0	3	0	0	2
Boots, ankle	2	2	3	0	1	12	3
Braces, prs.	1	0	1	5½	0	0	11
Cap comforter	1	0	1	8	0	1	3
Field Service Cap.	1	0	3	8	0	2	9
Great Coat.	1	5	17	0½	2	16	3.3
Comb, hair,	1	0	0	2	0	0	1.6
Discs, identity	2	0	0	2	0	0	1.6
First Fld.Dress.	1	0	1	1	0	0	9.9
Jacket sweater.	1	0	0	9	0	0	7.2
Knife, table,	1	0	0	9½	0	0	7.6
Belt, waist,	1	0	6	7	0	4	7.6
Braces, web,	2	0	6	2½	0	4	4.3
Covers, mess tin:	1	0	1	4½	0	1	0.4
Pouch, ammunition:	2	0	0	9	0	0	6.3
PT vests:	2	0	1	6	0	1	1.6
Knife, clasp,	1	0	0	3½	0	0	11.7
Gas wallet:	1	0	1	5½	0	1	1
Gloves,woollen prs.	1	0	0	7½	0	1	11.6
		£	8.	10 . 2½	£	6.	7. 8

Signed: A. Lesage, Storeman,
R.22e R. Coy. Store,
No. 6 C.I.R.U.

Certified True Copy.

W. Lincoln Capt
a/Adjt

Exhibit "B"

PJP

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42.

I CERTIFY that No. B-4127 . Rank . Pte: . Name . DUFOUR M. . . . . .

Unit R.22nd.Regt.#1.C.D.I.R.B. was arrested at . London . . . . . .(Place)

at . 0145. .(hour) on 3-Feb.1943.(date) and that at the time of his arrest he was wearing (Military Uniform) or (~~Civilian Clothes~~). Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

London,
3-Feb.1943

. . . . . Capt.
(W. Fern) D. A. P. M.,
London Area

Exhibit "C" [illegible]

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at No. 6 C.I.R.U. on the THIRD day of FEBRUARY 19 43, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. E-4127 Pte. Dufour M., R.22e R.

DECLARATION.

The Court declare, that E-4127 Pte. Dufour M., R.22e R. did illegally absent himself without permission from 2200 hrs. on the 7th day of January 1943, and is still so absent, and on the 4th of February 1943 was deficient of articles of kit (listed as appendix "A") ammounting to £ 6.7sh.5d.

Names of President and Members Pres. Lt. J.A. Barette, R.22e R.
Members: Lt. C. Falardeau, R.22e R.
Lt. J. Chouinard, R.22e R.

Signature of Commanding Officer [illegible], Lt-Col

CERTIFIED TRUE COPY.

J.H. Lincoln E Capt

Signature of Officer having custody of the Original Record.

a/ Adjudant

(12281) Wt.34318/1622 75,000 10/39 A.& E.W.Ltd. Gp.498 Forms.21/115/10

No. E-412 Name Dufour, M. Sqn., Battery, or Company } Corps H 22e R Date of enlistment } 14 Sep 39 G.C. Badges } N/A Service or Proficiency Pay } N/A

M.F.M. 6 (A.F.B. 122) 12551—7-41 (1259-39) H.Q. 1771-39-1651

Date of last entry in Company Conduct Sheet } N/A No. and date of last drunk } N/A Period not reckoning towards freedom from extra fine } N/A Sheet No. 1 Signature O.C. Company, etc. } W.E. Morgan, Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 17 May 40		Pte		AA 15-1 AWL from 2359 hrs 17 May 40 to 1930 hrs 22 May 40 (4 days 23 hrs 31 min)	Cpl [illegible]	168 hrs detn	23 May 40	Major Dixie	Forf 3 days pay for AWL
Field 20 Jun 40		Pte		AA 15-1 AWL from 0900 hrs 20 Jun 40 to 2300 hrs 21 Jun 40 (1 day 14 hrs)	Cpl [illegible] Sollis	168 hrs detn	22 Jun 40	Lt-Col Flynn	Forf 2 days pay for AWL
Field 20 Jul 40		Pte		AA 15-1 AWL from 2230 hrs 20 Jul 40 to 0000 hrs 30 Jul 40 (9 days 2 hrs 20 min)	[illegible]	14 days detn	1 Aug 40	Lt-Col Flynn	Forf 10 days pay for AWL
Field 6 Aug 40		Pte		AA 15-1 AWL from 1900 hrs 6 Aug 40 to 0441 hrs 21 Aug 40 (14 days 9 hrs 41 min)	Sgt [illegible]	14 days detn	26 Aug 40	Lt-Col Flynn	Forf 15 days pay for AWL

Certified true copy

Officer having custody of original documents

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 9 Sep 40		Pte		AA 15-1 AWL from 2100 hrs 9 Sep 40 to 0310 hrs 15 Sep 40 (5 days 6 hrs 10 min)	Sgt Archambault L/C Lodson	60 days detn	23 Sep 40	Pook	Forf 6 days pay for AWL & 5 days for time in arrest Rem 10 days 30 Oct 40
Field 1 Nov 40		Pte		AA 15-1 AWL from 2200 hrs 1 Nov 40 to 1330 hrs 9 Nov 40 (7 days 15 hrs 30 min)	L/Sgt Gatien	28 days detn	11 Nov 40	Lt-Col Mathewson	Forf 6 days pay for AWL Rem 2 days 6 Dec
Field 6 Dec 40		Pte		AA 15-1 AWL from 2300 hrs 6 Dec 40 to 1325 hrs 30 Dec 40 (23 days 15 hrs 25 min)	Sgt Gray	28 days detn	2 Jan 41	Major Belanger	Forf 24 days pay for AWL
Field 27 Jan 41		Pte		AA 15-1 AWL from 2200 hrs 27 Jan 41 to 1400 hrs 11 Feb 41 (14 days 16 hrs)	Sgt Gatien	28 days detn	13 Feb 41	Major Belanger	Forf 15 days pay for AWL

Certified true copy

Officer having custody of original documents

No. E-4127 Name Dufour, M. Sqn., Battery, or Company Corps R 22e R Date of enlistment 14 Sep 3[illegible] G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.R. 118) 17534—7-41 (1210-30) H.Q. 1772-38-1652

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. O. Gauthier, Capt Character 4

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 25 Mar 41		Pte		1) Stealing		1 month Lapt	24 Mar 41	Civil	Released
				2) Assault		7 days Lapt		Court	9 May 41
				3) Stealing		1 month Lapt			
Field 4 Mar 41		Pte		AA 1-1 AWL from 1230 hrs 4 Mar		2 years IHL	9 Jul 41	FCCM	Forf 116 days
				41 to 1000 hrs 16 Mar 41 (11 days		1 year rem			pay for AWL &
				21 hrs 30 min)		Sentence com-			time in arrest
						mted to date			Rem 119 days
						12 Jan 42			11 Mar 42
Field 22 Mar 42		Pte		1) AA 1-1 AWL 1 day 9 hrs 45 min		1 year IHL	14 Apr 42	FCCM	Forf 2 days
				2) AA 40 Conduct to prejudice of					pay for AWL &
				good order & military discipline					22 days pay
				3) AA 22 Wee in custody attempting					for time in
				to escape					arrest
				Lost of [illegible]					Rem 95 days

Certified true copy..... J. Gardner Capt Officer Acting Custody of original documents 2 Jan 43 (P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Fl[illegible]		Pte		AA 22 Willfully giving false evidence when examined [illegible] before a court-martial		6 months Lapt [illegible] [illegible] [illegible] sentence	5 May 4[illegible]	[illegible]	

Certified true copy consisting of two sheets

[illegible]

Officer having custody of original documents

Peter [illegible] Map
President

Exhibit "D" WFP

ARMY FORM B.2126.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
8-6127	Private	Dufour, E.	22nd Battalion	C.E.F.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1910.

* The entries herein stated should correspond with the number of reports in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness should be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Army Act 17 (1)	times	7 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, NIL

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* ~~He was at the present time under sentence for~~ ~~imprisonment with hard labour~~ ~~for~~ ~~by a~~ ~~summary~~ ~~court~~ ~~on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for ~~days~~ in civil custody, and ~~days~~ in military custody, making a total of ~~days~~ of which ~~days~~ were spent in hospital.

5. The present age of the accused according to his ~~enrolment or service~~ attestation paper is 26 years

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 24 Aug 14

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 244 days

8. The accused is entitled to deferred pay or gratuity in respect of 244 days service.

9. The accused is entitled to reckon 244 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (~~or no good conduct or~~ ~~entitled to obtain any military decoration or reward~~).

11. ~~I notice accused as a warrant officer.~~ The accused believes he was made a warrant officer last June, the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of dated

~~and in the regiment (or corps or department) the rank of dated~~

(Signed) WILLOUGHBY GIBBS, A.G., A.F.H.Q., Canada

Peter Hill Major
President

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-4127 Rank Private Name [illegible] of [illegible] Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	23 Sep 40	Army Act 15 (1)	60 days detention	10 days
	Field			
Civil	24 Mar 41	(1) Stealing (2) Assaulting an air-	2 months imprisonment	23 days
Court	London	raid warden (3) Stealing	with hard labour	
			7 days imprisonment	
FGCM	9 Jul 41	Army Act 15 (1)	2 years imprisonment	115 days
	Field		with hard labour	
			commuted 1 year data	
FGCM	22 Mar 42	(1) Army Act 15 (1) (2) Army Act 40	1 year imprisonment	99 days
	Field	(3) Army Act 22	with hard labour	
FGCM	5 May 42	Army Act 29	6 months imprisonment	
	Field		concurrent with	
			previous sentence	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day of Feb 1943

[signature] Hardin Lieut

Officer having custody of original documents

FS. The accused has served as a non-commissioned officer continuously without reduction, to the present date.

In the rank of _____ years _____ Date of Promotion

In the rank of _____ years _____

In the rank of _____ years _____

Conclusion.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.

BFP

(1) I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Algonquin Camp, Witley, Surrey, preliminary to my Court-Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

Dated at Witley, Surrey,
this.....day of
.....194

[signature].....

(2) I hereby acknowledge that I have been served with a true copy of an additional Summary of Evidence taken at Algonquin Camp, Witley, Surrey, preliminary to my Court-Martial.

Dated at Witley, Surrey,
this.....day of
.....194

[signature].....

(3) I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of.....LIEUT G BEAUCHAMP R22R.....
if he is available.

Dated at Witley, Surrey,
this.....day of
.....194

[signature].....

361 A Pt. Dufour M.

E-4127 Pte. Dufour,M.
No.2 Cdn Inf Hldg Unit.

9A

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 3rd day of July, 19 41.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS,CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

[redacted]

* Omit if not applicable

President.

Rank.	Name.	Regiment.
Major	A.W. Wright	No.2 Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	J.L. Charleboie	No.1 Cdn Inf Hldg Unit
Lieutenant	H. Weville	No.3 Cdn Inf Hldg Unit
Lieutenant	L. Riddell	No.3 Cdn Inf Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [signature]. Brigadier

Commanding Cdn Base Units,Cdn Army.

Convening Officer.

Promulgated RO 179 d/31-2-41

E-4127 Pte. Dufour, M.
No.2 Cdn Inf Hldg Unit.

9A
Orig
36/B 22

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 3rd day of July, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~[illegible]~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

~~[illegible]~~

*(1. ~~[illegible]~~)

*(2. ~~[illegible]~~)

*(3. ~~[illegible]~~ ~~service~~)

~~[illegible]~~

President.

Rank.	Name.	Regiment.
Major	A.W. Wright	No.2 Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	J.L. Charlebois	No.1 Cdn Inf Hldg Unit
Lieutenant	H. Weville	No.3 Cdn Inf Hldg Unit
Lieutenant	L. Riddell	No.3 Cdn Inf Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [signature], Brigadier

Commanding Cdn Base Units, Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E-4127 ob Gyn PTE. DUFOUR, M. No.2 Cdn Inf Hldg Unit.	First Charge A.A. sec 15(1) See charge sheet attached.	Guilty	Guilty Two years imprisonment with hard labour AWW Maj Pres 9-7-41	I confirm the finding & sentence of the Court but remit one year of the sentence L

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) L. F. Page Brigadier (Signed) Aurèle Wright Major
Commanding Cdn Base Units, Cdn Army. #2 C.I.H.U.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

9

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the ninth day of ~~the~~ July, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
AWW ~~3. The interpreter~~ Short hand writer
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this ninth day of July 1941.

Aurèle Wright Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~
~~AWW~~
~~President of the Court Martial~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ L

Signed this 18th day of July 1941.

L. F. Page Major-General
Confirming Officer.

Promulgated and extracts taken in the case of E 4127 Pte Dufour, M.

(a) (Dated) 31 July 41 (Signed) [signature] Mtt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

21

CHARGE SHEET

The accused, E-4127 Pte. Marcel Dufour, Royal 22nd Regiment Reinforcement, No. 2 Canadian Infantry Holding Unit, a soldier of the Canadian Army (Overseas) is charged with:

First Charge
Sec 15 (1)
Army Act

When on active service, absenting himself without leave,

in that he,

at No. 5 General Hospital, Taplow, Bucks., on 4th March 1941, at about 1230 hours, absented himself without leave, until apprehended by Civil Police, 16th March 1941, at about 1000 hours in London.

F. S. Mathewson

(F.S. MATHEWSON) Lt.-Col.
Officer Commanding
No. 2 Cdn. Inf. Holding Unit.

To be tried by Field General Court Martial

L. D. Snyder ...Brigadier
Commanding Cdn Base Units.

mp 102
tley, Surrey
May 1941

London, Kents
This 4th day of May 41.

A. Weir Wright Major
President.

No. E-4127, Pte. DUFOUR M., No. 2 Canadian Infantry Holding Unit, tried by Field General Court Martial at WITLEY, Surrey, on the 9th day of July, 1941.

The order convening the Court, the charge sheet, summary of evidence and medical certificate are laid before the Court.

Prosecutor:-	Lieut. J.H. Chicoine	No. 2 CIHU.
Defending Officer:-	Lieut. M. Cote	No. 2 CIHU.

At 1000 hrs the trial commences.

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 No, sir.

The President and members are duly sworn.

Q2 Do you object to B66944, Sgt. T. Pyburn, R.Regt.C., Canadian Base Units, acting as shorthand writer?
A2 No, sir.

The shorthand writer is duly sworn.

The charge sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon the charge in the above mentioned charge sheet.

Q3 Are you guilty or not guilty of the charge against you, which you have heard read?
A3 Guilty, sir.

R.P. 35 (B) is complied with by the Court.

The summary of evidence is read, signed by the President and annexed to the proceedings.

THE COURT: Do you wish to make any statement in mitigation of punishment?

DEFENDING OFFICER: I merely wish to say, sir, that the civil police gave him no chance to defend himself. They said he stole some blankets in a shelter and he does not understand English very well and he asked for an officer of this Regiment to defend him in the civil court and they gave him six weeks.

THE COURT: You say Pte. Dufour was arrested on a civil charge?

DEFENDING OFFICER: Yes, and he was AWL when he was arrested, and when he was arrested for theft of the blankets he had no chance to defend himself. He asked for an officer from this Regiment and they refused him, and according to British law a man accused of a crime has a right to defend himself, and I would like the Court to take into consideration the fact that he has served six weeks in a civil prison.

THE COURT: As President of this Court, I doubt very much that any man who cannot understand the evidence is going to be sentenced until he has a proper chance of understanding.

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DEFENDING OFFICER: He asked for an officer to represent him and the only thing one heard was that he was going down for six weeks. We asked the regiment if they had received any news that Pte. Dufour was arrested and they said the only news they had was that he had received six weeks in the civil jail. He went away AWL.

THE COURT: Your plea in mitigation of punishment is that Pte. Dufour was sentenced to six weeks by a civil power and he had requested an officer of his regiment to defend him and the regiment did not receive any such request?

DEFENDING OFFICER: Right. He has been in the detention barracks since 9 May 41 and I have the Sgt. to testify as to his character, and I would like the Court to hear him.

THE COURT: You appreciate that if you bring in a character witness in favour of the accused you at the same time allow his past record, if any, to be brought out?

DEFENDING OFFICER: Yes, sir.

THE COURT: In other words, witnesses who will give evidence of good character can be offset by records or any kind of evidence which will show the accused had a record?

DEFENDING OFFICER: I would like the Sgt to testify as to the character of Pte. Dufour since the time he has been in detention.

THE COURT: The second part of your plea is that the man has been undergoing detention since 9 May 41?

DEFENDING OFFICER: Yes, sir, since he was brought back from Wandsworth Prison.

THE COURT: Now you wish to have the Sgt of the Provost Corps brought to tell the Court of the character of the witness?

DEFENDING OFFICER: Yes, sir.

THE PROSECUTOR: May I have an opportunity of replying to this address?

THE COURT: You will have an opportunity in a minute.

No. G45801, Sgt. E.W. ALLEN, No. 2 Canadian Infantry Holding Unit, being duly sworn, is examined by the defending officer:-

Q4 Give the Court your name, number and unit?
A4 No. G45801, Sgt. E.W. Allen, Provost Sergeant, No. 2 CINU.
Q5 How long has Pte Dufour been in your custody?
A5 About a month.
Q6 What have you to say regarding his work and character during that time?
A6 Very good, sir; no trouble whatever. He has always worked when requested and his general conduct has been good.
Q7 In other words, he was a good soldier?
A7 Yes, sir.

CROSS-EXAMINED BY THE PROSECUTOR

Q8 Did you know Pte Dufour before you had him in detention?
A8 No sir, I did not.
Q9 Then the only knowledge you have of him is that period of one month he spent with you?
A9 Yes, sir.

Am w beg

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CLOSING ADDRESS OF THE PROSECUTOR

I merely wish to draw attention to the fact that the defending officer in his address to the Court did not help to clarify the matter. The accused man was brought up before a civil court. He was arrested by the civil power whilst AWL from Taplow Hospital. The man was tried, a man to translate was appointed, and they even had the man examined: I remember seeing the papers for a mental test. I submit when the defending officer says the man did not receive justice, it is going a little too far. The evidence before the Court shows that the man was absent for so many days. We are not concerned with the fact that the accused has served some time for another offence: he is not being tried here for that offence.

THE COURT: The Court is well aware of that. What, if anything, have you as to this man's past record?

THE PROSECUTOR: I have the usual form AF B296 and MFM 6.

The Prosecutor, Lieut. J.H. CHICOINE, No. 2 Canadian Infantry Holding Unit, being duly sworn, states:-

I am Lieut. J.H. Chicoine, Royal 22e Regt., attached to No. 2 CIHU. I have been detailed as Courts Martial Officer. I have here and wish to produce AF B296 and certified true copy of the regimental conduct sheet, MFM 6.

The above documents are annexed to the proceedings.

The defending officer declines to cross-examine this witness.

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE.

Awarded

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SUMMARY OF EVIDENCE

in the case of

E4127 Pte. Marcel Dufour, Royal 22nd Regiment, Reinforcement, No. 2 Canadian Infantry Holding Unit, a soldier of the Canadian Army (Overseas)

Evidence taken on oath by order of the Commanding Officer.

First Witness Prosecution — H-33049 Pte. N. Morrison R.C.A.M.C.

A statement by Private Morrison is attached. The statement has been read to the accused, who was told that it would be used in evidence against him. The accused did not ask any questions, nor did he raise any objections.

Second Witness Prosecution — Lieut. C.E. Bent having been duly sworn, states:

I am Acting Records Officer of No. 2 Canadian Infantry Holding Unit. I produce herewith:

(a) A.F.B. 252 - dated 9-5-41

This concerns the accused whom I recognize.

C.E. Bent Lieut.

Awarded eight days
President

Accused declines to cross-examine this witness.

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No. 5 Canadian General Hospital,
R.C.A.M.C.

Taplow, Bucks.
15th May 1941.

STATEMENT BY:-

I, H-33049 Pte. N. Morrison, R.C.A.M.C.
declare that on March 4, 1941 I was on duty as orderly in ward 14, No. 5 General Hospital, Taplow. At about 1230 hours on March 4, 1941 Pte. M. Dufour came to me and asked if he could go out for a walk. I found it rather strange that he should borrow a respirator to take a walk, I nevertheless gave him permission to go out. I did not see Pte. Dufour again. I furthermore declare that Pte. Dufour was wearing a great coat, the property of one Pte. Ford, who has since left the hospital. He was also in possession of 1 hospital shirt, 1 red tie, 1 blue suit, 1 pair pyjamas.

N Morrison ----------Private.

Witness--- Lawrence Cannon ----------Lieut.

The evidence of this witness could not readily be procured in the presence of the accused.

L. Cannon Lieut.

AWW.

SUMMARY OF EVIDENCE

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in the case of

E-4127 Private Marcel Dufour, Royal 22nd Regiment, Reinforcement, No. 2 Canadian Infantry Holding Unit, a soldier of the Canadian Army (Overseas)

Third Witness Lieut. J. Gendron, having been duly sworn, states:
Prosecution

"I am an officer of the Royal 22nd Regiment, on the strength of No. 2 Canadian Infantry Holding Unit. On the 19th May 1941, E-4127 Private Marcel Dufour, declared to me that he was apprehended in London, at about 1000 hours, on 16th March 1941, by the Civil Police, after having absented himself without leave from No. 5 General Hospital, Taplow, Bucks. Before making this statement Private Dufour was duly cautioned in compliance with R.P. 4 (e).

J.M. Gendron Lieut.

Accused declines to cross-examine this witness.

Compliance with R.P. 4 (c) (d) (e) certified.

Laurent P. Lieut.

Officer detailed by Officer Commanding No. 2 Canadian Infantry Holding Unit to take Summary of Evidence.

mp 102 (Laurentide Barracks)
tley, Surrey
May 1941

Aug 10 Aug.

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CHARGE

Army Form B 252
(See King's Regulations)

No.2 Inf. Holding Unit. — Regiment / Battery / Squadron / Troop or Company

CHARGE against No. E-4127 Rank Pte

Name Dufour M.

Place London. Date of Offence 9-May-41.

OFFENCE: D.A.S. Absent without leave from ..... until apprehended by the Civil Police at Baker St. W.1, at about 10.00 Hrs on the 16-Mar-41.

D.A.P.M.
CANADIAN MILITARY POLICE
LONDON AREA.

Names of Witnesses:—

L/Cpl Stanton, Canadian Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company: Awd 10.

Punishment Awarded:

By whom Awarded:

Adjutant

P.T.O.

Statement of **EVIDENCE** in the case of

E-4127 Pte Dufour M.
No.2 Inf. Holding Unit.

Sir,

At London on the 9-May-41 at about 14.15 Hrs I was on duty at C.P.C.H.Q. when acting on instructions received I proceeded to Wandsworth Prison where I saw the a/m soldier who ~~xxx~~ had been previously arrested, charged, and sentenced by the Civil Authorities. Having now served his term he was handed over to me and I escorted him to C.P.C.H.Q. where I handed him over to the N.C.O. i/c of Cells to be detained.

London.
8-May-41.

G.P. Stanton ..... L/Cpl.
Canadian Provost Corps.

Sir,

I was N.C.O. i/c of Cells at C.P.C.H.Q. when the a/m soldier was handed over to be detained.

London.
9-May-41.

M. Dufour ..... Cpl.
Canadian Provost Corps.

REMARKS

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 16th day of May 1941

[signature] Adjutant.

No. 2 Inf. Rifle Holding Unit, (C.A.S.F.)

Exhibit "A"

Aurelio Wright Major
President

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Army Form B296.

Statement as to Character and Particulars of Service of Accused.

E-4127 Pte. Marcel Dujaud of the Royal 22nd Regiment Reinforcement (#2 C.I.H.U.)

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

Det Pers. 96a, N.R. 1905.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.	*Since Enlistment.
For G.W.I.	8 times	8 times.
For Larany and Gosault	1 times	1 times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct~~,

~~or~~,

~~There are no entries in the Conduct sheets of the accused~~.

~~2. The accused has not been previously convicted~~,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

[illegible]

Aur. W.

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for ~~nil~~ beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges

for ~~nil~~ days in Civil Custody,

and 60 days in Military Custody.

Total ~~nil~~ 64 days.

Of which 24 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 24

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 14th July 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is two years.

8. The accused is entitled to deferred pay or gratuity in respect of two years' service.

9. The accused is entitled to reckon 2 years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to

]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion.
In the rank of , years,	
In the rank of , years,	
In the rank of , years,	

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

NOTE.—*A verbatim extract from the regimental books, stating fines corrections and dispensations with trial, must be inserted*

Description of Court by which tried, or status of officer imposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
G.C.M.	24th March 1941	Stealing (two charges) desertion	Two months. 9 days (Fourteen months) 60 days detention	
D.F.C. M.	23. 9. 1940	Sec. 15 (1) AA		

(Continued overleaf)

Last sheet destroyed 4-5-40

No. E4127 Name Dufour M | Sqn., Battery, or Company | Corps R 22e R C.A.(O) | Date of enlistment 14-9-39 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk N11 | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with same	By whom awarded	Remarks
Guillemont	17-5-40	Pte		A.W.L. fr 2359 hrs 17-5-40 to 1930 hrs 22-5-40 Absence 4 days 19 hrs 31 mts	Cpl. Bissonnette	168 hrs	Det 23-5-40	Major Blais.	Forfeits 5 days pay
Guillemont	20-6-40	Pte		A.W.L. from 0900 hrs 20-6-40 to 2300 hrs 21-6-40 Absence 1 day 14 hrs	C.S.M. Dagenais Cpl Solis	168 hrs	Det. 22-6-40	Lt.Col Flynn	Forfeits 2 days pay
In the Field	20-7-40	Pte		A.W.L. from 2230 hrs 20-7-40 until 0050 hrs 30-7-40 Absence 9 days 2 hr 20 mts	C.S.M. Dagenais L/C Muringuy L/C Myers	14 days detention	1-8-40	Lt.Col Flynn	Forfeits 10 dy pay
In the Field	6-8-40	Pte		A.W.L. from 1900 hr 6-8-40 until 0445 hr 21-8-40 Absence 19 days 4 hr 45 mts	Sgt. Beaudet Sgt. Switz	19 dy det	26-8-40	Lt.-Col Flynn	Forfeits 20 days pay

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	9-9-40	Pte		A.W.L. from 2100 hr 9-9-40 to 0310 hr 15-9-40 Sec 15-1 A A. Absence 5 days 6 hr 10 mts	Sgt. Archambault Cpl Lauzon	60 dy detention	23-9-40	G.F.C.M.	Major Ernst Pres.
Louisburg	1-11-40	Pte		A.W.L. from 2200 hr 1-11-40 to 1330 hr 9-11-40 Absence 7 days 15 hr 30 mts	L/Sgt Gatein	28 dy det.	11-11-40	Lt.Col Mathewson	Forfeits 8 dy pay
Bordon	6-12-40	Pte		Sec 15(1) AA AWL from 2200 hr 6-12-40 to 1325 hr 30-12-40 Absence 23 days 15 hr 25 mts	Sgt. Guay	28 dy Det	2-1-41	Major Belanger	Forfeits 24 days pay
Witley	27-1-41	Pte		Sec 15(1) AA AWL from 2200 hr 27-1-41 to 1400 hr 11-2-41 Absence 14 days 16 hr	Sgt. Gatien	28 dy det	13-2-41	Major Belanger	Forfeits 15 days pay
London	25-3-41	Pte		Stealing (2) Assaulting (3) Stealing		1 month 7 days 1 month Sentence to run consecutively at H.M. Prison Wandsworth.	24-3-41	Civil Court	Released 9-5-41

[illegible]

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MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No E-4127 Pte. Dufourd, M.

of Royal 22e. Regiment. No. 2 Cdn. Holding and in my opinion he

is fit to undergo Trial by Court Martial.

Awais Wright Major
President

Station Laurentide Camp.

Date 9 July 1941

Lucius Ostringer
Medical Officer

8A

REPORT FOR CONFIRMING OFFECER

ON

COURT-MARTIAL PROCEEDINGS IN CDN. BASE UNITS

Name of Accused . No. E4127, Pte MARCEL DUFOUR

Date & Place of Trial . . . 9 Jul 41, WITLEY, Surrey.

President of Court-Martial . . Major A.W. Wright

Time Accused in Confinement before Trial . . . ~~24 days~~ 60 days (24 in hospital)

Charge	Plea	Finding
AA 15(1) AWL, apprehended	G	G

absent 12 days

Sentence. . 2 years imprisonment W.H.L.

Service Record and Character . Age 24, enlisted 1st Sep 39.

AWL 8 - Larcency & Assault 1.

Irregularities

Illegalities

Remarks of Reviewing Officer for Confirming Officer The sentence is informally expressed, but this is in line with "The Green Book", para 59(b).

Morrigan Lt.
Reviewing Officer

ENTERED IN RECORDS OF C.M.
proceedings in envelope No. 361 B

Remarks by Confirming Officer

Is the civil conviction mentioned in the proceedings the same one as shown on AFB 296 which shows 1 mth or is it another? If the latter it should be entered

P

7A

MINUTE SHEET. 10-D-156.

1. Enclo. 1A.

Memo from 1 Cdn. Div. enclosing Proceedings of Court-Martial.
26 Sep 40.

2. Enclo. 2A.

Memo to 7 Corps returning Proceedings for correction.
29 Sep 40.

3. Enclo. 3A.

Reminder to 7 Corps.
5 Oct 40.

4. Enclo. 4A.

Reminder to 7 Corps.
~~14~~ Oct 40
10

5. Endo 5A.

Reminder to 7 Corps.
14 Oct 40.

6.

For documents re evidence etc. see File 10 - D -5

46I (2nd case)
See 361B for 1st case
47I " 3rd case

REGIMENTAL DOCUMENTS

H.Q. FILE No. .....

NAME Pte. DUFOUR M. REGIMENTAL No. .....

UNIT OF ENLISTMENT ..... RANK .....

	CONTENTS	NON-EFFECTIVE BY
	COMBINED DECLARATION FORM OR ATTESTATION AND MEDICAL HISTORY (M.F.M.1 & 1A) OR (M.F.M.2 & 2A)	DEATH
	SERVICE AND CASUALTY FORM (M.F.M.4 & 4A) (A.F.B.103)	DATE
	PARTICULARS OF FAMILY (M.F.M.5)	CAUSE
	FIELD CONDUCT SHEET (M.F.M.6) (A.F.B.122)	AUTHORITY
	CERTIFICATE OF SERVICE (M.F.M.8) COPY OF, OR DISCHARGE CERTIFICATE (M.F.M.7) COPY OF	
	FORM OF WILL (M.F.M.10 OR M.F.M.10A)	
	DENTAL HISTORY SHEET	DISCHARGE
	MEDICAL REPORT OR CASE HISTORY SHEET	DATE
	MEDICAL EXAMINATION ON LEAVING THE SERVICE	REASON
	TRANSFER CLOTHING STATEMENT	AUTHORITY
	LAST PAY CERTIFICATE (M.F.D.930A)	
	PROCEEDINGS ON DISCHARGE	
	PROCEEDINGS COURT OF ENQUIRY	DESERTION
	DECLARATIONS COURT OF ENQUIRY	DATE
	PAY SHEETS	AUTHORITY
	CARDS	
	SUNDRY	

6/Dufour,M./O
E-4127, Pte. Dufour, M.

Correspondence to be PINNED here.

Army Form A.3.

46 I

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this second day of May, 1942.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers ~~hereunder named~~ appointed or detailed hereunder,

* Omit if not applicable

*~~I am unable to appoint~~

~~*(Three Officers to form the Court.)~~

~~*(A Field Officer as President)~~

~~*(Three Officers having more than one year's service)~~

~~as the following persons named:~~

Judge Advocate Lieut. G.M. Morrison, H.Q.,C.R.U.

PROCEEDINGS REVIEWED.

G.M. Graham Capt
Revising Officer (Acting) C.M.R.
22 May 42

President.

Rank	Name.	Regiment
MAJOR	J.C.Q. BOWN	1 C.S.R.U.

Members.

Rank	Name	Regiment
A Captain	from	1 C.E.R.U.
A Captain	from	1 C.A.S.R.U.
A Lieutenant	from	1 C.G.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [signature] Brigadier.

Commanding Canadian Reinforcement Units.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
E-4127 PTE. DUFOUR, M. (R. 22e. Reg't) I.C.D.E.R.U.	FIRST CHARGE. A.A.Sec.29 See Charge Sheet attached.	Not Guilty	Guilty Awarded Six (6) months imprisonment Major 5 May 1944	Confirmed Brigadier Commanding

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) Brigadier (Signed) Major
Commanding Cdn. Reinf. Units. President.
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

CHARGE SHEET

The accused, E-4127 Pte. Dufour, M., Royal 22e Regt., on the strength of No.1 Canadian Division Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army (Overseas) is charged with:

1st Charge
Sec. 29
Army Act

When on Active Service, wilfully giving False Evidence when examined on Oath before a Field-General Court-Martial:

in that he:

At Laurentide Camp, Witley, Surrey, on the 14th day of April 1942 when examined as a witness before a Field-General Court-Martial, stated on Oath that he was in possession of one shilling and sixpence, and no more, when apprehended in LONDON on the 23rd day of March 1942, by L/Cpl Flowers and L/Cpl Good of No.6 Provost Company, well knowing such statement to be false.

(L.W. Slack) Lt.-Col., A/Comdr.,
No.1 Cdn. Div. Inf. Reinf. Unit.

To be tried by Field General Court Martial.

Brigadier.
Commanding, Cdn. Reinforcement Units.
Convening Officer.

Algonquin Camp,
Witley, Surrey,
27th day of April,
1942.

Farnborough, Hants,
this 2nd May 1942

John O. Bowen
Major.

MEDICAL OFFICER'S REPORT

I certify that No. E4127 Pte, Dufour.M.

of R.22 Reg. #.1.C.D.I.R.U. is in a Good state of health,

and Fit to undergo Trial By Court Martial.

[signature]
Medical Officer
CANADIAN DETENTION BARRACKS

Station Cdn. Det. Bks. Headley Comm.
Erie Camp

Date 5.May. 1942

No. E-4127, PTE. DUFOUR M., 1 CDIRU, tried by Field General Court Martial at WITLEY, Surrey on the 5th day of May, 1942.

PRESIDENT:	Major J.C.Q. Bown,	1 CSRU.
MEMBERS:	Capt. R.J. Smallian,	1 CERU.
	Capt. H.E. Patrick,	1 CASCRU.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:	Lieut. J.R. Turner,	1 CDIRU.
Defending Officer:	Lieut. R. Dumais,	1 CDIRU.

At 1500 hrs the trial commences.

The order convening the Court is read, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Accused objected to present Court, and requested trial by a court composed only of French speaking officers.

The Court was closed to consider application of accused.

The Court being re-opened, the accused was again brought before it.

THE COURT: The Court have decided to proceed with your trial, and you will have an interpreter to translate for you.

DEFENDING OFFICER: The accused says he wants to have a French court, or he will not say a word. He says he does not trust an interpreter either.

THE COURT: You might explain to him that we will have an interpreter, and he may object to the interpreter if he wishes, but the court is going to carry on.

The President, members and Judge Advocate are duly sworn.

LIEUT. J. BARIBOU-HARDY, 1 C.D.I.R.U., was duly sworn as Interpreter.

Q2. Do you object to No S-66944, A/Sgt T. Pyburn, H.Q., C.R.U., acting as shorthand writer?
A2. No, sir.

The shorthand writer is duly sworn.

The charge sheet is signed by the President, and annexed to the proceedings.

The accused is arraigned upon the charge in the above mentioned charge sheet.

Q3. Are you guilty or not guilty of the charge against you, which you have heard read?
A3. Not Guilty.

Q4. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A4. No, sir.

PROSECUTOR: The charge here arises out of a court martial held on 14-15 Apr 42, and the first witness will be Sgt Pyburn, who will give evidence as to a statement made by the accused on oath before that court martial. This statement will indicate the fact that the accused stated that he had, when apprehended in London by L/Cpls Good and Flowers of the CPC, only 1/6. To further questioning he replied in such a way as to definitely indicate to the court that he had 1/6, and no more, and that that was the only money he had in his possession. L/Cpl Flowers will give evidence that he was offered a sum of money in excess of 1/6 and that he actually had that money. L/Cpl Good will also state that he saw the money as it was being offered to himself and L/Cpl Flowers; he actually saw money in possession of the accused in excess of 1/6. I expect Cpl Chenery, who, following the arrest booked the accused in at HQ, No 6 Prov Coy and took his possessions from him, will give evidence as to the actual amount of money taken from the accused and signed for by him.

DEFENCE: The accused object to my defending him; he says he asked for another officer to defend him and it was not me.

JUDGE ADVOCATE: Who detailed you to act?

DEFENCE: The Coy Comdr.

JUDGE ADVOCATE: Who does the accused want?

PROSECUTOR: The accused requested the services of Lieut. R. Archambault if he was available. That information was immly passed on to Bde Wing, and Lt. Archambault was not available, and when that happens the Bde detail someone else to defend the accused.

JUDGE ADVOCATE: Mr. Interpreter, you might explain that to the accused.

The accused signifies his consent to LIEUT. R. DUMAIS defending him.

1st witness for prosecution) No. B-66944, A/Sgt. Thomas Pyburn, H.Q., C.R.U., being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

I am No. B66944, A/Sgt. Thomas Pyburn, H.Q., C.R.U. On the 14th and 15th days of April, 1942 I attended a F.G.C.M. held at Witley, Surrey, for the purpose of trying No. E-4127, Pte. Dufour M. of No 1 C.D.I.R.U. At the trial I was duly sworn as shorthand writer, and recorded in shorthand a verbatim report of the proceedings. Pte Dufour M. was warned by the Judge Advocate, Capt. A.H. Friedgut, HQ, CRU, in accordance with R.P. 40 & 41, and the provisions of the said R.P. were fully explained to him. The accused elected to be sworn and to give his evidence under oath. Below are excerpts, transcribed from my shorthand notes taken at the trial, of questions asked by the def officer, Lt. J. Gourdeau, No 1 CDIRU, and statements made by the accused under oath:-

"A.....We came to the Prov Corps HQ. They asked me to empty my pockets.
"I had sixpence in pennies and a one-shilling piece, and they had taken my
"pay book before I reached the HQ when they asked me for my pass. Then
"they took me to the cell.
"Q. Would you tell the court where you got the 1/6 that you had in your
"pocket at that time when you gave it to the Prov Corps for disposal?
"A. I was at my girl friend's, and I asked them if they had any button polish,
"and she said no. Then she took her purse and gave me 1/6 to buy some
"polish.
"Q. Before she gave you the 1/6 did you have any money?
"A. No.
"Q. Did you have any money in your pockets?
"A. No.
"Q. That is quite understood, is it?
"A. Yes, sir.

Upon completion of the Def Officer's examination the Judge Advocate questioned the accused, and following is an excerpt from my shorthand notes of the questions asked by the Judge Advocate and the answers given by the accused under oath:-

"Q. You have heard the evidence of L/Cpl Flowers that you offered him 2/-?
"A. Yes, sir.
"Q. And further, that you offered also another 2/- to L/Cpl Good at that "time when they were taking you down to the road to the HQ of the Prov "Corps?
"A. I could not give them both 2/- because I only had 1/6 in my pocket.
"Q. Did you hear the evidence given by the Prov Corps?
"A. Yes, I understand.
"Q. Now what do you say as to that evidence?
"A. I nev er offered money to these Prov Corps?
"Q. At any time?
"A. No, sir.
"Q. Did you hear the evidence of L/Cpl Flowers that he saw handed over by "you and taken from you as part of your possessions at H.Q. CPC in London, "a certain amount of silver which he estimated to be 6/- or 7/-?
"A. Yes, sir.
"Q. What do you say about that?
"A. I only had 1/6, a one-shilling piece and sixpence in pennies.
"Q. Did you take the money out of your pocket to give to the Prov people "there in London?
"A. I took the money from my pocket and put it on the table, six pennies "and one shilling.
"Q. Did you receive that money back again?
"A. Yes, when I left the next afternoon they gave me back all my personal "belongings, including this money, 1/6, also some pictures.
"Q. And did you sign for it?
"A. Yes, I did."

Q5. Sgt Pyburn, on which day of the previous FGCM were those statement which you have read given?
A5. On the 14 Apr 42, the first day of the former trial.

No cross-examination.

2nd witness for prosecution) No. S-65602, L/CPL R.J. FLOWERS, No 6 Prov Coy, C.P.C., being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q6. What do you know of the apprehension of Pte Dufour M. on 23 Mar 42, with particular reference to anything you know of what money he had in his possession?
A6. On 23 Mar 42 I was on duty in the Marble Arch area in the vicinity of Edgeware Rd and Hyde Park. At 1345 hrs I met the accused on Edgeware Rd at the corner of a street. On questioning him, he did not have a pass, nor his pay book. I informed him I was taking him to HQ for further investigation. L/Cpl Good was accompanying me. Pte Dufour put his hand in his pocket and pulled out two 2-shilling pieces, offering one to L/Cpl Good and the other to myself.
Q7. Did you see the money?
A7. Yes sir, I am just coming to that now. As L/Cpl Good didn't take the money, Pte Dufour passed me the two 2-shilling pieces. I accepted that money in my hand and was going to mark it for evidence. L/Cpl Good being senior, told me to give the money back to the accused, which I did. Then again, proceeding in the truck from the corner of Edgeware Rd to Police HQ, Pte Dufour gave me 4 shillings again and wanted me to take them for a drink and let him go. At the detn quarters, when I turned him over, when Pte Dufour turned his personal belongings out I saw at least 6 or 7 shillings in silver. Cpl Chenery searched the accused after he had handed over his personal belongings and locked him up.
Q8. You stated you saw some money; are you sure how much was there?
A8. No sir, all I saw was 6 or 7 shillings in silver; I was standing talking to someone else at the time.

No cross-examination.

3rd witness) for prosecution) No. A-3692, L/CPL. E.P. GOOD, No 6 Prov Coy, C.P.C., being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q9. Were you present at the apprehension of Pte Dufour M. on 23 Mar 42?
A9. Yes, sir.
Q10. Without going into details of the actual arrest, will you tell us anything you know of the money Pte Dufour had?
A10. On 23 Mar 42, in company with L/Cpl Flowers, I was on foot patrol at Marble Arch. Pte Dufour was checked for his pass, which he could not produce. We were escorting him down Edgeware Road to a telephone from where I could phone HQ for tpt. He offered us each 2-shillings, which was refused.
Q11. How did he offer it to you?
A11. A florin in each hand; we were on either side of him.
Q12. What was the total amount of money you saw on Pte Dufour?
A12. Four shillings.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q13. You said that the accused produced a 1-florin piece in each hand?
A13. Yes, sir.
Q14. You did say that?
A14. Yes, sir.
Q15. Are you sure there were two pieces - 1 florin in each hand?
A15. Yes, sir.

Q16. JUDGE ADVOCATE: Do you recognise the accused here as the man who offered you that money?
A16. Yes, sir.
Q17. Were you in the police station?
A17. Yes, sir.
Q18. Did you see anything that took place there when the accused was handed over?
A18. No sir, I have nothing to do with that work at all.

4th witness) for prosecution) B74166, CPL. A.R.E. CHUNERY, No. 6 Prov Coy, C.P.C., being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q19. Were you concerned in the booking in of No E-4127, Pte Dufour M at about 1425 hrs, 23 Mar 42?
A19. Yes, sir.
Q20. Will you tell the court just what your actions were in taking over from the Prov men who brought him in?
A20. He was brought into the office escorted by L/Cpls Flowers and Good. My duties are to enter the charge book and also make an entry of his personal belongings, and this was done.
Q21. You may refresh your memory. By the way, what record book is that you have with you?
A21. Book No. 12, charge book.
Q22. Is that a book in which you made entries in this case in question?
A22. Yes, sir.
Q23. Would you tellthe court what property you took from Pte Dufour, using the book to refresh your memory?
A23. Respirator; field service cap and badge; scarf; anklets; 16 cigarettes; 3 books; a strap; cigarette papers; shoe polish; a £1 note; silver 6 shillings; bronze sevenpence; pay book Pt I.
Q24. What did you do after taking this property from him?
A24. The property is entered in the book, placed in a bag in the prisoner's presence, and tied.

JUDGE ADVOCATE: I think the court want to know what the witness actually did in this particular case.

Q25. PROSECUTOR: Will you tell the court just what you did or what Pte Dufour did after having laid this property before you?
A25. I read over the orders governing cells to him, and then he signed the book showing I had taken his property, then he was placed in the cells.
Q26. For what purpose did he sign the book?
A26. That I had recd this property from him.
Q27. Then what was the next you had to do with this property following that?
A27. We have a box which we keep locked, and his property was put in that box.
Q28. What happened when Pte Dufour was due for release?
A28. His property was handed over to him and he signed the book, showing he had recd the correct amount of property I had taken from him the day before.
Q29. Was there any delay in connection with Pte Dufour being discharged?
A29. Yes sir, until the time the train went he was placed back in the cells again.
Q30. What happened to the property?
A30. It was placed in a bag and put back in the safe.
Q31. Did you get a signature for it?
A31. No sir, not at that time.
Q32. Then what happened when it was time for him to go?
A32. He recd his property and signed the book again.
Q33. Would you refresh your memory by looking at the book?
A33. Yes, sir.
Q34. Beside this property which you have told the court about, how many times does the signature of Pte Dufour appear?
A34. Three times, sir.
Q35. I don't think the court are just sure of the reason for 3 signatures, rather than two?
A35. The first signature is written when I took the property from him; the second signature when I handed the property to him; and the third signature when I handed the property to him again the second time before he left.
Q36. Do you recognise the accused?
A36. Yes, sir.
Q37. Who is he?
A37. Pte Dufour.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q38. Were the escorts the same from London to his Regt as the ones who picked him up in London?
A38. No sir, they were not the same.
Q39. How many times did he sign the book?
A39. Three times.
Q40. Were all signatures made on the same day?
A40. No sir, once on the 23rd and twice on the 24th.
Q41. On what date did he leave you?
A41. On the 24th.
JUDGE ADVOCATE:-
Q42. Did you have any conversation with the accused?
A42. No, sir.
Q43. Did he know what he was signing?
A43. Yes, sir.
Q44. How do you know? Why are you so sure of that?
A44. It was explained to him why I was taking it from him and he was asked for his signature certifying that I had taken that property from him: I explained that to him.
Q45. Are you perfectly sure you recd the amount of money you have already stated in evidence, from the accused?
A45. Yes, sir.
Q46. Will you show the court the signatures of the accused in your book?
A46. Yes, sir (witness indicates signatures in Charge Book No. 12).
Q47. Are the signatures of Pte Dufour appearing on p. 46 in his handwriting made in your presence?
A47. Yes, sir.
Q48. There seems to be a couple of lines drawn through a couple of the signatures there; is there any explanation of that?

A46. No explanation, only that he did it himself when writing, sir.

The prosecution is closed.

Q49. JUDGE ADVOCATE: Has the defence any application to make at this time?
A49. DEFENCE: No, sir.

R.P. 40 & 41 duly complied with.

Q50. Do you apply to give evidence yourself as a witness?
A50. DEFENCE: The accused wishes to make a statement, not under oath.
Q51. Do you intend to call any other witness in your defence?
A51. No, sir.

The Accused, No E-4127, PTE DUFOUR M., No 1 CDIRU, not being sworn, made the following statement:-

On Sat morning I asked for a pass to Guilford. In the afternoon I went to take a bus, the bus was full and I could not get on it. Then I got down the road next to 102, then crossed over and looked for a lift. I got a lift and went to Guilford and the driver told me he was going to London, so I carried on with him. I had some money in my pocket then, 1/6, and there was a restaurant when we had a cup of tea and something to eat, and we stopped and both of us had a cup of tea, and I spent my 1/6 that way. Then we arrived in London and I went to my girl friend's and I spent the night at her home, and the next day also. In the evening we went to the Marble Arch Park. We spent the evening there. Then we came back to her home and the next day, in the afternoon, I asked if they had any button polish and she had none. She took 1/6 from her purse and gave it to me to get some polish. I went to go to a restaurant(sic) to get some polish and I met two MPs. They asked me for my pass and I told them I had none. They took me back to the corner of Marble Arch and one of them phoned; the line was busy, so we went across the street where there were six different boxes. The same one who phoned or tried to phone went to one of the boxes; he tried to get through and could not get the number. The smaller MP of the two told the taller one to watch me because he was going up the street to check a Sgt's pass. Then he got through to HQ, Prov Corps. We walked from where we were to the Marble Arch corner. Two soldiers were walking alongand they were both checked for their passes. The MP who checked them came back and a truck arrived. One of them asked the driver if I could get in front with the driver and him, and the driver wouldn't allow it. Then one of them got in the back of the truck and the other one in front and we went to the Prov Corps office in London. When we arrived they asked me to empty my pockets. I took sixpence in pennies and a one-shilling piece out of my pockets. I also had a few pictures, a few prayer books, which they took, too. Then they asked me to take off my boots and sent me to one of the cells downstairs. The next day, in the morning, they called me upstairs. They gave me my effects, I signed for them, and then I was sent downstairs again, and it was about 1300 hrs. They asked me to come upstairs again to take a train to the station. We took the train and they sent me to the Regt. That is all.

DEFENCE: I wish to call one other witness for the defence.
JUDGE ADVOCATE: You were asked that question before and you said you had no further witnesses.
DEFENCE: I am sorry, sir, I misunderstood you.

2nd witness for the defence) No. G-615[illegible], L/CPL. W. SEXSMITH, No 1 CDIRU, being duly sworn, was examined by the defending officer:-

The witness identified himself.

Q62. When did you pick Pte Dufour up to bring him here?
A62. At the R.22e R. the Fd Regt., the field guard room.
Q63. What time was it?
A63. It was - well, I can't exactly tell you, but around noon, about that.
Q64. And did you leave that day, right away?
A64. Yes, sir.

Q55. Did you stop before reaching this station in the camp area?
A55. Yes, to change trains at Havott.
Q56. How long did you stop there?
A56. If I remember correctly, 35 mins, to catch the next train.
Q57. Did you have anything to eat there?
A57. Yes, sir.
Q58. With Pte Dufour?
A58. Yes, sir.
Q59. Who paid for the food?
A59. Pte Dufour paid for it all.
Q60. What did you have?
A60. Just lunch, sandwiches and a cup of tea and cake.
Q61. Do you remember the cost of that lunch?
A61. No sir, I don't, but Pte Dufour paid for the lunch, but I couldn't say how much it was.
Q62. Have you any idea?
A62. I would imagine it would be around 3 shillings.
Q63. And you came straight from there to the station here, did you?
A63. Yes.
Q64. Did anyone speak to him before he landed in this detention?
A64. No, nobody I know of.
Q65. No-one at all?
A65. There might have been somebody in the same coach on the train, but that would be all.
Q66. But on thestation?
A66. No sir, I phoned the Adjt for a truck and it met us and picked us up.
Q67. When he arrived in the detn room did you see anyone approach him?
A67. No sir, we got out of the truck at No 3 Detn and walked down, the two of us, and nobody approached us.

CROSS EXAMINED BY THE PROSECUTOR

Q68. Can you recall what date this was?
A68. No sir, I have been trying to think and I can't think of the date.
Q69. Can you give us any idea how long he was down at the Regt before being returned here?
A69. No sir, I didn't take him down there; I could not give you any idea.

Q70. JUDGE ADVOCATE: Do you know how much money the accused had on him on the day you approached him and brought him back here?
A70. No.
Q71. Did you have any conversation with him?
A71. Yes sir, I did.
Q72. In French or English?
A72. In English; I can't speak French.
Q73. Could he speak English fairly well?
A73. Yes, sir; fairly well, sir.

PROSECUTOR: Sir, Pte Dufour, after being apprehended in London and later released from No 6 Prov Coy, he was not brought right here to this unit, but went down to the Fd Unit, and L/Cpl Bexsmith here, on the staff of our R.P., went from here to the Regt to bring him back here.

JUDGE ADVOCATE: Who got him from the Prov Corps in London?

PROSECUTOR: A L/Cpl Dolan.

No closing addresses.

JUDGE ADVOCATE: I think in view of the facts before the Court, I can very well dispense with a summing up, with the Court's permission.

The Court is closed for the consideration of the finding.

The Court being re-opened, the accused is again brought before it.

The Prosecutor, LIEUT. J.R. TURNER, 1 C.D.I.R.U., being duly sworn, is examined by the Judge Advocate:-

The witness identifies himself.

Q74. Have you any evidence to produce as to the character and particulars of service of the accused?
A74. Yes sir, I produce AF B296 and copy of MFM-6.

The above statement is read, signed by the President, and annexed to the proceedings.

Q75. Is the accused the person named in the statement which you have read?
A75. Yes, sir.
Q76. Have you compared the contents of the above statement with the regtl books?
A76. I have.
Q77. Are they true extracts from the regtl books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A77. Yes, sir.

No cross-examination.

THE COURT: Do you wish to address the court?

DEFENCE: I just wish to draw the attention of the court to the fact that the accused is already undergoing one year's imprisonment.

PROSECUTOR: I would like to point out to the court the seriousness of the offence. From the statements made by the accused on the first day of the trial, when only two witnesses were available, it became obvious that someone in court was lying and it was considered necessary and in the best interests of the service to clear the matter up, and for that reason I would like to point out the seriousness of the charge as laid against the accused.

The Court is closed for the consideration of the sentence.

CERTIFIED a true and correct
transcript of my shorthand notes:-

A/Sgt.

Shorthand Writer.

STATEMENT OF B66944, SGT. T. PYBURN, HQ, CRU.

IN THE CASE OF NO. E-4127, PTE. DUFOUR M.,
NO. 1 C.D.I.R.U.

I am No. B-66944, A/Sgt. Thomas Pyburn, H.Q., Canadian Reinforcement Units. On the 14th and 15th days of April, 1942 I attended a Field General Court Martial held at Witley, Surrey, for the purpose of trying No. E-4127, Pte. Dufour M. of No. 1 C.D.I.R.U. At the trial I was duly sworn as shorthand writer, and recorded in shorthand a verbatim report of the proceedings. Pte. Dufour M. was warned by the Judge Advocate (Capt. A.H. Friedgut, HQ, C.R.U.) in accordance with R.P. 40 & 41, and the provisions of the said Rules of Procedure were fully explained to him. The accused elected to be sworn and to give his evidence under oath. Below are excerpts, transcribed from my shorthand notes taken at the trial, of questions asked by the defending officer (Lieut. J. Gourdeau, No 1 CDIRU) and statements made by the accused under oath:-

"A. ..... We came to the Provost Corps H.Q. They asked me to empty my pockets. I had sixpence in pennies and a one-shilling piece, and they had taken my pay book before I reached the H.Q. when they asked me for my pass. Then they took me to the cell.
Q. Would you tell the court where you got the £0.1.6 that you had in your pocket at that time when you gave it to the Provost Corps for disposal?
A. I was at my girl friend's, and I asked them if they had any button polish, and she said No. Then she took her purse and gave me £0.1.6 to buy some polish.
Q. Before she gave you the £0.1.6 did you have any money?
A. No.
Q. Did you have any money in your pockets?
A. No.
Q. That is quite understood, is it?
A. Yes, sir."

Upon completion of the Defending Officer's examination the Judge Advocate questioned the accused, and following is an excerpt from my shorthand notes of the questions asked by the Judge Advocate and the answers given by the accused under oath:-

"Q. You have heard the evidence of L/Cpl. Flowers that you offered him £0.2.0?
A. Yes, sir.
Q. And further, that you offered also another £0.2.0 to L/Cpl. Good at that time when they were taking you down the road to the H.Q. of the Provost Corps?
A. I could not give them both £0.2.0, because I only had £0.1.6 in my pocket.
Q. Did you hear the evidence given by the Provost Corps?
A. Yes, I understand.
Q. Now what do you say as to that evidence?
A. I never offered money to these Provost Corps.
Q. At any time?
A. No, sir.
Q. Did you hear the evidence of L/Cpl. Flowers that he saw handed over by you and taken from you as part of your possessions at H.Q. Canadian Provost Corps in London, a certain amount of silver which he estimated to be £0.6.0 or £0.7.0?
A. Yes, sir.
Q. What do you say about that?
A. I only had £0.1.6, a one-shilling piece and sixpence in pennies.
Q. Did you take the money out of your pocket to give to the Provost people there in London?
A. I took the money from my pocket and put it on the table, six pennies and one shilling.
Q. Did you receive that money back again?
A. Yes, when I left the next afternoon they gave me back all my personal belongings, including this money, £0.1.6, also some pictures.
Q. And did you sign for it?
A. Yes, I did."

T. Pyburn A/Sgt.

Sir:

1. With reference to the a/m soldier, I have to report for your information that on 23 Mar.42 I was on patrol at Marble Arch in company with L/Cpl.Flowers. At 1345 hours L/Cpl.Flowers asked a Cdn.soldier for his pass. He could not produce one, neither could he produce part 11 of his Paybook. L/Cpl.Flowers told the a/m soldier that he would accompany us to H.Qs. so that we might phone his Unit to prove whether or not he was the possessor of a leave pass. The soldier, according to Part 1 Paybook was Pte.Dufour, M E-4127 R 22nd.Regt.

2. As L/Cpl.Flowers and myself escorted Pte.Dufour to the police box on Oxford st., the a/m soldier produced and offered us two shillings each in exchangefor us turning him loose. We strictly refused the offer. As L/Cpl.Flowers was calling for the police van, I was left outside with Pte.Dufour, he offered me ten shillings if I would let him go, I again refused. He then wheeled around and started away saying "I am going". After making five or six steps in pursuit, I caught hold of his respirator sling and led Pte.Dufour to the interior of the police box.

3. The police van arrived and we were transported to the H.Qs of No. 6 Prov.Coy., where Pte.Dufour was handed over to the Cpl.i/c of Cells, to be detained.

E.P. Good L/Cpl.
(A-3692 (E.P.Good)
No.6 Prov.Company.

London
21 Apr.42

Officer Commanding
No.6 Provost Company
Canadian Provost Corps.

6/PROV/42/3-18

Sir: Ex "B" Re: E-4127 Pte Dufour M.
Royal 22nd Regt.

In comliance with request from the Court Martial Officer #1 C.D.I.R.U I submit the following:

1. I have to report for your information that at about 1345 hours on the 23 Mar.42 I was on duty at Marble Arch,London in company with L/Cpl. Good.As we proceeded along Edgeware Road we observed a Canadian soldier standing at the corner of the street.We approached him,I asked the soldier for his pass.The soldier in question could not produce a pass or Part II of his Paybook but stated that he was on leave,that he had left his pass at his room 28 Oxford Street and his paybook was handed into his Paymaster before he came on leave.Not being satisfied as to the legimate absence of this man from his unit I informed him he had to accompany L/Cpl. Good and myself to the Police box as we were detaining him for purpose of phoning his unit to verify his story.On taking down the a/m soldiers particulars from Part I of his paybook we found him to be the a/m soldier. As we escorted him to the Police Box he put his hand in his pocket and brought out some money,offering L/Cpl.Good and myself 2 shillings each asking us to give him a break and let him go.We most definitely refused the offer of bribe.Outside the Police box as I was phoning for the Police Van the a/m apparently gave L/Cpl.Good some trouble as L/Cpl.Good brought him into the Polic box saying the soldier had attempted to escape.L/Cpl. Good had a hold of Pte.Dufour's sling of his respirator.The a-m soldier stated he had not tried to run away but had walked away.I informed him he was under close arrest.

2. After we had entered the Police van on the way to Company H.Q. the soldier again offered me (2 shillings to let him go.On arrival at the Company H.Q.D tention Room Cpl.Chenery took down facts booking Pte.Dufour on the following charges.(1)False statements.(2) A.W.L. (3)Attempted bribery.(4)Attempting to escape lawful custody. whereon Pte.Dufour was ordered to turn out his pockets each item being listed in the Property Book,the a/m signing same.He was searched by Cpl.Chenery and placed in the cells.

London
21 Apr.42

R.J.Flowers L/Cpl.
B-87802 (R.J.Flowers)
No.6 Provost Company.

Officer Commanding
No.6 Provost Commanding
Canadian Provost Corps

Sir:

Ex D

1. I have to report for your information that on the 23 Mar.42, I was on duty as N.C.O. i/c Books at No.6 Cdn.Provost Company Detention Room.

2. At about 1425 hours E-4127 Pte.Dufour M.,"C" Coy.,Royal 22nd Regt., was escorted in to the office by L/Cpl.Flowers and L/Cpl.Good and was handed over to me to be booked in on a charge of being an absentee, (2) Attempting to bribe an N.C.O. of the Cdn.Provost Corps.(3)Attempting to escape lawful custody.(4) Stating a falsehood. I read over the orders governing the cell block to him and then ordered him to put all his personal property on the desk.

3. The following articles were handed over to me: 1 Respirator, 1 F.S. Cap and Badge, 1 Scarf, 1 Pair of Anklets, 18 Cigarettes, 1 Tin of Shoe Polish, 1 £1 Note, 8 Shillings in silver, 7 Pence in bronze,Part I Paybook. The a/m articles were entered in the Charge Book No.12,Page 48 in his presence and he signed the book as to the articles I had received from him.I then searched him and finding no more property placed him in a cell.

4. At about 1030 hours on the 24 Mar.42 the a/m soldier was brought from the cells and I gave him his property.He then signed the Charge Book as receiving the articles I had taken from him.Due to a change in the time of his release under escort,he was placed back in the cells and his property was returned to me.

5. At about 1150 hours his escort arrived and I again gave him his property and received his signature.

6. He was then handed over to L/Cpl.Dolan of No.6 Provost Company with his documents to be escorted to No.1 Cdn.Div.Reception Depot, Worthing.

London
20 Apr.42

A. Chenery L/Cpl.
B-74168 (A.R.E.Chenery)
No.6 Provost Company.

The Adjutant
No.1 Cdn.Div.Inf.Rein.Unit
Cdn.Army (O'S).

6/PROV/42/3-18

1. Forwarded for your information,please.

London
20 Apr.42
SD/B

S. Dalton Capt.
(S.Dalton) O.C. No.6 Coy.
Canadian Provost Corps

SUMMARY OF EVIDENCE

In the case of E-4127 Pte. Dufour, M., Royal 22e Regt.
No.1 Canadian Division Infantry Reinforcement Unit.

1st Witness for the Prosecution — Statement of B-66944 Sgt. Pyburn, T., H.Q., C.R.U.

I am No. B-66944, A/Sgt Thomas Pyburn, H.Q., Canadian Reinforcement Units. On the 14th and 15th days of April, 1942, I attended a Field General Court Martial held at Witley, Surrey, for the purpose of trying No. E-4127 Pte. Dufour, M., of No.1 C.D.I.R.U. At the trial I was duly sworn as shorthand writer, and recorded in shorthand a verbatim report of the proceedings. Pte. Dufour, M. was warned by the Judge Advocate (Capt. A.H. Friedgut, HQ C.R.U.) in accordance with R.P. 40 & 41, and the provisions of the said Rules of Procedure were fully explained to him. The accused elected to be sworn and to give his evidence under Oath. Below are excerpts, transcribed from my shorthand notes taken at the trial, of questions asked by the defending officer (Lieut.J. Gourdeau, No.1 CDIRU) and statements made by the accused under oath:-

"A.....We came to the Provost Corps H.Q. They asked me to empty my pockets. I had sixpence in pennies and a one-shilling piece, and they had taken my pay book before I reached the H.Q. When they asked me for my pass. Then they took us to the cell.

Q. Would you tell the court where you got the £0.1.6. that you had in your pocket at that time when you gave it to the Provost Corps for disposal?

A. I was at my girl friend's, and I asked them if they had any button polish, and she said No. Then she took her purse and gave me £0.1.6. to buy some polish.

Q. Before she gave you the £0.1.6. did you have any money?

A. No.

Q. Did you have any money in your pockets?

A. No.

Q. That is quite understood, is it?

A. Yes, sir."

Upon completion of the Defending Officer's examination, the Judge Advocate questioned the accused, and following is an excerpt from my shorthand notes of the questions asked by the Judge Advocate and the answers given by the accused under Oath:-

"Q. You have heard the evidence of L/Cpl. Flowers that you offered him £0.2.0.?

A. Yes, sir.

Q. And further, that you offered also another £0.2.0. to L/Cpl Good at that time when they were taking you down the road to the H.Q. of the Provost Corps?

A. I could not give them both £0.2.0., because I only had £0.1.6. in my pocket.

Q. Did you hear the evidence given by the Provost Corps?

A. Yes, I understand.

Q. Now what do you say as to that evidence?

A. I never offered money to these Provost Corps.

Q. At any time?

A. No, sir.

Q. Did you hear the evidence of L/Cpl. Flowers that he saw handed over by you and taken from you as part of your possessions at H.Q. Canadian Provost Corps in London, a certain amount of silver which he estimated to be £0.6.0. or £0.7.0.

A. Yes, sir.

Q. What do you say about that?

A. I only had £0.1.6. a one-shilling piece and sixpence in pennies.

Q. Did you take the money out of your pocket to give to the Provost people there in London?

A. I took the money from my pocket and put it on the table, six pennies and one shilling.

Q. Did you receive that money back again?

A. Yes, when I left the next afternoon they gave me back all my personal belongings, including this money, £0.1.6.,

SUMMARY OF EVIDENCE

In the case of E-4187 Pte. Dufour, M., Royal 22e Regt.,
No.1 Canadian Division Infantry Reinforcement Unit.

1st Witness for the Prosecution (CONT)-(this money, £0.1.6.,-)
also some pictures.
Q. And did you sign for it?
A. Yes, I did."

(Sgd) T. Pyburn .....A/Sgt.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence. Having regard to the loss of time involved, the attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this Witness for cross-examination.

J R Turner .....Lieut.
Officer Taking Summary

2nd Witness for the Prosecution Statement by B-gs802 L/Cpl R.J. Flowers, No. 6 Provost Company.

Re- E-4187 Pte. Dufour, M. (R 22e R)

I have to report for your information that at about 1345 hours on the 23 March 42 I was on duty at Marble Arch, London in company with L/Cpl. Good. As we proceeded along Edgeware Road we observed a Canadian soldier standing at the corner of the street. We approached him. I asked the soldier for his pass. The soldier in question could not produce a pass or Part II of his Paybook but stated that he was on leave, that he had left his pass at his room 22 Oxford Street, and his pay-book was handed into his Paymaster before he came on leave. Not being satisfied as to the legitimate absence of this man from his unit I informed him he had to accompany L/Cpl Good and myself to the Police Box as we were detaining him for the purpose of proving his unit to verify his story. On taking down the a/m soldier's particulars from Part I of his paybook, we found him to be the a/m soldier.

As we escorted him to the Police Box he put his hand in his pocket and brought out some money, offering L/Cpl Good and myself 2 shillings each asking us to give him a break and let him go. We most definitely refused the offer of bribe.

Outside the Police Box as I was phoning for the Police Van the a/m apparently gave L/Cpl Good some trouble as L/Cpl Good brought him into the Police box saying the soldier had attempted to escape. L/Cpl. Good had a hold of Pte. Dufour's sling of his respirator. The a/m soldier stated he had not tried to run away but had talked away. I informed him he was under close arrest.

2. After we had entered the Police Van on the way to Company H.Q. the soldier again offered me 2 shillings to let him go. On arrival at the Company H.Q. Detention Room Cpl. Chenery took down facts booking Pte. Dufour on the following charges. (1) False statements (2) A.W.L. (3) Attempted bribery (4) Attempting to escape lawful custody. whereon Pte. Dufour was ordered to turn out his pockets each item being listed in the Property Book, the a/m signing same. He was escorted by Cpl. Chenery and placed in the cells.

(Sgd) R.J. Flowers .....L/Cpl.
B-gs802 (R.J. Flowers)
No. 6 Provost Company.

London
21 April 42

SUMMARY OF EVIDENCE

In the case of E-4127 Pte. Dufour, M., Royal 22e Regt., No.1 Canadian Division Infantry Reinforcement Unit.

(CONT)(re-statement of L/Cpl. Flowers, R.J.)

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence. Having regard to the loss of time involved, the attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

J. R. Turner .....Lieut.
Officer Taking Summary

3rd Witness for the Prosecution

Statement by A-3692 L/Cpl. Good, E.P., No.6 Provost Company.

Re- E-4127 Pte. Dufour, M. (R 22e R)

Sir:

1. With reference to the a/m soldier, I have to report for your information that on 23 March 42, I was on patrol at Marble Arch in company with L/Cpl Flowers. At 1340 hours L/Cpl Flowers asked a Can. soldier for his pass. He could not produce one, neither could he produce Part II of his Paybook. L/Cpl. Flowers told the a/m soldier that he would accompany us to H.Q. so that we might phone his Unit to prove whether or not he was the possessor of a leave pass. The soldier, according to Part I paybook was Pte. Dufour, M. E-4127, R 22e Regt.

2. As L/Cpl. Flowers and myself escorted Pte. Dufour to the police box on Oxford St., the a/m soldier produced and offered us two shillings each in exchange for us turning him loose. We strictly refused the offer. As L/Cpl. Flowers was calling for the police van, I was left outside with Pte. Dufour. He offered me ten shillings if I would let him go. I again refused. He then wheeled around and started away saying "I am going". After taking five or six steps in pursuit, I caught hold of his respirator sling and led Pte. Dufour to the interior of the police box.

3. The police van arrived and we were transported to the H.Q.s of No.6 Prov. Coy, where Pte Dufour was handed over to the Cpl i/c of Cells, to be detained.

(Sgd) E.P. Good .....L/Cpl
(A-3692 (E.P. Good)
No.6 Prov. Company.

London
21 Apr 42

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence. Having regard to the loss of time involved the attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

J. R. Turner .....Lieut.
Officer Taking Summary.

SUMMARY OF EVIDENCE

In the case of E-4127 Pte. Dufour, M., Royal 22e Regt.
No.1 Canadian Division Infantry Reinforcement Unit.

4th Witness for the Prosecution

Statement of B-74166 Cpl. Chenery, A.R.E. No.6 Provost Coy.

Sir: Re- E-4127 Pte. Dufour, M. (R 22e R)

1. I have to report for your information that on the 23 March 42, I was on duty as N.C.O. i/c Books at No.6 Cdn. Provost Company Detention Room.

2. At about 1435 hours E-4127 Pte. Dufour,M., "C" Coy., Royal 22nd Regt., was escorted in to the office by L/Cpl. Flowers and L/Cpl. Good and was handed over to me to be booked in on a charge of being an absentee (2) Attempting to bribe an N.C.O. of the Cdn. Provost Corps.(3) Attempting to escape lawful custody. (4) Stating a falsehood. I read over the orders governing the cell block to him and then ordered him to put all his personal property on the desk.

3. The following articles were handed over to me: 1 Respirator, 1 F.S. Cap and Badge, 1 Scarf, 1 Pair of Anklets, 18 Cigarettes, 1 Tin of Shoe Polish, 1 £1 Note, 8 shillings in silver, 7 Pence in bronze, Part I Paybook. The a/m articles were entered in the Charge Book No.12, Page 48 in his presence and he signed the book as to the articles I had received from him I then searched him and finding no more property placed him in a cell.

4. At about 1030 hours on the 24 Mar.42 the a/m soldier was brought from the cells and I gave him his property. He then signed the Charge Book as receiving the articles I had taken from him. Due to a change in the time of his release under escort, he was placed back in the cells and his property was returned to me.

5. At about 1150 hours his escort arrived and I again gave him his property and received his signature.

6. He was then handed over to L/Cpl Dolan of No.6 Provost Company with his documents to be escorted to No.1 Cdn. Div. Reception Depot, Worthing.

London
20 April 42

(Sgd) ...A.R.E. Chenery. Cpl.
B-74166(A.R.E. Chenery)
No.6 Provost Company

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence. Having regard to the loss of time involved, the attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

.....Lieut.
Officer Taking Summary

SUMMARY OF EVIDENCE

In the case of E-4127 Pte. Dufour, M., Royal 22e Regt.
No.1 Canadian Division Infantry Reinforcement Unit.

The accused having been duly cautioned in French according to Rule of Procedure 4(E) and C.A.R.O. 1424 reserves his defense.

Certified that Rule of Procedure 4 (C)(D)(E)(F)and(G) have been complied with

Taken down by me in the presence and hearing of the accused this 24th day of April 1942, at Algonquin Camp, Witley, Surrey.

J.R. Turner .....Lieut.
Officer Taking Summary

LAST SHEET DESTROYED 4/5/41

COPY

No. E4127 Name Dufour, M. Sqn., Battery, or Company Corps R. 22e R. C.A.O. Date of enlistment 14/9/39 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) [illegible]

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Signed W.D. Character Morgan, Major

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order depending with trial	By whom awarded	Remarks
Guillemont	17-5-40	Pte		A.W.L. from 2359 hrs 17/5/40 to 1930 hrs 22-5-40 Absence 4 days 19 hours 31 minutes	Cpl. Bissonnette	168 hrs det.	23-5-40	Major Blais	Forfiets O.G. Capt 5 days pay
"	20-6-40	"		A.W.L.fr.0900 hrs 20-6-40 to 2300 hrs 21/6/40: Absence 1 day 14 hours	CSM Dagenais Cpl. Solis	168 hrs det.	27-6-40	Lt.-Col. Flynn	Forfiets O.G. Capt two days pay
In the Field	20-7-40	"		A.W.L.fr.2230 hrs 20-7-40 until 0050 hrs 30-7-40 Absence 9 days 2 hrs 20 minutes	CSM Dagenais L-Cpl Mainguy	14 days det.	1-8-40	Lt.-Col. Flynn	Forfiets, O.G. Capt 10 days pay
In the Field.	6-8-40	"		A.W.L. fr.1900 hrs 6-8-40 till 0445 hrs 21-8-40, Absence 19 days 4 hrs 45 mts	L-Cpl Myers Sgt. Beaudet " Sivitz	19 days det.	26-8-40	Lt.-Col. Flynn	forfeits 20 days pay O.G. Capt
"	9-9-40	"		A.W.L. fr. 2100 hrs 9-9-40 to 0310 hrs 15-9-40 (Sec.15(1) A.A. Absence: 5 days 6 hrs 10 mts.	Sgt. Astham Bault L-Cpl Lauzon	60 days Det.	23-9-40	F.G.C.M.	Major Kraft, Pres.

(A.F.G.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
									C.T.D.C.
Louisburg	1-11-40	Pte		A.W.L. fr.2200 hrs 1-11-40 to 0330 hrs 9-11-40 Absence 7 days 15 hrs 30 mts.	L/Sgt Dadier	28 Days Det.	11/11/40	Lt.-Col. Mathewson	Forfeits 1 days pay
									O.C.Capt
Bordon	6-12-40	Pte		Sec.15(1)A.A. A.W.L. fr.2200 hrs 6-12-40 to 1326 hrs 30-12-40 Absence 23 days 15 hrs 26 minutes.	Sgt. Quay	28 Days Det.	2-1-41	Major Belanger	Forfeits 24days pay
Witley	27-1-41	Pte		Sec.15(1)A.A. A.W.L. fr. 2200 hrs 27-1-41 to 1400 hrs 11-2-41 Absence 14 days 16 hours.	Sgt. Watson	28 days det.	13-2-41	Major Belanger	Forfeits 15 days pay
									O.C.Depot
London	25-3-41	Pte		1 Stealing 2 Assaulting 3rdStealing		1 month 7 days 1 month Sentence to run consecutively at H.M. Prison Wandsworth.	24-3-41	Civil Court	Released 3-5-41
									O.C.Capt

CERTIFIED TRUE COPY.....
(G. Cruickshank) Officer i/c Records, No.1 C.D.I.R.U.

No. E-4127 Name Dufour, M. Sqn., Battery, or Company Corps ".22e.R(C.A.O.S.) Date of Enlistment G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 10CM-6-39 (1772) H.Q. 1771-42-18

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Lewes Gauthier Character Capt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Laurentide						2 years imp.		F.G.C.M.	Forfiets
	4-3-41	Pte.		A.A. Sec.15(1) A.W.L. fr 1230 hrs		with hard	9-7-41	sentenced	12 days pay
				4-3-41 to 1000 hrs 16-3-41	sentenced	labor.		confirmed	114 days pay
				Absent- 11 days 20 hrs 30 m.		1 year Remission		by L.F.Page	365 days pay
								Major-Gen.	Total of f.of p.
								H.Q. Base	481 days pay.
								Unit	
									O.G.Capt.
				RELEASED FROM THE DETENTION					
				BARRACK Aldershot on		CERTIFIED TRUE COPY			
				11th March 1942, SENTENCE		[signature]			
				HAVING EXPIRED. Remission		(J. Cruickshank) Officer i/c Records			
				earned under Rules for Detention		No.1 C.D.I.R.U.			
				Barracks and Military Prisons					

119 days COMMANDANTS initials (initialled)

[illegible] Maj.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order depending with title	By whom awarded	Remarks
United Kingdom	22-4-42	Pte.		Charged (1) A.A. Sec.15(1) W.O.A.S. A.W.L. 0800 hrs 22 March 42 to 1345 hrs 23/4/42 (1 day 5hr 45 min) incurring expenses ; 11/ 5D (2) A.A. Sec.40 W.O.A.S. Act to the prejudice of good order military discipline. (3) A.A. Sec.22 attempted to escape		1 year imprisonment with Hard Labour	14April42	F.G.C.M. confirmed by G.O.C. Cdn Reinf Units	1days pay F.R.I.149 (1)a 22days pay FRI 149(1)b 315days pay FRI 149(1)c 388 days pay

(2 SHEETS) [illegible]

CERTIFIED TRUE COPY [illegible] Capt.
(G. Cruickshank) Officer i/c Records
N5.1 C.D.I.R.U.

John A. Bown Maj. A.F.B. 296

STATEMENT as to CHARACTER & PARTICULARS of SERVICE of ACCUSED

E-4127 Pte. Dufour, M. Royal 22e Regiment,
No.1 Canadian Division Infantry Reinforcement Unit

1. The following is a fair and true summary of the entries in the regimental conduct sheet of the accused, exclusive of convictions by a court-martial or a civil court, and of cases in which trial has been dispensed with:

	Within last 12 months	Since Enlistment
A.W.L. A.A. Sec.15	0	8

Number of instances of gallantry or distinguished conduct: NIL

~~2. The accused is not under sentence at the present time.~~

~~3. The accused has not been previously convicted by a Court-Martial or a civil court.~~ SS

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 0 days in military custody, making a total of 0 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his attestation paper is 24 years.

6. The date of his attestation specified in his attestation paper is 14th day of September 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 year 30 days

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr. 30days service.

9. The accused is entitled to reckon 1 yr. 30days service for the purpose of determining his pension, etc.

10. The accused is in possession of or entitled to no military decoration or military reward.

SCHEDULE

of convictions by a court-martial or a civil court and of cases in which trial has been dispensed with of the accused.

Tried by Civil Court 25th of March 1941 for (1) Stealing (2) Assaulting (3) Stealing, and sentenced to 1 month: 7 days: and 1 month, in Wandsworth Prison, Sentences to run consecutively. Released 9-5-41, sentence having expired.

On 9-7-41 tried by F.G.C.M. for A.W.L., A.A. Sec.15(1) and sentenced to 2 years with Hard Labour. Sentence remitted to 1 year. Confirmed by Maj.-Gen. L.F. Page. Released 11 March 1942, sentence having expired. Remission earned - 119 days.

On April 14, 1942 tried by F.G.C.M. for (1) A.W.L., A.A. Sec.15(1) (2) A.A. Sec.40 and (3) A.A. Sec.22, and sentenced to 1 year imprisonment with Hard Labour. Sentence confirmed by G.O.C. Cdn. Reinf. Units

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

George Cruickshank
(G. Cruickshank) Officer in Charge
Records, No.1 Cdn.Div.Inf.Reinf.Unit

Algonquin Camp
15 day of May 1942

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the fifth day of May 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court and Judge Advocate
2. The witnesses and short-hand writer
*(3. The interpreter)
*(4. The officer under instruction)

were duly sworn.

* Omit if not applicable.

Signed this fifth day of May 1942

[signature] Brown Major
President of the Court Martial.
[signature] Lt.
J.A.

C. Certificate in case of death sentences

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 13 day of May 1942

[signature] Brig
Confirming Officer.

Promulgated and extracts taken in the case of
Promulgated in D.O. 114, d/18/5-42
(a) (Dated) 15 May 42 (Signed) [signature]
(C.C. Ferrie) A/Commander,
No.10dn. Div. Inf. Reinf. Unit.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] Wt. [illegible] [illegible] P. St. G. [illegible]

47 I (3rd case)

Case #1 - 361B.
" #2 - 46 I

REGIMENTAL DOCUMENTS

H.Q. FILE No. .....

NAME Pte DUFOUR H. REGIMENTAL No. .....

UNIT OF ENLISTMENT ..... RANK .....

	CONTENTS	NON-EFFECTIVE BY
	COMBINED DECLARATION FORM OR ATTESTATION AND MEDICAL HISTORY (M.F.M.1 & 1A) OR (M.F.M.2 & 2A)	DEATH
	SERVICE AND CASUALTY FORM (M.F.M.4 & 4A) (A.F.B.103)	DATE
	PARTICULARS OF FAMILY (M.F.M.5)	CAUSE
	FIELD CONDUCT SHEET (M.F.M.6) (A.F.B.122)	AUTHORITY
	CERTIFICATE OF SERVICE (M.F.M.8) COPY OF, OR DISCHARGE CERTIFICATE (M.F.M.7) COPY OF	
	FORM OF WILL (M.F.M.10 OR M.F.M.10A)	
	DENTAL HISTORY SHEET	DISCHARGE
	MEDICAL REPORT OR CASE HISTORY SHEET	DATE
	MEDICAL EXAMINATION ON LEAVING THE SERVICE	REASON
	TRANSFER CLOTHING STATEMENT	AUTHORITY
	LAST PAY CERTIFICATE (M.F.D.930A)	
	PROCEEDINGS ON DISCHARGE	
	PROCEEDINGS COURT OF ENQUIRY	DESERTION
	DECLARATIONS COURT OF ENQUIRY	DATE
	PAY SHEETS	AUTHORITY
	CARDS	
	SUNDRY	

E-4127 Pte. Dufour, M.
1 Cdn Div Inf Reinf Unit

47 I

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 12th day of April, 1942.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CDN ARMY, OVERSEAS, ~~on active service~~ that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers ~~hereunder named~~ appointed or detailed hereunder.

* Omit if not applicable.

*~~I am unable to appoint~~ :—

*(1. ~~Three Officers to form the Court.~~)

*(2. ~~A Field Officer as President.~~)

*(3. ~~Three Officers having more than one year's service.~~)

~~for the following reasons, namely~~ ~~xx~~

Judge-Advocate Capt. A.H. Friedgut, K.C.
A-D.J.A. H.Q., C.R.U.

PROCEEDINGS REVIEWED.

[signature]
Reviewing Officer (J.A.G.) C.M.A.G.
22 May 42.

President.

Rank.	Name.	Regiment.
Major	Edward J.D. Edmonds	No.3 Cdn Arty Reinf Unit

Members.

Rank.	Name.	Regiment.
A Captain	from	1 Cdn Div Inf Reinf Unit
A Lieutenant	from	No.3 Cdn Arty Reinf Unit
	WAITING MEMBER	
A Lieutenant	from	1 Cdn Div Inf Reinf Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding Cdn Reinforcement Units,
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E-4127				
PTE. DUFOUR, M.	First Charge			
Royal 22e Reg't	A.A. sec 15(1)	Guilty	Guilty	
1 Cdn Div Inf Reinf Unit.	Second Charge	not	Guilty except that	
	A.A. sec 40	Guilty	as money was offered to 4 Cpl Good, E.P.	
	Third Charge	not	not	
	A.A. sec 22	Guilty	Guilty	
			awarded 1 year's imprisonment with hard labour.	
	See charge sheet attached.		E.J.D. Edwards Major RCA President 15-4-42	

Confirmed
D.W. Whelan
Brig

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) D.W. Whelan Brigadier (Signed) E.J.D. Edwards Major RCA

Commanding Cdn Reinforcement Units, President.
Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14th and 15th day of April, 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court — Judge Advocate
2. The witnesses — Short-hand writer
*(3. The interpreter)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 15th day of April 1942.

E.J.D. Edwards Major RCA
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (3) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 17 day of April 1942

D.W. Whelan Brig
Confirming Officer.

Promulgated and extracts taken in the case of E-4127 Pte. Dufour, M., No.1 C.D.I.R.U.
Promulgated in Daily Orders 93
(a) (Dated) 23-4-42 (Signed) L.W.W. Slack Lt.-Col.
(L.W.W. Slack) A/Comdr.
No.1 Cdn. Div. Inf. Reinf. Unit

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

E J D Edmonds
Maj R C A.
President.

CHARGE SHEET

The accused, E-4127 Private DUFOUR, M., (Royal 22e Regiment), on the strength of No. 1 Canadian Division Infantry Reinforcement Unit, as a reinforcement; a soldier of the Canadian Army, (Overseas), is charged with:

1st Charge
Sec. 15(1)
Army Act.

When on active service, absenting himself without leave,

in that he

at Algonquin Camp, Witley, Surrey, on the 22nd day of March 1942, absented himself without leave until apprehended by the Military Police in London at about 1345 hours on the 23rd day of March 1942, thereby incurring expenses to the public for the costs of his apprehension in the amount of 11 shillings and 5 pence.

2nd Charge
Sec. 40
Army Act.

When on active service, an act to the prejudice of good order and military discipline,

in that he

at London, on the 23rd day of March 1942, while in lawful custody of B-85802 L/Cpl. Flowers, R.J., and A-3692 L/Cpl. Good, E.P., of the Canadian Provost Corps, offered them money if they would allow him to escape.

3rd Charge
Sec. 22
Army Act.

When in lawful custody, attempting to escape,

in that he

in London, after being placed under arrest by B-85802 L/Cpl. Flowers, R.J., Canadian Provost Corps, attempted to escape by running away on the 23rd day of March 1942

L.W.W. Slack

L.W.W. Slack, Lt-Col., A/Cmdr.,
No 1 Cdn. Div. Inf. Reinf. Unit

Algonquin Camp,
Witley, Surrey,
9th day of April
1942.

To be tried by Field General Court Martial

F.R. Phelan

(F.R. Phelan) Brigadier
Commanding Cdn Reinforcement Units.
Convening Officer

Farnborough, Hants
This 12th day of Apr 42.

MEDICAL OFFICER'S CERTIFICATE

- K.R. (Can) Para. 557 -

I certify that I have this morning examined No. E-4127

Pte. Dufour, M. (R 22e R)

No. 1 Cdn. Div. Inf. Reinf. Unit, and in my opinion

he is fit to undergo trial by Court-Martial.

Algonquin Camp
14 April 42

..... Capt.
(Medical Officer)

MEDICAL OFFICER'S CERTIFICATE

- K.R. (Can) Para. 557 -

I certify that I have this morning examined No. E-4127

Pte. Dufour, M., (R 22e R) No.1 C.D.I.R.U.

No. 1 Cdn. Div. Inf. Reinf. Unit, and in my opinion,

he is fit to undergo trial by Court-Martial.

Algonquin Camp
15 April 42

..... Capt.
(Medical Officer)

No. E-4127, PTE. M. DUFOUR, No. 1 C.D.I.R.U., tried by Field General Court Martial at WITLEY, Surrey, on the 14th and 15th days of April, 1942.

PRESIDENT:	Major E.J.D. Edmonds,	No 3 CARU.
MEMBERS:	Capt. J.B. Rousseau,	No 1 CDIRU.
	Lieut. P.J. O'Hearn,	No 3 CARU.

The order convening the Court, the charge sheet, summary of evidence and medical certificate are laid before the court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:	Lieut. J.R. Turner,	No 1 CDIRU.
Defending Officer:	Lieut. J. Gourdeau,	No 1 CDIRU.

At 1330 hrs on 14 Apr 42 the trial commences.

The order convening the court is read, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1. No, sir.

The President, members and Judge Advocate are duly sworn.

The officer under instruction is duly sworn.

Q2. Do you object to No B66944, Sgt. T. Pyburn, H.Q., C.R.U., acting as shorthand writer?
A2. No, sir.

The shorthand writer is duly sworn.

The charge sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge sheet.

Q3. Are you guilty or not guilty of the first charge against you, which you have heard read?
A3. Guilty.
Q4. Are you guilty or not guilty of the second charge against you, which you have heard read?
A4. Not guilty.
Q5. Are you guilty or not guilty of the third charge against you, which you have heard read?
A5. Not guilty.

The accused having pleaded Guilty to the first charge, the provisions of R.P. 35(2) are here complied with.

Q6. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A6. No, sir.

DEFENDING OFFICER: The accused, sir, is French-speaking, and it would be of some importance to him if the evidence given was translated to him, because I intend later to put him in the box for questioning.

JUDGE ADVOCATE: Does he not understand English?

DEFENCE: Yes sir, but not very much.

JUDGE ADVOCATE: Have you got an interpreter here?
DEFENCE: No, sir.
JUDGE ADVOCATE: Perhaps the officer under instruction will act as interpreter.

Q7. Do you object to Lieut. J. Baribeau-Hardy, No 1 CDIRU, acting as interpreter?
A7. No, sir.

The interpreter is duly sworn.

The prosecutor makes no opening address.

1st witness for prosecution) No. B-85602, L/CPL. R.J. FLOWERS, No 6 Coy, Cdn Prov Corps, being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q8. Will you be good enough to tell the court in your own words what you know of the case of Pte Dufour as it took place on 23 Mar 42 in London?
A8. Yes, sir. On 23 Mar 42 I was on duty in the Edgewear Road-Marble Arch district when about 1345 hrs I met Pte Dufour standing at the corner of Edgewear Road and a side street. I was in coy with L/Cpl Good of No 6 Prov Coy. We approached Pte Dufour and asked to see his pass. Pte Dufour did not have a pass and he said he had left it at his room, 26 Oxford St. I then asked to see his pay book and he only had Pt I of his pay book with him. He said he was on leave but had nothing to substantiate the statement. I asked him for his Pt II pay book and he said it was at the Paymaster's office. I asked him to go with us to the Cdn Mil Police HQ to verify whether he had a pass or not. Pte Dufour then offered two shillings to L/Cpl Good and two shillings to myself as a bribe to let him go.
Q9. Can you remember what he said when he offered you the money?
A9. He put his hands in his pockets and pulled out two shillings in each hand, and offered one to L/Cpl Good and one to myself, and L/Cpl Good would not take it, and then he offered the four shillings to me and I took it and was going to use it as evidence, but L/Cpl Good, who was the senior, said, "No, give it him back," so I did. The accused said, "Give me a break, let me go." The action of offering us a bribe definitely showed that something was wrong, so we placed him under arrest and took him to a police box. As I was phoning L/Cpl Good brought Pte Dufour into the police box, saying he had attempted to escape. We detained Pte Dufour in the box until the arrival of the police van. L/Cpl Good went in front with the driver; I was in the back with Pte Dufour. On the way from the police box to Police HQ Pte Dufour again offered me four shillings as a bribe to let him go.
Q10. What did he say to you the second time?
A10. He said, "Here, take this for a drink and let me go." We handed him over to the NCO i/c cells at Henrietta St., where he was charged. I was then informed the next morning ---

Q11. JUDGE ADVOCATE: Was the accused present then?
A11. No, sir.
Q12. Well then, you know that is hearsay, don't you, Cpl? You should be familiar with that rule of evidence and not attempt to give it here.

Q13. PROSECUTOR: Can you recognise Pte Dufour in this court room?
A13. Yes sir (indicating accused).

CROSS EXAMINED BY THE DEFENDING OFFICER

Q14. You said Pte Dufour offered you and L/Cpl Good some money?
A14. Yes, sir.
Q15. Who did he offer it to?
A15. Separately in the first place, and then he handed the four shillings to me
Q16. In the first place who did he speak to?
A16. He turned to me and spoke to me, and then he spoke to L/Cpl Good. He offered it to us in both hands, a coin in each hand, and offered one to each of us.

Q17. Did he speak to you in French or English?
A17. In broken English.
Q18. Did you actually see the pieces of money yourself?
A18. I had them in my hand at one time, sir.
Q19. Did you always accompany Pte Dufour, or did you leave him at one time?
A19. The only time I left Pte Dufour was when I went into the police box to make a phone call.
Q20. And you did not actually see Pte Dufour trying to escape; you were told about it?
A20. No sir, I didn't see Pte Dufour attempting to escape. All I know was that L/Cpl Good said he tried to escape.

Q21. JUDGE ADVOCATE: When L/Cpl Good said to you that Pte Dufour tried to escape, was that in the presence of Pte Dufour?
A21. Yes sir, Pte Dufour was agitated, rather excited.
Q22. What did he say?
A22. He turned around and said he hadn't attempted to escape, and L/Cpl Good said, "You certainly did try to escape," and he answered, "I only walked off."

Q23. DEFENCE: Did you notice if L/Cpl Good was at that time holding, or had hold, of a respirator?
A23. He had hold of Pte Dufour's respirator from the back, sir.

2nd witness for prosecution) No. A-3692, L/CPL. E.F. GOOD, No 6 Coy, Canadian Provost Corps, being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q24. Will you tell in your own words what you know of the apprehension of Pte Dufour in London on 23 Mar 42?
A24. On 23 Mar 42 I was on duty at 1?hc hrs in coy with L/Cpl Flowers at the Marble Arch beat. L/Cpl Flowers accosted Pte Dufour and asked him for his pass, which he could not produce. He had Pt I of his pay book, but not Pt II. It was on Edgewear Road and we were taking him down Edgewear Road to the police box to phone for a van, to check to see whether he was on leave legitimately. As we were going down Edgewear Road the accused offered us each two shillings, which we refused.
Q25. Do you remember what he said when he offered you the money?
A25. He was asking us all the way down the street to let him go.
Q26. When he held out the money to you did he say anything in particular to you at that time?
A26. I don't remember exactly what he said. L/Cpl Flowers went to the police box to phone for the van and I was left with the accused. The accused again offered me ten shillings to leave him go. I would not accept that proposition.
Q27. What did he say?
A27. He said, "Here is ten shillings if you will let me go." He made four or five quick steps away from me, saying he was leaving. I caught him by the respirator sling and retained him and held him in the police box until the arrival of the van. We then proceeded to Prov Corps HQ.
Q28. Do you recognise Pte Dufour in this court room?
A28. Yes sir (indicating accused).

CROSS EXAMINED BY THE DEFENDING OFFICER

Q29. When you first addressed Pte Dufour did you put him under arrest?
A29. L/Cpl Flowers was dealing with him; he checked him for his pass, which is the usual procedure, and when he did not produce one - well, we usually check up to see if they are on legal leave or not.
Q30. I understand you were walking on Edgewear Rd?
A30. Yes, sir.
Q31. Walking on each side of him?
A31. Yes, sir.
Q32. Did you have hold of Pte Dufour?
A32. Not at that time, sir.
Q33. When L/Cpl Flowers left you to go to the telephone box, did you have hold or did you have a grip on the accused's respirator?
A33. No, sir.

Q34. When he attempted to walk away, what was his physical condition then? Was he out of breath or something like that?
A34. He turned around and started away.
Q35. Did he run?
A35. A very quick march.
Q36. Did he look at you again?
A36. I ran after him and caught hold of his respirator sling; I went after him about three or four steps.
Q37. Did he actually look back at you?
A37. I didn't notice whether he did or not -- no, he was on his way away; he started away; he was heading away from me.
Q38. You said a few moments ago that he mentioned something to you. Did he look back at you? When he spoke to you and offered you the ten shillings did he look ---
A38. When he offered me the ten shillings he waited a few seconds with his hands behind his back, and then he said he was leaving.
Q39. When he said these things did he look back at you? He must have been making his way out.
A39. He was making his way out, yes sir.
Q40. Do you remember the accused handing over or offering some money with both hands?
A40. Yes, sir.
Q41. When?
A41. When coming down Edgewear Rd, when escorting him to the police box.
Q42. What was he handing over?
A42. Two bob in each hand.
Q43. What did he say then?
A43. He was continually wanting us to turn him loose, all the way down to the police box.
Q44. When did you put him under arrest, do you remember?
A44. Actually when we started to bring him in; he had no pass and was AWL as far as we were concerned.
Q45. Did you tell him he was under arrest then?
A45. Not at that time, no sir; I don't know whether L/Cpl Flowers did or not; I don't know.
Q46. Did he speak to you in French or English?
A46. Broken English.
Q47. When you took him to HQ, where were you in the truck?
A47. Sitting in front with the driver.
Q48. Who was in the back with the accused?
A48. L/Cpl Flowers.
Q49. Was L/Cpl Flowers alone with the accused?
A49. Yes, sir.

Q50. PROSECUTOR: You say he spoke in broken English?
A50. Yes, sir.
Q51. Is there any doubt about what he was trying to say to you?
A51. No sir, he was definitely offering us money to turn him loose.

Q52. JUDGE ADVOCATE: As you started down Edgeware Rd and were walking with the accused between you and just before starting out, did you tell him what you were going to do with him?
A52. We told him we were taking him to the Prov Corps HQ.
Q53. Was he then free to go anywhere on his own?
A53. At that time, no sir.
Q54. Do you remember, at any time during the conversation, while you were taking him from Edgeware Rd up to the time L/Cpl Flowers telephoned, do you remember if there was any conversation on the part of either you or L/Cpl Flowers when either of you said this man was under arrest?
A54. I didn't say it myself; I don't know whether L/Cpl Flowers said it or not.

1st witness for prosecution) No. B-65602, L/CPL R.J. FLOWERS, No 6 Coy, Cdn Prov Corps, being previously sworn, is recalled and examined by the Court:-

Q55. You are still under oath?
A55. Yes, sir.

Q56. JUDGE ADVOCATE: When, if at any time, was the accused put under arrest and made so he was not free to go on his own?

A56. At the time he was brought by L/Cpl Good into the police box. We were taking him in for interrogation originally, and when he offered the brib of ten shillings we placed him under arrest then.
Q57. The moment of arrest, then, was at the time the accused was brought into the phone box by L/Cpl Good?
A57. Yes, sir.

Q58. THE COURT: Did you inform the accused of the fact he was under arrest?
A58. Yes, sir.

Q59. DEFENCE: Who put him under arrest and in what words?
A59. He said, "Why can't I go?" and I said, "You are under arrest."
Q60. You said, "You are under arrest?"
A60. Yes, sir.

Q61. PROSECUTOR: After you had asked him for his pass and pay book and so on, then you have stated you decided to take him to HQ for questioning?
A61. In a case like that we take them to HQ and HQ phone their unit and verify whether they have a pass or not.
Q62. After you had decided to take him in, was it all right then for him to walk away and say, "I refuse to go?"
A62. No sir, we would not have allowed him to go; we had him in custody then.

Q63. JUDGE ADVOCATE: When they cannot identify themselves you take them to some place where you can get in touch with a source where you can get verification of their story?
A63. Yes, sir.
Q64. If they come along voluntarily all right, and if they don't I take it you arrest them?
A64. That is right, sir.
Q65. In other words then, strictly speaking this accused was not in custody until in the phone box after his attempt to escape?
A65. That is quite correct, sir.
Q66. Then during the attempt to escape he was not really in custody; he was not actually in arrest?
A66. There was no force used whatever until the moment he attempted to get away.
Q67. You mean the moment after he attempted to get away?
A67. Yes, sir.

Q68. PROSECUTOR: Did you explain to him what you were going to do after you had checked his pay book?

DEFENCE: That question has been raised and explained to the court.

A68. THE WITNESS: I explained all that, sir, in a very definite way, too.

Q69. THE COURT: It came out in evidence he does not understand English very well. Did he understand you all right?
A69. We took our time and went over it two or three times, so he fully understood what we said.
Q70. When he spoke to you in broken English did he express himself well enough so that you could understand?
A70. He did.

The prosecution is closed.

DEFENCE: I have just had a last talk with the accused, sir, and I have just discovered the possibilities of having another witness here who might help the accused and testify that the accused, when he was taken to HQ, had empty pockets except for 1/6: his possessions were taken off him and he only had 1/6 in his possession at the time. I think in all justice to the accused I should have this witness present. The witness will most likely be a member of the Prov Corps at HQ.

JUDGE ADVOCATE: Have you a witness you want to call?

DEFENCE: I think it might be a good thing to call this witness for the defence, sir.

JUDGE ADVOCATE: What is the name of the witness?

DEFENCE: I don't know, sir.

JUDGE ADVOCATE: Then how can we call him? Can you suggest any way in which we can call a witness whose name you don't know?

PROSECUTOR: Is there any possibility that the two witnesses we have had from the Prov Corps were present at the time of the booking in of the accused? Is it possible they might have some knowledge of it?

JUDGE ADVOCATE: Have you any application to make now that the two charges should be dismissed without hearing any more evidence?

DEFENCE: Yes sir. When the accused supposedly walked away from the L/Cpl of the Prov Corps he was not under arrest and not in lawful custody, and he did not think it would matter if he walked away for five or six paces and then come back. That is all I have to say in connection with the third charge. On the second charge, the accused did not have that amount of money on him at the time.

JUDGE ADVOCATE: There is no evidence on that point, therefore you cannot argue it at this time. When were you instructed to take this defence?

DEFENCE: At 11 o'clock yesterday morning, sir.

JUDGE ADVOCATE: Who detailed you to defend the accused?

DEFENCE: I received a telephone call from 3 Bde and I was detailed to report to Lieut. Turner at the Courts Martial office.

JUDGE ADVOCATE: I should, sir, make this comment, that the defending officer should have more notice than that. It seems to me it is easy enough for him to get that notice. There is no reason why, as soon as application is made for a C.M., the accused should not be given a copy of the summary and asked if he wants a defending officer, and having asked for one, the defending officer should be detailed as early as possible. The prosecutor has some advantage in that quite often the summary is taken by the prosecutor and is acquainted with the facts of the case, and it seems only fair there should be a little more time given to the defending officer. The rule is at least 24 hrs, but that does not mean only 24 hrs.

PROSECUTOR: In our unit it is considered the responsibility of the coy to provide a def officer, and as soon as application is made the Bde is notified. There has, in the past, been quite a delay between the forwarding of the application and the actual trial, and officers change so rapidly that the coys are rather hesitant at putting an officer on the case until definite word has been recd that the trial will be held. In this case I was informed about nine o'clock Mon morning that the case would go on.

JUDGE ADVOCATE: I cannot understand why you should not get more notice.

PROSECUTOR: I was, however, on week-end pass, sir: possibly that has some bearing on the matter.

JUDGE ADVOCATE: As Judge Advocate it is my duty to see that the accused gets a fair trial and to assist his def officer in matters of law and advice. The argument presented by the def officer in connection with the third charge equally applies to the second charge. If he was not in lawful custody at the time, then there is no need for him to escape, so the money, although the accused may have had something in mind, was not in law a bribe to allow him to escape from lawful custody. I am not saying that argument is valid, but that argument is open to the defence. That is what I had in mind when I asked you if you had an argument on the second charge. The motion will be taken as presented.

The Court is closed to consider their decision.

The Court being re-opened, the accused is again brought before it.

THE COURT: The Court have decided to grant your application as regards the third charge, and put you on your defence in relation to the second charge.

Q71. Do you apply to give evidence yourself as a witness?
A71. Yes, sir.
Q72. Do you intend to call any other witness in your defence?
A72. Yes, sir.
Q73. Are they witnesses as to character only?
A73. No, sir.

R.P. 40 & 41 duly complied with.

1st witness for the defence) No. B-85602, L/CPL R.J. FLOWERS, No 6 Coy, Cnd Prov Corps, being previously sworn, is recalled and examined by the defending officer:-

Q74. When you took the accused to the HQ where he was to be detained, will you tell the court what happened there?
A74. At HQ we left him i/c of the Sgt who placed him in the cells below.
Q75. Could you give me the name of the Sgt who was i/c then?
A75. I couldn't: I don't know the name of the Sgt off-hand, but either Sgt Johnston or Sgt Crowe, one of the two.
Q76. To your knowledge did the accused empty his pockets when he was in custody?
A76. Yes sir, in my presence the accused emptied his pockets.
Q77. Could you tell the court the exact contents of the accused's pockets?
A77. That I couldn't say, sir: they keep a list of all that at HQ, everything is listed in a book there.

CROSS EXAMINED BY THE PROSECUTOR

Q78. Did I understand you to say you were there when his pockets were turned out?
A78. I was standing in the room talking at the time, when the accused turned out his pockets.
Q79. Were you in a position to know anything about the contents of his pockets at all?
A79. No, sir.

DEFENCE: L/Cpl Flowers said, "in my presence."

Q80. JUDGE ADVOCATE: Was there any money among the contents of the accused's pockets?
A80. Yes sir, there was some money, but how much I couldn't say.
Q81. Was it paper or silver?
A81. I heard the money falling on the table, sir, but whether there was any paper money or not I don't know, but I saw the silver money with my own eyes.
Q82. At least how much did you see with your own eyes?
A82. Around six or seven shillings: I saw that with my own eyes.

2nd witness for the defence) No. A-3692, L/CPL. E.P. GOOD, No 6 Coy, Canadian Provost Corps, being previously sworn, is recalled and examined by the defending officer:-

Q83. When you took the accused to your HQ or whenever you were taking him to be detained, will you tell the court in your own words what happened then, when he actually arrived at the place?
A83. The usual procedure took place. He was booked and detained to be sent back to his unit.
Q84. Will you explain what the usual procedure is?
A84. The number, name and unit is taken down in a book and his possessions are taken off him and kept for him and he is put in a cell to be detained for our office in the morning.
Q85. Now, one more question: When his personal belongings are taken - let me put it this way, were you there when the accused's personal possessions were taken off him?

A84. I was in the office, but that was not part of my work and I didn't take particular notice.
Q85. Did you see anything or hear anything about the accused depositing money on the said table or the said place?
A85. No sir, I don't believe I did.
Q86. I would like to know for sure, yes or not?
A86. No, sir.

No cross-examination.

Q87. JUDGE ADVOCATE: Did you at any time during your dealings with the accused that day see the accused with money in his possession?
A87. Yes, sir.
Q88. What was the most?
A88. Four shillings.
Q89. You referred to ten shillings that were offered to you?
A89. Yes, sir.
Q90. Did you see the ten shillings?
A90. No, sir.
Q91. And this ten shillings was offered to you before the accused started to walk away at a quick pace?
A91. Yes, sir.
Q92. Was any offer made to you after that?
A92. No, sir.

DEFENCE: I would like to ask for an adjournment to call for Sgt Johnston or Sgt Crowe to give evidence, who took the belongings from the accused.

JUDGE ADVOCATE: Do you realise you are asking for an adjournment in order to get these men who are on duty, who would have to come at some expense and time and trouble? Do you realise you have, as defending officer, certain responsibilities in this connection? Have you sufficient basis on which to ask for an adjournment, as you are doing?

DEFENCE: No, sir.

JUDGE ADVOCATE: I think you had better make sure, because these things are not lightly done.

DEFENCE: May I ask for an adjournment while I make a personal investigation?

JUDGE ADVOCATE: I think you should. So far we have had no sworn statement from the accused to the facts you have indicated. The accused himself has not sworn that is all he had. Why does he not tell that to the court under oath? If he makes a statement under oath that he handed over 1/6, and two witnesses come after and say that he handed over more somebody will be in trouble for perjury: you must consider that as well. We will grant a short adjournment in order that you may talk over the matter with the accused and receive his instructions, and then you may renew your application, keeping in mind what I have said.

The Court adjourned in order to enable the defending officer to consult the accused.

The Court being re-opened, the accused is again brought before it.

DEFENCE: The accused will take the stand as a witness, sir, and will be sworn.

The Accused, E-4127, PTE. M. DUFOUR, No 1 C.D.I.R.U., being duly sworn, is examined by the defending officer:-

The accused identifies himself.

Q93. Will you in your own words tell the court exactly what happened after you had been asked by the Provosts to go with them on Edgeware Road in London on 23 Mar 42 at approximately 1345 hrs?

A93. I was going along the road to buy some "Bluebell" polish for my greatcoat. There is a kind of jewellry store not very far from there. I saw the two Provost Corps coming along. They stopped me just at the corner of the street. They asked me for my pass. I answered that I had no pass. Then they took me to a civil police box. One of the two entered into the telephone box. The tallest one held me by the respirator, then I asked him to release his grip because he had enough of the respirator to hold. Then I pulled my respirator around to the front of my body. The one who went into the box to phone could not get the number. They went on the other side of the street where there were civilian public phones. They phoned again and the line was still busy. The smallest one of the two then went to check two other soldiers who were coming along and turned to the tallest one and told him to watch out for the telephone call. After he had checked the other two soldiers he came back, went into the phone box and phoned again. Then he came out of the telephone box and took me to the Marble Arch doors. Two other soldiers came along and one of the two Provosts started running after them and they were about 100 yds away from there and he ran after them and asked them for their passes. Then a little truck came along and one of the Provosts asked if one of them could get in the front seat and the driver said No. Then L/Cpl Flowers got in the rear of the truck and the tall one got into the front. We came to the Provost Corps HQ. They asked me to empty my pockets. I had sixpence in pennies and a one-shilling piece, andthey had taken my pay book before I reached the HQ when they asked me for my pass. Then they took me to the cell.

Q94. Would you tell the court where you got the 1/6 that you had in your pocket at that time when you gave it to the Prov Corps for disposal?

A94. I was at my girl friend's and I asked them if they had any button polish and she said No. Then she took her purse and gave me 1/6 to buy some polish.

Q95. Before she gave you the 1/6 did you have any money?

A95. No.

Q96. Did you have any money in your pockets?

A96. No.

Q97. That is quite understood, is it?

A97. Yes, sir.

No cross-examination.

Q98. JUDGE ADVOCATE: When did you leave camp, from your unit?

A98. I left camp Sat afternoon but I can't remember the date.

Q99. Did you have any money on you when you left the unit that Sat afternoon?

A99. Yes, I borrowed money from a soldier there.

Q100. How much money did you borrow?

A100. I had one shilling in my pocket and he lent me sixpence.

Q101. When you left your unit did you go to London?

A101. I asked for a pass to go to Guildford.

Q102. Did you go to London?

A102. I left for Guildford and I missed by bus so I went to the other road and a car came along and the car stopped and the driver asked me where I was going to and I told him I was going to Guildford.

Q103. From Guildford where did you go?

A103. The driver was a member of the R.A.F. and told me he was going to London, so instead of stopping at Guildford I just went with him to London.

Q104. Did you pay anything for your ride?

A104. Further than Guildford we stopped at a tea shop where we had tea, and that is where I spent my 1/6.

Q105. Then you had no money left at all?

A105. No.

Q106. And this man took you into London, did he?

A106. Yes, to Oxford Circus.

Q107. And then what did you do?

A107. Then I only had to cross the street and I was at my girl friend's.

Q108. What time did you arrive at your girl friend's?

A108. It was about half past four.

Q109. Did you go out that night?

A109. Yes, we went to Hyde Park - not on Sat night but only on Sun.

Q110. I asked you about the night you arrived?
A110. No.
Q111. You have heard the evidence of L/Cpl Flowers that you offered him two shillings?
A111. Yes, sir.
Q112. And further, that you offered also another two shillings to L/Cpl Good at that time when they were taking you down the road to the HQ of the Prov Corps?
A112. I could not give them both two shillings because I only had 1/6 in my pocket.
Q113. Did you hear the evidence given by the Prov Corps?
A113. Yes, I understand.
Q114. Now what do you say as to that evidence?
A114. I never offered money to these Prov Corps.
Q115. At any time?
A115. No, sir.
Q116. Did you hear the evidence of L/Cpl Flowers that he saw handed over by you and taken from you as part of your possessions at HQ, Cdn Prov Corps in London a certain amount of silver which he estimated to be six or seven shillings?
A116. Yes, sir.
Q117. What do you say about that?
A117. I only had 1/6 - a one shilling piece and sixpence in pennies.
Q118. Did you take the money out of your pocket to give to the Provost people there in London?
A118. I took the money from my pocket and put it on the table, six pennies and one shilling.
Q119. Did you receive that money back again?
A119. Yes, when I left the next afternoon they gave me back all my personal belongings, including this money, 1/6, also some pictures.
Q120. And did you sign for it?
A120. Yes, I did.

JUDGE ADVOCATE: Do you wish to call any other witnesses?

DEFENCE: No sir, but if the prosecution wish to call Sgt Johnston or Sgt Crowe, all right, but I don't see any necessity to do it myself. I would make a motion that the second charge be dealt with in the same way as the third, because of lack of proof produced by the prosecution.

PROSECUTOR: The evidence shows that even after the accused was put under lawful arrest, money was offered to one of the Provosts in order that the accused be allowed to escape.

No. B-85808, L/CPL R.J. FLOWERS, No 6 Coy, Cdn Prov Corps, being previously sworn, is recalled by the Court and examined by the Judge Advocate:-

Q121. You stated in evidence that during the trip in the police car to HQ, No 6 Coy, Cdn Prov Corps, the accused offered you some money?
A121. Yes, sir.
Q122. For what?
A122. If I would let him go.
Q123. Did you see any money at the time?
A123. Yes sir, he gave it to me in my hand.
Q124. Did you look at it?
A124. There were two 2-shilling bits.
Q125. Are you sure of that?
A125. Positive; I looked at it.
Q126. He has stated in evidence that he only had a one-shilling piece and six pennies when you first accosted him and that is all he had when he handed over the contents of his pockets at HQ, 6 Prov Corps?
A126. As far as the amount goes at HQ, there is a record kept in a register of everything taken off the accused.
Q127. What do you say as to his statement that that is all he handed over at HQ of Cdn Prov Corps?
A127. I say it is definitely wrong.
Q128. And you say there is a record kept?
A128. Yes sir, a record of everything taken off a prisoner, and he signs for it, and he signs again when he gets it; he signs when he hands it over and he signs when he receives it.

Q129. In this case who checked over it?
A129. I am almost positive in this case it was Cpl. Chenery; I don't know his initials.
Q130. Would Sgt Johnston or Sgt Crowe have anything to do with that?
A130. Usually the Cpl does the checking and the Sgt is there.
Q131. Is Cpl Chenery still there?
A131. Yes sir, they work on various shifts and he was on that shift.
Q132. Do you think he would be available tomorrow?
A132. That I could not tell you, sir, but it could be ascertained by phone.

Whereupon the Court adjourned at 1730 hrs.

On the 15 Apr 42 at 1600 hrs the Court reassemble, pursuant to adjournment; present the same members as heretofore.

No. R-74166, CPL. A.R. CHENERY, No 6 Coy, Cdn Provost Corps, being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q133. How are you employed?
A133. I am i/c detention cells at 30 Henrietta St, London.
Q134. What are your duties in connection with prisoners brought in?
A134. As a man is brought in he is handed over to me; I enter the charge in the charge book and his property, which I take from him.
Q135. Do you search him?
A135. Yes, sir.
Q136. Do you recall No. E-4127, Pte Dufour M. being booked in on 27 Mar 42?
A136. Yes, sir.
Q137. Do you know Pte Dufour? Do you recognise him in this room?
A137. Yes sir (indicating accused).
Q138. Have you any record of the property that you took from him when he was booked in?
A138. Yes, sir.
Q139. Will you produce that for the court?

The witness produces large register containing information in connection with soldiers detained at Cdn Prov Corps HQ, London.

JUDGE ADVOCATE: I would suggest he give his evidence without putting in the book if possible; he may use the book to refresh his memory if he made the entries at the time or shortly after the time the signing in was done.

Q140. PROSECUTOR: When you booked in the accused and took his property from him did you enter it up in your record book?
A140. Yes, sir.
Q141. Was that entry made at the time you took his property?
A141. Yes sir, article for article, as listed in the book.
Q142. Will you give the court a list of what he had in his possession that you took from him?
A142. If I may refer to the book, yes sir.

Q143. JUDGE ADVOCATE: What is that book?
A143. The charge book and the property book, sir; this is Charge Book No.12 in use at No 6 Cdn Prov Coy, 30 Henrietta St, London.
Q144. You are now refreshing your memory from entries you made yourself at the time?
A144. Yes, sir. - Respirator; F.S. Cap; Scarf; a strap; a £1 note; eight shillings in silver; sevenpence in bronze.
Q145. Would you tell the court the procedure when this property was taken; did the accused sign anything at the time indicating that was turned over?
A145. Yes sir, he signed here in the property book at the time I took his property (indicating in register).
Q146. That is, he was signing that that was the property taken from him?
A146. Yes, sir.
Q147. When it is time for him to be returned to his unit what is the procedure?
A147. He is brought in front of the desk and his property is issued back to him and he signs again for it.

Q148. Did you take care of that when the property was returned to the accused?
A148. In this case, yes sir.
Q149. How much money did you return to him at that time?
A149. £1; eight shillings in silver; and sevenpence in bronze.
Q150. Did you get a receipt for that?
A150. His signature is the receipt.
Q151. Where is the signature recorded?
A151. In this book.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q152. Will you look at the accused. Face the accused. Now, could you state that this man is the man who actually signed at the place in this book where you looked to refresh your memory?
A152. Yes, sir.
Q153. You stated in your declaration that the accused gave you a £1 note?
A153. Yes, sir.
Q154. The accused gave you eight shillings in silver?
A154. Quite right.
Q155. And he also gave you seven pennies?
A155. Yes, sir.
Q156. Will you explain to the court in your own words the denominations of the coins in silver?
A156. I couldn't do that, sir.
Q157. You don't know whether the coins were 2/6 or 2/- pieces or 1/- or sixpences?
A157. No, sir.

Q158. JUDGE ADVOCATE: Was the accused's signature made in your presence?
A158. Yes, sir.

Page 48 of the above mentioned Charge and Property Book, the property of No 6 Coy, Con Proy Corps, London, is read by the Court, signed by the President, and accepted as an exhibit by the Court. The aforementioned exhibit was filed with the Court in compliance with the request of the Defending Officer.

Q159. DEFENCE: With regard to this signature you have in this book, will you give the court exactly what happened so far as this signature is concerned? It is not very plain.
A159. The man came up and signed for his property, sir, and then he was returned to his cell again, and when he came back the second time he signed for it again.
Q160. Could you point out on that sheet exactly where he signed the first and second time?
A160. The first time he signed on the top line, the second time underneath, and the third time underneath that again. When he was brought in he signed here, the second time here, the signature being taken the next morning at 1150 hrs, and for the third signature I have no record of the time but it was only a few moments after (indicating signatures of accused in register).
Q161. Who scratched over one of those signatures?
A161. I don't know; that is the way he wrote himself.
Q162. How can you explain that? You don't know who struck out this signature - how do you explain that if you were present beside him when he signed it?
A162. The book is handed the man and he signs his signature, and that is all there is to it.
Q163. Did you or did you not see him sign?
A163. Yes sir, I did.
Q164. Then I request a full explanation to my question.

JUDGE ADVOCATE: He has answered it.

DEFENCE: He says he saw the man actually signing it but says he does not know when this was scratched out.

JUDGE ADVOCATE: He said this part is part of the man's signature, the lines across are part of the man's signature.

Q165. THE COURT: Is that exactly the way the book came back to you?
A165. Yes, sir.
Q166. With those marks on it?
A166. Yes, sir.

JUDGE ADVOCATE: Have you a specimen of the accused's signature anywhere?

PROSECUTOR: Yes, sir.

The Prosecutor, LIEUT. J.R. TURNER, No. 1 CDIRU, being duly sworn, states:-

I produce in evidence a form that I had the accused sign, certifying that he received his copy of the summary of evidence and charge sheet. This was signed in my presence in No 2 Detention Room at Algonquin Camp on 9 Apr 42, and it bears two signatures of the accused.

The above mentioned certificate is examined by the Court, signed by the president, and attached to the proceedings.

Upon completion of closing addresses by the prosecutor and defending officer, the Judge Advocate makes the following summing up:-

JUDGE ADVOCATE:- I think I should say that this is perhaps the first court martial in which I have seen such a direct conflict of evidence. The accused, if not exactly in these words, has testified to the fact that all the Provost witnesses are lying when they say he offered them a bribe of money. He said in effect that he could not have offered them the money they say he offered them, that is L/Cpl Flowers and L/Cpl Good - they stated he offered them two shillings each in two-shilling pieces - because he, the accused, only had one shilling in silver and sixpence in coppers. He said that was all the money that was taken from him at the time he was brought into HQ of No 6 Prov Coy on Wennietta St. In effect then he says that L/Cpl Flowers, who states on oath he saw at least seven shilling in silver in possession of the accused, was wrong. We now have the evidence of Cpl Chenery, who made the note at the time in the book kept for the purpose, of the amount of money he took from the accused and subsequently handed back to the accused, who says among other money there was eight shillings in silver. There you have a direct conflict of evidence. Somebody is lying under oath. It will be a matter of concern to someone to see what remedies will be sought in connection with this lying under oath, or perjury, but it is for the present court to decide which of the conflicting stories they will believe. In that connection it is not for me to influence you. As Judge Advocate I am only here to advise you in matters of law and in matters of procedure. It is for you alone to find the facts. Charge No. 2 reads that the accused offered money to L/Cpl Flowers and to L/Cpl Good while he was in lawful custody, to allow him to escape. There is no evidence that he was in lawful custody at the time he offered money to L/Cpl Good. The evidence is there, however, if you believe it, that he did offer money to L/Cpl Flowers while he was in the vehicle which conveyed him from Edgewere Rd to Wennietta St. You will recall the evidence of L/Cpl Flowers that he offered him four shillings if he would let him go. I say as a matter of law you may make a special finding under the circumstances, if you are so inclined, finding the offer of money to L/Cpl Flowers only. If you have any doubt, the accused is entitled to the benefit of such doubt, but it must be a real doubt, not a fanciful one. The onus is on the prosecution to prove the case. The accused is innocent until he has been proven guilty by the prosecution beyond any reasonable doubt. The accused has pleaded Guilty to the first charge and I need not say any more about it. The third charge has been disposed of by your allowing an application to dismiss it made by the defending officer at the end of the prosecution's case.

The Court is closed for the consideration of the finding.

The Court being re-opened, the accused is again brought before it.

The Prosecutor, LIEUT. J.R. TURNER, being previously sworn, is recalled and examined by the Judge Advocate:-

Q167. Have you any evidence to produce as to the character and particulars of service of the accused?
A167. Yes sir, I produce AF B206 and copy of MFM-6.

The above statement is read, signed by the President, and annexed to the proceedings.

Q168. Is the accused the person named in the statement which you have heard read?
A168. Yes, sir.
Q169. Have you compared the contents of the above statement with the regimental books?
A169. Yes, sir.
Q170. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A170. Yes, sir.

No cross-examination.

Q171. Do you wish to address the Court?

A171. DEFENDING OFFICER: I would just like to mention to the court the fact that the accused was, just before this trial, released from eight mos detention. He went AWL in London, not with the intention of doing anything wrong, but from the time he came out of detention until he went AWL he had become a very good soldier and he had every intention of becoming a good soldier. I ask the court to take that into consideration. After he finished his detention he declared his intention of wishing to become a good soldier. I would like also to point out to the court that the accused has already undergone a good part of his army career in detention and he was AWL only one day. He assures me that in future his conduct will be nothing but good.

The Court is closed for the consideration of the sentence.

CERTIFIED a true and correct transcript of my shorthand notes:-

J. Pyburn Lt.
Shorthand Writer.

(1) I hereby acknowledge that I have been served with a true copy of the summary of evidence taken at Algonquin Camp, Witley, Surrey, preliminary to my court-martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to court-martial.

Dated at Witley, Surrey,
this 2nd day of
April, 1942.

M. Dufour .....

(2) I hereby acknowledge that I have been served with a true copy of an additional summary of evidence taken at Algonquin Camp, Witley, Surrey, preliminary to my court-martial.

Dated at Witley, Surrey,
this _____ day of
_____, 1942.

.....

(3) I hereby request that the Convening Officer appoint an officer to represent me at my trial.

I desire the services of _____
if he is available.

Dated at Witley, Surrey,
this 2nd day of
April, 1942.

M. Dufour .....

E-6127 Pte. Dufour, M., R.22e R.

Statement of **EVIDENCE** in the case of
E-4127 Pte. Dufour, M.
"C" Coy. R.22nd. Regt.

Sir;

At London on the 23-Mar-42 at about 1345 hrs. I was on duty at the Marble Arch, London, in company with L/Cpl. Good, where I saw the a/m soldier. I approached him and asked to see his pass. He stated that "he had one but had left it in his room at Oxford St.". He was not in possession of his M.B.I. Part 2 saying same was in possession of his paymaster. I decided to take him to No 6 Cdn. Prov. Coy. Hqrs, where I could check on his statement advising him of what I was going to do. The a/m then offered to give L/Cpl. Good, and myself 2/shillings each. I then placed him under arrest and when phoning for the Van he attempted to escape by running away but was frustrated. When on the way to No 6 Cdn. Prov. Coy. Hqrs. he again offered to pay for to be allowed to get away. Both these offers of money were refused. On arrival at Hqrs. I turned him over to the N.C.O. i/c of cells to be detained.

London
23-Mar-42

R. J. Flowers .....L/Cpl.
(B-85802 Flowers, R.J.)

REMARKS

Sir;

I have read over and corroborate the above statement.

London
23-Mar-42

E. P. Good .....L/Cpl.
(A-3692 Good, E.P.)

CHARGE

Army Form B 252
(See King's Regulations

Royal 22nd. Regt. — Regiment
"C" Coy. — Battery / Squadron / Troop or / Company

CHARGE against No. E-4127 Rank Pte.

Name Dufour, M.

Place London Date of Offence 23-Mar-42

OFFENCE W.O.A.S.(I)Attempting to Bribe a N.C.O. of the Cdn. Prov. Corps when checked at the Marble Arch, London, at about 1345 hrs. on the 23-Mar-42(2) Attempting to escape Lawful custody at the same time date and place. (3)Stating a falsehood to a N.C.O. of the Cdn. Prov. Corps, at the same time date and place.

O. i/c Detention Room
No. 6 Provost Company.

Names of Witnesses:—

L/Cpl. Flowers, E.J. Canadian Provost Corps.

L/Cpl. Wood, E.P. Canadian Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. F 4127 Rank Pte Name Dufour M Unit Royal 22nd Regt

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ Worthing for London

Date	Particulars	Amount		
27 Mar 42	Escorts return fare from LONDON To Worthing	0	6	6
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Worthing	0	4	11
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £	0	11	5

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

M. E. Byers Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-58
40/P & S/482

Exhibit "B"
J.R.

SUMMARY OF EVIDENCE

In the case of E-4127 Pte. DUFOUR, M.,(Royal 22e Regt.), No. 1 Canadian Division Infantry Reinforcement Unit.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

1st Witness for the Prosecutor. E-39040 Pte. Boutet, J.H., (Royal 22e Regt.), No. 1 Cdn. Div. Inf. Reinf. Unit, having been duly sworn, states:

On the 22nd day of March 1942, I held the rank of A/Cpl. and on this date and also on the 23rd of March 1942, I was acting as Orderly Sergeant for the Royal 22e Regt. Company, No. 1 Cdn. Div. Inf. Reinf. Unit. At about 0810 hours on the 22nd of March, I went into the kitchen and found that E-4127 Pte. Dufour, the accused whom I now recognize, was absent from his duties as kitchen fatigue. I made a thorough search of the Company Lines and found that he was absent. I called the roll at 2200 hours on the 22nd of March, and also at 0630 hours on the 23rd of March, and on each occasion I found that Pte. Dufour was absent.

(The accused declines to cross-examine this witness)

J.H. Boutet

2nd Witness B-85802 L/Cpl. Flowers, R.J., Cdn. Provost Corps states:

Sirs:

At London on the 23 March 42 at about 1345 hours I was on duty at the Marble Arch, London, in company with L/Cpl. Good, where I saw Pte. Dufour M., E-4127. I approached him and asked to see his pass. He stated that "he had one, but had left it in his room at Oxford Street." He was not in possession of his M.B.I. Part 2, saying same was in possession of his paymaster. I decided to take him to No. 6 Cdn. Prov. Coy. Hqrs., where I could check on his statement advising him of what I was going to do. Pte. Dufour then offered to give L/Cpl. Good, and myself 2 shillings each. I then placed him under arrest and when phoning for the Van he attempted to escape by running away, but was frustrated. When on the way to No. 6 Cdn.Prov.Coy. Hqrs. he again offered to pay for to be allowed to get away. Both of these offeres of money were refused. On arrival at Hqrs. I turned him over to the N.C.O. i/c cells to be detained.

London, 23 Mar 42. (signed) R.J.Flowers, L/Cpl.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence. Having regard to the loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

J.R. Turner Lieut.
Officer Taking Summary.

3rd Witness A-3692 L/Cpl. Good, E.P., Canadian Provost Corps, states:

Sir:
I have read over, and corroborate the above statement.
(Statement of B-85802 L/Cpl. Flowers)

London (signed) E.P. Good
23 Mar 42.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence. Having regard to the loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

J.R. Turner Lieut.
Officer Taking Summary.

The accused having been duly cautioned in accordance with Rule of Procedure 4(E), reserves his defence. This caution was read in French, according to C.A.M.C. # 1424
Certified that Rule of Procedure 4 (C) (D) (E) (F) and (G) has been complied with.

Taken down by me in the presence and hearing of the accused, this 27th day of April 1942, at Algonquin Camp, Witley, Surrey.

J.R. Turner Lieut.
Officer Taking Summary.

ADDITIONAL SUMMARY OF EVIDENCE

In the case of E-4127 Pte. Dufour, M.,
(Royal 22e Regiment), No 1 Canadian Division
Infantry Reinforcement Unit.

By direction of the Commanding Officer, this
Additional Summary of Evidence is taken on oath.

4th Witness for the Prosecution — Capt. E.J. Rider, Officer i/c Records, No 1 Canadian Division Infantry Reinforcement Unit, Having been duly sworn, states:

I am Capt. E.J. Rider, Officer i/c Records, No. 1 Cdn. Div. Inf. Reinf. Unit, and as such produce in evidence:

Exhibit "P" - Expense Voucher re E-4127 Pte. Dufour, M. Royal 22e Regiment, bearing date 24 Mar 42, and signed by Lieut. M.E. Byers. This document refers to the accused whom I now recognize.

The accused declines to cross-examine this witness.

E J Rider Capt.

The accused having been duly cautioned in accordance with Rule of Procedure 4(E), read in French according to C.A.R.O. # 1424, reserves his defence.

Certified that Rule of Procedure 4 (C)(D)(E)(F) and (G) has been complied with.

Taken down by me in the presence and hearing of the accused this 7th day of April 1942, at Algonquin Camp, Witley, Surrey.

J L Turner Lieut.
Officer Taking Summary.

No. E-4127 Name Dufour, M. Sqn., Battery, or Company: Corps R.22e R. C.A.(O). Date of enlistment: 14-9-39 G.C. Badges: Service or Proficiency Pay:

M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet: No. and date of last drunk: Period not reckoning towards freedom from extra fine: Sheet No. One Signature O.C. Company, etc.: W.D. Morgan, Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishments awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				PREVIOUS SHEET DESTROYED 4-5-41					
Guillemont	17-5-40	Pte.		A.W.L. from 2359 hours 17-5-40 to 1930 hrs. 22-5-40. Total absence: 4 days, 19 hrs. 31 mnts.	Cpl. Bissonnette	168 hrs. Det.	23-5-40	Major Blais	Forfeits 5 days pay
Guillemont	20-6-40	Pte.		A.W.L. from 0900 hrs. 20-6-40 to 2300 hrs. 21-6-40. Absence 1dy. 14hrs.	CSM. Dagenais Cpl. Solis	168 hrs. Det.	22-6-40	Lt-Col. Flynn	Forfeits 2 days pay
In the Field	20-7-40	Pte.		A.W.L. from 2230 hrs. 20-7-40 to 0050 hrs. 30-7-40. Absence: 9d. 2h. 20m.	CSM. Dagenais L/C. Myers L/C. Mainprey	14 days Det.	1-8-40	Lt-Col. Flynn	Forfeits 10 days pay

(R.I.O.)

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	6-8-40	Pte.		A.W.L.from 1900 hrs 6-8-40, to 0445 hrs.21-8-40.Abs:19D.4H.45M.	Sgt.Beaudet " Switz	19 days Det.	26-8-40	Lt-Col. Flynn	Forfeits 20 days pay.
In the Field	9-9-40	Pte.		A.W.L.from 2100 hrs.9-9-40 to 0310 hrs.15-9-40.Abs:5D:6H:10M.	Sgt.Archambault L/C.Lauzon	60 days Det.	23-9-40	F.G.C.M.	Major Ernst.Pres.
Louisburg	1-11-40	Pte.		A.W.L. from 2200 hrs.1-11-40 to 1330 hrs.9-11-40.Abs:7D:15H:30M.	L/Sgt.Gasien	28 days Det.	11-11-40	Lt-Col. Mathewson	Forfeits 8 days pay.
Bordon	6-12-40	Pte.		A.W.L.from 2200 hrs.6-12-40,to 1325 hrs.30-12-40.Abs:23D:15H:25M.	Sgt.Gray	28 days Det.	2-1-41	Major Belanger	Forfeits 24 days pay.
Witley	27-1-41	Pte.		A.W.L. from 2200 hrs.27-1-41 to 1400 hrs.11-2-41.Abs:14D: 16 H.	Sgt.Gatien	28 days Det.	13-2-41	Major Belanger	Forfeits 15 days pay.
London	25-3-41	Pte.		1. Stealing; 2. Assaulting; 3. Stealing.		1 Month; 7Days; 1 Month.Sentence to runconsecutively at H.M.Prison, Wandsworth	24-3-41	Civil Court	Released 9-5-41.

CERTIFIED TRUE COPY:

E.J. Rider Capt.,
(E.J.Rider) Off.i/c Records, # 1 CDIRU.

No. E-4127 Name Dufour, M. Sqn., Battery, or Company: Corps R 22e R. C.A.(O). Date of enlistment: 14-9-39 G.C. Badges: Service or Proficiency Pay: M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet: No. and date of last drunk: Period not reckoning towards freedom from extra fine: Sheet No. Two Signature O.C. Company, etc.: O.Gauthier Capt. Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Laurentide Camp	4-3-41	Pte.		A.A.Sec.15(1).A.W.L. from 1230 hrs. 4-3-41 to 1000 hrs.16-3-41. Abs: 11days:20 hrs; 30 mins.		2 yrs. imprisonment with hard Labour. 1 yr.Remission	9-7-41	F.O.C.M. sentence confirmed by L.F.Page, Maj-Gen. D.S.O.	Forfeits 12 days pay. 114 " " 365 " " Total Forfeiture, 491 days pay.
				Released from the Detention Barrack Aldershot, on 11 Mar 42, sentence having expired. Remission earned under "Rules for Detention Barracks and Military Prisons" - 119 days. Commandants Initials - S.G.					

CERTIFIED TRUE COPY (2 Pages): E.J. Rider Capt.,
(E.J. Rider), Officer I/c Records,
No 1 Cdn. Div. Inf. Reinf. Unit.

(A.F.O.)

STATEMENT as to CHARACTER & PARTICULARS of SERVICE of ACCUSED

B-4127 Pte. Dufour, M., Royal 22e Regiment, No. 1 Canadian Division Infantry Reinforcement Unit.

1. The following is a fair and true summary of the entries in the regimental conduct sheet of the accused, exclusive of convictions by a court-martial or a civil court, and of cases in which trial has been dispensed with:

	Within last 12 months	Since Enlistment
A.A. Sec. 15(1), Absent without leave	0	7

Number of instances of gallantry or distinguished conduct: NIL.

2. The accused is not under sentence at the present time.

~~3. The accused has not been previously convicted by a Court-Martial or a civil court.~~ CJK

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 23 days in military custody, making a total of 23 days in custody, of which 8 days were spent in hospital.

5. The present age of the accused according to his attestation paper is 25 years.

6. The date of his attestation specified in his attestation paper is 14 September 1939.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 352 days.

8. The accused is entitled to deferred pay or gratuity in respect of 352 days service.

9. The accused is entitled to reckon 352 days service for the purpose of determining his pension, etc.

10. The accused is in possession of or entitled to no military decoration or military reward.

SCHEDULE

of convictions by a court-martial or a civil court and of cases in which trial has been dispensed with of the accused.

On the 23 September 1940, tried by F.G.C.M. for W.O.A.S. absent without leave (A.A.Sec 15(1)). Sentenced to undergo Detention for 60 days. Released Detention 30 October 1940, sentence having expired. Remission earned, 20 days.

On the 24 Mar 41, tried by Civil Court, at London for (1) Stealing; (2) Assaulting; (3) Stealing. Sentenced to imprisonment for (1) 1 Month; (2) days; (3) 1 Month, sentence to run consecutively at H.M. Prison, Wands-. Released 9 May 41.

On the 9th July 41, tried by F.G.C.M. for W.O.A.S. absent without leave (A.A.Sec.15(1)) and sentenced to 2 years imprisonment with hard labour. 1 year ...ion. Sentence confirmed by L.F.Page, Major-General, HQ, C.B.U. 12 Jan 42, sentence commuted to detention. Released from Detention ... Mar 42, sentence having expired. Remission earned, 119 Days.

I hereby certify that the foregoing schedule of convictions and dis...ensations with trial is a true extract from the regimental books in ...y custody.

...gonquin Camp,
...tley, Surrey,
...day of April
...2.

E. J. Rider Capt.,
(E.J.Rider), Officer i/c Records
No. 1 Can. Div. Inf. Reinf. Unit

LLL-29

PTE DUFOUR R.

CERTIFIED TRUE COPY
R. Cordeau Capt
(R. Cordeau)

Correspondence to be PINNED here.

LLL-29

Army Form A.3. Dupuis R

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twelfth day of April, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [redacted] "PEB"

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [redacted] "PEB"

[redacted]

* [redacted]

[redacted] "PEB"

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	B A Kennedy	Carlt & York R

Members.

Rank.	Name.	Regiment.
Captain	J B Jalbert	R 22e R
Lieut	A B Edgar	Carlt & York R
Waiting Captain	M Parlseault	R 22e R

*Must be signed personally by the Officer actually in command at the time and all alterations in the composition of the Court to be initialled by him.

*Signed "PE Bernnatchez" Brigadier

Commanding 3 Cdn Inf Bde

Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E5428 Pte Roch DUFOUR, R 22e R	First Charge Sec 41 AA	Not Guilty	Guilty To undergo IHL for a period of 2 years (two) "BAK" 15 Apr 44	Confirmed 20 Apr 44 "PE Bernatchez" Brig Comd 3 Cdn Inf Bde.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(*Signed*) "PE Bernatchez" Brigadier (*Signed*) "BA Kennedy" Major

Commanding 3 Cdn Inf Bde
Convening Officer (e) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 15th day of April 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter)
*(~~[illegible]~~) "BAK"

were duly sworn.

*Omit if not applicable.

Signed this 15th day of April 1944.

"BA ~~Rene~~ Kennedy Major"
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (b) on page 782 M.M.L. 1929.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~[illegible]~~ "PEB"

Signed this ~~15~~ 20th day of April 1944.

"PE Bernatchez Brig"
Confirming Officer Comd 3 Cdn Inf Bde.

Promulgated and extracts taken in the case of E.5428 Pte. R. DUFOUR.

(a) (Dated) 21 Apr 44. (Signed) "PA Tremblay Lieut" ASS/Adjt R.22eR.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

32
"13 A K"

CHARGE SHEET

The accused E.5428 Pte Roch DUFOUR, a soldier of the Royal 22e Regiment, Canadian Army, Overseas, CMF, On Active Service, is charged with:-

Charge
A Sec 41

WHEN ON ACTIVE SERVICE
COMMITING A CIVIL OFFENCE

that is to say

ASSAULT OCCASIONING ACTUAL BODILY HARM

in that he

In the Field, at San Appolinari, at about 2245 hours on 5 Feb 1944, unlawfully shot and wounded GUCCI Donato, an Italian civilian.

"GJ Charlesbois"
(J.G. Charlebois) Major,
T/Commanding Royal 22e Regiment.

In the Field
23 Mar 44

"TO BE TRIED BY FIELD GENERAL COURT MARTIAL"

In the Field

14 Apr 44

"PE Bernatchez"
Brigadier,
Commanding 3 Cdn Inf Bde.

"BAH"

MEDICAL OFFICER'S CERTIFICATE

This is to certify that this morning I examined No E-5428

Rank Pte Name: DUFOUR A. of Royal 22e Regt.

and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station: In the Field

Date: 15 April 1944

"CB Caswell, Capt"
Medical Officer

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at in the Field on the 15th day of April 1944 by order of Brigadier J.P.E. Bernatchez.

Commanding 3 Cdn Inf Bde.

dated the 12th day of April 1944

President Major B.A. Kennedy, Carlt & York Regt.

Members.

Captain J.B. Jalbert R 22e R.
Lieut AB Edgar Carlt & York R.

Trial of*

E5428 Private Roch Dufour

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court. "BAK"

~~[illegible] "BAK"~~

~~, waiting member takes his place as a member of the Court.~~ BAK

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut P.A. Tremblay R22e R.

Counsel‡ or defending officer† Capt. L. Cannon R22e R.

At 0940 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible]

B

The President, members and ~~judge advocate~~ are duly sworn.

[redacted] duly sworn.

Q: Do you object to E 5414 Cpl Angiolillo, J. R22e R as Interpreter.
A: No.
The interpreter is duly sworn.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

[redacted] "BAK"

Answer.

[redacted] *Question.*

[redacted] "BAK"

Answer.

[redacted] *Question.*

[redacted] "BAK"

Answer.

[redacted] "BAK"

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No Sir

[redacted]

"BA[redacted]"

The prosecutor proceeds to call witnesses.

First witness for prosecution. Canci Michele

being duly sworn, is examined by the prosecutor.

Q: What is your name and place of residence?
A: I am Canci Michele, a resident of San Appolinari.

Q: Do you recognize the accused as being Pte Dufour?
A: I recognize him as one of the soldiers who were there that night.

Q: Will you relate to the court what you know about this case of Pte Dufour.

A: There were three soldiers who knocked at the door and came into the house and closed the door behind them. One of soldiers stayed at the door. One of the soldiers was in the centre of the room and a third was trying to make a proposition with Ballerina Angela. Another woman in the room wanted to go out to call the police. The soldier at the door struck her twice with his fist. This same lady then tried to climb the stairs when the third mentioned soldier climbed after her. After climbing three or four steps with a machine gun he passed the gun to the accused and keeps on climbing the stairs after the woman trying to stop her from yelling. While this was going on I saw the accused shoot Gucci Donato.

Q: Do you recognize the accused as the one who shot Gucci Donato?
A: Yes.

Cross-examined by the defence:

Q: At what time did this occur?
A: Around 1030 to 1100 o'clock.

Q: Had the accused ever been to the house prior to that time?
A: This was the first time.

Q: Where was Gucci Donato at the time of the shooting?
A: Near the hearth.

Q: Where is the hearth?
A: In the kitchen of the second floor of the house.

Q: Did Dunato struggle with the accused?
A: He did not struggle with the accused.

Q: Did the accused appear to be very drunk at the time?
A: He did not appear to be drunk.

Q: Was there any argument between the accused and Donato?
A: No.

Q: Did Donato interfere when one of the soldiers allegedly propositioned one of the women?
A: No, Donato did not try to stop him.

Q: Was the woman propositioned on the first floor or in the kitchen?
A: On the second floor in the kitchen.

R.P. 83(8) complied with.

"BAK"

-1-

Second Witness
Prosecution - Ballerina Angela.

Q: What is your name and place of residence?
A: Ballerina Angela of San Appolinari.

Q: Do you recognize the accused as the one involved in this case?
A: I do not recognize him.

Q: What is your story of this case?
A: Three soldiers came in after knocking at the door. One stayed near the door, one was in the middle of the room and a third was sitting near me with a machine gun. The wife of the wounded man tried to get out to call the police but the soldier near the door struck her twice with his fist. Seeing that she could not get out by the door she tried to get up the stairs, so the soldier with the machine gun followed the woman up the stairs. He passed his machine gun to the soldier in the middle of the room. He was trying to stop the woman from yelling. While this was happening on the stairs the one in the middle of the room shot Gucci Donato.

Q: Do you recognize the accused as the one who held the machine gun?
A: I recognize him as the one who shot Gucci Donato.

Second Witness - Prosecution Ballerina Angela -2- "BAK"

Cross-examined by the defence:

Q: Are you quite sure that the accused is the soldier who shot Gucci Donato?
A: Yes.

Q: How long after the soldiers entered the house did this happen?
A: Not more than five minutes.

Q: Were the three soldiers drunk?
A: They seemed to be sober.

R.P. 83(B) Complied with

-3- "BAK"

Third Witness
Prosecution - D'Angelo Antonio

Q: What is your name and place of residence?
A: D'Angelo Antonio of San Appolinari.

Q: Do you recognize the accused as the one involved in this case?
A: Yes. He had a moustache before.

Q: Where were you at about 2230 hrs 5 Feb 44?
A: Getting ready to go to sleep in my house.

Q: Where is this house in relation to that of Ballerina Angela?
A: My house is that next to Ballerina Angela's.

Q: Did you hear anything unusual at that time?
A: I heard some shouts for help coming from the next house.

Q: Did anybody come to see you then?
A: Nobody came.

Q: What did you do then?
A: I went out and saw the accused with a gun. The accused went into my house.

Q: What did he do then?
A: I tried to quiet him down as I speak little French but he wouldn't listen.

Q: What did you do after that?

A: I went out and called the police.

Q: Did the police bring the accused away?
A: Yes.

Cross-examined by the defence.

Q: When you saw the accused and tried to calm him down was the accused drunk?
A: He was drinking but not drunk.

Q: What did the accused do when he was arrested by the Military Police?
A: When the prisoner saw the policeman he dropped his gun. The policeman picked up the gun and took the accused by the arm and took him out.

R.P. 83(B) complied with

4th Witness for Prosecution E5298 L/Cpl. Emard F

I am E5298 L/Cpl. Emard. F. Regimental Police R22e R.

At S. Appolirani the 5th Feb 1944, at about 2200 hrs I was called by a civilian named Nicolas, and asked to go to his house where there was a soldier of our ~~[illegible]~~ Unit with a firearm. I immediately went there and found Pte Dufour R. in possession of a TSMG, and it had just been fired. I put the accused under arrest.

[illegible] the full magazine I could the TSMG.

"BAK"

-5-

Q: Did you unfasten the magazine from the TSMG and count the number of rounds in it?
A: I took the magazine off but did not count the rounds.

Q: When you put Pte Dufour under arrest, was he drunk?
A: He probably had taken some drinks but ~~you~~ I could not say that he was drunk.

Pros
Q: That civilian who went to get you, did you see him here this morning
A: Yes sir.

Q: Is it the last witness who came before the court?
A: I would not swear because I did not notice the last witness but I know his name is Antonio, he is called Tony.

R.P. 83(b) complied with

E-4286 L/Cpl Mercier, P. posted in the Regimental Police of R.22e R.

Q: Will you state what you know in the case of the accused.
A: At 2200 hrs, the 5th Feb 1944, I was present when L/Cpl Emard arrested Pte Dufour who was in possession of a Tommy Gun. He was put under arrest.

"BAK" -6-

Q: Did you smell the Tommy Gun?
A: Yes Sir.

Q: What did you notice?
A: The Tommy Gun had just been fired.

R.P. 83(b) complied with.

"BAK"

5th Witness
for Prosecution E4750 Sgt Langlois R.

I am E4750 Sgt Langlois R. Medical Sgt. R22eR. At approx. 2300 hrs beginning of Februrary, I don't remember the date, while the unit was in San Appolinari, I was called upon to give first aid to an Italian civilian. he had some through and through wounds in the right arm. After applying the necessary dressings I called the Regimental M.O. but the Italian refused to receive treatment from the M.O. and wanted to get his own Italian doctor. Therefore I made the Italian sign a paper to the effect that he was refusing treatment from an army doctor. Unfortunately that paper was destroyed in the R.A.P.

Q: When you applied treatment did you notice the seriousness of the wounds and how in your opinion were they caused?
A: They were gun-shot wounds and they were serious as one of the bones had been injured.

R.P. 83(b) complied with.

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness ?

Answer. Yes.

Question. Do you intend to call any other witness in your defence ?

Answer. No.

Question. Is he a witness as to character only ? *Answer.*

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. [redacted] "BAK"

Answer. [redacted]

"BAK" [redacted]

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

"BAK"

1st Witness for the Defence

The accused E5428 Pte Dufour R. after having been duly sworn proceeds to give evidence in his own defence.

Q: On the 5th of Feb 44, before going to the house of a civilian named Donato, did you have occasion to drink wine. VINO.
A: On that day I began to drink at about 0900 hrs in the morning.

Q: Do you remember having got into the house of Donato and do you remember anything that happened in that house.
A: No, I don't remember anything.

Q: At what moment did you bedome aware of what was going on around you?
A: I remember being in the clink with the handcuffs.

Q: How long have you been with the unit?
A: Since the 6th of March 1940.

Q: Did you land in Sicily with the Unit?
A: Yes sir.

Q: Have you been with "C" Coy all the time?
A: Three weeks after Sicily I was in hospital with the malaria, ----for three weeks or a month.

Q: By the Court: On what day did you start to drink?
A: That was the last day I was free because the next day I was in the clink.

Q: When you started drinking at 0900 hrs was it the day that you went to the house of Donato?
A: It must be that day, because I was arrested that night and they told me I had been to this house.

R.P. 83(b) complied with.

Closing Address - Prosecution: "BAK"

The Prosecution feels this case has been proved and that an example should be made. It is incidents like this which go to bring discredit on the Canadian Army, and in bringing ill-feeling between the civilian population and the Army of Occupation, perhaps hinder the prosecution of the war.

"PA Tremblay, Lieut."

'BAK'

Closing Address bydefending officer Capt. L. Cannon: -

I cannot believe that Dufour was in full possession of his senses, on the night of 5 Feb 44. The prosecution would have us believe that Dufour shot Donato in cold blood, without provocation or motive. That would be the act of a thug and gangster and surely we can't say that Dufour is either one or the other. I am certain that the act was committed under the influence of liquor and while blind drunk, and that the accused has no recollection of shooting Donato. He might have fired the TSMG but I don't think he was responsible for anything he did that night, as he admits drinking all that day.

E

Finding.*

**To be struck out except in cases where trial has taken place on a plea of "Not Guilty."*

The Court is closed for the consideration of the finding.

The Court find that the accused E5428 Pte Roch Dufour R22eR Guilty of the charge as laid

Proceedings on Conviction *before Sentence.*

**When the Court is already open this sentence will be struck out.*

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut. P.A. Tremblay R.22eR. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. Yes

Cross-examined by the accused. N/A

(Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court requires him liable to any exceptional punishment in addition to that it is awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	20-1-42	Pte		Conduct to the PGO & M. D. in that he in the field on the 20-1-43 did gamble contrary to Par 440KR(Can) 1939.	CSM Miville Sgt Fanbert	21 dys det.	20-1-43	Lt-Col Bernatchez	C Bellavance Maj.
" " "	1May43	Pte		Sec 15AA Absent of tatoo at 2230 hrs 1 May 43 until 0630 hrs 2 May 43 at Reveille Totlabs8 hrs.	Cpl Pilotte L/Cpl Otis	7 dys CB	3 May 43	Lt P Triquet Forf one for OC C Coydays' pay	
" " "	6Jun43	Pte		W.O.A.S. sec. 40 AA While on Parade neglect to obey an order in that he neglected to return live ammunition.	Sgt DesjardinsL C Boudreau	3 Dys CB	7 Jun 43		CL Bellavance Major
In the Field	25 Nov 43	Pte		W.O.A.S. AA Sec. 15 AWL from 1200 hrs 25-11-42 until 22 hrs 27-11-42 2 Dys 10 hrs AWL.		Forfeit 3 days Pay	8-1-44	F. Trudeau Major	

CERTIFIED TRUE COPY OF
ORIGINAL IN MY POSSESSION
"PA Tremblay, Lieut"
2 Apr 44.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused E5428 Pte Roch Dufour R22eR Guilty of the charge as laid

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut. P.A. Tremblay R.22eR. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused. N/A

(Instructions.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused E5428 Pte Dufour R. of R 22eR Sentence

To undergo IHL for a period of 2 years (Two).

"BA Kendy Major"

Certified True Copy
"Y Dube Capt."

No E5428 Name Pte DUFOUR R. Sqn. Battery, or Company "C" Corps R.22 R. Date of enlistment 6-3-40 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/P&S/126 (5428)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On the 6/3/42 this soldier completed two years service. In accordance with R.O. 71 (CAO) the above regt entries were transferred from previous sheet which was then destroyed on the									
In the Field	16-6-42	Pte		1. Late on afternoon parade 2. Improperly dressed on parade	Cpl Lalonde	3 days C.B.		Major Doiron	
In the Field	21-6-42	"		1. Improperly dressed 2 - Insubordination towards an NCO	RSM Tremblay	7 days CB		Lieut Payette	
" "	" 1-8-42	"		Neglect to obey an order AA Sec40	Sgt Colas Cpl Nadeau	7 days CB	6-8-42	Major Dorion	Forf 1 day's
" "	" 20-9-42	"		Overstaying his pass from 2359 hrs till 1030 hrs 21-0-42 Total abs 1031 hrs	Cpl Lalonde B	5 days CB	21-9-42	E.A. Doiron	1 dys Pay
In the Field	17-10-42	"		AWL from 2359 hrs 17-10-42until 1130 hrs 19-10-42	Cpl LacelleE	7 days CB 7 days FP	21-10-42	LtColBernatchez	plus 7 dys
In the Field	17-8-42	"		Neglect to obey a Standing Order in that he In the field on 17-8-42 seen playing cards with money at stake contray to Coy Order No 3 14 Jul 42.	CSM Mirrille Cpl Lafortune	7 days CB	17-8-42	Maj.Millette	

"BAK"

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	20-1-42	Pte		Conduct to the PGO & M. D. in that he in the field on the 20-1-43 did gamble contrary to Par 440KR(Can) 1939.	CSM Miville Sgt Fanbert	21 dys det.	20-1-43	Lt-Col Bernatchez	G Bellavance Maj.
" " "	1May43	Pte		Sec 15AA Absent of tatoo at 2230 hrs 1 May 43 until 0630 hrs 2 May 43 at Reveille Totlabs8 hrs.	Cpl Pilotte L/Cpl Otis	7 dys CB	3 May 43	Lt P Triquet Forf one days' pay for OC C Coy	
" " "	6Jun43	Pte		W.O.A.S. sec. 40 AA While on Parade neglect to obey an order in that he neglected to return live ammunition.	Sgt DesjardinsL C Boudreau	3 Dys CB	7 Jun 43		CL Bellavance Major
In the Field	25 Nov 43	Pte		W.O.A.S. AA Sec. 15 AWL from 1200 hrs 25-11-42 until 22 hrs 27-11-42 2 Dys 10 hrs AWL.		Forfeit 3 days Pay	8-1-44	F. Trudeau Major	

CERTIFIED TRUE COPY OF
ORIGINAL IN MY POSSESSION
"PA Tremblay, Lieut"
2 Apr 44.

RECEIVED 27 MAY 1944 JAG BRANCH C.M.H.Q.

Correspondence to be PINNED here.

RECORDED AT CMHQ IN AB 160 ... 44429

G56

Army Form A.3.

CANADIAN SECTION DISCIPLINE & PAY SECTION 3 MAY 1944 G.M.Q. 2nd ECHELON

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twelfth day of April, 1944.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*(and that it is not practicable to delay the trial for reference to a superior qualified officer)~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

~~*I am unable to appoint~~

~~*(1) Three Officers to form the Court~~

~~*(2) A Field Officer as President~~

~~for the following reasons, namely~~

PROCEEDINGS REVIEWED 29 May 44

H. C. Pick Lieut.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

38

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	B A Kennedy	Carlt & York R

Members.

Rank.	Name.	Regiment.
Captain	J B Jalbert	R 22e R
Lieut	A B Edgar	Carlt & York R
Captain	M Parisault	R 22e R

Waiting

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding 3 Cdn Inf Bde

Convening Officer.

G56

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E5428 Pte Roch DUFOUR, R 22e R	First Charge Sec 41 AA	Not Guilty	Guilty To undergo IHL for a period of 2 years (two) Bldg 15 APR 44	Confirmed 20 April 44 E Burnatchey Brig Cmd 3 Cdn Inf Bde

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) E Burnatchey Brigadier (Signed) [signature] Major

Commanding 3 Cdn Inf Bde
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 15th day of April 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter)
~~*(4. The officers under instruction)~~ BR

were duly sworn.

*Omit if not applicable.

Signed this 15th day of April 1944.

[signature] Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19 ,

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ PEB

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 20th day of April 1944.

E Burnatchey Brig
Confirming Officer. Comfd 3 Cdn Inf Bde

Promulgated and extracts taken in the case of E 5428 Pte R Dufour R

(a) (Dated) 21 Apr 44 (Signed) [signature] Lieut [illegible] R 22e R

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible]

B2 . Bak

CHARGE SHEET

The accused E.5428 Pte Roch DUFOUR, a soldier of the Royal 22e Regiment, Canadian Army, Overseas, CMF, On Active Service, is charged with:-

Charge
AA Sec 41

WHEN ON ACTIVE SERVICE
COMMITTING A CIVIL OFFENCE

that is to say

ASSAULT OCCASIONING ACTUAL BODILY HARM

in that he

In the Field, at San Appolinari, at about 2245 hours on 5 Feb 1944, unlawfully shot and wounded GUCCI Donato, an Italian civilian.

J G Charlebois
(J.G.CHARLEBOIS)Major,
T/Commanding Royal 22e Regiment.

In the Field
23 Mar 44

" TO BE TRIED BY FIELD GENERAL COURT MARTIAL"

In the Field

14 Apr 44

[illegible]
~~(T.G.Gibson)~~ Brigadier
Commanding 3rd Inf Bde.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts - Martial.

Proceedings of a Field General Court-Martial held at in the Field on the 15th day of April 1944 by order of Brigadier J P E Bernatchez

Commanding 3 Cdn Inf Bde.

Dated the 12th day of April 1944

President. Major B A Kennedy Carlt & York Regt.

Members.

Captain J B Jalbert R22eR.
Lieut A B Edgar Carlt & York R.

Trial of* E5428 Private Roch Dufour ~~Judge Advocate~~

The order convening the Court, the charge-sheet and the summary (~~or abstract~~) of evidence are laid before the Court.

~~The Court satisfy themselves that is not~~ Bal ~~available to serve owing to~~ Bal ~~, waiting member takes his place as a member of Cour~~ Bal

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court

Prosecutor, † Lieut P. A. Tremblay R22eR.

Counsel § or defending officer † Capt. R Cannon R22eR.

At 0940 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B. — If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.

* Here insert No., Rank, full Name, Regiment, and Appointment (if any)
† Here state Rank and Name, and Regiment (if any)
§ Qualification to be stated.

5947 - PMEJ/5-000 - 5-43

V

B

The President, members and ~~judge-advocate~~ are duly sworn.

~~The following officers~~ under instruction are duly sworn,

Q Do you object to E 5414 Cpl Angiolillo. J. R22eR as Interpreter.
A No
The Interprete is duly sworn

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the (first) charge against you, which you have heard read? *Question to the accused.*

- Not Guilty *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (8) are here complied with.~~

Instruction. If the trial proceeds upon any charge to which where is a plea of Not Guilty, the Court will not proceed upon the record of a plea of Guilty, until after the finding on that other charge.

C

Proceedings on Plea Not Guilty.

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No Sir.

~~The prosecutor makes an opening address (hands in a written address which is read, marked ~~ ~~signed by the President, and attached to the proceedings.)~~ Ptf.~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. Cucci Michele

being duly sworn, is examined by the prosecutor.

Q What is your name and place of residence?
A. I am Cucci Michele, a resident of San Appolinare.
Q Do you recognize the accused as being Pte Dufor?
A. I recognize him as one of the soldiers who were there that night.
Q Will you relate to the court what you know about this case of Pte Dufor.
A. There were three soldiers who knocked at the door and came into the house and closed the door behind them. One of soldiers stayed at the door. One of the soldiers was in the centre of the room and a third was trying to make a proposition with Palleria Angela.
Q Another woman in the room wanted to go out to call the police. The soldier at the door struck her twice with his fist. This same lady then tried to climb the stairs when the third sentinel soldier climbed after her. After climbing three or four steps with a machine gun he passed the gun to the accused and kept on climbing the stairs after the woman trying to stop her from yelling. While this was going on I said the accused shot Cucci Renato.

Q Do you recognize the accused as the one who shot Gucci Dunato?

A Yes.

Cross examined by the defense:

Q At what time did this occur?

A Around 10:30 to 11:00 o'clock.

Q Had the accused ever been to the house prior to that time?

A This was the first time.

Q Where was Gucci Dunato at the time of the shooting?

A Near the hearth.

Q Where is the hearth?

A On the kitchen of the second floor of the house.

Q Did Dunato struggle with the accused?

A He did not struggle with the accused.

Q Did the accused appear to be very drunk at the time?

A He did not appear to be drunk.

Q Was there any argument between the accused and Dunato?

A No.

Q Did Dunato interfere when one of the soldiers allegedly propositioned one of the women?

A No, Dunato did not try to stop him.

Q Was the woman proprietress in the first floor or in the kitchen?

A On the second floor in the kitchen.

R.P. 83 (b) complied with

BLK

[illegible]

I certify that I have this morning examined No. 5428

Rank Fte Name DUFOUR H. of Royal 22d Regt.

and in my opinion he is fit/~~[illegible]~~ to undergo trial by Court Martial.

Station In the Field

Date 15th of April 1944

C. B. Caswell Capt

Medical Officer.

B&K

Second Witness Prosecution - Ballerina Angela.

Q. What is your name and place of residence?

A. Ballerina Angela. of San Appolinari.

Q. ~~what~~ Do you recognize the accused as the one involved in this case.

A. I do not recognize him.

Q What is your story of this case?

A. Three soldiers came in after knocking at the door. One stayed near the door, one was in the middle of the room and a third was sitting near me with a machine gun. The wife of the wounded man tried to get out to call the police but the soldier near the door struck her twice with his fist. Seeing that she could not get out by the door she tried to get up the stairs so the soldier with the machine gun followed the woman up the stairs. He passed his machine gun to the soldier in the middle of the room. He was trying to stop the woman from yelling. While this was happening in the stairs the one in the middle of the room shot Gucci Donato.

Q Do you recognize the accused as the one who held the machine gun?

A I recognize him as the one who shot Gucci Donato.

Cross-examined by the defense:

Q. Are you quite sure that the accused is the soldier who shot Gucci Donato?

A. Yes.

Q. How long after the soldiers entered the house did this happen?

A. Not more than five minutes.

Q. Were the three soldiers drunk?

A. They seemed to be sober.

R.P. 83(b) completed record.

Third Witness
Prosecution. - D'Angelis Antonio

Q. What is your name and place of residence?
A. D'Angelo Antonio of San Appolinare.
Q Do you recognize the accused as the one involved in this case?
A. Yes. He had a moustache before.
~~Q Will you tell the court what you know of the case.~~
A.
Q. When ~~was~~ were you at about 2230 hrs 6 Feb 44?
A. Getting ready to go to sleep in my house.
Q Where is this house in relation to that of Ballerina Angela?
A. My house is that next to Ballerina Angela's.
Q did you hear any thing unusual at that time?
A. I heard some shouts for help coming from the next house.
Q. Did anybody come to see you then.
A. Nobody come.
Q what did you do then?
A. I went out and saw the accused with a gun. The accused went into my house.
Q What did he do then?
A. I tried to quiet him down as I speak a little French but he wouldn't listen.
Q What did you do after that?

OK

A. I went out and called the police.

Q Did the police bring the accused away?

A Yes.

Cross-examined by the defence.

Q. When you saw the accused and tried to calm him down was the accused drunk?

A. He was drinking but not drunk.

Q What did the accused do when he was arrested by the Military Police?

A. When the prisoner saw the policeman he dropped his gun. The policeman picked up the gun and took the accused by the arm and took him out.

R.P. 83(b) complied with

4th Witness for Prosecution E5298 L/Cpl. Emard F

I am E5298 L/Cpl. Emard F Regimental Police R 22e R.

R.P 83 (b) complied with

R.P. 83 (b) complied with

BAK. (7)

5th Witness
for Prosecution

E 4750 Sgt Langlois R

I am E 4750 Sgt Langlois R. Medical Sgt
R 22 R. At approx 2300 hrs beginning
of February. I dont remember the date, while
the unit was in San Appolinare, I was
called upon to give first aid to an Italian
Civilian he had some through and through
wounds on the right arm. After applying
the necessary dressings I called the
Regimental M.O. and the Italian refused
to receive treatment from the M.O. and
wanted to get his own Italian doctor
therefore I made the Italian sign a
paper to the effect that he was refusing
treatment from an Arrow doctor. Unfortunately
[illegible] the H.M.P.
[illegible] paper [illegible]

Q When you applied treatment did you notice
the serviceness of the wounds and how
in your opinion were they caused?

A They were gun-shot wounds and they
were serious as one of the bones had been
injured

R.P. 83(b) complied with

D

The prosecution is closed

Defence

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes

Question. Do you intend to call any other witness in your defence?

Answer. No.

Question. Is he a witness as to character only? *Answer.*

INSTRUCTIONS TO THE COURT.

(i) when the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and address which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page *(see overleaf.)*

(Where the accused does not give evidence upon oath.)

Question to the accused. ~~Have you anything to say in your defence.~~ BK

Answer. The ~~accused in his defence says~~†
(~~hands in written address which is read, marked~~
~~signed by the President and attached to the proceedings.~~ BK

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see instructions to the Court above.)

1st Witness for the Defence

V

R.P. 83(b) complied with

Bak

Closing Address - Prosecution

The Prosecution feels this case has been proved and that an example should be made. It is incidents like this which go to bring discredit on the Canadian Army, and in bringing ill feeling between the civilian population and the army of occupation, perhaps hinder the ~~whole war effort~~ prosecution of the war.

P. A. Tremblay, Lieut.

Bat

Closing Address by defending officer Capt. L. Cannon:—

I cannot believe that Dufour was in full possession of his senses, on the night of 5 Feb '44. The prosecution would have us believe that Dufour shot Donato in cold blood, without provocation or motive. That would be the act of a thug and gangster and surely we can't say that Dufour is either one or the other. I am certain that the act was committed under the influence of liquor and while blind drunk, and that the accused has no recollection of shooting Donato. He might have fired the TSMG but I don't think he was responsible for anything he did that night, as he [illegible] drinking all that day.

E

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty"

Findings.*

The Court is closed for the consideration of the finding.

The Court find that the accused E-7428 Pte Rock

Colour Regt. Guilty of the charge as laid

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction before Sentence

*The Court being re-opened, the accused is again brought before it

Lieut. P.A. Tremblay R.22eR.

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by Witness.* Yes

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused. N/A

N/A

Instruction.—If by reason of the nature of the service of the accused in a department, corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor should call the attention of the Court to this fact, and the Court must inquire into the nature and amount of this additional punishment.

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence

F

Sentence.

The Court sentence the accused E 5428 Pte Dufour R. OF R22ER. Sentence.
to undergo I H L for a period of 2
Years. (Two)

[illegible]

BCK.

SUMMARY OF EVIDENCE

In the case of E.5428 Private Roch DUFOUR, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service.

By direction of the Commanding Officer this Summary of Evidence is taken under oath.

1st Witness for Prosecution CANCI Michele, 13, Via Rocca Di Renzo, San Appolinari, having been duly sworn states:-

" I am CANCI Michele, a resident of San Appolinari. At about 2230 hrs on 5 Feb 1944, three Canadian soldiers, two of whom I now recognize as E.42071 Pte Samuel Element, and E.5428 pte Roch Dufour came into our house. E.42071 pte Element was carrying a TSMG and approached BALLERINA Angela and tried to molest her. When she repulsed him he pointed his TSMG at her. RUICCI Adeline then tried to intervene but E.42071 Pte Element struck her in the face with his fist. She then ran upstairs to call for help at the window. E.42071 pte Element handed the weapon to E.5428 pte Roch Dufour and followed RUICCI Adeline upstairs. As soon as E.5428 pte Dufour got the TSMG he pointed it at GUCCI Donato and fired, hitting him in the right arm three times.

The accused declined to cross examine the witness.

Canci Michele
CANCI Michele

2nd Witness for Prosecution BALLERINA Angela, 13, Via Rocca Di Renzo, San Appolinari, having been duly sworn states:

" I am BALLERINA Angela, a civilian resident of San Appolinari. At about 2230 hrs on 5 Feb 1944, three Canadian soldiers came into our house. I now recognize two of them as E.42071 pte Samuel Element and E.5428 pte Roch Dufour. E.42071 pte Element was carrying a TSMG and came directly to me and started bothering me. I pushed him away and he pointed the TSMG at me. RUICCI Adeline then tried to intervene but he struck her in the face with his fist, upon which she ran upstairs to call for help. E.42071 pte Element then handed the TSMG to E.5428 pte Dufour and followed her upstairs. As soon as E.5428 pte Dufour got the TSMG he pointed it at GUCCI Donato and fired, hitting him three times in the right arm.

The accused declined to cross examine the witness.

Ballerina Angela
BALLERINA Angela

BAK

3rd Witness For Prosecution

D'ANGELO Antonio, Via Rocca Di Renzo, San Appolinari having been duly sworn states:-

" I am D'ANGELO Antonio, a civilian resident of San Appolinari. At about 2230 hrs on 5 Feb 44, I was awakened by shouts and cries coming from a nearby house. I immediately got up and while I was putting my shoes on, a soldier whom I now recognize as E.5428 pte Roch Dufour came to the door and asked for some wine. As he was carrying a TSMG and was obviously drunk, one of the occupants of the house tried to get out to call for assistance; E.5428 pte Dufour pushed him back. I then got the lady of the house to invite him into another room, and when he walked in I ran out and went to the guard room and got E.5298 L/Cpl Emard F. who came back with me and placed E.5428 pte Roch Dufour under arrest and brought him with him.

The accused declined to cross examine the witness.

D'ANGELO Antonio

4th Witness For Prosecution

E.5298 L/C Emard F. Royal 22e Regiment, having been duly sworn states:-

" I am E.5298 L/Cpl Emard F. of R.22e.R. posted to Police Section.

On 5 Feb 1944, after hearing shots, I patrolled the village, but could find nothing amiss. I returned to the Detention room at about 2245 hrs. Immediately after my arrival there, a civilian, D'ANGELO Antonio, came and asked for our help as a soldier was in his house, armed with a TSMG and drunk. I went with him and upon entering I saw E.5428 pte Roch Dufour whom I now recognize, armed with a TSMG. I immediately disarmed him and smelled the barrel and noticed that it had been recently fired. The number of the TSMG is 262521. I placed him under arrest and while bringing him to the guard room , E.4286 L/Cpl Mercier P. joined me and also checked the weapon to find that it had been recently fired.

The accused declined to cross examine the witness.

F. Emard L/Cpl

5th Witness For Prosecution

E.4286 L/Cpl Mercier P. ~~[illegible]~~ Royal 22e Regiment, having been duly sworn states:-

" I am E.4286 L/Cpl Mercier P. of R.22e.R. posted to Police Section.

At about 2300 hrs on 5 Feb 1944, I met E.5298 L/Cpl Emard F. as he was bringing E.5428 pte Roch Dufour to the guard room. I smelled the TSMG and noticed that it had been recently fired.

The accused declined to cross examine the witness.

L/Cpl

BOX

6th Witness for Prosecution

E.4750 Sgt. Langlois R. having been duly sworn states:

I am and was at all times material hereto a sergeant in charge of R.A.P., Royal 22e Regiment.
While the Unit was in San Apolinare, Italy, approximatly and to the best of my knowledge a month and a half ago, I was called upon to render first aid to an Italian civilian. He was suffering from several GSWs of the wrist and arm. As the wounds had a serious appearance to me, I endeavoured to call the Unit Medical Officer but the injured Italian insistently refused asking to be treated by an Italian Doctor which came in a short while after. I made the Italian Doctor sign a certificate to the effect that his patient refuses free treatment by an Army doctor as offered. This certificate was put in R.A.P's file. It was unfortunatly destroyed by E.4490 Cpl. Hamel G. which however read and clearly remember its content.

The accused declined to cross examine the witness.

R. Langlois Sgt

I, Lieut. J. Girolami, Royal 22e Regiment, was acting on in the capacity of interpreter for the following Italian civilians: CANCY Michele, BALLEKIAN Angelo, D'ANGELO Antonio, in the case of E.5428 pte Roch DUFOUR.

J. A. Girolami Lieut.

The accused having been duly cautioned in French in accordance with RO 1424 reserves his defence.

I certify that the foregoing Summary of Evidence consisting of three(3) pages was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (c), (d), (e), (f) and (g) were duly complied with.

Officer taking Summary

In the Field
23 Mar 44

LIST OF WITNESSES FOR THE PROSECUTION

in the case of

E.5428 Private Roch DUFOUR, Royal 22e Regiment.

FOR THE PROSECUTION

CANCI Michele,

BALLERINA Angelo,

D'ANGELO Antonio,

E.5298 L/C Emard F.

E.4286 L/C Mercier P.

E.4750 Sgt Langlois F.

FOR THE DEFENCE

N I L

I hereby acknowledge receipt of a true copy of a Summary of Evidence taken prior to my trial by FGCM. I furthermore acknowledge receipt of a true copy of a charge sheet upon which I am being brought into Court Martial.

I desire the services of an officer to represent me at my trial.

I desire the services of Capt Talbot.

if he is available.

R Dufour pte

In the Field
23 Mar 44

No. E-5428 Name Pte. Dufour R. Sqn., Battery, or Company "C" Corps R. 22 R. Date of enlistment 6-3-40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F. B.122) 40/P & /S136 (2965)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2. | Signature O.C. Company, etc. | Character

Bak

Certified True Copy
[illegible]

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On the 6/3/42 this soldier completed two years service. In accordance with R.O. 71 (CAO) the above regt' entries were transferred from previous sheet which was then destroyed on the									
In the Field	16-6-42	Pte	1	1- Late on afternoon parade 2- Improperly dressed on parade	Cpl. Lalonde	3 days C.B.		Major Dovron	
In the field	21-6-42	"		1- Improperly dressed 2- Insubordination towards an N.C.O.	A.S.M. Tremblay	7 days C.B.		Lieut. Pizzetti	
" "	1-8-42	Pte		Neglect to obey an order - A.A. Sec. 40	Sgt. Colvin Cpl. Mudean	7 days C.B.	6-8-42	Major Dovron	
" "	20-9-42	"		Overstaying his pass from 2359 hrs till 1030 hrs 21-9-42. Total abs. 1031 hrs.	Cpl. Lalonde B.	5 days C.B.	21-9-42	Col. Dovron	Forfeit 1 day = 1 day 2 Pay Forfeits 2 Day = Pay
In the Field	17-10-42	"		A.W.L. from 2359 hrs. 17-10-42 until 1130 hrs. 19-10-42	Cpl. Lacelle B.	7 Days Pay and 7 Days Field punish	21-10-42	Lt. Col. Bernatchy	Pts. 7 Days
In the Field	17-8-42	"		Neglect to obey a Standing Order in that he: In the field on 17-8-42 was playing cards with money at stake, contrary to Corp. Order No. 3 14 Jul. 42	C.S.M. Merville Cpl. Lafontaine	7 Days C.B.	17-8-42	Major Millette	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	20-1-43	Pte		Conduct to the P. G. O. & M. D. in that he in the field on the 20-1-43 did gamble contrary to Para. 440 K.R. (1) (Gen) 1938.	Cpl. Mirville Sgt. Fairbrd	21 days det.	20-1-43	Lt. Col. Bernatchy	A. Bellavance Maj.
" " "	1 May 43	Pte		Sec. 15 AA. Absent of Cotton at 2230 hrs. 1 May 43 until 0630 hrs 2 May 43 at Roseville Tatal abs. 8 hrs.	Cpl. Pelotte Lt. Otis	7 days C.B.	3 May 43	Lt. P. Vaquet for O.C. C Coy.	Forfeits one day's Pay.
" " "	6 June 43	Pte		W.O.A.S. sec. 40 AA. While on Parade neglected to obey an order in that he neglected return line ammunition.		Sgt. Dufardine L. Cpl. Chartrian	3 days C.B.	7 June 43	Ch. Bellavance Major.
In the Field	25 Nov 43	Pte		W.O.A.S. A.A. Sec. 15 A.W.L. from 1200 hrs. 20-11-43 until 22 hrs. 27-11-43 - 2 Days 10 hrs. A.W.L.		Forfeit 3 days Pay.	8-1-44	F. Trudeau Major	

Certified true copy of original in my possession.

P. W. Gremblay Lieut.

O A pr 44.

BLK

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E 5428	PTE	ROCH DuFOUR	R22eR

1. The following is a fair and true summary of the entries in the Service and General / Regimental ~~and Squadron, Battery~~ Conduct sheets / or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.A. 15(1)	TWO	times	A.A. 40	FIVE times
For A.A. 40	ONE	times	A.A. 15(1)	THREE times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act / Section 47 of the Army Act and dispensations with trial under A.F.A. 75 / A.A. 75 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges, for N/A days in civil custody, and 55 days in military / Air Force custody, making a total of 55 days in custody, of which N/A days were spent in hospital.

5. The present age of the accused according to his record of service is 25 / attestation paper is 6 months

6. The date of his commission specified in his record of service is / attestation / attestation paper

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force / military decoration, or air force / military reward (or is in possession of or entitled to). State any air force / military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental / Air Force rank of .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated, and in his regiment (or corps), the rank of dated.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number Rank Unit

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody. P.C. Kennedy Lt

Signed this 2 17 pr day of 44

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

HF - 96

Pte Dupresne A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 118872 Pte Andre DUFRESNE R 22 R.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Sec 12(1)(a)	NOT GUILTY	GUILTY	
2nd Sec 12(1)(a)	NOT GUILTY	NOT GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ~~ ~~commencing on date~~ "RGT" (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial a total of 9 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Two (2) years imprisonment without hard labour.

(Sgd) ..... Judge-Advocate, if any. 16 Oct 44 Date awarded. (Sgd) "R.G. THEXTON" Maj. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Findings and sentence confirmed

I direct that the accused is not suspended from duty pending further orders. "PEB" (1. AA 57A. Delete if not used.)

(Sgd) "P.E. Bernatchez" Brig.

Date 24 Oct 44

Commanding 3 Cdn Inf Bde.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 57A, 577.)

Accused.	Date.	Signature of Offr.
D118872 Pte A Dufresne, R 22 R	30 Oct 44	"P.A. TREMBLAY" Capt. Adjt R 22 R

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

CERTIFIED TRUE COPY

RECORDED AT CMHQ IN AB 160. 4F96

(D.M. OWEN) CAPT

CAN SC CMHQ 2Tech 881

FIELD GENERAL COURT-MARTIAL

CFA96 (To Be Used in Lieu of AFA32) (D.P.S.S./1608-12664)

Convened by Order of Brig J.P.E. Bernatchez Comd 3 C.I.B. dated 15 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D118872	Pte		Andre	Dufresne	R22R

Proceedings Reviewed

PROCEEDINGS OF TRIAL.

' W.B. Taylor' Major
15 Nov 44 DJA
CAN SC CMHQ 2Tech AAJ

Held in the Fd in (country) Italy on (date) 15 Oct 44 'RGT'

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member ~~and Prosecutor and Offr under instr~~ assemble, and the 'RGT' Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) 'RGT' The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and 'RGT' each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0945 hours trial commences. 'RGT'

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) 'RGT' ~~The Prosecutor produces a list of witnesses and hands it to the President. Copies are handed to the Court and Defending Offr.~~ 'RGT'

(1. KR Con 557. 2. AA 44(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to P te Mainguy A as interpreter? Ans No

The Interpreter is sworn.(1) ~~Copies are handed to the interpreter and witness sworn.~~ 'RGT' 'RGT'

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~Prosecutor and Offr under instr~~ are sworn.(1) The following are the 'RGT' ranks, names and units of the offrs comprising the Court, etc:

President	Major	R.G. Thexton	Nest N.S.R.
Member	Capt	P G ~~Langevin~~ Vallerand	R22 R
Member	Lieut	C.O. Huggard	C AYR
~~Prosecutor~~	'RGT'		
Prosecutor	Lieut	W.H. Pope	R22R
Defending Offr	Lieut	L.Descoteaux	R22 R

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

Q. RP 26, 27, 109, 111. Lists of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
Q. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 32.)

A8. The accused D118872 Pte Dufresne A. before arraignment makes(s) (no) plea(s) 'RGT' (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~severally~~ on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. 'RGT'

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~adjourned~~) considers the Instrs on Procedure after Arraignment at top of p 2. The pro- 'RGT' ceedings are continued on Record Form D1

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

E & E 151 AH/55 'RGT'

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans _____ (5)
(1. RP 37(B). 2. RP 37(D) fn 4. 3. RP 35(B) fn 1 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be cleared to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ____, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (no) opening address.(1) "RGT"
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D2A (See memo attached) "RGT"

D3. The evidence for the Prosecution is taken.(1) On the first charge
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ "RGT"
establish a prima facie case against the accused on the _____ charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the _____ charge(s), and allowed on the _____ charge(s). ~~Accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s) (4).~~
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

On the first charge

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans I wish to give evidence myself Do you intend to call witnesses on your behalf ? Ans No 115. Are they witnesses as to character only ? Ans N/A
(1. RP 114. 2. RP 40(A), see 80(D). 3. RP 40 fn 1. 4. RP 40 fns 2, 3.)

D5 to proceedings on 2nd charge see attached notes (Marked D5A)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 885. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).) "RGT"

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court as (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).) "RGT"

D8. The President announces the finding(s), of Not Guilty, and states to the accused that the finding(s) of the Court on the First charge(s), being subject to confirmation, will be promulgated later.(1) ~~In the event of mistrial~~ announces that the accused is found discharged on all charges and is to be released forthwith "RGT"
and that the proceedings are now finally terminated. Part I of the Schedule is filed and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.) "RGT"

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans I wish to give evidence myself.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true "RGT"
copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for "RGT"
examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E 1 and Ex E 2 respectively.(3)
(1. MFB 355 or AFB 2916. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.) "RGT"

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes (Marked E4 and attached to proceedings) "RGT"
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to speak on with anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if one is~~. "RGT" RP 71(D) "RGT"
(1. When several accused tried separately see RP 60(C). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 328, 330, 563-566, Overseas Reg 1959, 1203, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(5), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused D-118672 Private Andre DUFRESNE, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service is charged with:-

FIRST CHARGE
Sec 12 (1) (a) Army Act

WHEN ON ACTIVE SERVICE
DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field in Italy, on 15 Sep 44 while serivng with his platoon in a forward area, with intent to avoid such service, absented himself from his p latoon from approximately 1430 hrs, 15 Sep 44 until he returned at approximately 0830 hrs 18 Sep 44

Second Charge
Sec 12 (1)(a) Army Act

WHEN ON ACTIVE SERVICE
DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field in Italy on 19 Sep 44 after being warned that his platoon would soon proceed to take part in active operations against the enemy with intent to avoid so proceeding absentéd himself from his platoon from approximately 1100 hrs 19 Sep 44 until he returned to his platoon at approximately 0930 hrs 24 Sep 44.

In the Field
29 Sep 44

'J V Allard'
(J.V. Allard) Lieut- Colonel
Commanding Royal 22e Regiment

"TO BE TRIED BY FIELD GENERAL COURT MARTIAL"

In the Field
15 Oct 44

'P E Bernatchez'
(P.E. Bernatchez) Brigadier
Commanding 3 Cdn Inf Bde.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
D118672	Pte		Andre	DUFRESNE	R22R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 15 Oct 44 endorsed by me, [by authority of my Hat in me], "To be tried by Field General Court-Martial". ' PEB '

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [and that it is not expedient that the trial be referred to a superior convening offr.] ' PEB '
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [A Field General Court-Martial is hereby ordered to assemble at Pratica for the trial of the said person(s) attached hereto.] ' PEB '
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [Lt Col Appointed as Judge Advocate thereof.] [Officers detailed hereunder.] ' PEB '
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	R G Thexton	RCR

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J G Vaugeois	R22R
Lt	C O Ruggard	CYR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	E H Holloway	WNSR

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

'P E Bernatchez (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Date 15 Oct 44

Commanding 5 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CF.MS. (To Sec. of AFA) 40/P & S/1867 (4-40))

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No D118872

Rank Pte Name Dufresne A. of R 22 R and in my opinion he is fit to undergo trial by Court Martial

Station In the Field

Date 16-10-44

'M Vandersalt' Capt
(Medical Officer)

'RGT'

FGCM - Pte Dufresne

D2A

Before any evidence for the prosecution was heard, the Court agreed that it was desirable in order to avoid confusion of evidence as between the 2 charges of desertion, that all the evidence both for the prosecution and the defence should be heard on the first charge only and then the evidence relating to the second charge would be heard.

The Prosecutor and the Defending officer both consented to this procedure being followed

'RGT'

First Charge

16 Oct 44 2.

1st Witness Prosecution	I am G23149 Pte Boudreau A. of the R22R having been duly sworn states:- Do you recognize anyone in courtroom. The witness identifies accused in court On 15 Sep 44 the Coy had been warned that we were going to attack an enemy position in a few minutes. This was about 1400 hrs. During the attack I was with CSM Couturier L. when I saw the accused running away from his Coy. CSM Couturier ordered him to stay with the Coy but he kept on running away. This was about 1430 hrs. I did not see him again until the 18 Sep 44 at 0830 hrs.
Q. Prosecut	Did you hear Couturier order accused to stay with his Coy.
A.	Yes.
Q.	What Coy do you mean
A.	"C" Coy
Q.	Were you and accused both in "C" Coy.
A.	Yes
Q. Defence	You were employed as a signaller in C Coy and what kind of a set were you operating

'RGT'

A.	Yes a 48 set
Q.	Did you have on the ear phones
A.	No.
Q.Court	When Couturier called to accused to stay with Coy was there any reply.

A. I don't know.

Q. How far was accused from Couturier at time.

A. Approx 25 Yds.

Certified that R.P. 83 (B) has been complied with

2nd Witness
Prosec D132860 Pte Gravel J.M. of "C" Coy having been duly sworn states:-
The witness identifies accused in court.
On 15 Sep 44 at 1400 hrs we were all in a house and Pte Dufresne was there also. We had rec'd orders that we were going to attack. We left for the attack and Dufresne was following the Major when pinned
'RGT' down in a ploughed field. I was watching the Maj. for the signal

4.

D-3 to leave as I had to notify the offr and the Sgt Major to keep on going in the attack. When we were all pinned down the accused stood up and threw himself against me in the place where I was observing. I asked him where he was going and he told me he was leaving, because they were shellign too heavily. He followed the ditch along the road and the Sgt. Major notified him to remain at his post. I did not see him after.

Q. Prosec Were you batman in reserve 15 Pl that day

A. Yes

Q. which pl was accused in

A. He was runner for the Major.

Q. When did you see accused next time.

A. The morning 18 Sep 44 at 0830 hrs.

Q. Defence What distance were you from Couturier while acting as laison between Coy Comdr and 15 Pl Comdr.

A. About 5 yds.

Q. Are you sure the accused spoke to you while running away

Q. Yes.

'RGT'

D-4

Q. Court Who gave you warning order that Coy was going into the attack.

A. We rec'd the order in the house from the Maj himself.

Q. Did you see accused there when warning was given.

A. Yes we were all in the same apartment

Q. Did you hear Sgt. Maj order accused to remain at his post.

A. Yes

Q. How far was accused from Sgt Major at the time.

A. 30 feet

Q. What did CSM say to accused when he shouted out.

A. He shouted loudly and clearly Dufresne remain at your post we are going forward later.

(5 cont'd)

Certified that R.P. 83 (B) has been complied with.

The prosecution is closed.

"RGT"

6

D-5

Witness DEFENCE

D 118872 Pte Dufresne A "C" Coy having been duly sworn states:-

On 15 Sep 44 I was the Coy Runner and the Maj notified us about the attack. Five or ten minutes later our own Air Force dropped bombs and sprayed us with M.G. bullets and this made me nervous. We left to go forward the Coy Pls were on the left of road and the Major and I in a hole on the right side. The Maj ordered 2 Pls to move and then I crossed to other side with the Maj. The Maj. crossed a ploughed field and shouted 'Runner' I started running across field & when half way there came under M.G. fire and got down. When I raised my head Jerrys opened with M.G.s. I called to CSM and pointed out direction of fire and CSM replied 'it is only your imagination' I ran to embankment and joined CSM where enemy again opened up. I decided to leave for F.O.O. attached to Coy to give information about enemy fire. I left CSM and followed ditch and found Arty F.O.O. attached to our Coy. When I got there someone asked me if the Coy was still in the same place and he said no. I remained at the house.

"RGT"

7

"D" 6

for two days and inquired about my Coy and no one could give me any information. One morning a chap told me where my Coy was and I rejoined it.

Q Prosec Did the Maj give you a direct order to rejoin him.
A He hollered 'Runner'

Q Who gave you orders to go back and notify Arty F.O.C.
A No one.

Q What have you done during your absence from your Coy.
A I remained at a house.

Q Was that the house that the F.O.C. was in.
A Yes.

Q Why didn't you leave when F.O.C. left.
A I didn't know when he left.

The defence declines to re-question the witness.

Certified that R.P. 83 (B) has been complied with.

"RGT"

2nd Charge

1st Witness Prosec. G43530 L/Cpl Demers A. "C" Coy having been duly sworn states:

The witness identifies accused in Court. At About 1100 hrs 19 Sep 44 I checked my section and found accused absent. I enquired from my men where accused was and was told he had gone to report to Major. As the accused was not coming back to the section. I reported him absent to the CSM.

Q Prosec How long had Dufresne been in your Sec.
A The first day.

Q Had you seen any action during day.
A No.
Q When did you see Dufresne again.
A When we returned to barracks.

Q Did he come back by himself or was he in custody.
A He was under arrest.
The defence declines to cross examine witness.

Q Court Was accused warned that Pl was going into action and by whom.
A The Pl was warned by the Maj & I.

Q "RGT" Was accused present on both.

D-8

Occasions.
A Yes.

Q What day and approx time did accused return.
A I cannot remember date and hour.

2nd Wit Pros Maj L.F. Trudeau R 22 R having been duly sworn states:

Witness identifies accused in Court.
On 19 Sep 44 I was Cmd "C" Coy at approx 1030 hrs accused came to my Coy Hq and stated he could not carry on. I told him to return to his Pl and fight like a man when the time comes. He refused to do so stating that he did not feel capable of it. I then told accused the consequences of quitting just prior to attack we were going to make. I talked to him about promises he made on 17 Sep 44 that day. That day he was paraded before me because he had quit in the previous attack and I gave him the

"RGT"

choice either to be a soldier or be court martialed. He selected the former. When I found on 19 Sep 44 that the accused did not want to do his duty as a soldier I ordered him out of Coy and told him to avoid returning to Pl and report himself to our M.P. as I wanted no bad example set to Coy. I have not seen accused from then until the day we came back here 24th Sep 44. He had reported to our own M.P.'s.
Q Prosec Was it 17 Sep 44 or 18th Sep 44 that you warned accused.
A 17 Sep 44.

The defence declines to cross ex the witness.

R.P. 83 (B) complied with.

The case for the prosecution is closed.

The accused declines to make a statement or produce witnesses in this case. (see D-9-A-Art)
The prosecuting offr makes a closing address which is attached to proceedings and marked "D 10"

"RGT" "RGT"

D-5-A

At the close of the evidence for the Prosecution on the Second charge, the following took place -

President to accused: You will now proceed with your defence on the Second charge. You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross examination. You may, however, make a statement without being sworn, and you will not be subject to cross-examination. But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony. You may call witnesses in your defence, and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself, make a statement, or do neither. Ans. Do neither. Do you intend to call witnesses on your behalf. Ans. No.

"RGT"

D 10 "D 10" 13

Summing up by Prosecuting Officer

The accused left his company in the face of the enemy on 15 Sep 44 dispite orders to stay. He claims to have gone back on his own initiative to see the F.C.O. but brings in no evidence to support this. When the F.C.O. went forward the accused did not go with him.

He returned and was posted to 13 Pl at 0830 hrs 18 Sep 44. As soon as another attack was broached, he left his pl and told his coy comdr. he refused to go on.

It has been proved that on two occassions the accused deserted in the face of the enemy.

"W H Pope" Lieut.

"RGT"

E 2 (a)

The defending officer declines to make a closing address.

"RGT"

12

E-1

Statement by accused J118872 Pte Dufresne A, of the R22R.
Having been duly sworn.

I enlisted when 18 yrs old in Dec 41. I came overseas with Voltigeur Regt July 43 although not necessary as I had a Hernia at end of Aug 43 when Voltigeur Regt was broken up. I volunteered to leave at once on draft going to R22R. I was taken off draft on acc of hernia by Lt-Col Taschereau. I asked to be put down on next draft and arrived N.Afr Nov 43. I arrived at Regt on 5 Jan 44. At end of Jan I left Ortona front for operation on hernia. After my return to CBRD end of April I was there two or three days I volunteered for draft for Regt. I did the Hitler line as a Coy runner and have been with the Regt eversince exmept eight days evac at Piedmonte.

A.P. 83 (3) complied with

"RGT"

E-3

Statement in Mitigation of Punishment in the case of D118872 Pte Dufresne, A.

The accused when enlisted was only 18 yrs old. He volunteered for C A O S and later on for this theatre of war although he didn't have to as he was suffering from an hernia. He fought with the Regt on the Hitler line and the Gothic lines and as always accomplished his duty. Still very young I feel that a long sentence would probably be the start of many troubles in the future.

"RCT"

ARMY FORM B.296 (WAR)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
D118872	Pte	Andre DUFRESNE	Royal 22e Regiment

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For ..... times.

For ..... times.

For ..... times.

For ..... times.

"GL"

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

"GL"

*Strike out if not applicable.

*3. The accused at the present time is under sentence for .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for .....

~~[illegible]~~ nine days in military custody, *i.e.*, ... days in open arrest, ... days in close arrest, of which nil days were spent in hospital.

5. The present age of the accused is 20 years 9 months

6. The date of his attestation ~~[illegible]~~ is 26-12-41

7. The service which the accused is allowed to reckon is N/A

8. The accused is in possession of N/A

*State the military decorations (if any) held by accused.

9. *(If the accused is a warrant officer or N.C.O.).* The accused has served continuously, without reduction, to the present date—

		Date of Promotion.
In the substantive rank of	N/A	
In the war substantive rank of	N/A	
In the acting rank of		

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

E-1 "RGT"

DPSS. UDF. ME.—[illegible]—[illegible]/UDF/5

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended
		"DL"		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 16th day of Oct 44

"PATremblay Lieut"
Offr i/c Records R 22 R

No D 118872 Name DUFRESNE A | Sqn, Battery or Company C | Corps CIC | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM. 136 (3438)

Company Conduct Sheet | Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature, OC Company, etc | "Undecipherable, a" Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				certified to be a true copy from the regimental books in my custody. Signed "Undecipherable Capt"					
				Temporary Sheet: Original not available. "J H Rousseau Capt Adjt" OffCr i/c Records H22H					

JJ-3

PTE DUFRESNE G.

R-17022 Pte. Gerald DUFRESNE
R.H.C. - 5 C.I.R.U. JF-3

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 9th day of JULY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "G" GROUP CANADIAN REINFORCEMENT UNITS C.A.(O), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * and that it is not practicable to delay the trial for reference to a superior qualified officer;

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* I am unable to appoint—

*Omit if not applicable.

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

[for the following reasons, namely:**]

President.

Rank.	Name.	Regiment.
LIEUT-COL.	D.L. REDMAN VD	H.Q. C.R.U.

Members.

Rank.	Name.	Regiment.
A Captain	from	5 C.I.R.U.
A Lieutenant	from	5 C.I.R.U.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [illegible] Brigadier
Commanding "G" Gp Cdn Rft Units, C.A.(O)
Convening Officer.

R-17022 Pte. Gerald DUFRESNE
R.H.C. - 5 C.I.R.U. JT-3

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

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Order convening the Court.

On Active Service, this 9th day of JULY, 1943.

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And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [and that it is not practicable to delay the trial for reference to a superior qualified officer;]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [am unable to appoint:—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reasons, namely:—]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
LIEUT-COL.	D.L. REDMAN VD	M.G. C.R.H.

Members.

Rank.	Name.	Regiment.
A Captain	from	5 C.I.R.U.
A Lieutenant	from	5 C.I.R.U.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J. Stewart Scott Brigadier
Commanding "G" Gp Cdn Rft Units, C.A.(O)
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
H-17022 Pte. Gerald DUFRESNE R.H.C. - 5 CIRU	First Charge A.A. Sec. 15(1)	Guilty	Guilty	Confirmed

Sentence
To undergo detention
~~for a~~ period of ninety
(90) days.
SEE CHARGE SHEET
ATTACHED
10th July 1943

"I have satisfied myself that none of the Officers detailed as members of this Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charge before this Court Martial."

President of the Court

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) Brigadier (Signed)

Commanding Op Cdn Rft Units
Convening Officer (e) CA(C) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10th day of July 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
~~2. The witnesses~~
~~(3. The Interpreter)~~
~~(4. The officers under instruction)~~

were duly sworn.

*Omit if not applicable.

Signed this 10th day of July 1943

President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 13 day of July 1943.

Brigadier
Commanding Op Cdn Rft Units
Confirming Officer.

Promulgated and extracts taken in the case of H-17022 Pte. DUFRESNE, G., 5 CIRU (Auth: D.O. Pt. II NO. 117 dated 15 July 43)

(a) (Dated) 13 July 43 (Signed) Pearson Colonel C.O. 5 C.I.R.U.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

DO. 117 d/15 Jul 43
EDB

CHARGE SHEET

The accused No. H-17022 Private DUFRESNE, Gerald, The Black Watch (R.H.R.) of Canada, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Army Act
Sec. 15 (1). WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

did absent himself from Lille Barracks, Farnborough Hants, from 2200 hours on the 1st day of June 1943 until surrendering himself to the Canadian Provost Corps, at London, at 1800 hours on the 7th day of July 1943.

Total Absence 35 days 20 hours.

.....
(A. S. Pearson) Colonel
Commander,
5 Cdn. Inf. Reinf. Unit.

In the Field
9th day of July
1943.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

.....
(J.R.Stewart Lough) Brigadier,
Commanding,
Group Cdn Rft Units, C.A.(O).

July 1943.

Convening Officer

Medical Officer's Certificate
K.R. (Can) para 557

I certify that I have this morning examined No. H-17022

Pte. DUFRESNE, O.

(rank) (name) and in my opinion he is ~~unfit~~ fit to undergo trial by Court Martial.

Station

Date.....

(Sgd. T.A.B. Glen Conway Capt
(Medical Officer)

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT TARCOSSA BNS. ALDERSHOT HANTS
ON THE 10TH DAY OF JULY 1943

The accused H.11922 Pte Duressne G. Unit. R.H.C. 5 C.I.R.U.

The order convening the Court and charge sheet are laid before the Court, who ~~satisfied~~ themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President ~~Lieut Colonel~~ D.J. Redman, V.D. Unit. H.Q. C.I.R.U.

Members Capt. B.B. Scott Unit. 5 C.I.R.U.

Lieut. I.S. Blair Unit. 5 C.I.R.U.

The officers under instruction are duly sworn:-

..... Unit.

..... Unit.

Prosecutor Lieut. H.B. Jackson Unit. 5 C.I.R.U.

Defending Officer Major F.L. Fisher Unit. 5 C.I.R.U.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s), R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, ~~MFB 296~~ and MFK 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) ~~Makes a statement in mitigation of punishment.~~
(b) ~~Calls witnesses as to character.~~
(c) ~~Calls witnesses in mitigation of punishment.~~
(d) Addresses the Court by his Defending Officer.

C/S R.O. was complied with. No 3262
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Plea in mitigation is attached

10 July 1943.

Statement of mitigation of punishment in the case of H-17022 Pte Dufresne G.

In my plea for mitigation, may I give a short statement of the accused past record.
Pte.Dufresne was an American, who came to Canada to enlist in the Canadian Active Service. He enlisted with the R.H.R. in December 1941. He was made an Instructor at Huntingdon Quebec, and from there went on a course. Returning from the course he was placed with the 2nd Bn. R.H.R. as a Corporal Instructor.
He still wanted to come overseas and finally took down his stripes to do so. He arrived at a Reinforcement Unit and was with the Transport as a driver, There he was personal driver for Col.Hervay, and was entirely satisfactory and reliable, no charges against him whatsoever. Then on the reorganization he came to 5 CIRU, but could not get back into transport. Naturally he was rather discontented and disappointed He has had recently another charge of A.W.L. for 7 days for which he was rather severely punished; More so than several other cases of more serious offences. This made him all the more discontented.
Now may I point out, (1) Pte Dufresne admits his guilt and now realizes his actions in no way helped him to get where he wants to be. (2) he voluntarily gave himself up to the Canadian Provost Corps, in other words he came back of his own accordand own free will. (3) Pte.Dufresne is Category "A" young,keen and intelligent, and from his past record is anxious to fight, and do all in his power to further our war efforts Considering these facts and the present condition in Europe, I humbly ask you to answer this question. Would it not be for the best interests of the Service to have Pte.Dufresne available for the field at the earliest possible moment, so that he can finish his task ?

F. L. Fraser Major

Exhibit A

RECORD of the Declaration of a Court of Inquiry assembled at Lille Barracks Farnborough, Hants.
on the 28th day of June 1943

for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No. H-17022 Pte Dufresne G.(Royal Highland Regiment of Canada, No. 5 Cdn Inf Rft Unit.

DECLARATION

The Court declare, that H-17022 Pte Dufresne G. (RHC) illegally absented himself without leave from Lille Barracks, Farnborough, Hants, No. 5 Cdn Inf Rft Unit at 2200 hrs., 1 June 43 and is still absent, and that he was deficient and still is deficient the articles of kit as listed to the value of £3. 1. 8 (75% of value)

ARTICLE	NO.	100% Value	75%Value	100Value	75%Value
Battle D.Blouse	1	£ 1. 7. 8	£ 1. 0. 9	$ 6.18	$ 4.64
Battle D. Trousers	1	1. 7.11	1. 0.11½	6.24	4.68
Brasses Button	1	2	. 2	. 4	. 4
Brush Shaving	1	1. 4	1. 0	.30	.22
Comb.Hair	1	. 2	. 1	. 4	. 2
Fork Table	1	. 5	. 5	. 9	. 9
Gloves Woollen	1	2. 7½	1.11½	.59	.44
Knife Table	1	. 9½	. 9½	.18	.18
Razor	1	1.10½	1. 5	.42	.32
Spoon Dessert	1	. 4½	. 4½	. 8	. 8
Brush Hair	1	1. 1	.10	.24	.19
Shirts Gym	1	1. 6	1. 1½	.34	.25
Belt Waist	1	4. 4	3. 2	.97	.71
Haversack	1	9. 7	7. 1	2.14	1.58
Braces Left	1	2. 2½	1. 6½	.49	.36
		£4. 2. ½	£ 3. 1. 8	$ 12.86	$ 13.80

Names of President and Members: Frederick E.L. Fowke Lieut
Lieut F.E.L. Fowke (L.Scots) President
5 Cdn Inf Rft Unit

Lieut E.J. Lavigne
Lieut E.J. Lavigne (Unallotted)
5 Cdn Inf Rft Unit

Member

J.H. Ackerman
Lieut J.H. Ackerman(H.& P.E.)
5 Cdn Inf Rft Unit

Member

Signature of Commanding Officer F. Pearson Col

Certified true copy G. T. Lloyd Lieut for Record Officer
Signature of Officer having custody of original record.

"Exhibit B" #52

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1) (J)

I, ...certify that

Re . No. H.17022 Rank: Pte. Name Dufresne, G.

REGIMENT Black Watch(R.H.C.)

UNIT No.5 C.I.R.U.

STATIONED AT .....

Surrendered himself to No. B.93520 Rank L/Cpl. Name Armstrong, R.J.

of the Canadian Provost Corps, 6 AREA Coy.

on the 7th day of July 1943, at 1800 hours London

.....AS AN ABSENTEE WITHOUT LEAVE .....

at the time of his surrender he was wearing (Military Uniform) or ~~(Civil Clothes)~~'

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on surrender. (Strike out part inapplicable)'

London
8 July 43.

.....Lieut.
Officer i/c Detention Room,
No. 6 Cdn. Provost Coy.

SUMMARY OF EVIDENCE

In the case of No. H-17022 Private DUFRESNE, Gerald, The Black Watch (R.H.R.) of Canada, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

FIRST WITNESS FOR THE PROSECUTION

Lieut. F. T. Lloyd, Stormont Dundas and Glengarry Highlanders of Canada, Assistant Records Officer, 5 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am Lieut. F. T. Lloyd, Stormont Dundas and Glengarry Highlanders of Canada, employed as Assistant Records Officer at 5 Canadian Infantry Reinforcement Unit. I produce a certified true copy of a Record of the Declaration of the Court of Inquiry, which assembled at Lille Barracks, Farnborough Hants on the 28th day of June 1943, showing the accused whom I now recognize as absenting himself without leave from Lille Barracks Farnborough Hants at 2200 hours on the 1st day of June 1943. This document is marked Exhibit "A". I also produce Certificate under the Army Act, Section 163 (I) (J), showing the accused whom I now recognize, as surrendering himself to the Canadian Provost Corps, 6 Area Company, London at 1800 hours on the 7th day of July 1943 and that at the time of arrest he was wearing Military Uniform. This document purporting to be signed by Capt. W. Fern Officer i/c Detention Room, No. 6 Cdn. Provost Coy., is marked Exhibit "B".

F. T. Lloyd Lt.

F. T. Lloyd) Lieut.

The accused declines to cross examine this witness.

The accused having been warned according to Rules of Procedure 4 (E), reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C), (D), (E), and (F) have been complied with.

J. G. Dodd) Lieut.
Officer detailed to take Summary of Evidence.

In the Field
9th day of July
1943.

No. H.17022 Name Dufresne Gerald | Sqn., Battery, or Company | Corps Can Inf Corps | Date of enlistment 1.12.41 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.127) 40/P.A./8136 (2685)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				(1)					
Westmount	4.6.42	L/C	1	WOAS Drunkness in that he at approximately 2200hrs on Jun4 1942 while on duty as company Orderly Sergeant was drunk A.A. Sec. 19	D.86221 Sgt Irwin L.G. D.81286 Sgt. Martin A.J. D.86086 Pte. Cole M.R.	Severe Reprimand	6.6.42		
				(2)					
Westmount	4.6.42			WOAS Conduct to the prejudice of good order and military discipline in that he at approximately 2200hrs. on 4 Jun 42 in the canteen became involved in a quarrel with a private A.A.Sec 40	H.320 Pte. Hinaes I.J. H.19200 Pte. Brook J.W.				
Field	1 June 43	Pte		WOAS A.A. 15(1) AWL 35 days 20 hrs)		30 Days Detent		F.S.C.M.	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Sussex	3Aug42	L/C		WOAS Conduct to the prejudice of good order and military disccipline in that he at approximately 18-45hrs on 3 Aug 42 while travelling on a train behaved in such a manner as to bring discredit to his unit.A.A.Sec 40	D.81558RSM Leonard J. D.82150Sgt. McBride J. D.82170 Cpl Ferridge W.T.	Reduced to Rank of private	7Aug 42		
Camp Sussex	12.Oct.42			WOAS AWL from 2200hrs 12.10.42 till 0720hrs 13Oct42.Absent 9hrs 20 mins A.A. Sec 15 (1)	D.81179 Cpl Fox W.J.L.	Admonished	13.Oct.42	Lt. Col H.A. Hervey VD	Forfs 1 dys pay under FRI 149 (1)(a)
Field	16.5.43	Pte.		WOAS A.W.L. from 2359hrs 16.5.43 to 2245hrs 23.5.43.Total absence 6days 22hrs 46 mins AA Sec15(1)	CSM Darwin JW	27 days F.P. 27 days pay FRI 149 (1)(b)	25.5.43	AS Pearson Col.	7 days pay FRI 149 (1) (a) Total 134 days

Certified true copy as taken from documents in my possession

J.L.Henstow .....Capt.

8 July 43 Records Offr.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Sussex	3Aug42	L/C		WOAS Conduct to the prejudice of good order and military disccipline in that he at approximately 19-45hrs on 3 Aug 42 while travelling on a train behaved in such a manner as to bring discredit to his unit.A.A.Sec 40	D.81558RCM Leonard J. D.82150Sgt. McBride J. D.82170 Cpl Ferridge W.T.	Reduced to Rank of private	7Aug 42		
Camp Sussex	12.Oct.42			WOAS AWL from 2290frs 12.10.42 till 0720hrs 13Oct42.Absent 9hrs 20 mins A.A. Sec 15 (1)	D.81179 Cpl Fox W.J.L.	Admonished	13.Oct.42	Lt. Col H.A. Hervey	Forfs 1 dys pay VD under FRI 149 (1)(a)
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Certified true copy as taken from documents in my possesion

J.L.Henson .....Capt.

8 July 43 Records Officer.

M.F.B. 355
22M—5-41 (573-3)
H.Q. 1772-39-(2)
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H17022	Pte	Dufresne G.	RHC (SCIRD)

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For AA Sec 15(1)	Two (2)	times	AA Sec 15(1) Two (2)	times
For AA Sec 40 (c)	One (1)	times	AA Sec 19 One (1)	times
For		times	AA Sec 40 Three (3)	times
For		times		times

Number of instances of gallantry or distinguished conduct Nil

~~or,~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or,~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ A.F.A. 79 Section 47 of the Army Act and dispensations with trial under A.A. 75 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for ..... beginning on the day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in ~~Air Force~~ civil custody, and 3 days in military custody, making a total of 3 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ is attestation paper is 29 years

6. The date of his ~~commission~~ specified in his ~~record of service~~ is attestation paper 1 Dec 41

7. The service which the accused is allowed to reckon towards discharge is 1 year 7 mos

8. The accused is entitled to reckon 1 yr 7 mos service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ decoration, or ~~air force~~ reward ~~(or is in possession of or entitled to)~~. State any ~~air force~~ decoration or reward. Nil

military military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the ~~regimental~~ rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force ~~the rank of~~ ~~Permanent Force~~ unit ~~dated~~ ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer ~~continuously, without reduction, to the present date:—~~

9 Feb 42 Date of promotion.

In the rank of L/cpl 6 mos years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~Eighth~~ Tenth day of July 1943 J L Henderson Records officer

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

[illegible signature]

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Tournay Barracks, Farnborough Hants on the 9th day of July 1943, preliminary to my Court Martial.

I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

H17022 Dufresne G.
(H/17022 Pte. Dufresne, G.)

Dated at Tournay Barracks
this 9th day of July 1943.

I hereby request that the Convening Officer appoint an Officer to represent me at my trial. I desire the services of Major F. L. Fisher - S.W.&G. Highs 5C. 1 R.V. if he is available.

H17022 Dufresne G.
(H-17022 Pte. Dufresne, G.)

Dated at Tournay Barracks
this 9th day of July 1943.

LIST OF EXHIBITS

In the case of No. H-17022 Private DUFRESNE, Gerald, The Black Watch (R.H.R.) of Canada, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

(For the Prosecution)

"A" Certified true copy of the Record of the Declaration of the Court of Inquiry, which assembled at Lille Barracks, Farnborough Hants on the 28th day of June 1943.

"B" Certificate under the Army Act, Section 163 (I) (J) showing the accused as surrendering himself to the Canadian Provost Corps, 6 Area Company, London.

(For the Defence)

NIL

LIST OF WITNESSES

In the case of No. H-17022 Private DUFRESNE, Gerald, The Black Watch (R.H.R.) of Canada, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian army Overseas.

(FOR THE PROSECUTION)

1. Lieut. F. T. Lloyd, Stormont Dundas and Glengarry Highlanders of Canada, Assistant Records Officer, 5 Canadian Infantry Reinforcement Unit.

(FOR THE DEFENCE)

NIL

4K105.

Pté. Dufresne G.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D107507 Pte Dufresne G ... R Hamps Regt

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 18(2) alternative	Guilty	Guilty	
2nd 1st alt	Convicted on admission by Prosecution RP 25(c)		
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of And days, of which And days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned until hard labour for two years and to be discharged with ignominy from the Service

(Sgd) — Judge-Advocate, if any. 15 Nov 44 Date awarded. (Sgd) [illegible] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

(Delete this line if not applicable) I direct that the accused be not committed to prison or detention barracks under the sentence. (1)

(1. AA 57A. Delete if not used.)

Date (Sgd) [illegible] Officer [illegible] Commanding

Commanding Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D107507 Pte Dufresne G	22 Nov 44	[illegible] Maj

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECORDED AT CMHQ IN AB 160 4-K-105

FIELD GENERAL COURT-MARTIAL

CFA66 (in lieu of AFA21) W.P. & S. 1708 (1600) 4/38B

Convened by Order of Brigadier B W Browne Comd 6 I C dated 7 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/B or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D107507	Pte		Gerard	Dufresne	R Hamps Regt

Date of Trial 13 Jan 45 Place of Trial Aldershot

PROCEEDINGS OF TRIAL.

Held at the Fd in (country) Belgium on (date(s)) 13 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. (3) 148

A1. The President, Members, ~~waiting Member, A/J, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 35, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1545 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by him (her).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Lt Col J E C Hamilton Rifle Bde as Interpreter? Ans No

The Interpreter is sworn.(1) ~~Do you object to the shorthand writer? Ans~~ The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member returns. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~A/J, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E P Lee	Can Inf Bde 1 Cdn Corps
Member	Major	M E Dray	1 Cdn Armd Bde, 1 Cdn Corps
Member	Capt	J A Boullanger	Gen Staff 1 Cdn Corps
Judge-Advocate		—	
Prosecutor	Lt Col	J E C Hamilton	HQ 2 Cdn Corps
Defending Offr	Lt Col / Capt	W B G Humphreys / P Dufresne	AGRA / 1 Cdn Armd Bde

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 23.)

A8. The accused D/107507 Pte G Dufresne before arraignment make(s) (no) (~~no~~) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, (1). See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B V E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A Vol 2 p 42.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without asthy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Prts to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No ..... (5)
(*1. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court sum[illegible] the accused's statement.~~(1) ~~The Court decides (not)~~ to advise accused on charge No (three plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) pleads charge(s) Eit (three plea(s) on ..... charge(s). ~~Part I of the Schedule is amended accordingly~~.
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Not Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex P , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such pleas and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B3 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*b*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See NML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 895. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1. 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*b*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA* 54(3) (*c*), *RP* 45, 120(*b*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Yes can I give evidence on oath
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor ~~reads the~~ states the substance of statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2) ~~is (are) handed to the accused, which he admits to the Defending Offr for examination and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 58(1) (g) (h), and (ii) they purport to refer to (a) a conviction having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex and Ex respectively~~.(3)
(*1. MFB* 223 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 538. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. ..... (2)
(*1. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witness to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(3), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*a*), *KR Can* 308, 330, 563-566. *Overseas Act* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1*B*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET.

The accused Reg.No.D107507, Pte.Gerard DUFRESNE, of the Royal Winnipeg Rifles Regiment, attached to No: 8 Can. General Hospital, a soldier of the Canadian Army Overseas, is charged with.

First Charge
A.A. Sec. 18 (2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE.

in that he

in the field on 17 October 44, by discharging an enemy weapon, a German revolver P-38 which was in his possession, wilfully injured himself by shooting himself through the large toe of the left foot with intent thereby to render himself unfit for service.

Second Charge
(Alternative)
A.A. Sec. 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER OF MILITARY DISCIPLINE.

in that he

in the field on 17 October 44, while with his regiment in the line, so negligently handled an enemy weapon, a German revolver P-38 which was in his possession as to shoot himself in the large toe of the left foot thereby rendering himself unfit for service.

W. E. Hume

(W.E. Hume Colonel,
Officer Commanding,
No: 8 Cdn. Gen. Hosp.

In the field,
3 Nov 44.

To be tried by Field General Court-Martial

A.W. Beament

(A.W. Beament) Brigadier
CIC
Cdn Sec GHQ 1 Ech 21 A Gp.

In the Field
9 Nov 44.

E E Ess
go
Pres.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-107507	Pte		Gerard	DUFRESNE	R Wnpg Rif Reg att No.8 Cdn Gen Hosp.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 9 Nov 44 endorsed by me, ~~for by an offr of my staff for me~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereof the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.P. Lee	Cdn Sec GHQ 1 Ech 21 A Gp.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	M.L. Troy	Alq Regt - att Cdn Sec GHQ 1 Ech - 21 A Gp.
Capt	F.A. Baillargeon	Gen List - att Cdn Sec GHQ 1 Ech 21 A Gp.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium (Country.)

Dat 9 Nov 44

[signature] (Signed personally. RP 105 fn 2.) (A.W. Beament)

Brigadier (Rank.)

Commanding Cdn Sec GHQ 1 Ech 21 A Gp.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (IFA 96 (In lieu of AFA 3) 40/F & S/1697 (8143)

(See overleaf for oaths and notes for use on trial.)

Approved:

[signature] for ADJA
Capt

D-107507 Pte Dufresne Gerard R.W.R.

Sworn States:

I was born in Saskatoon Saskatchewan on the 21st of May 1921 - (23 yrs) My parents were both born in Canada. of French Canadian Extraction - I went to 5th Grade in Country School at Trois Rivieres Quebec. - at fifteen years when I left. I was then a milkman. When I enlisted I was on a farm with my dad at Abitibi Quebec. I was called up and enlisted on 30th June 1942. I trained at St. Jerome nr. Montreal and Farnham Quebec. I went overseas at the end of July 1944 as a reinforcement arrived in the U.K. on or about the 20th of July. I stayed there for until Sept 7th or 8th where I did some training, then I came to France as a reinforcement joining the Royal Winnipeg Rifles on the 15th of September 1944 and I remained with them in action until this happened on the 17th oct. I had rests during this period. I was a rifleman. I fired my rifle without much success. I helped take prisoners in company with other soldiers. I never requested a transfer to another regiment while I was with the R W R's. There were other French speaking personnel in this Regt and in my platoon. I had one

I owned speaking pal with a kid I had
trained for two years. He was still
there when I left.

If I got a chance to return to the line
I owned be willing to serve with any
French Canadian regiment.

I owned like to express my willingness
to go back to the line as soon as I can.

I have never had any serious trouble
in the army before this or in Civilian
life.

I am not married or engaged.
~~the~~ I assign pay to my father who keeps
it for me. This amounts to $12 per
month and I am buying a bond. My
mother is dead. I have two sisters and
three brothers. no one else is in the
services besides me. They are all younger
except one (~~girl~~) sister who ~~works in~~
lives in Abitibi Quebec.

My category has always been "A". I
have never suffered from any serious
diseases in my life.

I was fed up and nervous when I left this
unit in addition I was unhappy and wanted
to rejoin my regiment. I did not seem to be

& make a go of it where I was -

14/ The officers & N CO's (as) always spoke English and I could never understand them - neither could my chum - we had one N.C.O. who spoke French but he was wounded.

I never asked for a transfer because I didn't think I could get one -

---

E3

[illegible]

Plea in Mitigation by defending officer

You have already heard read the psychiatrist's report ~~as~~ to the effect that the accused's Pullen test is M2 S3. This report makes it quite clear that this man should be re-allocated. He is of inadequate personality for the task in hand. He has been asked to do a job for which he has no capabilities. You can see through his life history what qualities of fortitude and capabilities suited him for active service conditions. I suggest that there is not one of the qualities necessary for service in this or any theatre of war possessed in this man's makeup. He is another instance of that policy on the part of the people back home who send overseas men who are willing to serve but do not possess the qualities necessary to carry out such a trust. Typical example of another one from the assembly line. How long this will go on, I do not know. This should be brought to the attention of the provincial premiers from coast to coast ~~of~~ this and the state of affairs, and stop this nonsense forthwith and prove to men in the line that their brethren at home who have the capabilities are behind them 100%. Give those men whom I say are capable of leadership command in

a theatre of war. No need for this isolation on the part of Canada. Let us take our full share of responsibility alongside the other nations and prove ourselves worthy of membership of such a league. This is the basis of the philosophy in these cases. In this case this man was never fit for this kind of duty. This man should be considered as M2 S3 and dealt with accordingly.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of D-107507 Pte Dufresne, G., Royal Winnipeg Rifles, att. No.8 Cdn Gen Hosp, charged with, when on active service wilfully injuring himself with intent thereby to render himself unfit for service (AA Sec 18(2)), alternative, when on active service neglect to the prejudice of good order and military discipline (AA Sec 40).

By direction of the Commanding Officer the evidence is taken on oath.

D-139903 Pte Dufort J.R.C.M., No.8 Cdn Gen Hospital, having been duly sworn, acts as interpreter.

First Witness

Capt L.A. Kickham, Medical Officer at No.8 Cdn Gen Hosp, RCAMC, sworn, states:

I am Capt L.A. Kickham, Medical Officer at No.8 Cdn Gen Hosp. The accused, D-107507 Pte Dufresne, G., was admitted to No.8 Cdn Gen Hosp on 23 Oct 44, being a transfer from No.12 Cdn Gen Hosp where he was admitted on 17 Oct 44 with a compound comminuted fracture of the left great toe, labelled GSW. He was treated at No.12 Cdn Gen Hosp surgically and a Plaster of Paris cast applied. Since coming to No.8 Cdn Gen Hosp the cast has not been removed so I am not in a position to say as to the condition of the wound but the patient's condition generally is good. I am unable to state the probable duration of his illness or the residual deformity ~~which may result.~~

The accused declines to cross-examine this witness.

L. Kickham,
Capt L.A. Kickham,

Second Witness

Lieut J.B. Barr, S.I.S., Cdn Provost Corps, att No.8 Cdn Gen Hospital, sworn, states:

I am Lieut J.B. Barr, S.I.S. Cdn Provost Corps. I interviewed the accused, D-107507 Pte Dufresne G., whom I now recognise, at No.8 Cdn Gen Hosp on 3 Nov 44. After I had identified myself I informed the accused that I was investigating his case regarding his injury. I cautioned the accused that he was not obliged to say anything unless he wished to do so but whatever he did say would be taken down in writing and may be used in evidence. He understood the caution and made a statement which was reduced to writing. This statement was read to him and he read it himself and then signed it. The signature was witnessed by myself and K.75873 L/Cpl Pederson P.M., who was present at the interview.

Q. Is the statement in the same condition now as when it was signed or are there any alterations, additions, erasions or interlineations?

A. The statement is in the same form as when it was signed, sir.

Q. Was the accused under arrest at the time?

A. No, sir.

Q. Were there any threats, promises or inducements made in obtaining this statement?

A. No, sir.

The accused declines to cross-examine this witness.

(Lieut J.N. Barr)

The statement referred to in the evidence of the above witness is attached hereto as Exhibit 'A'.

Third Witness

Capt J.J. O'Neill, RCAMC, No.8 Cdn Gen Hospital.

I certify that in my opinion the attendance of this witness, is, owing to the exigencies of the service, not readily procurable and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Exhibit 'B'.

Officer taking Summary.

I do not require the attendance of Capt J.J. O'Neill for the purpose of cross-examination.

(D-10/507 Pte Lafrance G)

The accused is cautioned as follows:

Do you wish to make a statement or give evidence on oath? You are not obliged to say anything unless you wish to do so, but whatever you do say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement at this time.

The accused does not call any witnesses.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence of the accused and that RP4 (C), (D), (E), (F) and (G) have been complied with.

In the Field
4 Nov 44.

Officer detailed to take Summary of Evidence

Hôpital Générale Canadienne No 8
le 3 novembre 1944

Déclaration du numéro Régimentaire D-107507, soldat Gérard Dufresne du Régiment Royal Winnipeg Rifle, Cie (B) peloton (12) 8e brigade, 3e division d'Infanterie Canadienne, attaché à l'hôpital Générale Canadienne numéro (8).

Il déclare: "J'ai été mis en garde par le Lieut. J. R. Barre, S. I. S. Prévoté Canadienne de la manière suivante: "Voulez-vous faire une déclaration? Vous n'êtes pas obligé de rien dire à moins que vous ne le désiriez mais tout ce que vous direz sera pris en écrit et pourra servir de preuve." Je comprends le sens de cette mise en garde et je fais volontairement la déclaration suivante qui, est sans menaces promesses ou faveurs.

Signature. [illegible]

Je suis numéro Régimentaire D-107507, soldat Gérard Dufresne. Je suis âgé de 23 ans. J'ai reçu mon appel militaire au mois de juin 1942 et je n'ai signé actif qu'au mois d'avril 1944. J'ai fait deux mois d'entraînement au Camp de St-Jérome et trois autres mois à Farnham, Qué. Je suis arrivé en Angleterre au début de juillet 1944 comme renfort d'infanterie, c'est-à-dire avec le Régiment de Montmagny. Je suis arrivé en France (Cuba) le 10 septembre 1944 avec cinquante autres soldats de mon Régiment comme renfort général d'infanterie, et nous sommes allés au numéro (2) C.B.R.G. Le 15 septembre 44, je suis parti avec plusieurs autres soldats de mon Régiment pour aller joindre le Régiment Royal Winnipeg Rifle, qui à cette date là se trouvait près de Boulogne. Je suis resté avec mon Régiment jusqu'au 17 octobre et j'ai pris part à dix attaques. Le 17 octobre nous étions environ un mille de l'autre côté du canal St-Léopold dans une position défensive. Le 16 octobre j'ai trouvé un pistolet allemand P-38 et le 17 vers les 11 hrs. A.M. j'ai décidé de le nettoyer. J'ai enlevé le magasin et avec un linge j'ai enlevé toute la rouille qu'il

y avait sur le canon et la détente, et après j'ai enlevé le cran de sureté et c'est en enlevant le cran de sureté que le coup a parti. A ce moment là j'étais debout et la balle a pénétrée juste au dessus de la première jointure de la grosse orteille du pied gauche.

Voici je suis aussi bien de vous dire la vérité. J'ai enlevé le magasin et j'ai laissé une balle dans le canon et me suis servi de cette balle pour me tirer dans le pied gauche. La raison pour laquelle je me suis blessé est que j'étais devenu très nerveux et ne pouvais plus dormir, et de plus je n'aimais pas le Régiment parce que je ne comprends pas l'Anglais et que la majorité des officiers et sous officiers étaient tous de langue Anglaise.

Aussitôt que je serai mieux je suis consentant de retourner au front mais cette fois ci avec un Régiment Canadien Français.

J'ai lu ma déclaration et tout ce que j'ai dit est la vérité. Je l'ai fait volontairement sans menaces promesses ou faveurs et je signe mon nom ci-après.

Signature: [illegible]

Déclaration prise en écrit par le Lieut. J. R. Barre S.I.S Prévoté Canadienne, et en présence du L. Cpl. F. M. Pedersen, Prévoté Canadienne

Témoins:

J R Barre, Lieut
S.I.S Prévoté Canadienne

Witness [illegible]
[illegible]

This is Exhibit "A" referred to in summary of evidence in the case of D-107507 Pte Dufresne G. taken before me this 4th day of November 1944

Signature [illegible]
[illegible]

8 Cdn. Gen. Hosp.

ENGLISH TRANSLATION.

3 Nov 44.

STATEMENT of: Reg.No. D-107507, Pte. Gerard DUFRESNE, Royal Winnipeg Rifles, "B" Co'y, 12 Pln., 8th Bde., 3 Cdn. Division, Cdn. Infantry, attached 8 Cdn. Gen. Hosp.

WHO STATES: I have been warned by Lieut J.R. Barre, S.I.S., Cdn. Provost Corps, as follows: " Do you wish to make a statement? You are not obliged to say anything unless you wish to do so, but whatever you do say will be taken down in writing and may be given in evidence." I understand the meaning of this caution and I make the following voluntary statement without threat, promise, or favour.

(Sgd) Gerard Dufresne

I am Reg.No. D-107507, Pte. Gerard Dufresne. I am 23 years of age. I was called up for my Military Service in June, 1942 and went "active" in April 1944. I did two months training at Ste. Jerome Camp and three more months at Farnham, Que. I arrived in England at the beginning of July, 1944 as an Infantry Reinforcement, that is to say, with the Regt de Montmagny. I arrived in France 10 Sept 44 with 50 other soldiers from my Regiment as General Reinforcements for Infantry, and we went to No.2 C.B.R.C. On 15 Sep 44 I left with many other soldiers of my Regiment to join the Royal Winnipeg Rifle Regt, which at that time was near Boulogne. I stayed with my Regiment until 17 Oct and took part in 10 attacks. On 17 Oct we were approximately a mile on the other side of St. Leopold Canal and were in a defensive position. On 16 Oct I found a German revolver, a P.38, and on the 17th at about 11.00 hrs. I decided to clean it. I took the magazine off and with a rag I cleaned all the rust off the muzzle and trigger, and then I took the safety catch off, and in doing so the weapon fired. At that time I was standing up, and the bullet penetrated just above the first joint of the large toe of my left foot.

Here, I might as well tell you the truth. I took the magazine off and left a bullet in the breech, and used same to wound myself in the left foot. The reason why I wounded myself is that I had become very nervous and could not sleep any more, moreover, I did not like the Regiment because I don't understand English - and the majority of Officers and N.C.O.'s are all English speaking.

As soon as I am better I am willing to return to the front, but this time with a French-Canadian Regiment.

I have read my statement, and all I have said is the truth. I made it voluntarily, without threat, or promise, or favour, and I sign my name herewith.

(Sgd) Gerard Dufresne

Statement reduced to writing by Lieut J.R. Barre, S.I.S., Cdn. Provost Corps, in the presence of L/Cpl. F.M. Pederson, Canadian Provost Corps.

Signature of Witness: Lt.
(J.R. Barre)

2nd Witness: (Sgd) F.M. Pederson

This is Exhibit 'A' referred to in the Summary of Evidence in the case of D-107507 Pte Dufresne G., taken before me this 4th day of November 44.

No. .....

DEPARTMENT OF neuro-psychiatry - 8 - C. H. H.

No. D-107507 Rank pte Name Defresne G. Unit Roy. Winnipeg Rifles

REPORT:— DATE 4 Nov 44

M/n has admitted shooting himself through large toe of lt. foot with revolver.

He is 23 - Called up in June 42 - Went active in April 44 - To UK in July 44 - To BLA in Sept 44 - Was about 1 mos. in action - No heavy action.

Complaints: pain in lt knee.
I was nervous - scared.

Family history: Mother died when m/n was 15 - She was often sick - Had many complaints - was very nervous - 3 brothers & 2 sisters in good health

Personal history. Pte was delicate - jumpy & impulsive - Had fear of dark - night mares - Was sick in crowds - Had vomiting spells & frequent nose bleeding. I was scared - Never could fight or play rough games - Often missed school on account of minor ailments.

Had pneumonia at 12 - Wore a belt until 15 on account of pain in R.L.Q. At 16 he was told he had ~~[illegible]~~ rheumatic fever. His first foot would swell in morning. No Temperature.

To School from 6 to 15 - Grade V - Repeated grades.

To Work at 15 as milkman for 6 mos. - Then 2 years to farm with father. Never could do hard work - Left jobs because was always tired.

ARMY Called up in June 42 - Did his training - Was scared on firing range - Could not learn map-reading - Went active because was fed up & thought he would get a medical examination & be declared unfit for service.

In Action he was shaky - could not fire his gun because was trembling too much - His only thought was to keep under cover - He could not sleep - After finding a German revolver he shot himself so that he would be evacuated.

Examination. Well oriented - No signs of anxiety - no signs of psychosis - Intelligence is of low average level - Marked lack of judgement - Morale for further service is nil - Physical exam: neg except for S.I.W.

Impression: Mental retardation M2
Psychopathic personality inadequate S3

He is fit to stand trial & undergo punishment but unlikely to become an efficient soldier.

This is Exhibit 'B' referred to in the Summary of Evidence in the case of D-107507 Pte Defresne G taken before me this 4th day of November 1944.

J. J. O'Neill Capt.
Specialist, RCAMC

[illegible]

COPY

Neuro-psychiatry - 8 C.G.H.

D-107507 Pte Dufresne G Royal Winnipeg Rifles

4 Nov 44.

M/n has admitted shooting himself through large toe of left foot with revolver.

He is 23 - called up in June 42 - went active in April 44 - To UK in July 44 - to BLA in Sep 44 - was about 1 month in action - no heavy action.

Complaints: Pain in lt knee
Was nervous - scared.

Family History - mother died when m/n was 15 - she was often sick - had many complaints - was very nervous - 3 brothers and 2 sisters in good health.

Personal History - Pte was delicate, jumpy and impulsive - had fear of dark, nightmares - was sick in crowds. Had vomiting spells and frequent nose bleeding - nervous, scared - never could fight or play rough games. Often missed school on account of minor ailments. Had pneumonia at 12 - Wore a belt until 15 on account of pain in R.L.Q. At 16 he was told he had rhumatic fever. His right foot would swell in morning - no temperature.
To school from 6 to 15 Grade V - repeated grades.
To work at 15 as milkman for 6 months - then 2 years on farm with father. Never could do hard work - left jobs because was always tired.

ARMY: Called up in June 42 - did his training - was scared on firing range - could not learn map reading - Went active because was fed and thought he would get a medical examination and be discharged as unfit for service. In action he was shaky - could not fire his gun because he was trembling too much. His only thought was to keep under cover - he could not sleep. After finding a German revolver he shot himself so that he would be evacuated.

Examination: Well nurtured - no signs of anxiety - no signs of psychosis - intelligence is of low average level - marked lack of judgment. Morale for further service is nil - physical exam nrg except for S.I.W.

Impression: Mental retardation M.2
Psychopathic personality inadequate S.3

He is fit to stand trial and undergo punishment but unlikely to become an efficient soldier.

"J.J O'Neill" Capt
RCAMC

This is Exhibit'B' referred to in the Summary of Evidence in the case of D-107507 Pte Dufresne, G., taken before me this 4th day of November 1944.

No.8. Cdn. Gen. Hospital
Nov. 44.

Ihave this day examined Dufresne Pte D/107507
and find him fit to undergo trial by Field General Court
Martial.

15 Nov 44

L Beckham Capt
Medical Officer

I, D-107507 Pte Dufresne G, desire to have an officer assigned to represent me at my trial by Field General Court Martial.

I desire the services of Capt W.D. Hungerford and ..... (Interpreter) if they are available.

Nov 44

(Signature of accused)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D/107507 Pte Gerard DUFRESNE, Royal Winnipeg Rifles att 8 Cdn Gen Hosp

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(2)	Guilty	Guilty	
2nd AA Sec 40 (alternative)	Withdrawn by the Prosecution (R P 35(C))		
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present~~ under ~~sentence for~~ ~~beginning on date~~ (2)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A); information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of nil days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court:

To be imprisoned with hard labor for two years and to be discharged with ignominy from His Majesty's Service

13 Nov 44 (Sgd) E P Lee, Major
Date awarded. President. (RP 45, 50.)

(Sgd) Judge-Advocate, if any.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 63. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally, AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be sent to prison or detention barracks until further order.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) A W Beamont, Brig

Date 17 Nov 44 Commanding Cdn Sec GHQ 1 Ech 21 Army Gp
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
D/107507 Pte G Dufresne	22 Nov 44	(Sgd) A Green, Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFA98 (Replaces CFA32) 40-P & C-1000-4/45(D) 4/38B

Convened by Order of Brig A W Beamont Comd Cdn Sec GHQ dated 5 Nov 44

ACCUSED. 1 Ech

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D/107507	Pte	Gerard	DUFRESNE	Royal Winnipeg Rifles att 8 Cdn Gen Hosp

Certified true Copy
A.D.J.A.
Cdn Sec G.H.Q. 2 Ech. 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 13 Nov 44

RECORD FORM A--OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the EPL Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF A65, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1400 hours trial commences. EPL

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to D/133603 Pte Dufort, R. C. W Ans No 8 Cdn Gen Hosp, ~~shorthand writer~~ Ans ~~No~~ EPL

The Interpreter is sworn.(1) ~~Do you object to the shorthand writer so sworn?~~ Ans

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E P	Lee	Cdn Sec GHQ 1 Ech 21 A Gp
Member	Major	M L	Troy	Cdn Sec GHQ 1 Ech 21 A Gp
Member	Capt	J A	Baillargeon	Cdn Sec GHQ 1 Ech 21 A Gp
Judge-Advocate				
Prosecutor	Lt-Col	J E G	Thompson	HQ 2 Cdn Corps
Defending Offr	(Capt	W D	Hungerford	Cdn Sec GHQ 1 Ech 21 A Gp
	(Capt	R	Fafard	Asst JA Hqs 1 Can Corps Hosp

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Officer a lawyer? Ans Yes

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See 2d p 3.)

A8. The accused D/107507 Pte G Dufresne before arraignment make(s) (no) (a) plea. EPL (3)

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 18, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.) Second charge withdrawn by prosecutor (R P 35(C)) EPL

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record (per Notes.))

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B" & "C"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*ii*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No, sir.(5)
(*1. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and to (his) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~ E.P.L.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1) E.P.L.
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B4 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are relied on relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p* 3 *and making be appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3. E.P.L.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. ..... E.P.Lee, Plt
(*1. RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* 885. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes on Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(*3*) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(*3*), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form* B *or* C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Yes, sir, to give evidence on oath
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor ~~produces~~ states that Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), ~~purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) their purport is disclosed in the manner required by AA 183(1) (g) (ii), and (ii) their purport to refer to (a) soldier(s) having the same name(s)/rank, number and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.~~(3) are not available EPL
(*1. MFB* 353 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes, sir, by my defending officer .....(2)
(*1. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-52, 69, 118, 119(*A*), *KR Con* 308, 330, 563-568. *Overseas RO* 309, 2323, *MML p* 66, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(*C*), *KR Con* 564. 2. *RP* 50. *As to remove from account for Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

41.

CHARGE SHEET.

The accused Reg.No:107507, Pte.Gerard DUPRESNE, of the Royal Winnipeg Rifles Regiment, attached to No: 8 Can. General Hospital, a soldier of the Canadian Army Overseas, is charged with.

First Charge
A.A. Sec. 18 (2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HI SELF UNFIT FOR SERVICE.

in that he

in the field on 17 October 44, by discharging an enmeny weapon, a German revolver P-38 which was in his possession, wilfully injured himself by shooting himself through the large toe of the left foot with intent thereby to render himself unfit for service.

Second Charge
(Alternative)
A.A. Sec. 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER OF MILITARY DISCIPLINE.

in that he

in the field on 17 October 44, while with his regiment in the line, so negligently handled an enmeny weapon, a German revolver P-38 which was in his possession as to shoot himself in the large toe of the left foot thereby renderin himself unfit for service.

(W.E. Hume Colonel,
Officer Commanding,
No: 8 Cdn. Gen. Hosp.

In the field,
3 Nov 44.

To be tried by Field General Court Martial.

In the field
9 Nov 44

(Sgd) A W Beament, Brig
OIC
Cdn Sec GHQ 1 Ech
21 Army Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-107507	Pte		Gerard	DUPRESNE	R Wnpg Rif Reg att No.8 Cdn Gen Hosp.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) Nov 44 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by a Field General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.P. Lee	Cdn Sec GHQ 1 Ech 21 A Gp.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	M.L. Troy	Alq Regt - att Cdn Sec GHQ 1 Ech - 21 A Gp.
Capt	F.A. Baillargeon	Gen List - att Cdn Sec GHQ 1 Ech 21 A Gp.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium (Country.) Brigadier (Rank.)

(Sign) (G.W. Beament)

Date Nov 44 Commanding Cdn Sec GHQ 1 Ech 21 A Gp.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 2) 40/F & S/1697 (6143) *(See overleaf for oaths and notes for use on trial.)*

Approved:

ADJA

No 8 Cdn Gen Hosp
13 Nov 44

I have this day examined D/107507 Pte Dufresne, G, and find him fit to undergo trial by Field General Court Martial.

(Sgd) L Kickham, Capt
Medical Officer

D/107507 Pte Gerard Dufresne, Royal Winnipeg Rifles, sworn states:

I was born in Saskatoon, Sask, on 21 May 21. I am 23 years old. My parents were both born in Canada of Fr-Cdn extraction. I went to the fifth grade in country school at Trois Rivieres, Quebec. At 15 years I left. I was then a milkman with my dad at Abitibi, Quebec. When I enlisted I was on a farm. I was called up and enlisted on 30 Jun 42. I trained at St Jerome near Montreal and at Farnham, Buebec. I went overseas at the end of July 44 as a rft and arrived in the United Kingdom on or about 20 Jul 44. I stayed there until 7 or 8 Sep 44, where I did some trg. Then I came to France as a rft, joining the Royal Winnipeg Rifles on 15 Sep 44, and I remained with them in action until this happened on 17 Oct 44. I had reses during this period. I was a rfn. I fired my rifle without much success. I helped take prisoners in company with other soldiers. I never requested a transfer to another Regt while I was with the Royal Winnipeg Rifles. There were other Fr speaking pers in this Regt and in my pl. I had one Fr speaking pal who had trained for two years. He was still there when I left.

If I got a chance to return to the line I would be willing to serve with any Fr-Cdn Regt.

I would like to express my willingness to go back to the line as soon as I can.

I have never had any serious trouble in the army before this nor in civilian life.

I am not married nor engaged. I assign pay to my father, who keeps it for me. This amounts to $12 per month and I am buying a bond. My mother is dead. I have two sisters and three brothers. No one else is in the services besides me. They are all younger except one sister who lives in Abitibi, Quebec.

My category has always been "A". I have never suffered from any serious diseases in my life.

I was fed up and nervous when I did this and in addition I was unhappy and wanted to change my Regt. I didn't seem to be able to make a go of it where I was.

The officers and NCO's always spoke English and I could never understand them. Neither could my chum. We had one NCO who spoke French but he was wounded.

I never asked for a transfer because I didn't think I could get one.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of D-107507 Pte Dufresne, G., Royal Winnipeg Rifles, att. No.8 Cdn Gen Hosp, charged with, when on active servide wilfully injuring himself with intent thereby to render himself unfit for service (AA Sec 18(2)), alternative, when on active service neglect to the prejudice of good order and military discipline (AA Sec 40).

By direction of the Commanding Officer the evidence is taken on oath.

D-139903 Pte Dufort J.R.C.M, No.8 Cdn Gen Hospital, having been duly sworn, acts as interpreter.

First Witness

Capt L.A. Kickham, Medical Officer at No.8 Cdn Gen Hosp, RCAMC, sworn, states:

I am Capt L.A. Kickham, Medical Officer at No.8 Cdn Gen Hosp. The accused, D-107507 Pte Dufresne, G., was admitted to No.8 Cdn Gen Hosp on 23 Oct 44, being a transfer from No.12 Cdn Gen Hosp where he was admitted on 17 Oct 44 with a compound comminuted fracture of the left great toe, labelled GSW. He was treated at No.12 Cdn Gen Hosp surgically and a Plaster of Paris cast applied. Since coming to No.8 Cdn Gen Hosp the cast has not been removed so I am not in a position to say as to the condition of the wound but the patient's condition generally is good. I am unable to state the probable duration of his illness or the residual deformity which may result.

The accused declines to cross-examine this witness.

(Capt L.A. Kickham)

Second Witness

Lieut J.R. Barr, S.I.S., Cdn Provost Corps, att No.8 Cdn Gen Hospital, sworn, states:

I am Lieut J.R. Barr, S.I.S. Cdn Provost Corps. I interviewed the accused, D-107507 Pte Dufresne G, whom I now recognise, at No.8 Cdn Gen Hosp on 3 Nov 44. After I had identified myself I informed the accused that I was investigating his case regarding his injury. I cautioned the accused that he was not obliged to say anything unless he wished to do so but whatever he did say would be taken down in writing and may be used in evidence. He understood the caution and made a statement which was reduced to writing. This statement was read to him and he read it himself and then signed it. The signature was witnessed by myself and K.75573 L/Cpl Pederson F.M., who was present at the interview.

Q. Is the statement in the same condition now as when it was signed or are there any alterations, additions, erasions or interlineations?

A. The statement is in the same form as when it was signed, sir.

Q. Was the accused under arrest at the time?

A. No, sir.

Q. Were there any threats, promises or inducements made in obtaining this statement?

A. No, sir.

The accused declines to cross-examine this witness.

(Lieut J.R. Barr)

The statement referred to in the evidence of the above witness is attached hereto as Exhibit 'A'.

Third Witness — Capt J.J. O'Neill, RCAMC, No.8 Cdn Gen Hospital.

I certify that in my opinion the attendance of this witness, is, owing to the exigencies of the service, not readily procurable and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Exhibit 'B'.

Officer taking Summary.

I do not require the attendance of Capt J.J. O'Neill for the purpose of cross-examination.

(D-107507 Pte DuFresne G)

The accused is cautioned as follows:

Do you wish to make a statement or give evidence on oath? You are not obliged to say anything unless you wish to do so, but whatever you do say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement at this time.

The accused does not call any witnesses.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence of the accused and that RR (C), (D), (E), (F) and (G) have been complied with.

In the Field
Nov 44.

Officer detailed to take Summary of Evidence

Hopital Generale Canadienne No 8
3 Nov 44

Declaration de D/107507 soldat Gerard Dufresne, du Regt Royal Winnipeg Rifle attache a l'hopital Generale Canadienne Numero 8.

Il declare: J'ai ete mis en garde par le Lieut J R Barre, SIS Prevate Canadienne de la moniere suisonte: Voulez vous faire une declaration? Vous n'ites pos oblige de rien dire a moins que vous ne le desiriez mois tout ce que vous direz sera pris en ecrit et pourra servir de preuve. Je comprends le serise de cette mise en garde et je fais volontoirement la declaration suisante qui, est sous menaces promesses ou faveurs.

(Sgd) Gerard Dufresne

Je suis D/107507 soldat Gerard Dufresne. Je suis age de 23 ans. J'ai recie mon appel militaire au mois de juin 1942 et je n'ai signe actif qu'au mois d'anil 1944. J'ai fait aux mois d'intrainement au camp de St Jerome et trois outres mois a Farnham, Qui. Je suis arrive en Angleterre au debut de juillet 1944 comme reinfort d'infantrie, c'est a dire onc le Regt de Montmagny. Je suis arrive en France le 10 Sep 44 avec conquonte outres soldats de mon Regt comme reinfort general d'infantrie, es nous sommes allis ou 2 CEMG le 15 Sep 44, je suis parte onc plusieurs outres soldats de mon Regt pour aller joindre le Regt Royal Winnipeg Rifle, qui a cetee date la se trourait pris de Boulogne. Je suis rest onc mon Regt jusqui ou 17 Oct 44 es j'ai pris part a dix attaques. Le 17 Oct 44 nous etions ennion un mille de l'outre cote du canal-St-Leopold dans une position defensive. Le 16 Oct 44 j'ai trouse un pistole allemand P-38 et le 17 vers les 11 hrs a m j'ai decide de le nettager. J'ai enleve le magasin et onc un linge j'ai enleve toute la rouille qu'il.

Avait sur le canon et la detente et apres j'ai enleve le cran de surete et c'est en enlevant le cran de surete que le couf a parte. A ce moment la f'etais debout es la balle a penetrie juste au dessus de la premiere jointure de la grosse orteille du pied gouche.

Voici je suis ousse bien de vous dire la veriti. J'ai enleve le magasin es j'ai laisse une balle dous le canon et me suis servi de cetee balle pour me tires dous le kied gouche. La raison pour loguelle je me suis blessi est que j'etais devence tris nerveux et ne pourvais plus dormir, et de plus je n'aimais pos le Regt parce que je ne comprends pas l'Anglais et qui la majorite des officiers et sous officiers etaient tous de longue Anglaise.

Aussitat oui je serai mieux je suis consentant de retourner au front mois cete fois ce onc un Regt Cdn Francaise.

J'ai lu ma declaration et tout ce que j'ai det ess la verite. Je l'ai fait volontairement sous menaces, promesses ou faveurs et je signe mon nom ce apres.

(Sgd) Gerard Dufresne

Declaration prise en ecrit par le Lieut J R Barre, SIS Prevate Canadienne, en presence du L/Cpl F M Pedersen, Prevate Canadienne.

Timoins: (Sgd) J R Barre, Lieut
SIS Prevate Canadienne

Witness: (Sgd) F M Pedersen, L/Cpl
Cdn Provost Corps

ENGLISH TRANSLATION.

8 Cdn. Gen. Hosp.

3 Nov 44.

STATEMENT of: Reg.No. D-107507, Pte. Gerard DUFRESNE, Royal Winnipeg Rifles, "B" Co'y, 12 Pln., 8th Bde., 3 Cdn. Division, Cdn. Infantry, attached 8 Cdn. Gen. Hosp.

WHO STATES: I have been warned by Lieut J.R. Barre, S.I.S., Cdn. Provost Corps, as follows: " Do you wish to make a statement? You are not obliged to say anything unless you wish to do so, but whatever you do say will be taken down in writing and may be given in evidence." I understand the meaning of this caution and I make the following voluntary statement without threat, promise, or favour.

(Sgd) Gerard Dufresne

I am Reg.No. D-107507, Pte. Gerard Dufresne. I am 23 years of age. I was called up for my Military Service in June, 1942 and went "active" in April 1944. I did two months training at Ste. Jerome Camp and three more months at Farnham, Que. I arrived in England at the beginning of July, 1944 as an Infantry Reinforcement, that is to say, with the Regt de Montmagny. I arrived in France 10 Sept 44 with 50 other soldiers from my Regiment as General Reinforcements for Infantry, and we went to No.2 C.B.R.C. On 15 Sep 44 I left with many other soldiers of my Regiment to join the Royal Winnipeg Rifle Regt, which at that time was near Boulogne. I stayed with my Regiment until 17 Oct and took part in 10 attacks. On 17 Oct we were approximately a mile on the other side of St. Leppold Canal and were in a defensive position. On 16 Oct I found a German revolver, a P.38, and on the 17th at about 11.00 hrs. I decided to clean it. I took the magazine off and with a rag I cleaned all the rust off the muzzle and trigger, and then I took the safety catch off, and in doing so the weapon fired. At that time I was standing up, and the bullet penetrated just above the first joint of the large toe of my left foot.

Here, I might as well tell you the truth. I took the magazine off and left a bullet in the breech, and used same to wound myself in the left foot. The reason why I wounded myself is that I had become very nervous and could not sleep any more, moreover, I did not like the Regiment because I don't understand English - and the majority of Officers and N.C.O.'s are all English speaking.

As soon as I am better I am willing to return th the front, but this time with a French-Canadian Regiment.

I have read my statement, and all I have said is the truth. I made it voluntarily, without threat, or promise, or favour, and I sign my name herewith.

(Sgd) Gerard Dufresne

Statement reduced to writing by Lieut J.R. Barre, S.I.S., Cdn. Provost Corps, in the presence of L/Cpl. F.M. Pederson, Canadian Provost Corps.

Signature of Witness: Lt.
(J.R. Barre)

2nd Witness: (Sgd) F.M. Pederson

This is Exhibit 'A' referred to in the Summary of Evidence in the case of D-107507 Pte Dufresne G., taken before me this 4th day of November 44.

COPY

Neuro-psychiatry - 8 C.G.H.

D-107507 Pte Dufresne G Royal Winnipeg Rifles

4 Nov 44.

M/n has admitted shooting himself through large toe of left foot with revolver.

He is 23 - called up in June 42 - went active in April 44 - To UK in July 44 - to BLA in Sep 44 - was about 1 month in action - no heavy action.

Complaints: Pain in lt knee
Was nervous - scared.

Family History - mother died when m/n was 15 - she was often sick - had many complaints - was very nervous - 3 brothers and 2 sisters in good health.

Personal History - Pte was delicate, jumpy and impulsive - had fear of dark, nightmares - was sick in crowds. Had vomiting spells and frequent nose bleeding - nervous, scared - never could fight or play rough games. Often missed school on account of minor ailments. Had pneumonia at 12 - Wore a belt until 15 on account of pain in R.L.Q. At 16 he was told he had rhumatic fever. His right foot would swell in morning - no temperature.
To school from 6 to 15 Grade V - repeated grades.
To work at 15 as milkman for 6 months - then 2 years on farm with father. Never could do hard work - left jobs because was always tired.

ARMY: Called up in June 42 - did his training - was scared on firing range - could not learn map reading - Went active because was fed and thought he would get a medical examination and be discharged as unfit for service. In action he was shaky - could not fire his gun because he was trembling too much. His only thought was to keep under cover - he could not sleep. After finding a German revolver he shot himself so that he would be evacuated.

Examination: Well nurtured - no signs of anxiety - no signs of psychosis - intelligence is of low average level - marked lack of judgment. Morale for further service is nil - physical exam nrg except for S.I.W.

Depression: Mental retardation M.2
Psychopathic personality inadequate S.3

He is fit to stand trial and undergo punishment but unlikely to become an efficient soldier.

"J.J O'Neill" Capt
RCAMC

This is Exhibit 'B' referred to in the Summary of Evidence in the case of D-107507 Pte Dufresne, G., taken before me this 4th day of November 1944.

Plea in Mitigation by the Defending Officer

You have already heard read the psychiatrist's report to the effect that the accused's Pulhems test is M2 S3. This report makes it quite clear that this man should be re-allocated. He is of inadequate personality for the task in hand. He has been asked to do a job for which he has no capabilities. You can see through his life history what qualities of fortitude and capabilities suited him for active service conditions. I suggest that there is not one of the qualities necessary for service in this or any theatre of war possessed in this man's make-up. He is another instance of that policy on the part of the people back home who send overseas men who are willing to serve but do not possess the qualities necessary to carry out such a trust. He is a typical example of another one from the assembly line. How long this will go on I do not know. This should be brought to the attn of the provincial premiers from coast to coast -- this awful state of affairs -- and stop this nonsense forthwith and prove to men in the line that their brethren at home who have the capabilities are with them 100 per cent. Give those men whom I say are capable of leadership comd in a theatre of war. There is no need for this isolation on the part of Canada. Let us take our full share of responsibility alongside the other nations and prove ourselves worthy of membership in such a league. This is the basis of the philosophy in these cases. In this case this man was never fit for this kind of duty. This man should be considered as M2 S3 and dealt with accordingly.

COPY

Neuro-psychiatry - 8 C.G.H.

D-107507 Pte Dufresne G Royal Winnipeg Rifles

4 Nov 44.

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To school from 6 to 15 Grade V - repeated grades.
To work at 15 as milkman for 6 months - then 2 years on farm with father. Never could do hard work - left jobs because was always tired.

ARMY: Called up in June 42 - did his training - was scared on firing range - could not learn map reading - Went active because was fed and thought he would get a medical examination and be discharged as unfit for service. In action he was shaky - could not fire his gun because he was trembling too much. His only thought was to keep under cover - he could not sleep. After finding a German revolver he shot himself so that he would be evacuated.

Examination: Well nurtured - no signs of anxiety - no signs of psychosis - intelligence is of low average level - marked lack of judgment. Morale for further service is nil - physical exam nrg except for S.I.W.

Impression: Mental retardation M.2
Psychopathic personality inadequate S.3

He is fit to stand trial and undergo punishment but unlikely to become an efficient soldier.

"J.J O'Neill" Capt
RCAMC

This is Exhibit'B' referred to in the Summary of Evidence in the case of D-107507 Pte Dufresne, G., taken before me this 4th day of November 1944.

Plea in Mitigation by the Defending Officer

You have already heard read the psychiatrist's report to the effect that the accused's Pulhems test is M2 S3. This report makes it quite clear that this man should be re-allocated. He is of inadequate personality for the task in hand. He has been asked to do a job for which he has no capabilities. You can see through his life history what qualities of fortitude and capabilities suited him for active service conditions. I suggest that there is not one of the qualities necessary for service in this or any theatre of war possessed in this man's make-up. He is another instance of that policy on the part of the people back home who send overseas men who are willing to serve but do not possess the qualities necessary to carry out such a trust. He is a typical example of another one from the assembly line. How long this will go on I do not know. This should be brought to the attn of the provincial premiers from coast to coast -- this awful state of affairs -- and stop this nonsense forthwith and prove to men in the line that their brethren at home who have the capabilities are with them 100 per cent. Give those men whom I say are capable of leadership comd in a theatre of war. There is no need for this isolation on the part of Canada. Let us take our full share of responsibility alongside the other nations and prove ourselves worthy of membership in such a league. This is the basis of the philosophy in these cases. In this case this man was never fit for this kind of duty. This man should be considered as M2 S3 and dealt with accordingly.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused. D/107507 Pte Gerard DUFRESNE, Royal Winnipeg Rifles att 8 Cdn Gen Hosp

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 18(2)	Guilty	Guilty	
2nd AA Sec 40 (alternative)	Withdrawn by the Prosecution (R P 35(C))		
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of nil days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under EE.)

Sentence Awarded by the Court:

To be imprisoned with hard labor for two years and to be discharged with ignominy from His Majesty's Service

(Sgd) ..... Judge-Advocate, if any. 13 Nov 44 Date awarded. (Sgd) E P Lee, Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date. ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MEML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) A W Beament, Brig

Date 17 Nov 44 Commanding Cdn Sec GHQ 1 Ech 21 Army Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D/107507 Pte G Dufresne	22 Nov 44	(Sgd) A Green, Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 44-105

CFAR6 (To Take the Place of AFA6) 60-P.A.-8/1698 (4600)

FIELD GENERAL COURT-MARTIAL

4388

Convened by Order of Brig A W Beament Comd Cdn Sec GHQ 1 Ech dated 9 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D/107507	Pte	Gerard DUFRESNE Royal Winnipeg Rifles att 8 Cdn Gen Hosp		

PROCEEDINGS RECEIVED Cdn. Sec. G.H.Q. 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 13 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~ assemble, and the Court is closed. EPL

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for notes and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1400 hours trial commences. EPL

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (1).~~ EPL

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to D/133903 Pte Dufort, R C M, 8 Cdn Gen Hosp ~~or interpreter~~ / Ans No

The Interpreter is sworn.(1) ~~Do you object to the shorthand writer so sworn (1).~~ EPL

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 23, 71, 108, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E P	Lee	Cdn Sec GHQ 1 Ech 21 A Gp
Member	Major	M L	Troy	Cdn Sec GHQ 1 Ech 21 A Gp
Member	Capt	J A	Baillargeon	Cdn Sec GHQ 1 Ech 21 A Gp
Judge-Advocate				
Prosecutor	Lt-Col	J W G	Thompson	HQ 2 Cdn Corps
Defending Offr	(Capt	W D	Hungerford	Cdn Sec GHQ 1 Ech 21 A Gp
	(Capt	R	Fafard	Regt de Mais att 8 Cdn Gen Hosp

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Comm Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See 2d p 3.)

A8. The accused D/107507 Pte G Dufresne before arraignment makes(s) (nos) (a) plea EPL

(1. If a special plea is made for separate trial as one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental Fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the evidence made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 name and name of the accused making the plea.) Second charge withdrawn by prosecutor (R P 35(C))

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused choose (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. EPL

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B" & "E"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc. offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans. No, sir. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) pleas(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~ E.P.L.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records findings of Guilty in Part I of the Schedule.(1) E.P.L.
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (f).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3. E.P.L. Tres

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. ..... E.P.L. Tres
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 14(3) (d), RP 43, 120(A). 2. AA 14(3), RP 43, 117. This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Yes, sir, to give evidence on oath.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor ~~produces~~ stated that Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), ~~purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for reference in evidence. The Court is satisfied that these documents refer to the accused, because in they purport to be signed in the manner required by AA 14(3) (g) (h), and (in their purports to refer to (a) evidence having the same number, rank, name and corps as the accused. Admitted in evidence and~~ E.P.L. ~~marked Ex ..... and Ex ..... respectively.(3)~~ 1 & 2 are not available
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes, sir, by my defending officer (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 14(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 98, 118, 119(A), KR Can 308, 330, 563-566, Overseas KO 309, 1203, MML p 80, 737-738. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see insstrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET.

The accused Reg.No:107507, Pte.Gerard DUFRESNE, of the Royal Winnipeg Rifles Regiment, attached to No: 8 Can. General Hospital, a soldier of the Canadian Army Overseas, is charged with.

First Charge
A.A. Sec. 18 (2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HI SELF UNFIT FOR SERVICE.

in that he

in the field on 17 October 44, by discharging an ennemy weapon, a German revolver P-38 which was in his possession, wilfully injured himself by shooting himself through the large toe of the left foot with intent thereby to render himself unfit for service.

Second Charge
(Alternative)
A.A. Sec. 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER OF MILITARY DISCIPLINE.

in that he

in the field on 17 October 44, while with his regiment in the line, so negligently handled an ennemy weapon, a German revolver P-38 which was in his possession as to shoot himself in the large toe of the left foot thereby rendering himself unfit for service.

(W.E. Hume Colonel,
Officer Commanding,
No: 8 Cdn. Gen. Hosp.

In the field,
3 Nov 44.

To be tried by Field General Court Martial.

In the field
9 Nov 44

(Sgd) A W Beament, Brig
CIC
Cdn Sec GHQ 1 Ech
21 Army Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-107507	Pte		Gerard	DUFRESNE	R Wnpg Rif Reg att No.8 Cdn Gen Hosp.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) Nov 44 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by superior General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.P. Lee	Cdn Sec GHQ 1 Rch 21 A Gp.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	M.L. Troy	Alq Regt - att Cdn Sec GHQ 1 Rch - 21 A Gp.
Capt	F.A. Baillargeon	Gen List - att Cdn Sec GHQ 1 Rch 21 A Gp.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium (Country.)

Brigadier (Rank.)

(Signature of Officer)

Date Nov 44

Commanding Cdn Sec GHQ 1 Rch 21 A Gp.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 95 (In lieu of AFA 3) 40/F & S/1697 (6143)

Approved:

ADJA

No 8 Cdn Gen Hosp
13 Nov 44

I have this day examined D/107507 Pte Dufresne, C, and find him fit to undergo trial by Field General Court Martial.

(Sgd) L Kickham, Capt
Medical Officer

E 1

D/107507 Pte Gerard Dufresne, Royal Winnipeg Rifles, sworn states:

I was born in Saskatoon, Sask, on 21 May 21. I am 23 years old. My parents were both born in Canada of Fr-Cdn extraction. I went to the fifth grade in country school at Trois Rivieres, Quebec. At 15 years I left. I was then a milkman with my dad at Abitibi, Quebec. When I enlisted I was on a farm. I was called up and enlisted on 30 Jun 42. I trained at St Jerome near Montreal and at Farnham, Quebec. I went overseas at the end of July 44 as a rft and arrived in the United Kingdom on or about 20 Jul 44. I stayed there until 7 or 8 Sep 44, where I did some trg. Then I came to France as a rft, joining the Royal Winnipeg Rifles on 15 Sep 44, and I remained with them in action until this happened on 17 Oct 44. I had reses during this period. I was a rfn. I fired my rifle without much success. I helped take prisoners in company with other soldiers. I never requested a transfer to another Regt while I was with the Royal Winnipeg Rifles. There were other Fr speaking pers in this Regt and in my pl. I had one Fr speaking pal who had trained for two years. He was still there when I left.

If I got a chance to return to the line I would be willing to serve with any Fr-Cdn Regt.

I would like to express my willingness to go back to the line as soon as I can.

I have never had any serious trouble in the army before this nor in civilian life.

I am not married nor engaged. I assign pay to my father, who keeps it for me. This amounts to $12 per month and I am buying a bond. My mother is dead. I have two sisters and three brothers. No one else is in the services besides me. They are all younger except one sister who lives in Abitibi, Quebec.

My category has always been "A". I have never suffered from any serious diseases in my life.

I was fed up and nervous when I did this and in addition I was unhappy and wanted to change my Regt. I didn't seem to be able to make a go of it where I was.

The officers and NCO's always spoke English and I could never understand them. Neither could my chum. We had one NCO who spoke French but he was wounded.

I never asked for a transfer because I didn't think I could get one.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of D-107507 Pte Dufresne, G., Royal Winnipeg Rifles, att. No.8 Cdn Gen Hosp, charged with, when on active servide wilfully injuring himself with intent thereby to render himself unfit for service (AA Sec 18(2)), alternative, when on active service neglect to the prejudice of good order and military discipline (AA Sec 40).

By direction of the Commanding Officer the evidence is taken on oath.

D-139903 Pte Dufort J.R.C.M, No.8 Cdn Gen Hospital, having been duly sworn, acts as interpreter.

First Witness

Capt L.A. Kickham, Medical Officer at No.8 Cdn Gen Hosp, RCAMC, sworn, states:

I am Capt L.A. Kickham, Medical Officer at No.8 Cdn Gen Hosp. The accused, D-107507 Pte Dufresne, G., was admitted to No.8 Cdn Gen Hosp on 23 Oct 44, being a transfer from No.12 Cdn Gen Hosp where he was admitted on 17 Oct 44 with a compound comminuted fracture of the left great toe, labelled GSW. He was treated at No.12 Cdn Gen Hosp surgically and a Plaster of Paris cast applied. Since coming to No.8 Cdn Gen Hosp the cast has not been removed so I am not in a position to say as to the condition of the wound but the patient's condition generally is good. I am unable to state the probable duration of his illness or the residual deformity which may result.

The accused declines to cross-examine this witness.

(Capt L.A. Kickham)

Second Witness

Lieut J.R. Barr, S.I.S., Cdn Provost Corps, att No.8 Cdn Gen Hospital, sworn, states:

I am Lieut J.R. Barr, S.I.S. Cdn Provost Corps. I interviewed the accused, D-107507 Pte Dufresne G, whom I now recognise, at No.8 Cdn Gen Hosp on 3 Nov 44. After I had identified myself I informed the accused that I was investigating his case regarding his injury. I cautioned the accused that he was not obliged to say anything unless he wished to do so but whatever he did say would be taken down in writing and may be used in evidence. He understood the caution and made a statement which was reduced to writing. This statement was read to him and he read it himself and then signed it. The signature was witnessed by myself and K.75573 L/Cpl Pederson F.M., who was present at the interview.

Q. Is the statement in the same condition now as when it was signed or are there any alterations, additions, erasions or interlineations?

A. The statement is in the same form as when it was signed, sir.

Q. Was the accused under arrest at the time?

A. No, sir.

Q. Were there any threats, promises or inducements made in obtaining this statement?

A. No, sir.

The accused declines to cross-examine this witness.

(Lieut J.R. Barr)

The statement referred to in the evidence of the above witness is attached hereto as Exhibit 'A'.

Third Witness

Capt J.J. O'Neill, RCAMC, No.8 Cdn Gen Hospital.

I certify that in my opinion the attendance of this witness, is, owing to the exigencies of the service, not readily procurable and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Exhibit 'B'.

Officer taking Summary.

I do not require the attendance of Capt J.J. O'Neill for the purpose of cross-examination.

(D-107507 Pte DuFresne G)

The accused is cautioned as follows:

Do you wish to make a statement or give evidence on oath? You are not obliged to say anything unless you wish to do so, but whatever you do say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement at this time.

The accused does not call any witnesses.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence of the accused and that RP 4(C), (D), (E), (F) and (G) have been complied with.

In the Field
Nov 44.

Officer detailed to take Summary of Evidence

Hopital Generale Canadienne No 8
3 Nov 44

Declaration de D/107507 soldat Gerard Dufresne, du Regt Royal Winnipeg Rifle attache a l'hopital Generale Canadienne Numero 8.

Il declare: J'ai ete mis en garde par le Lieut J R Barre, SIS Prevate Canadienne de la moniere suisonte: Voulez vous faire une declaration? Vous n'ites pos oblige de rien dire a moins que vous ne le desiriez mois tout ce que vouz direz sera pris en ecrit et pourra servir de preuve. Je comprends le serise de cette mise en garde et je fais volontoirement la declaration suisante qui, est sous menaces promesses ou faveurs.

(Sgd) Gerard Dufresne

Je suis D/107507 soldat Gerard Dufresne. Je suis age de 23 ans. J'ai recie mon appel militaire au mois de juin 1942 et je n'ai signe actif qu'ou mois d'anil 1944. J'ai fait aux mois d'intrainement au camp de St Jerome et trois outres mois a Farnham, Qui. Je suis arrive en Angleterre au debut de juillet 1944 comme reinfort d'infantrie, c'est a dire onc le Regt de Montmagny. Je suis arrive en France le 10 Sep 44 avec conquonte outres soldats de mon Regt comme reinfort general d'infantrie, es nous sommes allis ou 2 CBRG le 15 Sep 44, je suis parte onc plusieurs outres soldats de mon Regt pour aller joindre le Regt Royal Winnipeg Rifle, qui a cetee date la se trourait pris de Boulogne. Je suis rest onc mon Regt jusqui ou 17 Oct 44 es j'ai pris part a dix attaques. Le 17 Oct 44 nous etions ennion un mille de l'outre cote du canal-St-Leopold dans une position defensive. Le 16 Oct 44 j'ai trouse un pistole allemand P-38 et le 17 vers les 11 hrs a m j'ai decide de le nettager. J'ai enleve le magasin et onc un linge j'ai enleve toute la rouille qu'il.

Avait sur le canon et la detente et apres j'ai enleve le cran de surete et c'est en enlevant le cran de surete que le couf a parte. A ce moment la f'etais dehout es la balle a penetrie juste au dessus de la premiere jointure de la grosse orteille du pied gouche.

Voici je suis ousse bien de vous dire la veriti. J'ai enleve le magasin es j'ai laisse une balle dous le canon et me suis servi de cetee balle pour me tires dous le kied gouche. La raison pour loguelle je me suis blessi est que j'etais devence tris nerveux et ne pourvais plus dormir, et de plus je n'aimais pos le Regt parce que je ne comprends pas l'Anglais et qui la majorite des officiers et sous officiers etaient tous de longue Anglaise.

Aussitat qui je serai mieux je suis consentant de retournu au front mois cete fois ce onc un Regt Cdn Francaise.

J'ai lu ma declaration et tout ce que j'ai det ess la verite. Je l'ai fait volontairement sous menaces, promesses ou faveurs et je signe mon nom ce apres.

(Sgd) Gerard Dufresne

Declaration prise en ecrit par le Lieut J R Barre, SIS Prevate Canadienne, en presence du L/Cpl F M Pedersen, Prevate Canadienne.

Timoins: (Sgd) J R Barre, Lieut
SIS Prevate Canadienne

Witness: (Sgd) F M Pedersen, L/Cpl
Cdn Provost Corps

ovlv

This is Exhibit "A" referred to in summary of evidence in the case of D/107507 Pte Dufresne, C, taken before me this 4th day of November 1944.

(Sgd) J W G Thompson, Lt-Col

8 Cdn. Gen. Hosp.

ENGLISH TRANSLATION.

3 Nov 44.

STATEMENT of: Reg.No. D-107507, Pte. Gerard DUFRESNE, Royal Winnipeg Rifles, "B" Co'y, 12 Pln., 8th Bde., 3 Cdn. Division, Cdn. Infantry, attached 8 Cdn. Gen. Hosp.

WHO STATES: I have been warned by Lieut J.R. Barre, S.I.S., Cdn. Provost Corps, as follows: " Do you wish to make a statement? You are not obliged to say anything unless you wish to do so, but whatever you do say will be taken down in writing and may be given in evidence." I understand the meaning of this caution and I make the following voluntary statement without threat, promise, or favour.

(Sgd) Gerard Dufresne

I am Reg.No. D-107507, Pte. Gerard Dufresne. I am 23 years of age. I was called up for my Military Service in June, 1942 and went "active" in April 1944. I did two months training at Ste. Jerome Camp and three more months at Farnham, Que. I arrived in England at the beginning of July, 1944 as an Infantry Reinforcement, that is to say, with the Regt de Montmagny. I arrived in France 10 Sept 44 with 50 other soldiers from my Regiment as General Reinforcements for Infantry, and we went to No.2 C.B.R.D. On 15 Sep 44 I left with many other soldiers of my Regiment to join the Royal Winnipeg Rifle Regt, which at that time was near Boulogne. I stayed with my Regiment until 17 Oct and took part in 10 attacks. On 17 Oct we were approximately a mile on the other side of St. Leopold Canal and were in a defensive position. On 16 Oct I found a German revolver, a P.38, and on the 17th at about 11.00 hrs. I decided to clean it. I took the magazine off and with a rag I cleaned all the rust off the muzzle and trigger, and then I took the safety catch off, and in doing so the weapon fired. At that time I was standing up, and the bullet penetrated just above the first joint of the large toe of my left foot.

Here, I might as well tell you the truth. I took the magazine off and left a bullet in the breech, and used same to wound myself in the left foot. The reason why I wounded myself is that I had become very nervous and could not sleep any more, moreover, I did not like the Regiment because I don't understand English - and the majority of Officers and N.C.O.'s are all English speaking.

As soon as I am better I am willing to return to the front, but this time with a French-Canadian Regiment.

I have read my statement, and all I have said is the truth. I made it voluntarily, without threat, or promise, or favour, and I sign my name herewith.

(Sgd) Gerard Dufresne

Statement reduced to writing by Lieut J.R. Barre, S.I.S., Cdn. Provost Corps, in the presence of L/Cpl. F.M. Pederson, Canadian Provost Corps.

Signature of Witness: Lt. (J.R. Barre)

2nd Witness: (Sgd) F.M. Pederson

This is Exhibit 'A' referred to in the Summary of Evidence in the case of D-107507 Pte Dufresne G., taken before me this 4th day of November 44.

COPY

Neuro-psychiatry - 8 C.G.H.

D-107507 Pte Dufresne G Royal Winnipeg Rifles

4 Nov 44.

M/n has admitted shooting himself through large toe of left foot with revolver.

He is 23 - called up in June 42 - went active in April 44 - To UK in July 44 - to BLA in Sep 44 - was about 1 month in action - no heavy action.

Complaints: Pain in lt knee
Was nervous - scared.

Family History - mother died when m/n was 15 - she was often sick - had many complaints - was very nervous - 5 brothers and 2 sisters in good health.

Personal History - Pte was delicate, jumpy and impulsive - had fear of dark, nightmares - was sick in crowds. Had vomiting spells and frequent nose bleeding - nervous, scared - never could fight or play rough games. Often missed school on account of minor ailments. Had pneumonia at 12 - Wore a belt until 15 on account of pain in R.L.Q. At 16 he was told he had rhumatic fever. His right foot would swell in morning - no temperature.
To school from 6 to 15 Grade V - repeated grades.
To work at 15 as milkman for 6 months - then 2 years on farm with father. Never could do hard work - left jobs because was always tired.

ARMY: Called up in June 42 - did his training - was scared on firing range - could not learn map reading - Went active because was fed and thought he would get a medical examination and be discharged as unfit for service. In action he was shaky - could not fire his gun because he was trembling too much. His only thought was to keep under cover - he could not sleep. After finding a German revolver he shot himself so that he would be evacuated.

Examination: Well nurtured - no signs of anxiety - no signs of psychosis - intelligence is of low average level - marked lack of judgment. Morale for further service is nil - physical exam nrg except for S.I.W.

Impression: Mental retardation M.2
Psychopathic personality inadequate S.3

He is fit to stand trial and undergo punishment but unlikely to become an efficient soldier.

"J.J O'Neill" Capt
RCAMC

This is Exhibit 'B' referred to in the Summary of Evidence in the case of D-107507 Pte Dufresne, G., taken before me this 4th day of November 1944.

I, D-107507 Pte Dufresne G, desire to have an officer assigned to represent me at my trial by Field General Court Martial.

I desire the services of Capt W.D. Rungerford and ..... (interpreter) if they are available.

Nov 44

.....
(Signature of accused)

Plea in Mitigation by the Defending Officer

You have already heard read the psychiatrist's report to the effect that the accused's Pulhems test is M2 S3. This report makes it quite clear that this man should be re-allocated. He is of inadequate personality for the task in hand. He has been asked to do a job for which he has no capabilities. You can see through his life history what qualities of fortitude and capabilities suited him for active service conditions. I suggest that there is not one of the qualities necessary for service in this or any theatre of war possessed in this man's make-up. He is another instance of that policy on the part of the people back home who send overseas men who are willing to serve but do not possess the qualities necessary to carry out such a trust. He is a typical example of another one from the assembly line. How long this will go on I do not know. This should be brought to the attn of the provincial premiers from coast to coast -- this awful state of affairs -- and stop this nonsense forthwith and prove to men in the line that their brethren at home who have the capabilities are with them 100 per cent. Give those men whom I say are capable of leadership comd in a theatre of war. There is no need for this isolation on the part of Canada. Let us take our full share of responsibility alongside the other nations and prove ourselves worthy of membership in such a league. This is the basis of the philosophy in these cases. In this case this man was never fit for this kind of duty. This man should be considered as M2 S3 and dealt with accordingly.

5 31-126



ON HIS MAJESTY'S SERVICE

FASTEN Envelope by gumming this Label across Flap.
OPEN by cutting Label instead of tearing Envelope.

Pte Dufresne, S.
Missing

1/14 CMHQ 40-1
40/P & S.53
(Strips of 4)

C. A. O. F. - 1-42

Pte. Dufresne, J. J.

28

18

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 146694 Pte DUFRESNE J J.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for NIL beginning on (date) NIL (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 24 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of ninety days

(Sgd) ..... 19 Oct 45 (Sgd) D Morwood Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53; MML p 65. Quashing after promulgation: KR Can 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

[redacted] (1. AA 57A. Delete if not used.)

Date 22 Oct 45 (Sgd) W H Catling Lt Col

Commanding H Q R C A S C. 3 Cdn Inf Div. (AOF)

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. D146694 Pte Dufresne, J.J. Date. 23 Oct '45 Signature of Offr. H.G. Matheson Maj/a

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 C AOF - 1 - of 2

FIELD GENERAL COURT-MARTIAL

CF AAS 2 (in lieu of AFA 21) 40/P & S/1098 (40/01) 4/38B

30 OCT 1945 (JAG BRANCH C.M.H.Q.)

Convened by Order of Lt Col W H Catling Comd RCASC 3 Cdn Inf Div (CAOF) dated

ACCUSED.

(Where the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D.146694	Pte	Jean Jacques	Dufresne	Chauffeur 1 Cdn RCASC

PROCEEDINGS REVIEWED 31 Oct 45 Lt Brody Mcy REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED DATE 27 OCT 45 HQ 3 CDN INF DIV (CAOF)

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany on (date(s)) 19 Oct 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Ischedule referred to throughout is on p 4. Citations do NOT include all relevant fmo ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 49S, for words and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~(are)~~, amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 10 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~an interpreter~~? Ans .....

~~The Interpreter is sworn.~~(1) ~~Do you object to~~ ~~the shorthand writer~~? Ans .....

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 23, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	D. MORWOOD	2 Cdn MAC RCASC
Member	CAPT	J M C VENUS	2/7 Cdn Inf Bde Coy RCASC
Member	LIEUT	C M WHITCAR	2/8 Cdn Inf Bde Coy RCASC
Judge-Advocate			
Prosecutor	CAPT	J T K CLARK	2/3 Cdn Inf Div Tps Coy RCASC
Defending Offr	CAPT	R DURAND	2 Cdn MAC RCASC

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See Qs p 3.)

A8. The accused D146694 Pte Dufresne J J before arraignment makes(a) (no) ~~plea~~ plea.

(1. If a special plea is made for separate trial or one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 111. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 49G to record proceedings. 2. RP 22, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 68(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex P.A., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by using paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 41. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (d), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. No Sir.

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)

(*1. MFB 315 or AFB 294. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes through my Defending Officer.(2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(4), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566. Overseas RO 309, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see orders on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

First Charge
Sec 19
Army Act

The accused D146694 Pte Dufresene, J.J. of 5 Cdn Base Tpt Pl, 2/3 Cdn Inf Div Tps Coy RCASC (CAOF) a soldier of the Canadian Army Overseas is charged with:

WHEN ON ACTIVE SERVICE DRUNKENNESS

in that he

in the field, in Germany, on the 25 Sep when on duty was drunk.

Second Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, in Germany, on the 25 Sep '45 so negligently drove Cdn Mil Vehicle No. CL 5927159 as to cause it to collide with Veh No L 5927379 thereby causing damages to the extent of £9-12-0 to Veh No. CL 5927159 and to the extent of £10-10-0 to Veh No L 5927379. Total damage £20-2-0.

In the Field
25 Sep '45

(W.F. Bigger) Capt
A/Officer Commanding
2/3 Cdn Inf Div Tps Coy RCASC (CAOF)

To be tried by Field-General Court-Martial.

(W.H. Colling) Lt-Col.,
C,RCASC,
3 Cdn Inf Div (CAOF)

Field
16 Oct 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-146694	Pte		Jean Jacques	DUFRESNE	5 Cdn Base Tpt Pl RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has [redacted] committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 16 Oct 45 endorsed by me, (~~[illegible]~~) "To be tried by Field General Court-Martial". WHC

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[illegible]~~ WHC

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~ WHC

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~[illegible]~~ WHC

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D. MORWOOD	2 Cdn MAC RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	T.G. WATT	2/3 Cdn Inf Div Tps Coy RCASC
Lieut	C.M. WHITICAR	2/8 Cdn Inf Bde Coy RCASC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	J.M.C. VENUS	2/7 Cdn Inf Bde Coy RCASC

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in GERMANY (Country.)

W H Colling (Signed personally. RP 105 fn.) (W.H. Colling) Lt-Colonel (Rank.)

Dat 16 Oct 45

Commanding RCASC 3 CDN INF DIV (CAOF)

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 98 (In lieu of AFA 3) 40/P & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

D. Morwood Major

19 Oct 45

I certify that No. D.146694 Pte. DUFRESNE, J.U. of 5 Cdn. Base Tpt. Pl. attd to 2/3 CDN INF DIV TROOPS COY RCASC CAOF is...fit...to undergo trial by Court-Martial.

.....Capt.....
Signature of the Medical Officer.

Proceedings of Field General Court Martial
Adm Building R.C.A.S.C. 3 Cdn Inf Div C.A.O.F.
19 Oct 45.

Accused D-146694 Pte Jean Jacques Dufresne
5 Cdn Base tpt Pl RCASC.

Court opened 1010
- adjourned 1025.
- reopened 1030

Summary of Evidence read by president.

Court adjourned 1050.
- reopened 1055.

The accused does not wish to call witnesses as to character.

Plea read by Defending Officer and handed to president.

The accused is not under sentence at present

Accused under close arrest from 25 Sept. 45.
total time 24 days.

No time spent in hospital during confinement.

Court ~~adjourned~~ dismissed 1105.

As Capt Watt was not available the Waiting Member took his place

F. Norwood Major

Mr. President
Members of the Court

You have in front of you a case which is a very common one and whose cause is liquor. This man admitted his drunkeness and though that state is not an excuse for the accident he is involved in, that is the answer.

With regards to the same incident, I am bringing to the attention of the Court that Pte Dufresne's record service shows that he has been in the Army for a little more than a year, out of which roughly five months only was spent on the Continent with very little driving experience. His MBM 1 even shows no qualifications as a driver. As far as his character is concerned, this is the first charge of drunkeness that Pte Dufresne has been involved in.

I also want to draw to the attention of the Court that the AFB 296 (WAR) para 4 should be amended to read 24 days as this period of time is covered by the statement of Sgt Hartney.

Gentlemen, in your findings I am asking you to take into consideration the facts brought to your attention, and I do feel that this man should not support the full cost of damages caused to the vehicles and that the sentence against him be the lightest possible.

That is all, Sir.

A/Lieut Capt
Defending Officer

Summary of Evidence in the case of D146694 Pte Dufresne, J of 5 Cdn Base Transport Platoon RCASC attached to 2/3 Cdn Inf Div Troops Coy RCASC (CAOF).

The Officer Commanding directs that the evidence be taken on oath.

First Witness: G6439 Pte Green, C of 5 Cdn Base Transport Platoon, sworn states:-

I am G6439 Pte Green, C of 5 Cdn Base Tpt Pl RCASC (CAOF). At approximately 1230 hrs 25 Sept 45, following an accident I was detailed to tow the accused and his vehicle. I started to tow the accused, and while being towed he started his motor. I stopped and in turning his motor off told him not to run his motor. I started towing again and the accused started his motor a second time. I stopped and and in turning his motor off and paying more attention to the accused noticed his actions in the cab were peculiar and his speech was incoherent. I reported these facts to Cpl Vyvyan my Fed Cpl, and informed him that the accused was drunk and in no condition to drive. Cpl Vyvyan informed, Sgt Hartney Platoon Transport Sergeant. When the accused alighted from his lorry, he staggered and continued to do so until entering Cpl Vyvyan's lorry.
That is all I know of the case, Sir.

The accused declines to cross-examine this witness.

C. Green

Second Witness: B160992 Cpl Vyvyan, H. of 5 Cdn Base Tpt Pl RCASC having been sworn states:-

I am B160992 Cpl Vyvyan, H. of 5 Cdn Base Tpt Pl RCASC (CAOF). At approximately 1230 hrs 25 Sept 45 following an accident I was asked by Pte Green, C to inform Sgt Hartney that the accused was drunk and in no condition to drive. I reported this to Sgt Hartney and he ordered the accused to get out of his lorry and into my lorry. The accused, on alighting from his lorry, staggered and continued to do so until entering my lorry. That is all I know of the case, Sir.

The accused declines to cross-examine this witness.

H. Vyvyan

Exhibit A

Third Witness: B81196 Sgt Hartney, J.J., Transport Sergeamt of 5 Cdn Base Tpt Platoon RCASC (CAOF) sworn states:-

I am B81196 Sgt Hartney, J.J. , Tpt Sgt of 5 Cdn Base Tpt Pl RCASC (CAOF).
At approximately 1230 hrs 25 Sept 45 following an accident involving D146694 Pte Dufresne, J., I detailed Pte Green, C., to tow the accused and his lorry. A few minutes later I was informed by Cpl Vyvyan, H., that Pte Green had told him the accused was drunk and in no condition to drive. On checking the accused, I noticed his eyes were glassy and his attempts at speaking were futile. I ordered the accused to leave his lorry and to enter Cpl Vyvyan's lorry. On leaving his lorry, the accused staggered and continued to do so until entering Cpl Vyvyan's lorry. On reaching the RU for dinner I had the accused placed under close arrest and taken back to our platoon lines. That is all I know of the case, Sir.

The accused declines to cross-examine this witness.

J. Hartney

Fourth Witness: B157162 Pte Gillespie, J.C., of 5 Cdn Base Tpt Pl RCASC (CAOF) sworn states:-

I am B157162 Pte Gillespie, J.C., of 5 Cdn Base Tpt Pl RCASC (CAOF). At approximately 1230 hrs 25 Sept 45 I was driving in convoy and the lorries ahead of me halted. I gave the signal to slow down and also to halt. While sitting with the brakes on and my arm still out the window, I felt a crash which drove my lorry into the lorry ahead. I got out of my vehicle and looked to see what had happened. I saw the accused D146694 Pte Dufresne, J., sitting in his lorry. It was Pte Dufresne's lorry which had run into my lorry. Sgt Hartney ordered a lorry to tow me to the RU. That is all I know of the case, Sir.

The accused declines to cross-examine this witness.

J.C. Gillespie

Fifth Witness: L108507 Pte Anderson, J.T. of 5 Cdn Base Tpt Pl RCASC (CACF).

I certify that in my opinion the attendance of this witness is, owing to his having been evacuated to hospital, not readily procurable, and a written statement of his evidence signed by him, has been read to the accused and is attached hereto as Exhibit "A"

J.T.K. Clark Capt

I do not require the attendance of L108507 Pte Anderson, J.T. for the purpose of cross-examination.

J.J. Dufresne

The accused was cautioned as follows:-

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I don't want to make a statement.

J.J. Dufresne

The accused does not call any witness.

I certify that the following Summary of Evidence, consisting of five pages, was taken down by me in the presence of the accused and that RP 4 (C), (D), (E) and (F) have been complied with.

Jos T.K. Clark

In the Field
12 Oct 45

(J.T.K. Clark) Capt.
2/3 Cdn Inf Div Tps Coy RCASC (CAOF)

CERTIFIED TRUE COPY:

(J.T.K. Clark) Capt.
2/3 Cdn Inf Div Tps Coy RCASC (CAOF)

EXHIBIT "A"

1108507 Pte Anderson, J.T. having been duly sworn, states:-

I am 1108507 Pte Anderson, J.T. of 5 Cdn Base Tpt Pl RCASC (CACF). At approximately 1230 hrs 25 Sept 45 I was proceeding in convoy. As I came round a slight bend in the road I noticed that some of the vehicles had halted at a railway crossing. As I approached I gave my signal and slowed down. The vehicle in front of me, driven by the accused, Pte Dufresne slowed down but did not stop in time and crashed into the vehicle in front of him. That is all I know of the case, Sir.

J.T. Anderson

CERTIFIED TRUE AND CORRECT COPY

J.T.E. Clark) Capt

Additional Summary of Evidence in the case of D146694 Pte Dufresne, J., of 5 Cdn Base Tpt Pl RCASC (CAOF) attached to 2/3 Cdn Inf Div Troops Coy RCASC (CAOF).

The Officer Commanding directs that the evidence be taken on oath.

First Witness: B81196 Sgt Hartney, J.J. Tpt Sgt of 5 Cdn Base Tpt Pl RCASC (CAOF)sworn, states:-

I am B81196 Sgt Hartney, J.J. Tpt Sgt of 5 Cdn Base Tpt Pl RCASC (CAOF). D146694 Pte Dufresne, J., was the driver of vehicle CL5927159 when involved in an accident on Tuesday 25 Sept 45 with the result that his vehicle crashed into the rear of the vehicle ahead namely L5927879, driving it forward into the rear of the lorry ahead of it thereby damaging CL5927159 and L5927879.

The accused declines to cross-examine this witness.

J. Hartney

Second Witness: M20819 AQMS McDougall, J.H., of Workshop Pl of 2/3 Cdn Inf Div Troops Coy RCASC (CAOF), sworn states:-

I am M20819 AQMS McDougall, J.H., of Workshop Pl of 2/3 Cdn Inf Div Troops Coy RCASC (CAOF). On the afternoon of the 25th of Sept 45 we received two damaged WD vehicles in the Workshop. One of which we sent the wrecker for, the other was towed in by 5 Cdn Base Tpt Pl RCASC. Both vehicles belonged to 5 Cdn Base Tpt Pl RCASC. The damages were as follows:-

Vehicle CL5927159 Chev 60 cwt.

Damages:-
- Bumppr bent
- Grill broken beyond repair
- Right and left fenders bent
- Cowling of cab badly bent
- Steering to be checked
- Radiator beyond repair
- Radiator support bent
- Water pump to be checked

Costs:-

Parts	£6-0-0
Labour	3-12-0
Total	£9-12-0

Vehicle L5927879 Chev 60 cwt

Damages:-
- Bumper bent
- Grill damaged beyond repair
- Cowling to be replaced
- Radiator to be replaced
- Cab sprung
- Radiator guard bent
- Petrol tanks and box to be moved back
- Water pump to be checked
- Steering to be checked

Costs:-

Parts	£6-0-0
Labour	4-10-0
Total	£10-10-0

Therefore total costs to repair both lorries £20-2-0. I did not check to see who the driver were.

The accused declines to cross-examine this witness.

J.H. McDougall

The accused was cautioned as follows:-

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

A. I don't want to make a statement.

J.J. Dufresne

The accused does not call any witnesses.

I certify that the foregoing Additional Summary of Evidence, consisting of three pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with.

J.T.K. Clark

In the Field
12 Oct 45

(J.T.K. Clark) Capt.
2/3 CDN INF DIV TROOPS COY
RCASC (CAOF)

CERTIFIED TRUE COPY:

(J.T.K. Clark) Capt.,
2/3 Cdn Inf Div Tps Coy. RCASC
(CAOF)

27 Sep '45

LIST OF WITNESSES FOR THE PROSECUTION

G6439 Pte Green, C. - 5 Cdn Base Tpt Pl RCASC (CAOF)

B160992 Cpl Vyvyan, H. - 5 Cdn Base Tpt Pl RCASC (CAOF)

B81196 Sgt Hartney, J.J. - 5 Cdn Base Tpt Pl RCASC (CAOF)

B157182 Pte Gillespie, J.C. - 5 Cdn Base Tpt Pl RCASC (CAOF)

L108507 Pte Anderson, J.T. - 5 Cdn Base Tpt Pl RCASC (CAOF)

M20819 A/QMS McDougall, J.H.-2/3 Cdn Inf Div Tps Coy RCASC CAOF.

2/3 CDN INF DIV TPS COY RCASC (CAOF)

27 Sep '45

I desire to have an officer assigned by the Convening Officer to represent me at the trial.

(D146694 Pte Dufresne, J.)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D146694	Pte	Dufresne, J.	5 Cdn Base Tpt Pl RCASC(CAOF)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL Sec 15(1) 2 times.

For CONDUCT TO THE PREJ ETC 1 times.

For ~~.....~~ ~~.....~~ times.

For ~~.....~~ ~~.....~~ times.

Date of first entry in Field Conduct Sheet 29 Dec '44

Date of last entry in Field Conduct Sheet 15 Sep '45

~~2. Particulars of the conduct, character and military services of the accused not entered in the Field Conduct Sheet.~~ N/A

*Strike out if not applicable.

~~3. The conduct, character and military services of the accused have been good.~~ N/A

4. The accused has been awaiting trial on the present charge for ~~.....~~ N/A days, ~~in close arrest~~ in military custody, *i.e.*, ~~.....~~ N/A ~~in open arrest~~ 24 days in close arrest ; ~~and~~ ~~.....~~ N/A ~~days were spent in hospital~~.

5. The present age of the accused is 22 yrs

6. The date of his ~~attestation~~ ~~taking on strength~~ ~~.....~~ N/A is 30 Aug '44

7. The service which the accused is allowed to reckon is 1 yr 28 days

[State the military decorations (if any) held by accused.

8. The accused is in possession of: CVSM and Clasp

~~9. If the accused is a Warrant Officer or N.C.O. The accused has served continuously without reduction in the rank of~~ ~~.....~~ N/A

~~Date of promotion~~

~~In the substantive rank of~~ ~~.....~~

~~In the temporary rank of~~ ~~.....~~

~~In the acting rank of~~ ~~.....~~

Exhibit B

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27821) W1.24339/3404 5M/1000 7/44 A.& E.W.Ltd. Op.650 Forms/B.296/War/19

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N/A		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books of my custody, are correct to the best of my knowledge and belief.

Signed this 27 Sep '45 day of

H. Biggar Capt
(H.C. Battalion) Major
273 Cdn Inf Div Tps Coy RCASC(CASF

No D.146694 Name DUFRESNE Jean Jacques | Sqn, Battery or Company | Corps C.I.C.(R)CA. | Date of enlistment 30 Aug 44 | Qc Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Company Conduct Sheet | Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc Sgd:??????????? | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed after 6 months under CARO 393					
Vacartier	29 Dec 44	Pte.		A.A.Sec. 15(1)AWL 0800 hrs. 29 Dec.44 to 0830 4 Jan 45.45 Total 6 days 30 mins.	Evidence	10 days C.B. 3 days pay	5 Jan 45	D.Menard Colonel	7 days pay FR&I
Angleterre	15 Apr 45	Pte.		A.A. Sec 15(1) AWL from 2230 hrs 14 April 45 to 2230 hrs April 45. TTA: 2 day	CSM Laporte R. Cpl Simard, C.	7 days C.B.	17 April 45	Major G. Vallee	Forfeits 1 day's pay.
Field	15 Sep 45	Pte.		Sec 40 AA CONDUCT TO THE PREJ etc in that he at approx 1800 hrs 15 Sep 45 did act in a manner not becoming a soldier in that he was fighting and was under the influence of liquor	Lt. D.R. Gaitens	14 days C.B.	17 Sep 45	Maj H.C. Pattison	Sgd: H.C. Pattison Major.

Exhibit C

CERTIFIED TRUE COPY
W F Spearman Lt.
(W.F. Spearman) Lt& Adjt
for O.C. 2/3 CDN INF DIV TROOPS COY RCASC

OPTO

HX-104
Pte. Dufresne, JO

LRPG V LRIZ SR (9)

FROM: CANMILITRY 281535A

TO: CDN O2E MF

A 2456 (.) RESTRICTED (.) FOCSM PROCEEDINGS UNDER MENTIONED SOLDIERS ENDORSEK MGA 28 FEB 45 QUOTE I CONFIRM THE FINDING(S) AND SENTENCE AND I DIRECT THAT A PART OF THE SENTENCE NOT EXCEEDING TWO YEARS SHALL BE SERVED IN A MILITARY PRISON UNQUOTE C34920 PTE DUFRESNE JO SERIAL 505/1 . K50830 PTE GRENZEBACK KF SERIAL 505/1. B64563 PTE PREVOST LJ SERIAL 107/1 . H40676 PTE SWAN DL SERIAL 38/1

ET 011017 JN B 1

R SRL 9 011018 NAB K

"ACB" SCHEDULE. "ACB"

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C 34920 Private Joseph Ovila DUFRESNE Lan & Ren Scot R

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 12(1)(a)	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~Arrangement under subparagraphs~~ "ACB" ~~the finding as to guilty~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 33 days, of which No days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO SUFFER PENAL SERVITUDE FOR THE TERM OF THREE (3) YEARS.

(Sgd) ---------"ACB" 29 Jan 45 (Sgd) "A.C. Beckingham" Major

Judge-Advocate, if any — Date awarded — President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

I reserve the finding s and sentence for confirmation.

Date 31 Jan 45 (Sgd) "J.S. Lind" Brig Commanding 12 Cdn Inf Bde

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

"I confirm the finding and sentence and I direct that a part of the sentence not exceeding two years shall be served in a military prison".

~~I direct that the accused be released on expiry of sentence and that he be struck off strength~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) "E.G. Weeks" Major-General

Date 28 Feb 45 — IC Administration

Commanding CANADIAN MILITARY HEADQUARTERS

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
C-34920 Pte Dufresne JO Lan & Ren Scottish	5 Mar 45	S.H. Shaw Lt #2 Cdn Reallocation Centre CMHQ

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY

(D.M. Owen) Capt

Cdn Sec 2 Ech

AFHQ

RECORDED AT CMHQ IN AB 160 4X-104

CFA98 (In lieu of AFA3) 40-P & S-1698 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig JSH Lind DSO Comd 12 CDN Inf Bde dated 25 Jan 45

150ct45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C 34920	Private		Joseph Ovila	DUFRESNE	Lan & Ren Scot. R.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date) "ACB" 29 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~if any~~ and ~~duly~~ substitute, if any, assemble, and the Court is closed. "ACB"

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn NOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.) "ACB"

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) ~~is~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3) "ACB"

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0930 hours trial commences. "ACB"

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by CO(1).~~ "ACB" "ACB"

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~_____~~ as interpreter? Ans ~~_____~~ "ACB"

The Interpreter is sworn.(1) Do ~~you object to~~ "ACB" as shorthand writer? Ans ~~_____~~

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2) "ACB"

(1. RP 110. 2. If no objection, waiting member retires. RP 56(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JAG, waiting member, substitute, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc.:

President	Major	Alexander Clifford BECKINGHAM	4 PLDG
Member	Capt	Frederick Christie Burrell Cummins	Westor R(M)
Member	Lieut	John Victor Hyde WILSON	Westar R(M)
Judge-Advocate			
Prosecutor	Lieut	Geoffrey Richard STEAD	Lan & Ren Scot R
Defending Offr	Lieut	John David ROSEFIELD	Lan & Ren Scot R

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109. 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 88 (B) and fn 2 were not followed. See Div p 3.)

A8. The accused C 34920 Pte J.O. Dufresne before arraignment make(s) (his) ~~(her)~~ "ACB"

---------"ACB" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.) "ACB" "ACB" only "ACB" "ACB"

A9. The accused is ~~are~~ arraigned ~~severally~~ on 7 charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See paras 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AF6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 39) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*H*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*I. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(*I. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*I. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*I. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*I. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)
(*I. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*I. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans "ACB" No sir (1)
(*I. If "yes", see RP* 39(*A*) *for procedure. Statement, or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*I. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*I. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).) "ACB"

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the "ACB" charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*I. Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Neither Do you intend to call witnesses on your behalf ? Ans No sir Are they witnesses as to character only ? Ans "ACB"
(*I. RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*I. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statements, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*I. RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).) "ACB" "ACB" "ACB" "ACB"

D8. The President announces the finding(s) of the Court on the one charge, and states to the accused that the finding(s), subject to confirmation, will be promulgated later.(1) Or The President announces that the accused is found Not Guilty on the charge and is to be released from custody and that the proceedings are accordingly terminated.(2) Part I of the Schedule is filled in and signed.(3)
(*I. AA* 54(3) (*d*), *RP* 43, 120(*A*). 2. *AA* 54(3), *RP* 46. 117. *This alternative pronouncement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Forms B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans No sir
(*I. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy "ACB" of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (b), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C "ACB" Ex D respectively.(3)
(*I. MFB* 355 *or AFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) "ACB" and Conduct Sheet(s) "ACB" and in mitigation of punishment ?(1) Ans No sir
(*I. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to swear on oath anything them or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*I. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him "ACB"
(*I. When several accused tried separately see RP* 77(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and* 10 *proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, *and* 108, 119(*A*), *KR Can* 308, 330, 343-344, *Overseas RO* 309, 2203, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 364. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET "ACB"

The accused, C.34920 Pte Joseph Ovila DUFRESNE, Lanark & Renfrew Scottish Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE:

Army Act

Sec 12(1)(a)

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE,

in that he,

In the Field, in Italy, at approximately 1600 hrs on 3 Dec 44, when serving with his platoon in a forward area in contact with the enemy, with intent to avoid such service, absented himself from his said platoon until surrendering himself at 2130 hrs 26 Dec 44.

"W H BUCHANAN"
(W H Buchanan) Lt-Col
Commanding
Lanark & Renfrew Scottish

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

25 Jan 45

" J. S. Lind"
(J.S.H. Lind) Brig
Comd 12 Cdn Inf Bde

"ACB"

FIELD GENERAL COURT-MARTIAL

CPA90 (In lieu of AFAB) 40/FAS/1697 (2669)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.34920	Pte		Joseph Ovila	DUFRESNE	Lan & Ren SCOT R.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence set forth in the Charge Sheet attached and on (date) 25 Jan 45 endorsed by me, (~~or by an offr of my staff for such~~) "To be tried by Field General Court-Martial". "JSL"

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~) "JSL"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "JSL"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I hereby appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ "JSL"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	Alexander BUCKINGHAM		4 PLDG

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by CO WESTMR R (M)		
Capt or Lieut	to be detailed by CO WESTMR R (M)		

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	to be detailed by CO 4 PLDG		

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (Country)

"J.S. LIND" (J.S. Lind) Brig (Rank.)
(Signed personally. RP 105 fn 2.)

Date 25 Jan 45

Commanding 12 Cdn Inf Bde.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE "ACB"

This is to certify that I have this date examined C.34920
Pte DUFRESNE, J.
of the Lanark & Renfrew Scottish Regiment and found him to be free from infectious and contagious disease and fit to undergo trial by Field General Court Martial.

29 Jan 45 "P.M. Hewson" Capt.

CLOSING ADDRESS BY PROSECUTOR "ACB" (1)

PROS: I wish to emphasize the point that the accused was in D 2 actual contact with the enemy, not on approach march or rear reserve area: but as stated in the charge sheet in contact with the enemy.

D 3 1st Witness for Prosecution: H.3554 PTE NICOL D J Lan & Ren R. having been duly sworn proceeds to give evidence:-

On 3rd Dec 1944, while member of Cpl Crickson's section and platoon HQ was duggin at approx 50 yds from canal bank. At approx 1545 hrs supper was brought up to the house on our right we were to go to eat by sections. Part of my section and platoon H.Q. of which the accused was a member went to the house to eat I saw the accused in the house. When I returned to my slit trench I did not see him again. I have not seen him since until I saw him a few days ago when the Summary of Evidence was being taken.

PROS:- No questions.

DEF CROSS EXAM: Q. Is it always necessary for the man to return to the same slit trench?
A. Myself I would always return to my section's slit trench.

Q. Is it not possible for a man to go to a slit trench which he had not previously occupied?
A. It is quite possible.

Q. Is it part of your duties to check on coming's & goings of personel of Pl HQ.
A. It is NOT part of my duties.

Q. If the accused were detailed by someone else you would not necessarily know?
A. That is correct, Sir.

"ACB" (2)

EXAMINATION BY COURT: Q. Before the section went to supper your section and Pl HQ were together?
A. Yes Sir.

Q. Were you all in slit trenches?
A. Yes, we were.

Second Witness for Prosecution:

H.35493 CPL CRICKSON H.S. Lan & Ren Scot
having been duly sworn proceeds to give evidence as follows:-

I was in charge of a section of 16 Pl D Company, which was in action against the enemy on 3rd Dec 1944. At approx 1430 hrs we occupied a position on the Canal Bank. My section and Pl H.Q. occupied a position at the rear of our platoon which was on the left of the company. At 1530 hrs I observed the accused who was a member of Pl HQ and occupied a position on my right, leaving for supper which we had in a house about 200 yds to the rear. I left with my section at approx. 1600 hrs and when I returned I did not see the accused, nor have I seen him since with the platoon.

PROS: No Questions.

DEF CROSS EXAM:

Q. Were you in charge of Pl HQ?
A. No. I was in charge of my section.

Q. Someone else was in charge of Pl HQ at that time?
A. Yes.

Q. Could someone else have detailed the accused without your knowledge?
A. I would have been informed because we were short handed and needed the men of Pl H.Q.

Q. You have just stated that you were not in charge of the accused, who would have told you.
A. SGT MANSER would have told me.

Q. Was Sgt HALL not in charge of the platoon?
A. He was platoon commander.

Q. Who was platoon Sergeant?
A. SGT MANSER.

Q. If Sgt Manser had detailed the accused to a job - wouldn't be necessary for him to tell you?
A. Ordinarily no, but under these circumstances he would.

RE EXAM: PROS.

Q. When you returned to your platoon after supper was your platoon involved in further operations that day?
A. Yes sir at approx 1630 hrs we crossed the crossed the canal.

Q. What was the accused's job in Pl HQ particularly in reference to the equipment he was carrying?
A. The accused was a mortar man and was carrying bombs.

Q. Who carried the mortar bombs across the canal?
A. My section did, Sir.

Q. Why did your section carry the bombs?
A. Because the accused was not there to do so.

EXAM BY COURT:

Q. Do you recognize the accused, Pte DUFRESNE, in the court?
A. Yes sir.

Third Witness for Prosecution:

K.7104 CSM FOLZ E. Lan & Ren Scot having been duly sworn proceeds to give evidence as follows:-

At approx 2200 hrs on 3rd Dec 1944, M.3305 Sgt. HALL G.B. since killed in action, at that time acting Platoon Commander 16 Pl reported to me the absence of the accused. I reported his absence on my first casualty return. I did not see the accused with the company again.

PROS NO QUESTIONS.

CROSS EXAM DEF:.

Q. Sgt Hall reported to you at approx 2200 hrs.
A. Yes Sir.

Q. Did he state the time that the accused was first absent?
A. Yes Sir.

Q. Was that before or after the action that took place that day?
A. During the action.

Q. Did you make any attempt to find the accused.
A. No sir - at that time it was impossible.

EXAM BY COURT:.

Q. Did you make any search for the accused at any time after the action?
A. Yes we did. Because the radio set was missing we made a thorough search for the set and the accused.

Q. Was the set ever found?
A. No sir.

Fourth Witness for Prosecution:

Major Henderson G.A. Lan Renf Scot having been duly sworn proceeds to give evidence as follows:-
On 3rd Dec 44 I was company Commander of D Company. Lan Ren Scot. On morning of 3rd Dec the company was committed to an attack. At approx 1000 hrs we reached our first objective and after stopping there for sometime we received orders to move up to the Canal Bank. Via CUPA. We took up a position here two platoons up along the bank and one in reserve. While we were in this position we received a fair amount of shelling and mortaring from the enemy. At approx 1400 hrs I returned to TAC HQ so that I could put my C.O. completely in the picture. While there I received further orders to cross the Via Cupa and advance toward the town of Godo. The Zero hour was to have been 1630 hrs. I returned to my company HQ and found that food had arrived and that the company was being fed by sections. I called my platoon commanders in and told them what we had to do. I noticed several men were eating their lunch in the stable attached to the house and I told them to return to their section position as soon as possible so the other men could be fed. Among these men was the accused. He was cleaning his rifle. I told him to get on with the job and return to his platoon immediately. We crossed the VIA CUPA at 1630 hrs and at approx 2200 hrs when we stopped to re-group, the platoon commander reported the accused to be missing. To-day is the first time I've seen the accused since the afternoon of 3rd Dec 1944.

PROS NO QUESTIONS.

CROSS EXAM: - DEF.

Q. Did you see the accused after you had given him the order to return to his platoon?
A. Yes, I did see him.

Q. Could he have returned to his platoon when you were so busy?
A. Yes, he could have.

EXAM BY COURT:

Q. Who was the Platoon Commander? and why is he not here?
A. Sgt HALL G E was the platoon Commander, and he was killed in action on 13 Dec 44.

Q. Was a search made for the accused that day or the next?
A. No it was impossible as another company was following immediately behind us.

PROS PRODUCES CERT OF SURRENDER AND EXTRACT FROM ORDERS (Exh A&B).

D.6 CLOSING ADDRESS DEFENCE.

The charge against the accused is "Desertion when in contact with the enemy". At no time has the prosecution proved this charge. There is a serious lapse of time in which the whereabouts of the accused cannot be shown. By the evidence shown it is quite possible and probable that the accused was still with the company during the action. The accused has never declared any intention of desertion, and it has not been shown that he intended to desert. The fact that he surrendered himself while still in uniform may prove absense but not desertion, and absence only from 2200 hrs 3 Dec 44. He has been serving in this country during all actions and has never been absent before. He has a clean sheet and a good record

---

"ACB" Exhibit "A".

CERTIFICATE UNDER ARMY ACT SECTION 163 (1) (j).

I, Capt W.E. Wickes Commanding 506 Provost Coy. CM Police, The Green Howards.
Certify that No C34920 Rank Pte Name J.O. DUFRESNE of The Lanark & Renfrew Scottish Regt. "D" Coy.
Surrendered himself to No.143749x Rank L/CPL Name SIMMONS J J of the 506 Provost Company CMP at CATTOLICA.
At 2130 hrs on the 26th day of Dec 1944 as a deserter for absentee without leave.)

Date 27th Dec 44.

"W.E. Wickes" Capt.
O.C. 506 Prov Coy C.M.P.
Commanding Officer of the person or portion of His Majesty's Forces to whom the surrender was made.

"ACB" Exhibit "B"

EXTRACT FROM THE LANARK & RENFREW SCOTTISH REGIMENT
Part II Orders. No 1 6 Jan 45

- -

10. ABSENT WITHOUT LEAVE

(d) AWL from 1600 hrs 3 Dec 44. Still absent 1600 hrs 11 Dec 44 (8th day)

C.34920 Pte DUFRESNE J.O.

"CERTIFIED TRUE COPY"

"L.G. MacKenzie" Capt.
(L.G. MacKenzie) Capt & Adjutant
Lanark & Renfrew Scottish Regt.

Officer having custody of original.

"ACB" Exhibit C ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
C 34920	Pte	DUFRESNE J O	Lanark & Renfrew Scottish Regt.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For Nil Nil times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet No entries

Date of last entry in Field Conduct Sheet "LGM"

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence ~~for~~ not beg~~ing on the~~ "LGM" ~~[illegible]~~

4. The accused has been awaiting trial on the present charges for no days in civil custody; and for 33 days in military custody, i.e., ---- days in open arrest, ---- days in close arrest; of which no days were spent in hospital.

5. The present age of the accused is 29 years

6. The date of his attestation / calling up for military service is 10 FEB 42

"LGM" 7. ~~[illegible]~~

*State the military decorations of any held by accused.

8. The accused is in possession of † CVSM & Clasp

"LGM" 9. (If the accused is a warrant officer or N.C.O.). The accused has served continously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of .....

In the war substantive rank of .....

In the acting rank of .....

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Wt. 13479/2857 30,000 5/44 51-431 T.Ltd. Form B.296/War/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N I L		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

"L.G. McKENZIE" Capt
(L.G. McKenzie) Capt Adjutant

Signed this 17th day of January 1945 Lanark & Renfrew Scottish Regt.

No. C34920 Name DUFRESNE J.O. Sqn. Battery or Company | Corps CIC | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
"ACB" Exhibit "D"									
				Nil "CERTIFIED TRUE COPY" "L.G. McKenzie" Capt (L.G. McKenzie) Capt Adjutant Lanark & Renfrew Scottish Officer having custody of the Original					

(PTO)

52-80

Pk. Dufresne, L.

RECORDED AT CMHQ IN AB 160 5-2-80

REVIEWED 17 JUN 45 AG BRANCH CMHQ

FIELD GENERAL COURT-MARTIAL

Page (in lieu of AF67) 40/P.A.B./1608 (2882)

Convened by Lt. Col V R Jones ComdHQ 1 Cdn Army dated 16 Feb 45

ACCUSED.

Tpt Coln

(As to the trial of two or more charged jointly see RP 14, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D 15839	Private	Lionel	DUFRESNE	HQ 1 Cdn Army Tpt Coln

PROCEEDINGS REVIEWED J.A. Reddy Lt. Cdn. Sec. 21 Army Gp 13 CFRS 20 Aug 45

REVIEWING OFFICER, ADJUTANT GENERAL'S BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Belgium on (*date(s)*) 19 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 24/18-

A1. The President, Members, ~~waiting Members~~, JA, ~~if any, and Offrs under instn~~ if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 101, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~or~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with~~ summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 562(c). Delete if not applicable.)

A5. President to accused: Do you object to ~~Lt. [illegible]~~ as interpreter? Ans

~~The Interpreter is sworn.(1)~~ Do you object to as shorthand writer? Ans

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting members return. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instn, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D.A. Ferguson	4 Cdn Armd Recce Tpt Coy
Member	Capt	C.H. Wilson	63 Cdn Army Tpt Coy
Member	Capt	J.A. Herrington	4 Cdn Armd Recce Tpt Coy
Judge-Advocate	Capt.	J.N. Jermyn	HQ 1 Cdn Army Tpt Coln
Prosecutor	Lt.	T.M. McLean	1 Cdn Army Tpt Coln
Defending Offr	Capt	H.R. Goodman	1 Cdn Army Tpt Coln

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 32.)

A8. The accused before arraignment makes(s) (no) plea (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~jointly~~ on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. Where more than one Charge Sheet see RP 61; where several accused to be tried separately see RP 71(C), and use sequence copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, quash and make appropriate record per Notes.)

A10. The Court ~~is dissolved~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 15839 Pte Lionel DUFRESNE HQ 1 Cdn A Tpt Coln

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44, special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for 28 days Field Punishment beginning on (date) 25 Jan 45 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To ~~suffer~~ ~~imprisonment~~ field punishment for 90 days and to forfeit all ordinary pay for a period of 90 days.

(Sgd) Jordon N Jermyn 19 Feb 45 (Sgd) D.A. Ferguson
Judge-Advocate, if any. Date awarded. President (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1) (1. AA 57A. Delete if not used.)

Date 4 Jun 45 (Sgd) [illegible] 13 C F R Coy
Commanding 13 CFRS Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 55, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D15839 Pte Dufresne - Lionel	4 Jun 45	[illegible] 13 CFRS 30 B R D

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 105; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The ~~President~~ JA, ~~if Sol~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s)(1). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans N A S I R (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement(1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~ Et

~~(1. Court may be closed to consider the statement. Delete whole or part not used.)~~

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*E*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by vsn of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114. KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114*, *115*.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans .....Do you intend to call witnesses on your behalf?

Ans .....Are they witnesses as to character only? Ans .....

(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, *115*, *116*. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E2 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(2) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans N A S I R

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 4. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *AFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans yes sir by my defending officer .....(2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to answer on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When severance: accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 47, 48 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas AO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), (*d*)(*i*), *KR Can* 564. 2. *RP* 50. *As to release from command by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Def.

CHARGE SHEET

The accused D-15839 Private DUPRESNE Lionel, HQ 1 Cdn Army Tpt Coln, a soldier of the Cdn Army Overseas, is charged with, WHEN ON ACTIVE SERVICE,

First Charge
A.A. Sec 15(1)

ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the Field, whilst undergoing Field Punishment, did absent himself without leave from 1330A hrs 1 Feb 45 until surrendering himself at 2240A hrs 3 Feb 45. (Total Time Absent: 2 days 9 hrs 10 mins).

IN THE FD
7 Feb 45

(V.R. Jones) Lt-Col
Comd 1 Cdn Army Tpt Coln.

"To be tried by F.G.C.M."

IN THE FD
~~7~~ Feb 45

(V.R. Jones) Lt-Col
Comd 1 Cdn Army Tpt Coln.

W/A16

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D 15839	Private		Lionel	DUFRESNE	HQ 1 Cdn Army Tpt Coln

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 16 Feb 45 endorsed by me, ~~[illegible]~~ "To be tried by Field General Court-Martial".

2. ~~[illegible]~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

MAJOR (Rank.)	D.A.	FERGUSSON (Must be named. RP 106.)	4 Cdn Armd Div Tpt (Unit.) Coy

MEMBERS.

CAPT	C.H.	WILSON	63 Cdn Army Tpt Coy
CAPT (Rank.)	J.A.	HERRINGER (Named or detailed. RP 106.)	4 Cdn Armd Div Tpt (Unit.) Coy

WAITING MEMBER.

LIEUT (Rank.)	D.S.	BIRKS (Named or detailed, if any. RP 106.)	Att HQ 1 Cdn Army (Unit.) Tpt Coln

JUDGE-ADVOCATE.

CAPT (Rank.)	G.H.	JERMYN (Must be named, if any. RP 106.)	ADJA HQ A Tps Area (Unit.)

On Active Service in the Fd

in BELGIUM (Country.) (V.R. Jones) (Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Date 16 Feb 45 Commanding HQ 1 Cdn Army Tpt Coln
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

19 Feb 45 Dal

This is to certify that I have this date medically examined D.15839 Private DUFRESNE, L. and he is in my opinion Not to undergo trial by F.G.C.M.

Jas J. Anderson Lt
(Medical Officer)

EXHIBIT A

SUMMARY OF EVIDENCE

in the case of D-15839 Private DUFRESNE Lionel, HQ 1 Cdn Army Tpt Coln, a soldier of the Cdn Army Overseas:

FIRST WITNESS — L-7172 Sgt Hinds, R., HQ 1 Cdn Army Tpt Coln, having been duly sworn states:

On 1 Feb 45 at approx 1330A hrs I had occasion to look for Pte Dufresne. I could not find him. I checked with the guards at the gate and they said he had not passed them. I then marked him absent. I did not see him again until Cpl Charlton turned him over to me at 2240A hrs 3 Feb 45. I put him under close arrest and turned him over to the guard Cpl. Pte Dufresne to my knowledge did not have permission to be absent from his quarters during this period of time.

R. Hinds
(L-7172 Sgt Hinds, R.)

The accused declines to cross-examine this witness.

SECOND WITNESS — A-58149 Cpl Charlton, W.E., HQ 1 Cdn Army Tpt Coln, having been duly sworn states:

At 2240A hrs on 3 Feb 45 Pte Dufresne reported to me in the Orderly Room and I took him upstairs to Sgt Minds who took charge of him. I believe he put him under close arrest. Pte Dufresne was sober and properly dressed.

W.E. Charlton
(A-58149 Cpl Charlton, W.E.)

The accused declines to cross-examine this witness.

The accused is warned in accordance with R.F. 4 (e) as follows: "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence".

The accused reserves his defence at this time.

Certified that R.F. 4 (c) (d) (e) and (f) have been complied with. Further certified that the foregoing Summary of Evidence consisting of one page was taken down by me in writing in the presence of the accused.

IN THE FD
7 Feb 45

(S.A. German) Capt
HQ 1 Cdn Army Tpt Coln
Officer taking Summary of Evidence.

LIST OF WITNESSES

First Witness L-7172 Sgt Hinds, H. - HQ 1 Cdn Army Tpt Coln

Second Witness A-58149 Cpl Charlton, W.E. - HQ 1 Cdn Army Tpt Coln

I, D-15839 Pte Lionel DUFRESNE, desire to have an officer appointed to represent me at my forthcoming trial by Field General Court Martial.

Field
17 Feb 45

.....Pte
(L. Dufresne)
HQ 1 Cdn Army Tpt Coln

Plea in Mitigation of punishment in the case of D.15839 Private DUFRESNE, L.

Sir, Members of the Court:-

This case presents to you a problem of mental instability and not one of army discipline, as such.

Pte. Dufresne enlisted in the army in Sep 1941 and was employed as a cook and has served in this capacity throughout his army career.

He is married in Canada and has three young children. He is devoted to these children and has always been and still is extremely worried about their welfare, because he has had no letters from his wife for a period of eight months. This worry has caused a warping of Dufresne's stability. He goes absent without leave and knows that he will be punished but he simply cannot combat a desire to "get away from it all" for a short period. Please notice the extremely short duration of the time that he was absent on every occassion in England, France and Belgium, each time only a day or two or even only a few hours and then he would return to his unit. He sincerely feels that he is ill and as a result he must go absent. He is convinced of this illness and as a result, although it may all be imagination, he is just as truly ill as one who has contacted a germ.

At the time this offence was committed he was undergoing Field Punishment but had not had his money withdrawn. He had been given a pass to get his glasses which were in the town. While out, because he still had money, was able to have a few drinks and then returned to his unit to prepare supper. After supper, perhaps because of the liquor, he felt the "urge" to leave and went out and stayed with a friend in the town of Herenthals for two days and then returned to receive his punishment.

While in confinement at this unit awaiting trial his behaviour has been excellent and he has, on occasion, helped in the kitchens and done very good work.

He wrote a statement while awaiting this trial and I append it to this plea, as it reflects his mentality. Also appended is a psychiatric report on the accused which shows he is recategorized to a Mentality 2 Stability 4 and suitable for base duties only. On the strength of this report authority has been forthcoming that he be returned to base whenever he has stood trial for this offence.

My plea is, sir, that in the face of this report and the circumstances surrounding this case that he be given as light a punishment as possible for this very short period of absence without leave. Also if he must be given a long term of Field Punishment that his request to serve it with 49 Can Army Tpt Coy be recommended so that his services as a tradesman may be utilized by the army.

17-2-45.

I am Pte. Dufresne. L. No H-15839.

Father of tree childrens and in Oversea service since two year and nine month. I was often lonesome and worrying about my children, which I know my wife ain,t give,n them the proper care. I was with the 3rd Battalion R.C.E. since two year as a cook. I always give them my best satisfaction and no matter what was the hour, of the day. I was doing it for my children, but day after day I was feeling sick. I was hoping that after my good work I would be-come promotted and that would be more money to my family. after eight month, without any new,s did,nt help me, my heart, my nerve and my head. I was often on sick-parade and asking for examination, which I n,ever did look sick, I am asking you if it is possible to see a Specialist. be sure if I went out as often without permission. it is not I

(OVER)

Had any attention to do wrong or cause you trouble, sincerely believe me if I did,nt feel sick I wouldn of done it. or acted that way. because I need d the money for my family.

I wish to juge that if I do deserve to a punishment. I will like to know if it possible to do it here, at 45 C.N.D. ARMY

Sign TPT. COY.

Pt. Dufresne L.

D. 15839.

Dup.

Etant père de trois enfants, et en service outremer depuis deux ans et neuf mois, je me suis beaucoup ennuyé et eux beaucoup d'inquiétude pour eux car je sais que ma femme est brutal pour eux et quelle ne leur donne pas les premier soin. Attaché au 1er Bataillon R.C.E depuis deux ans comme ~~étant~~ cuisinier j'ai donnez mes meilleurs services je n'ai jamais jamais regardez les surplus d'heures de travaille que j'ai fait pour eux, pour leur donnez le meilleur nourriture possible. Mais de jour en jour je me sentais mal. J'espérait toujours par mon travaille de venir a avoir une promotion, qui aurait donnez a ma famille une somme plus élevé.

Après huit mois sans nouvelles, cela n'a pas amélioré ma maladie, mon coeur, mes nerfs et ma tête. Je me suis souvent rapporté chez le M.O., et demandé un examain, mais on croyait que je voulait plaisanté, car mon phisique ne regardait pas pour un homme malade. Je vous demanderait s'il serait possible devoir un spécialiste. Soyez persuadé que si je suis parti si souvent sans permission, je n'ai tort pas dans l'idée de mal faire, ou vous donnez du trouble, en sincerité vous me croire, que si je n'avait pas été malade j'aurais pas agit de cette manière la, car j'ai trop besoin de cette argent pour ma famille.

~~[illegible]~~

Si vous jugé que je ~~[illegible]~~ une punition avec les malheurs qui m'entour, je vous demanderait s'il serait possible de remplir ma punition ici.

PTE. Lionel Dufresne. D.15839.

No. .....

DEPARTMENT OF Neuropsychiatry - INPWing

No. 015839 Rank Pte Name Duquesne L Unit 45 Cdn AT pl Coy RCASC
age 33 Enl - 3 years ago

REPORT:- U.K. - 2 B.L.R.? DATE 14-2-45

Problem - referred because of complaints of headache + amnesia - history thru an interpreter
F.H. - Parents are nervous
P.H. - Born in Montreal - very timid + shy in childhood - claims he was afraid to go out alone until he was 19 - walked + talked in his sleep + has nightmares. He claims he went to school 9 years - claims he passed every grade. He claims he was nervous at school - played no games - always remained by himself + was unhappy at school - he apparently did a lot of day dreaming at school.
His work consisted of unskilled labour - he said he never did hard work because he was always tired + run down. He was unemployed for 4 years - lived on a farm & his father - in law - at this time began having frequent headaches.
He was married in 1936 - didnt get along well & his wife - hasnt heard from her for 2 mos but replies twice a week - apparently has some difficulty in concentrating.
He enlisted 2 R.C.E. + said he was with them for 2 1/2 years - says they marked him passed in B.T. but didnt take any. He was a cook & an ~~engineer~~ R.C.E. Bln + stayed 8 them until he came to France - claims he was miserable in England because of worry over his family - only took 3 leaves + would go back to his unit. He was never in hospital - only on sick parade a few times. He was always tenified when the sirens sounded - always had to get up + dressed.
He apparently came to France in July - apparently was always tenified of bombing, cooking abilities deteriorated. He got drunk on calvados + was awl for 1 1/2 days + was given 28 days F.P. He returned to C.B.R.D. + went awl 2 days + had another 28 days. He then was under open arrest (?) + broke it so is up for 8 b.c.m.
He describes headaches, pain over his heart + says he loses his memory but I believe it is only preoccupation + is exaggerated. No evidence of psychoses - attention during the examination is good. His intelligence is very limited - general information + arithmetic

Specialist, RCAMC

AMD 10
46 F & R-1314 (4404)

is poor - but he carried on well as a
cook & one unit over two years & therefore
from an army standpoint is M.

Rx - neg

Impression - a mentally dull dependent
weak individual & childish judge
and reasoning. he has definite evidence
of life long instability & inadequacy
He is intelligent enough. I believe to
appreciate the nature & quality of his
& is fit to stand trial & punishment
but punishment would be of little
Diag. Psychopathic Personality Inad
advise - Recat $M_2 S_4$

Fit for base duties only.

A M Johnson
NPSF

EXHIBIT
B

M.F.B. 355
12M—8-40 (6435-6)
H.Q. 1772-39-620

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-15839	Private	LUFRESNE, Lionel	HQ 1 Cdn Army Tpt Coln

1. The following is a fair and true summary of the entries in the [redacted] Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For A W L	six	times	eleven	times
For		times		times
For		times		times
For		times		times

[redacted]

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. [redacted]

3. [redacted]

The accused at the present time is under sentence for 28 FP beginning on the 25th day of Jan 45

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 0 days in military custody, making a total of 0 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his record of service is / attestation paper is 33 years

6. The date of his [redacted] specified in his [redacted] is / attestation paper 5 Sep 41

7. [redacted]

8. [redacted]

9. The accused [redacted] is in possession of [redacted] C.V.S.M. & Clasp

10. [redacted]

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... dated ..... Permanent Force unit, and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

N/A

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

N/A

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this nineteenth day of February 1945

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

[illegible]
[illegible] Army [illegible] R.C.A.S.C.

EXHIBIT C

No D-15839 Name DUFRESNE L | Sqn, Battery or Company | Corps RCASC | Date of enlistment 5-9-41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/136 (3438)

Date of last entry in Company Conduct Sheet 6-11-41 | No and date last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet No 1 destroyed 5-3-42 on completion of six months service in accord. with AR (Can) 1524 (c)									
Petawawa	23-3-42	Spr		A.A. Sec 15 (1) AWL 17 days 23 hours	L/C Brunet Doc Hvid	14 days CB	25-4-42	LM Nantel Major	18 days pay FR&I 149 1.a. Est. $8.05
Field	26-2-43	Spr		A.A. Sec 15 (1) WOAS AWL 2 hours Missed a	Cpl Godon Spr Guirard	2 days pay FR&I 149 (2)	27-2-43	GV Bourbonnais Capt	1 days pay FR&I 153 (b)
Field	20-5-43	Spr		A.A. Sec 15 (1) WOAS AWL 23 hours 30 mins	Cpl Godon CSM Metayer	2 days pay FR&I 149(2)	22-5-43	GJ Cote Major	1 days pay FR&I 149 1.a

(FIO)

Place	Date of offence	Rank	Cause of absent-ness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30-6-43	Spr		A.A. Sec 15 (1) WOAS AWL 2 days	Cpl Godon CSM Metayer	4 days pay FR&I 149(2)	6-7-43	JM Michaud Capt	2 days pay FR&I 149 1.a.
Field	3-10-43	Spr		A.A. Sec 15 (1) WOAS AWL 6 hours 1 min.	CSM Metayer Doc Evid	1 days pay FR&I 149(2)	4-10-43	JM Michaud Capt	1 days pay FR&I 149 1.a.
Field	2-6-44	Pte		A.A. Sec 40 WOAS Neglect did not attend consultation at Mil Hosp did notwait as ordered.	L/C Nolin Cpl Lavoie Spr Labre	3 days pay FR&I 149(2)	5-6-44	Lt Col GW Smith	
Field	9-9-44	Pte		A.A. Sec 15 (1) WOAS AWL 1 day 20 hours	Cpl Rioux Spr Lefebvre	27 days F.P.	11-9-44	G Beaudet Major	27 days pay FR&I 149 1.b. 2 days pay FR&I 149 1.a.
Field	13-11-44	Pte		A.A. Sec 15 (1) WOAS AWL 1 day 9 hrs 45 mins	Cpl Rioux CSM Metayer	28 days F.P.	15-11-44	G Beaudet Major	Total 29 days pay 28 days pay FR&I 149 1.b. 2 days pay FR&I 149 1.a.

No D15839 Name DUFRESNE L | Sqn, Battery or Company | Corps R.C.A.S.C. | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (2468)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order depending with Gial	By whom awarded	Remarks
Belgium	9 Jan 45	Pte		AA SEC 15(1) AWL 1800 hrs 9 Jan 45 to 1900 hrs 9 Jan (1 hr)	A9656 Sgt Gillies J	10 days CB	11 Jan 45	Major AO Allan	1 days pay FR&I 149(1) (a)
Belgium	10 Jan	Pte		AA SEC 15(1) AWL 0945 hrs 10 Jan 45 to 2300 hrs 10 Jan 45 (8 hrs 15 min)	L7863 Cpl Munt TR Documentary		11 Jan 45	Major AO Allan	
Belgium	21 Jan 45	Pte		AA SEC 15(1) AWL 2300 hrs 21 Jan 45 to 2230 hrs 24 Jan 45(2 days 23 hrs)	A9656 Sgt Gillies A44012 L/Cpl Greenslade DJ	28 dys FP J 28 days pay	25 Jan 45	Major AO Allan	28 days pay FR&I 149(1) 3 days pay FR&I 149(1) (a)

(PTO)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY COMPILED FROM ORIGINAL DOCUMENT IN MY POSSESSION.					

(S.A. German) Capt Adjt
HQ 1 Cdn Army Tpt Coln

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND S[illegible]

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals requ[illegible] confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) EB

(1. AA 57A. Delete if not used.)

(Sgd) E. Fin Burns
Major-General,
GO i/c Cdn. Sec. 1 Echs
HQ. 21 Army Gp.

Date .....

Commanding .....

16 APR 1945 Confirming Officer.

XX-144

PTE DUFRESNE R.

Correspondence to be PINNED here.

Certified true Copy
Vindian Capt
(R. CORDEAU)
20/CM/2

Army Form A.3. XX-144

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Eighth day of November, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of Third Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [and that it is not practicable to delay the trial for reference to a superior qualified officer.] "TGG"

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [I am unable to appoint:—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.) "TGG"

for the following reasons, namely:—]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	R.S.E. Waterman	West N.S.R.

Members.

Rank.	Name.	Regiment.
Captain	J.W.K. Smeltzer	West N.S.R.
Captain	W.R. Moore	West N.S.R.
Lt.	F. Brunet	R. 22e R.

(Waiting)

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed "T.G. Gibson" Brigadier

Commanding 3 Cdn Inf Bde.
Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-57317 Private DUFRESNE, Rosaire, R. 22e. R.	First Charge AA Sec 12(1)(a)	Not Guilty "NG"	Guilty "NG".	I reserve confirmation of the finding & sentence of the court for superior authority.
	Second Charge AA Sec 12(1)(a)	Not Guilty "NG"	Guilty "NG"	"T.G. Gibson" Brig.
			To suffer Penal Servitude for a term of three years	
			"NG"	Finding and Sentence confirmed
			12 Nov 43	H.J. Wrottesley Major Gen.
			"NG"	Senior Combatant Officer Canada
				24 Dec 43

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) "T.G. Gibson" Brigadier (Signed) "R. Waterman" Major

Commanding 3 Cdn Inf Bde West N.B.R.
Convening Officer (*c*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 12th day of November 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter) S-4923 Sgt. Girouard, R., R.22e.R.
*(4. ~~The officers under instruction~~)

*Omit if not applicable.

were duly sworn.

Signed this 12th day of November 1943.

"R. Waterman" Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (3) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~

Pte

Signed this 27 day of December 1943.

P.J. Wrottesley Major Gen.
Senior Combatant Officer Canada
Confirming Officer.

Promulgated and extracts taken in the case of D 57317 Pte. Dufresne, R., R22R.

(*a*) (Dated) 3 January 1944 (Signed) Richard Hyde Adjutant
A/Bde Maj & Cdg Officer 3 Cdn Inf Bde Reinforcement Depot

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(20313) W—40,000 3/43 [illegible] Ltd Gp.698

FROM: CANMILITRY 281653

TO : FLAMBO FOR CANDEX

ORIG NO: A5080

REFERENCE ACA1641 25 DEC 43

PARA ONE

VGCsM PTES D57317 DUFRESNE ER D51320 BEAUDETTE R D56662 SIMARD PJ PROCEEDINGS ENDORSED BY SENIOR OFFICER 24 DEC 43 QUOTE FINDING AND SENTENCE CONFIRMED UNQUOTE X

PARA TWO

PROCEEDINGS CASE OF E4783 PTE MARTEL P ENDORSED BY SENIOR OFFICER 24 DEC 43 QUOTE I CONFIRM THE FINDING AND SENTENCE UNQUOTE X

No D57317 Name DUFRESNE R. Sqn, Battery or Company | Corps CIC | Date of enlistment 1/6/40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P408/136 (3436)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature GC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of order dispensing with trial	By whom awarded	Remarks
Field	11Apr42	Pte		1. AA Sec 40 2. AA Sec 10(4) 3. AA Sec 15(1) AWL 8 hrs.		~~21 dys F.P.~~ 21 dys' pay 149(1)(b)			1 dys pay aut. 3 dys pay 149(1)(c)(ii)
Field	10Jan43	Pte		AA Sec 15(1) AWL 16 dys 12 hrs 48 minutes		14 dys pay FR&I 149(b)			17 dys' pay aut. £1/9/0 for trnsp'n self & escort. Tot.Forf. 31 dys' pay
Field		Pte		A.A. 24		7 dys' F.P.			7 dys' pay 149(2)

CERTIFIED TRUE COPY OF EXTRACT FROM MF M4

(D.M. Owen)

26 Jul 44. for Officer I/C Cdn Section GHQ 2 Ech AAI.

(PTO)

SUMMARY OF EVIDENCE

In the case of D.57317 Private DUFRESNE, Rosaire, a soldier of the Royal 22e Regiment, Canadian Army Overseas, on Active Service. By direction of the Commanding Officer, this Summary of Evidence was taken under oath.

1st WITNESS for the Prosecution: E-4578 Sgt. Trepanier, R.E., Royal 22e Regiment, having been duly sworn states:-
" On the 11 Oct 43, I was Sgt. of 15 Pl. During the night when we reached our objective, at about 2300 hrs., I asked my section commanders to report their sections. Cpl. Lemieux reported that the accused was missing since 1800 hrs. "

"Sgt. Trepanier, R.E."

The accused declines to cross-examine the witness.

2nd WITNESS for the Prosecution: E-57666 Cpl. Lemieux Gerard, Royal 22e Regiment, having been duly sworn states:-
" I Cpl. Lemieux, on the 11 Oct 43, while we were reaching our objective, noticed that some of my men was missing. I checked and found out that the accused was missing. It was around 1800 hrs, as the darkness was commencing. I reported the absence of the accused to my Pl. Sgt. at around 2230 hrs. "

" Gerard Lemieux, Cpl."

The accused declines to cross-examine the witness.

3rd Witness for the Prosecution: E-4928 Cpl. Gladu Aime, Royal 22e Regiment, having been duly sworn, states:-
" I Cpl Gladu, during the week of Oct 18, 1943, was acting as coy orderly sgt. The accused reported to me at 1900 hrs on the 18 Oct 43. I put him under close arrest."

" Aime Gladu, Cpl "

The accused declines to cross-examine thewitness.

The accused having been duly cautioned in French, in accordance with R.O. 1424 reserves his defense.

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down in the presence and hearing of the accused and that Rules of Procedure 4 (c), (d), (e), (f) were duly complied with.

"Jean L. Ringuet"
(Jean L. Ringuet) Lieutenant
Officer taking Summary.

In the field
20 Oct 43.

"R. Waterman" Major.

SUMMARY OF EVIDENCE

In the case of D-57317 Private Rosaire DUFRESNE, a soldier of the Royal 22e Regiment, Canadian Army Overseas, On Active Service.

By direction of the Commanding Officer this summary of evidence was taken under oath.

1st Witness for the Prosecution

E-4188 P/Sgt. Lebel, L.P., Royal 22e Regiment having been duly sworn, states:-

" I am E-4188 P/Sgt. Lebel, L.P., R. 22e R. On October 22nd 1943, at about 1430 hrs I was present when Major Allard 2 i/c Royal 22e Regiment, advised Pte. Dufresne, whom I now recognize, that his coy was moving forward towards the enemy He added that the accused had to report to his former Platoon and carry on his normal duties. (At the moment Pte Dufresne was just being released from Detention on a charge of Desertion)

"L.P. Lebel" P/Sgt.

The accused declines to cross examine the witness.

2nd Witness for the Prosecution.

E-4578 Sgt. Trepanier, F. Royal 22e Regiment posted to "C" Coy having been duly sworn states:-

" I am E-4578 Sgt. Trepanier, F. R. 22e R. posted to "C" Coy. On October 22nd 1943, the accused, whom I now recognize, did report himself at about 1600 hrs. He was aware that we were moving towards the enemy. At about 2200 hrs, the accused without permission left his platoon."

"Fernand Trepanier" Sgt.

The accused declines to cross-examine the witness.

3rd Witness for the Prosecution.

Lieut. C. Chouinard, Royal 22e Regiment having been duly sworn states:-

" I am Lieut. C. Chouinard, R. 22e R. posted to "C" Coy. The accused, whom I now recognize, belongs to my platoon. On October 22nd 1943, Pte. Dufresne reported to me. He knew we were advancing towards the enemy. At 2200 hrs, my Sgt. reported to me that the accused had left without any permission. I made a personal check and found it was true."

" C. Chouinard" Lieut.

The accused declines to cross-examine the witness.

"R. Waterman" Major

SUMMARY OF EVIDENCE

The accused D-57317 Private Rosaire DUFRESNE, a soldier of the Royal 22e Regiment, Canadian Army Overseas, On Active Service.

4th Witness for the Prosecution.

D-51144 L/C.MacDuff, G. Royal 22e Regiment posted to "C" Coy having been duly sworn states:-

" I am D-51144 L/Cpl.MacDuff, G., Royal 22e Regt, posted to "C" Coy. On November the 4th 1943 at 1700 hrs, the accused whom I now recognize, did report himself to me from A.W.L. At that time I was acting coy Orderly Corporal. "

"Gabriel R. MacDuff" L/Cpl

The accused declines to cross-examine the witness.

The accused having been cautioned in French in accordance with R.O. 1424, reserves his defence.

I certify that the foregoing summary of evidence consisting of two (2) pages was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (c), (d), (e), (f), & (g) were duly complied with.

"Charles E. Levesque" Lieut.
Officer taking Summary.

In the Field
6th November 1943.

"R. Waterman" Major.

"B 2"

CHARGE SHEET

The accused D-57317 Private Rosaire DUFRESNE, a soldier of the Royal 22e Regiment, Canadian Army Overseas, On Active Service is charged with:-

1st Charge: DESERTING HIS MAJESTY'S SERVICE,
A.A. Sec. 12(1)(a)

in that he,

In the field, on October the 11th 1943, when advancing towards the enemy, did absent himself without leave at 1800 hrs until he returned at 1900 hrs the 18th of October 1943, with the intention to avoid battle with the enemy.

2nd Charge: DESERTING HIS MAJESTY'S SERVICE,
A.A. Sec. 12(1)(a)

in that he,

In the Field, on October 22nd 1943, when advancing towards the enemy, did absent himself without leave from about 2200 hrs until he reported at 1700 hrs November 4th 1943, with the intention to avoid battle with the enemy.

"J.P.E. Bernatchez"
In the Field (J.P.E. Bernatchez), Lt-Col.
6th November 1943 Commanding Royal 22e Regiment.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field,
6th Nov 43.

"T.G. Gibson"
(T.G. Gibson), Brigadier,
Commanding 3 Can Inf Bde.

"R. Waterman" Major.

MEDICAL OFFICER'S CERTIFICATE

KR (CAN) 557

I certify that I have this morning examined

No. D-57317 Rank Pte. Name DUFRESNE, R.

of Royal 22e Regiment and in my opinion he is

fit to undergo trial by Court Martial.

Station In the Field

Date 12th Nov 1941.

"Guy Latour" Capt.
Medical Officer

"R. Waterman" Major

Army Form A 9

A

FORM OF PROCEEDINGS FOR GENERAL AND DISTRICT COURTS-MARTIAL

Proceedings of a Field General Court-Martial held at
on the 12th day of November 1943 by order of

Brigadier T.G. Gibson

Commanding 3 Cdn Inf Bde.

dated the 8th day of November 1943

President

Major R.S.M. Waterman West N.S.R.

Members

Captain J. J.A. Gueltzer West N.S.R.

Captain [illegible] West N.S.R.

Judge Advocate

Trial of D-57317 Pte. Rosaire DUFRESNE,
R. 22e R.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that [illegible] is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor Lt. C.E. Levesque, R.22e R.

Counsel or defending officer Lt. A. Letourneau R. 22e R.

At 0845 hrs o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? Answer No.

(N.B. - If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

"R. Waterman" Major.

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

The Interpreter Sgt. Gerouard, R., B-4923, R. 22e R., not having been objected to, is duly sworn

Charge-Sheet

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the (first) charge against you, which you have heard read?

Answer

Are you guilty or not guilty of the second charge against you, which you have heard read?

Answer

Are you guilty or not guilty of the third charge against you, which you have heard read?

Answer

Are you guilty or not guilty of the fourth charge against you, which you have heard read?

Answer

The accused having pleaded guilty to charge, the provisions of Rule of Procedure 35(B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty", the Court will not proceed upon the record of a plea of "Guilty", until after the finding on that other charge.

"R. Waterman" Major.

C

PROCEEDINGS ON PLEA OF NOT GUILTY

Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have beenprejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer No.

The prosecutor makes an opening address (hands in a written address which is read, marked "C", signed by the President, and attached to the proceedings.)

The prosecutor proceeds to call witnesses.

First witness for prosecution

being duly sworn, is examined by the Prosecutor.

"C. Waterman" Major.

C 1

In the case of D-57317 Pte Rosaire DUFRESNE

First Witness for the Prosecution. E-4578 Sgt. Trepanier, R.E. R.22e.R., having been duly sworn states:-

Witness identifies the accused. On the night of 11 Oct 43 at 2300 hrs when we had reached our objective I went to see my section commanders to check up their sections and Cpl Lemieux reported that the accused was absent about 1800 hrs. On the 22 Oct 43 the accused reported back to the platoon from close arrest at 1600 hrs and I told him that we were moving, going forward towards the enemy and at 2200 hrs when we debussed I checked my platoon and found the accused was missing.

Q. - On 11 Oct 43 at 1800 hrs do you remember if your platoon was under enemy shelling?
A. - Yes, sir, we had a few shells but they fell on our right.

Q. - Do you know if the accused left with permission?
A. - No, sir, he had no permission from me.

Q. - Did the Platoon Commander give him permission to leave?
A. - I don't know.

Question by the Defence

Q. - Did you see the accused leave his platoon at 1800 hrs 11 Oct 43?
A. - No, sir.

C 2

Q. - How do you know that he left at that time?
A. - Reported by the section commander.

Q. - Were there any other form of enemy activity?
A. - There were a few bursts of M.G. fire.

Q. - How far were the shells falling from you?
A. - I could not see as it was dark.

Question by the Court

Q. - On the night of the 11 Oct 43 what sort of military operation was being carried out?
A. - We were advancing in expectation of meeting the enemy.

R.P. 83(b) complied with. "RW"

Second Witness for the Prosecution: E-57666 Cpl. Lemieux, Gerard, R. 22e R., having been duly sworn states:

The witness identifies the accused. On the 11 Oct 43 we were advancing to take position. While we were advancing I noticed that a few men were absent. I had checked and found the absence of the accused. It was at about 1600 hrs. I then told my platoon Sgt. at about 2230 hrs. I had to wait until then because being on the rear of the platoon I could not

"D. Waterman" Major

C 3

easily go forward to report as we were on the move.

Q. - Was the accused in your section?
A. - Yes, sir.

Q. - Did you see him leave the section?
A. - No, sir.

Q. - Had your section been shelled before 1800 hrs?
A. - There was shelling on our right.

C 3 (Cont'd)

Q. - Did you give the accused permission to leave?
A. - No, sir.

Q. - Were you expecting to meet the enemy that day?
Q. - Yes, I thought so.

Question by the Defence

Q. - How far away were the shells falling on the 11 Oct 43?
A. - From 400 - 500 yards on our right.

Q. - Were you advancing to attack the enemy?
A. - We were supposed to advance and carry out an infiltration movement.

Q. - Did your men know of this?
A. - They were supposed to know as we were in the front line.

Q. - Did you tell your men before you left about the enemy?
A. - No, sir.

R.P. 83(b) complied with.

"R. Waterman" Major

C 4

Third Witness for the Prosecution: E-4928 Cpl. Gladu, Aime, R. 22e R., having been duly sworn, states:

Witness identifies the accused. On the 18 Oct 43 the accused reported to me at 1900 hrs. I placed him under close arrest.

Defence declines to cross-examine the witness

Question by the Court

Q. - Why did you place him under close arrest?
A. - Because he had been absent since the 11 Oct 43.

R.P. 83(b) complied with.

Fourth Witness for the Prosecution: E-4138 Sgt. Lebel, L.P., R. 22e R., having been duly sworn states:

Witness identifies the accused. On the 22 Oct 43 at about 1400 hrs I paraded all prisoners to Major Allard, 2 i/c R. 22e R. Major Allard told them I am returning you to your own platoons. Before sending them back, he said the regiment is going to advance towards the enemy but I am not sure when, but soon and told them if they were good soldiers during the next exercise the previous charge would be destroyed if you dont be good soldiers you will pay for it. The accused was one of those prisoners and present on this parade

R.P. 83(b) complied with.

"R. Waterman" Major

C 5

Defence declines to cross-examine the witness.

Fifth Witness for the Prosecution: Lt. G. Chouinard, R. 22e R., having been duly sworn states:

The witness identifies the accused. I command No. 15 Platoon "C" Coy, R. 22e R. The accused is in my platoon. On the 22 Oct 43 at approximately 1500 hrs to 1600 hrs the accused reported to me as coming from close arrest. He knew as everyone in my platoon knew as I had personally told them that we were moving into a forward position. Around 2200 hrs same date debussing from trucks which had brought us about one mile from our positions into which we were supposed to move, my platoon sgt reported to me that the accused was absent without permission. I personally checked

up that report and found that the accused was not in his section or anywhere around.

Question by the Defence

Q. - Was there any enemy activity that night?
A. - On our left flank at a distance of two or three miles there was enemy shelling.

R.P. 83(b) complied with.

"R. Waterman" Major

C 6

Sixth Witness for the Prosecution - D-51144 L/Cpl. MacDuff, G., R. 22e R., having been duly sworn states:

Witness identifies the accused. On the 4 Nov 43 at 1700 hrs I was CQ. The accused reported to me as returning from AWL. I placed him under close arrest.

The Defence declines to cross-examine the witness

R.P. 83(b) Complied with.

"R. Waterman" Major.

D

The prosecution is closed.

DEFENCE

Accused advised of his rights under R.P. 40 & fn. (2) "RW"

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer Yes

Question Do you intend to call any other witness in your defence?

Answer Yes

Question Is he a witness as to character only? Answer. "RW"

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in whicy they are made. Any address which the accused is entitled to make pursuant to Rulesof Procedure 40(C)(iv) and 41(A)(i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, markde and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

- - - - - - -

(Where any evidence is given for the defence)

The evidence or the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (see overleaf).

- - - - - - -

(Where the accused does not give evidence upon oath).

Question to the accused. Have you anything to say in your defence?

Answer No. ~~The accused in his defence says:~~ ~~(hands in a written address which is read, marked signed by the President and attached to the proceedings.)~~ "RW"

- -

* In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above).

"W. Waterman" Major.

D 1

1st Witness for the Defence — G-57317 Private Rossire Dufresne (Not sworn states)

Q. - On the 11 Oct 43 what were you carrying?
A. - I had my own equipment, rations, and six bren gun magazines.

Q. - Were you tired or sick when you went absent?
A. - I was tired and I had a sore arm.

R.P. 83(b) complied with.

"R. Waterman" Major.

Summing Up - Prosecution "R. Dufresne

12-11-43

On Oct 11th 1943 the section to whom the accused belongs fell under enemy shelling. The accused at about 1300 hrs left his comrades without permission. He knew without any doubt that they were advancing towards the enemy, and he decided of his own to leave. We know what kind of fellows they are.

On the 22nd Oct he was again advised of a move forward towards the enemy. He failed a second time to behave as a real soldier and failed to fulfill his duty. Consequently according to MML Chap III Sec 20 the accused must be considered a deserter.

"Charles E. Levesque" Lt.

"R. Waterman" Major

Closing up address in the case of

Pte. ROSAIRE DUFRESNE

R. 22e R.

On the 11th of October 1943 nobody saw the accused leaving his section. It might have been anytime before 1800 hrs. At that time enemy activity was practically not existing; A few enemy shells dropping at a long distance. Nobody could say if the accused left during that shelling. His section commander in the evidence he gave states that he did not tell the accused that they were going to meet the enemy. The accused left because he was tired and sick. This is clear.

On the 22nd October, the accused was released from Detention. He was told that with his coy he was to go forward and meet the enemy. No time, whatever, was mentioned. The words of Major Allard who told him that, were related by Sgt. Lebel: "You will go forward but I do not know when." These were the words that were said by Major Allard. On that 22nd of Nov. there was no enemy activity.

"A. Letourneau"

"R. Waterman" Major.

E

FINDING

The Court is closed for the consideration of the finding.

The Court find that the accused is guilty of deserting His Majesty's Service on both charges as laid.

"H.W."

PROCEEDINGS ON CONVICTION BEFORE SENTENCE

The Court being re-opened, the accused is again brought before it.

Lt. C.E. Levesque, R.22eR. is duly sworn.

Have you any evidence to produce as to the character and particulars of service of the accused? Answer by the Witness. Yes

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked A, B & C, signed by the President, and annexed to the proceedings.

Question by the President: Is the accused the person named in the statement which you have read? Answer by the Witness. Yes

Question: Have you compared the contents of the above statement with the regimental books? Answer. Yes

Question: Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. Yes, as far as they are available.

Cross-examined by the accused.

Do you wish to address the Court? Answer No.

The Court is closed for the consideration of the sentence.

"H. Waterman" Major.

No. D-5731 Name DUFRESNE, R. Sqn., Battery, or Company C Coy Corps C I C Date of enlistment 1 Jun 40 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F. B.122) 40/P.S. 8136 (2965)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	IMPORTANT OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	6 Sep 43	Pte		WOAS Sec 25 AA losing by neglect his shovel.	Lt. Chouinard	7 days FP	13Sep43	Lt-Col.P.S. Pernatchez R.S.S.	7 days pay
				Certified not available at the present time.		Certified Copy "Jean L. Ringuet" Lieut.			
						"R. Guimond" Adjt. Royal 22e Regiment		"R. Waterton" Major.	

(P.T.O.)

E

FINDING

The Court is closed for the consideration of the finding.

The Court find that the accused is guilty of deserting His Majesty's Service on both charges as laid.

"R.W."

PROCEEDINGS ON CONVICTION BEFORE SENTENCE

The Court being re-opened, the accused is again brought before it.

Lt. C.E. Levesque, R.22eR. is duly sworn.

Have you any evidence to produce as to the character and particulars of service of the accused? Answer by the Witness. Yes

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked S 1 & S 2, signed by the President, and annexed to the proceedings.

Question by the President: Is the accused the person named in the statement which you have read? Answer by the Witness. Yes

Question: Have you compared the contents of the above statement with the regimental books? Answer. Yes

Question: Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. Yes, as far as they are available.

~~Cross-examined~~ by the accused.

Do you wish to address the Court? Answer No.

The Court is closed for the consideration of the sentence.

"R. Waterman" Major.

F

SENTENCE

The Court sentence the accused D-57317 Pte. Rosaire Dufresne Sentence
R. 22e R.

To suffer Penal Servitude for a term of three years.

"R. Waterman" Major

No. D-57312 Name DUFRESNE, R. Sqn., Battery, or Company C Coy Corps C I C Date of enlistment 1 Jun 40 G.C. Badges Service or Proficiency Pay "E 1"

M.F.M. 6 (A.F. B.122) 40/P.A./8136 (2965)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET.					
In the Field	6 Sep 43	Pte		WOAS Sec 25 AA Losing by neglect his shovel.	Lt. Chouinard	7 days FP	13Sep43	Lt-Col. P.S. Bernatches	7 days pay R.S.E.
				Certified not available at the present time.					
						Certified Copy			
						"Jean L. Ringuet" Lieut.			
					"S. Guimond" Adjt. Royal 32e Regiment				
								"R. Waterman" Major.	

(P.T.O.)

" E 2 "

M.F.B. 355
22M—5-41 (373-3)
H.Q. 1772-39-62)
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-57317	Pte.	DUFRESNE, R.	R. 22e R.

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	Losing by neglect his shovel 1 times	1 times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct Nil

or,

There are no entries in the conduct sheets of the accused. Nil

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time

or,

The accused at the present time is under sentence for Nil beginning on the Nil day of Nil

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 26 days in Air Force military custody, making a total of 26 days in custody, of which none days were spent in hospital.

5. The present age of the accused according to his record of service is 23 ~~attestation paper~~ is Militia Book (M1)(Part 1)

6. The date of his ~~commission~~ attestation specified in his record of service is nil ~~attestation paper~~ 1 Jun 40

7. The service which the accused is allowed to reckon towards discharge is N.A.

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force military decoration, or air force military reward ~~(or is in possession of or entitled to). State any air force decoration or reward.~~ Nil

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the Air Force regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit N/A dated N/A, and in his regiment (or corps), the rank of N/A dated N/A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— N/A

N/A Date of promotion.

In the rank of ..... years.

In the rank of N/A years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number D57317 Rank Pte.

Name DUFRESNE, R. of Royal 22e Regiment Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		N/A		

"B. Guimond" Adjt.
Royal 22e Regiment.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th day of November 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

"R. Waterman" Major.

List of Witnesses for the Prosecution

In the case of D-57317 Pte. R. Dufresne

B- 4578 Sgt. Trepainer, R.E.

B-57666 Cpl. Lemieux, G.

B- 4928 Cpl. Gladu, A.

B- 4188 P/Sgt Lebel, L.P.

Lieut. J.Chouinard.

D-51144 L/Cpl. McDuff, G.

Defence

Nil

STATEMENT BY THE ACCUSED

I acknowledge the receipt of a copy of the Summary of Evidence taken prior to my trial by Field General Court Martial.

I further acknowledge the receipt of a copy of the charge sheet upon which I am to be brought into Court Martial.

I desire the services of an officer to represent me at my trial.
I desire the services of:- Lt. Chatillon R. 22e R.
if he is available.

"R. Dufresne"
(R. Dufresne)

In the Field
20 Oct 43.

XX-144

(B 80)

Correspondence to be PINNED here.

Army Form A.3.

RECEIVED 20 NOV 1943

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Eighth day of November, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of Third Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* ~~I am unable to appoint~~ :—

*(1. ~~Three Officers to form the Court~~)

*(2. ~~A Field Officer as President~~)

~~for the following reasons, namely~~ :—]

No illegalities or irregularities such as would warrant withholding confirmation of findings, but due to omission of words "When on Active Service" from the charges, although clearly shown on the charge sheet as part of the description of the soldier, it is considered that the Confirming Officer should vary the sentence to one of imprisonment with hard labour for a period of two (2) years.

(J. J. Kelly) Lt-col
A.J.A.G. (Cts) C.M.H.Q.

Proceedings Reviewed

Reviewing Officer (J.A.G.) C.M.H.Q.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	R.S.E. Waterman	West NSR

Members.

Rank.	Name.	Regiment.
Captain	J.W.K.Smeltzer	West NSR
Captain	W.R. Moore	West NSR
(Waiting) Lieutenant	F. Brunet	R 22e R

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed Kitchen Brigadier,

Commanding 3 Cdn Inf Bde.

Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D57317 Private DUFRESNE, Rosaire R 22e R	First Charge AA Sec 12(1)(a)	Not guilty R	Guilty R	Answer conformeth of the finding & sentence of the court for appeal Whitworth Brig
	Second Charge AA Sec 12 (1)(a)	Not guilty R	Guilty R To suffer Penal Servitude for a term of three years R 12 Nov 43	Hearing and Sentence Confirmed P.J. Murphy Maj Gen 5D Cdn Inf Bde 24 Dec 43

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded in the words used, if necessary*):—

(Signed) Whitworth Brigadier, (Signed) Katerman Major,
Commanding 3 Cdn Inf Bde. Corps. R.C.A.S.C.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (If necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 12th day of November 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter) #4923 Sgt. Gerard R. R22eR.
*~~(4. The officers (make instruction)~~

were duly sworn.

*Omit if not applicable.

Signed this 12th day of November 1943.

Katerman Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (k) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 24th day of Dec 1943

P J Murphy
Confirming Officer. Maj Gen
5D Cdn Inf Bde

Promulgated and extracts taken in the case of

Certified that F.G.C.M. Proceedings in the case of D 57317 Pte Dufresne R, R 22e R, have been duly Promulgated and extracts taken, on 3 Jan 1944

(Lt. L. Whitwell) Capt.,
A/Adjutant,
4 Bn., 1 C. B. R. D.

need only sign once.

[illegible] W1481/8/500 10,000 7/42 A.G.2.W.1.1. Gp.698

I DIRECT that a part, not exceeding 2 years, of the sentence of 3 years penal servitude awarded to D 57317 Pte DUFRESNE, R., w.e.f. 12 Nov 43, shall be served in a Military Prison.

P.J.M.

(P.J. Montague) Major-General
i/c Administration
Canadian Military Headquarters

5 MAY 1944

B.2.

CHARGE SHEET

The accused D.57317 Private Rosaire DUFRESNE, a soldier of the Royal 22e Regiment, Canadian Army Overseas, On Active Service is charged with:-

1st Witness:
A.A. Sec,12(1)(a)

DESERTING HIS MAJESTY'S SERVICE,

in that he,

In the Field, on October the 11th 1943, when advancing towards the enemy, did absent himself without leave at 1800 hrs until he returned at 1900 hrs the 18th of October 1943, with the intention to avoid battle with the enemy.

2nd Charge:
A.A.Sec.12(1) (a)

DESERTING HIS MAJESTY'S SERVICE,

in that he,

In the Field, on October 22nd 1943, when advancing towards the enemy, did absent himself without leave from about 2200 hrs until he reported at 1700 hrs November 4th 1943, with the intention to avoid battle with the enemy.

(J.P.E. Bernatchez), Lt-Col.,
Commanding Royal 22e Regiment.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
6th November 1943.

In the Field
8 Nov 43

(T.G. Gibson), Brigadier,
Commanding 3 Cdn Inf Bde.

MEDICAL OFFICER'S CERTIFICATE

[illegible] 557

I certify that I have this morning examined

No. 15111 Rank Pte. Name Dufresne R.

of Royal 22e Regt. and in my opinion he is

fit/~~[illegible]~~ to undergo Trial by Court Martial.

Station In the Field.

Date 22th Nov. 1943.

[illegible] Capt.
Medical Officer

Katerman
[illegible] mgr.

A Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held ~~at~~ in the field on the 12th day of November 1943 by order of Brigadier T. G. Gibson

Commanding 3rd Cdn Inf Bde

dated the 8th day of November 1943.

President.

Major R. S. E. Waterman. West NSR

Members.

Capt. J. W. K. Smeltzer. West NSR

Capt. W. R. Moore. West NSR

~~Judge Advocate.~~

Trial of* D 57317 Pte Rosaire Dufresne R22eR.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~ RS

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt C. E. Levesque. R22eR.

Counsel‡ or defending officer† Lt A. Letourneau R22eR.

At 0845 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Waterman
Maj

B

The President, members ~~and judge advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~ RWS

The interpreter St Gerouard. R. E 4923. R22cR.
not having been objected to, is duly sworn RWS

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.

Answer. Not guilty

Are you guilty or not guilty of the second charge against you, which you have heard read?

Question.

Answer. Not guilty

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ RWS

Question.

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ RWS

Question.

Answer.

~~The accused having pleaded Guilty to ..... charge; the provisions of Rule of Procedure 35 (B) are here complied with.~~ RWS

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Instruction.

Rakeman maj.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No.

~~The prosecutor makes an opening address (hands in a written address which is read, marked _____, signed by the President, and attached to the proceedings).~~

The prosecutor proceeds to call witnesses.

First witness for prosecution.

_____ being duly sworn, is examined by the prosecutor.

C1

The Case of D57317 Private Rosaire Dufresne.

First Witness for the Prosecution

E 4578 Sgt Trepanier RE RuR having been duly sworn states

Witness identifies the accused

On the night 11 Oct 43 at 2300 hrs when we had reached our objective I went to see my section commanders to check up their sections and Cpl Lemieux reported that the accused was absent since about 1800 hrs. On the 22 Oct 43 the accused reported back to the platoon from close arrest at 1800 hrs and I told him that we were moving, going forward towards the enemy and at 2200 hrs. when we debussed I checked my platoon and found the accused was missing.

Question On 11 Oct 43 at 1800 hrs do you remember if your platoon was under enemy shelling

Answer Yes sir we had a few shells but they fell on our right

Question Do you know if the accused left with permission

Answer No sir he had no permission from me.

Question Did the platoon commander give him permission to leave

Answer I dont know.

Question by the Defence

Question Did you see the accused leave his platoon at 1800 hrs 11 Oct 43.

Answer No sir.

Question How do you know that he left at that time

Answer. Reported by the section commander

Question Were there any other form of enemy activity

Answer There were a few bursts of M. G. fire

Question. How far were the shells falling from you

Answer I can not say as it was dark.

~~Question~~ Mr

Question by the Court

Question On the night of the 11 Oct 43 what sort of military operation was being carried out

Answer We were advancing in expectation of meeting the enemy.

R.P. 83(b) complied with. [illegible]

Second Witness for the Prosecution

E57666 Cpl Lemieux Gerard R.C.R. having been duly sworn states

The Witness identifies the accused.

On the 11 Oct 43 we were advancing to take positions. While we were advancing I noticed that a few men were absent. I had checked and found the absence of the accused. It was at about 1800 hrs. I then told my platoon sgt at about 2230 hrs I had to wait until then because being in the rear of the platoon I could not

[illegible]

Easily go forward to report as we were
on the move.
Question Was the accused in your section
Answer Yes sir
Question Did you see him leave the
section
Answer No sir
Question Had your section been shelled
before 1800 hrs
Answer There was shelling on our right.
Question Did you give the accused
permission to leave.
Answer No sir.
Question Were you expecting to meet the
enemy that day.
Answer Yes, I thought so.

Questions by the defence
Question How far away were the shells
falling on the 11 Oct 43
Answer From 400 to 500 yds on our right.
Question Were you advancing to attack
the enemy
Answer. We were supposed to advance
and carry out an infiltration movement.
Question Did your men know of this
Answer They were supposed to know as we
were in the front line.
Question Did you tell your men before you
left about the enemy
Answer No sir

R.P. 83 (b) Complied with.

[illegible]

Third Witness for the Prosecution
E 4928 Cpl Gladu Aime R22R having been duly sworn states
Witness identifies the accused.
On the 18 Oct 43 the accused reported to me at 1900 hrs I placed mkg I placed him under close arrest

Defence declines to cross-examine the ~~accused~~ mkg witness

Question by the Court
Question Why did you place him under close arrest.
Answer Because he had been absent since the 11 Oct 43
RP 83(B) complied with

Fourth Witness for the Prosecution
E 4188 Sgt Libel L.P. R22R having been duly sworn states
Witness identifies the accused.
On the 22 Oct 43 at about 1400 hrs I paraded all prisoners to Major Allard 2½ R22R. Major Allard told them I am returning you to your own platoons. Before sending them back he said, the regiment is going to advance towards the enemy but I am not sure when, but soon and told them if they were good soldiers during the next [illegible] the previous charge would be destroyed if you don't be good soldiers you will pay for it. The accused was one of those prisoners and present on this parade.

RP 83(B) complied with

C 5

Defence declines to cross examine the witness

Fifth Witness for the Prosecution

Lieut C. Chouinard R22R having been duly sworn states

The Witness identifies the accused

I command No 15 Platoon "C" Coy R22R. The accused is in my platoon men.

On the 22 Oct 43 at approx 1500 to 1600 hrs the accused reported to me as coming from close arrest. He knew as everyone in my platoon knew as I had personally told them that we were moving into a forward position. Around 2200 hrs same date debussing from trucks which had brought us about one mile from our positions into which we were supposed to move, my platoon sgt reported to me that the accused was absent without permission. I personally checked up that report and found that the accused was not in his section or anywhere around

Questions by the defence

Question Was there any enemy activity that night

Answer On our left flank at a distance of two or three miles there was enemy shelling

RP 89(b) Completed with

[illegible]

C 6

Sixth Witness for the Prosecution.
D.S 1144 L/cpt MacDuff G. R2R
having been duly sworn states
Witness identifies the accused.
On the 4 Nov 43 at 1700 hrs I was
COC and the suppose was. The accused
reported to me as returning from AWL
I placed him under close arrest.
The defence declines to cross examine the witness

R.P. 83(b) complied with

Waterman major

D

The prosecution is closed.

Defence.

Accused advised of his rights under R.P. 40 & Footnote 3(2) [illegible]

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes.

Question. Do you intend to call any other witness in your defence?

Answer. No

Question. ~~Is he a witness as to character only? *Answer.*~~ [illegible]

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. No. ~~The accused in his defence says:~~

~~[hands in a written address which is read, marked~~

~~signed by the President and attached to the proceedings.]~~

[illegible]

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

[illegible]

First Witness D for the Defense
DS 7317 Private Rosaire Dufresne
(not sworn state)
Question On the 11 Oct 43 what were you carrying?
Answer I had my own equipment, rations and six Bren gun magazines
Question Were you tired or sick when you left Mr. went absent.
Answer I was tired and I had a to men sourcing
R.P. 10 fb complied with

Summing up Prosecution R Dufresne
12-11-43

On Oct 11th 1943 the section to whom the accused belongs fell under enemy shelling. The accused at about 1800 hrs left his comrades without permission. He knew without any doubt that they were advancing towards the enemy, and he ended of his own to leave. He knew what kind of fellows they are.

On the 22nd Oct he was again advised of a move forward towards the enemy. He failed a second time to behave as a real soldier and ~~[illegible]~~ failed to fulfill his duty. Consequently according to MMA Chap III Sect 3d the accused must be considered as a deserter.

Charles E. Lemaire Cr

R Dufresne
Lt Major

Closing up address in the case of

Pte. ROSAIRE – DUFRESNE. R 22° R

On the 11th of October 1943. nobody saw the accused leaving his section. He might have been anytime before 1800 hrs. At that time enemy activity was practically not existing: a few enemy shells dropping at a long distance.
Nobody could say if the accused left during that shelling.
His section commander in the evidence he gave, states that he did not tell the accused that they were going to meet the enemy. The accused left because he was tired and sick. This is clear.

On the 21st of October, the accused was ~~told that he~~ released from de-tention. He was told that with his coy. he was to go forward and meet the enemy. No time, or whatsoever, was mentionned. The words of Major Allard who told him that, were related by Sgt Lebel: "You will go forward but I do not know when." These were the words that were said by Major Allard.

On that 22nd of Nov, there was no enemy activity.

Letourneau

Letourneau major

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused is guilty of deserting His Majesty's Service on both charges as laid.

[illegible]

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction before Sentence.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Lt. C. L. Levesque R.22eR is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked E 1 & 2 signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes, as far as they are available.

~~Cross-examined by the accused.~~

[illegible]

Question to the accused.

Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

[illegible]

F

Sentence.

The Court sentence the accused D 57317 Pte Rosaire Dufresne R. 22e R. Sentence.

To suffer Penal Servitude for a term of three years.

R. Laferman
major

ARMY FORM B 116

..... Royal 22e Regiment ..... Regiment

STATION.... In the field ..... Date..... 20 Oct ... 1943 .

Application for a .... Field General ..... Court-Martial

Sir,

I have the honour to submit..... one ... charge..... against No.....

.. D-57317 ..... Pte Dufresne, R .....

of the.. Unit .... under my command, and request you will obtain the sanction

of... higher authorities ..... taht a Field General Court-Martial may be

assembled for his trial at.. in the field .....

The case was investigated by(a). Lt-Col. J.P.E. Bernatchez .....

. Capt. P. Triquet and Lieut J.L. Biriquet .....

A Court of Inquiry was held on(b)..... (date)

at..... o/a ..... (Station)

President	..... o/a	Ranks
Members	..... o/a	Names and Corps
	..... o/a	

The accusedis now at Field Unit his General Character is(c). fair ...

I enclose the following documents(d):-

1 ... one ..... Charge Sheet..... (in duplicate)(e)

2 Summary of Evidence, original(f)..... 1 .... copy

3 ~~Original Exhibits~~(g)

4 List of witnesses for the prosecution and defence(with their p present stations or addresses)(g)

5 List of Exhibits (g).

6 Correspondence (g)

7 Statement as to character (AFB 296) and regimental and company etc., conduct sheets of accused(g)

8 Statement bya coused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (g)

I have the honour to be,
Sir,
Your obedient Servant,

Signature of
Commanding Officer [signature] .....

To the Officer Commanding
... 3rd Can Inf Bde.

Royal 22e Regiment.

6366

MEDICAL OFFICER'S CERTIFICATE

I CERTIFY that No D-57317 Pte Dufresne R ..... Royal 22e Regiment

is..... fit ..... to undergo trial by Court-Martial.

Signature of the Medical Officer

[signature] .....

List of Witnesses for the Prosecution.

In the case of: D-57317 Pte R. Dufresne.

E-4578 Sgt. Trepanier R.E.

E-57666 C/Sgt Lemieux G.

E-4928 C/Sgt Gladu A.

E-4188 P/Sgt Lebel L.P.

Lieut J. C. Lamirand

D-51044 L/Cpl. McDuff G.

Defence

N.L.

STATEMENT BY THE ACCUSED.

I acknowledge the receipt of a copy of the Summary of Evidence, taken prior to my trial by Field General Court Martial.

I further acknowledge the receipt of a copy of the charge sheet upon which I am to be brought into Court Martial.

I desire the services of an Officer to represent me at my trial;
I desire the services of:- Lt. Chatillon, R.C.A.

if he is available.

R. Dufresne

(R. Dufresne)

In the field,
20 Oct 43.

SUMMARY OF EVIDENCE

In the case of D.57317 Private DUFRESNE Rosaire, a soldier of the Royal 22e Regiment. Canadian Army Overseas, on Active Service, by direction of the Commanding Officer, this Summary of Evidence was taken under oath.

1st WITNESS:
for the Prosecution

E.4578 Sgt Trepanier R.E., Royal 22e Regiment, having been duly sworn states:
" On the 11 Oct 43, I was Sgt of 15 Pl. During the night when we reached our objective, at about 2300 hrs. I asked my section commanders to report their sections. Cpl Lemieux reported that the accused was missing since 1800hrs.

Sgt Trepanier R.E.

The accused declines to cross-examine the witness.

2nd WITNESS:
for the Prosecution.

E.57666 Cpl. Lemieux Gerard, Royal 22e Regiment, having been duly sworn states:
" I Cpl. Lemieux, on the 11 Oct43, while we were reaching our objective, noticed that some of my men were missing. I checked and found out that the accused was one of them missing. It was around 1800 hrs, as the darkness was commencing. I reported the absence of the accused to my Pl. Sgt at around 2230hrs.

Cpl Gerard Lemieux Cpl.

The accused declines to cross-examine the witness.

3rd WITNESS;
for the PROSECUTION.

E.4928 Cpl. Gladu Aime, Royal 22e Regiment, having been duly sworn, states:
" I Cpl Gladu, during the week of Oct 18, 1943, was acting as coy orderly sgt. The accused reported to me at 1900hrs on the 18 Oct 43. I put him under close arrest.

Aime Gladu Cpl.

The accused declines to cross-examine the witness.

The accused having been duly cautioned in French, in accordance with R.O. 1424 reserves his defense.

I certify that the foregoing Summary Of Evidence, consisting of one page, was taken down in the presence and hearing of the accused and that Rules of Procedure 4 (c) (d) (e) and (f) were duly complied with.

Jean L. Riquet

(Jean L. Riquet) Lieutenant.
Officer taking Summary.

In the field,
20 Oct 43.

SUMMARY OF EVIDENCE

In the case of D.57317 Private Rosaire DUFRESNE, a soldier of the Royal 22e Regiment, Canadian Army Overseas, On Active Service,

By direction of the Commanding Officer this summary of evidence was taken under oath.

1st Witness: For the Prosecution.

R.4188 P/Sgt. Lebel, L.P. Royal 22e Regiment having been duly sworn states:-

" I am R.4188 P/Sgt. Lebel, L.P. R.22e.R. On October 22nd 1943, atabout 1430 hrs I waspresent when Major Allard 2i/c Royal 22e Regimen, advised Pte. ~~Dufresne~~, whom I now recognize, thathis coy was moving forward towards the enemy He added that the accused had to report to his former platoon and carry on his normal duties. (at the moment Pte. ~~Dufresne~~ was just being released from Detention on a charge of Desertion).

P/Sgt.

The accused declines to cross examine the witness.

2nd Witness: For the Prosecution.

R.4578 Sgt. Trepanier, F. Royal 22e Regiment posted to "G" coy having been duly sworn states:-

" I am R.4578 Sgt. Trepanier, F. R.22e.R. posted to "G" coy On October 22nd 1943, the accused, whom I now recognize, did report himself at about 1600 hrs. He was aware that we were moving towards the enemy. At about 2200 hrs, the accused Without permission left hisplatoon. ~~On October 23 th 1943 at 1100 hrs Pte. Dufresne reported himself. I then put him under Close Arrest.~~

Sgt.

The accused declines to cross examine the witness.

3rd Witness:

Lieut. C. Chouinard, Royal 22e Regiment having been duly sworn states:-

" I am Lieut. C. Chouinard, R.22e.R. posted to "G" coy. The accused, whom I now recognise, belongs to my platoon. On October 22nd 1943, Pte. ~~Dufresne~~ reported to me. He knew we were advancing towards the enemy. At 2200 hrs, my Sgt. reported to me that the accused had left without any permission. I made a personal check and found it was true.

Lieut.

The accused declines to cross examine the witness.

SUMMARY OF EVIDENCE

The accused D.57317 Private Rossaire DUFRESNE, a soldier of the Royal 22e Regiment, Canadian Army Overseas, On Active Service.

4th Witness: For the Prosecution.

D.51144 L/Cpl. MacDuff, G. Royal 22e Regiment posted to "C" coy having been duly sworn states:-

" I am D.51144 L/Cpl. MacDuff, G. R.22e.R. posted to "C" coy. On November the 4th 1943 at 1700 hrs, the accused, whom I now recognize, did report himself to me from A.W.L. At that time I was acting coy Orderly Corporal.

Gabriel R MacDuff L/Cpl.

The accused declines to cross examine the witness.

The accused having been cautioned in French in accordance R.O. 1424 reserves his defence.

I certify that the foregoing summary of evidence was taken down by me in the presence and hearing of the accused ant that rules of procedure 4 (c), (d), (e), (f), and (g) were duly complied with.

C. [illegible] Lieut.
Officer taking Summary

In the Field

6th November 1943.

FIELD CONDUCT SHEET

Army Form B122
Sheet No. E1

*No. 157317 Name Dufresne R. Sq., Batty., or Company C Coy Corps C. I. C.

Date of Enlistment 1 June 40

*Date of last entry in Company Conduct Sheet | No. and date of last drunk | G.C. Badges | Long Service and G.C. Pay | Signature O.C. Company etc.

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Temporary Sheet					
In the Field	6 Sep 43	Pte		W. O. A. S. No 25 AA losing by neglect his shovel	[illegible]	7 days F.C.	13 Sep 43	Lt Col [illegible] Dunnathy M.A.C.	7 days pay
				Original not available at the present time.					

Certified copy

Jean L Ringuet
Lieut.

*Serial Number in case of enemy prisoner of war

[P.T.O

E.2.

M.F.B. 358
22M—5-41 (572-5)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-57517	Pte	Dufresne R	R. 22 R

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets / Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For losing by neglect his shovel	1 times	1 times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct NIL

or,

There are no entries in the conduct sheets of the accused. NIL

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act / Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time

or,

The accused at the present time is under sentence for NIL beginning on the NIL day of NIL

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 26 days in Air Force / military custody, making a total of 26 days in custody, of which none days were spent in hospital.

5. The present age of the accused according to his record of service is 23 ~~attestation paper~~ is Militia Bank (M.) (Bat.)

6. The date of his ~~commission~~ attestation specified in his record of service is NIL ~~attestation paper~~ 1 June 40

7. The service which the accused is allowed to reckon towards discharge is N.A.

8. The accused is entitled to reckon N.A. service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (~~or is in possession of or entitled to~~) military military NIL ~~state any air force decoration or reward~~ military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force / the regimental rank of N.A.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit N.A dated N.A, and in his regiment (or corps), the rank of N.A dated N.A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— N.A N.A Date of promotion.

In the rank of ..... years.

In the rank of N.A years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number D-57317 Rank P.O. Name Dufresne, R. of Royal 22nd Regiment Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	N.A			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th 26th day of October 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

E.2.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-630
A.F.B. 290

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-87317	Pte	Dufresne G	R. 22e R.

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery / Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For losing by neglect his shovel	1 time	
For	times	times
For	times	times
For	times	times
Number of instances of gallantry or distinguished conduct	N i L	times

or,

There are no entries in the conduct sheets of the accused. N i L

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act / Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time

or,

The accused at the present time is under sentence for N i L beginning on the N i L day of N i L

4. The accused has been in confinement awaiting trial on the present charges, for N i L days in civil custody, and 26 days in military / Air Force custody, making a total of 26 days in custody, of which none days were spent in hospital.

5. The present age of the accused according to his record of service is 23

6. The date of his ~~enrolment~~ attestation specified in his record of service is N i L ~~attestation paper~~ is Militia Book (M.2) (Part I)

7. The service which the accused is allowed to reckon towards discharge is ~~1 June 40~~ N A

8. The accused is entitled to reckon N A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force / military decoration, or air force / military reward (~~or is entitled to, state any air force / military decoration or reward~~). N i L

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer / Air Force last held the regimental rank of N A.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N.A dated N.A, and in his regiment (or corps), the rank of

N.A dated N.A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N.A. N.A Date of promotion.

In the rank of ..... years.

In the rank of N A years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number D-57317 Rank Pte Name Dufresne, R. of Royal 22nd Regiment Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	N.A.			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th ~~26~~th day of ~~October~~ November 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

YY-91

SPR DUFRESNE R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D19088 Spr Robert Dufresne

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		not guilty	guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and re loss of kit see RP 44 fn 6.)

~~At present under sentence for ... beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or MF B296.)

Time in confinement awaiting present trial—a total of 29 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or MF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

See proceedings on charge sheet No I

(Sgd) R K Lunkley Capt 26 Nov 43 (Sgd) A W Jones Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING ~~AND SENTENCE~~.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~No finding (finding of guilty) or sentence (sentence) is confirmed. Accused be not committed to prison nor (detention barracks) until further orders.~~ (2)

(1. AA 57A. Delete if not used.)

Date 29 Nov 43 (Sgd) [signature]

Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D19088 Spr Robert Dufresne	1 Dec 43	A W Jones Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

II

44-91

FIELD GENERAL COURT-MARTIAL

(FORM 126 (ON SHEET AFAS) AC P & C 1808 (1944))

Convened by Order of Lt-Col L F Barnes Comd RCE First Cdn Inf Div A Tps dated

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptnt, A/rank or A/apptnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptnt, A/R or A/Apptnt.	Full Christian Names.	Surname.	Unit.
D19088	Spr - - - - - - - -	Robert	DUFRESNE	10 Cdn Fd Pk Coy

Proceedings Reviewed

[signature]

13 Jan 44

Reviewing Officer (JAG) CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 26 Nov 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnes RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1135 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ... as interpreter? Ans:~~

~~The interpreter is sworn.~~(1) ~~Do you object to ... as shorthand writer? Ans:~~

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans ...(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A W Jones	2a Cdn Fd Coy
Member	Capt	E M Stewart	23 Cdn Fd Coy
Member	Capt	A J Le Blanc	HQ RCE First Cdn A Tps
Judge-Advocate	Capt	R K Lunkley	HQ First Cdn Army
Prosecutor	Lt	G W Walkley	10 Cdn Fd Pk Coy
Defending Offr	Major	G J Cole	3 Bde RCE

Questions by President: Is the Prosecutor a lawyer? Ans ... Is the Defending Offr a lawyer? Ans ...(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused D19088 Spr Robert Dufresne before arraignment make(s) (no) (~~no~~) plea ...(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~separately~~) on the charge(s) in the charge sheet.(1) The accused does (do) not object to ~~the~~ charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc., offence. (RP 44(B).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 28.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 90, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans ..... (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes his (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is cleared, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charges.(4)~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 13-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Your evidence as a witness ..... Do you intend to call witnesses on your behalf ? Ans Yes ..... Are they witnesses as to character only ? Ans No
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. *AA 54(J) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *AFB 355 or AFB 296.* 2. *AFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisn, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET No. II

The accused D-19088 Spr. Robert DUMESNIL, of 10 Cdn. Fd. Pk. Coy., a soldier of the Canadian Army, placed On Active Service, is charged with:-

First Charge
Sec. 8 (2)
Army Act.

USING THREATENING LANGUAGE TO HIS SUPERIOR OFFICER, in that he at Dorking Police Station, on the 29 Oct 43, when being questioned in respect to a fracas in Dorking, said to Capt. F.J. Mills of 87 Cdn. Arty. Coy. R.C.A.S.C. "If I get into trouble over this, I'll remember you and I'll get you," or words to that effect.

W.B. Airth Major R.C.E.
W.B. Airth) Major, R.C.E.
O.C. 10 Cdn. Fd. Pk. Coy.

IN THE FIELD

29 Oct 43.

To be tried by a Field General Court-Martial

Lt. Col. R.C.E.
C.R.E. FIRST CDN. ARMY TPS.

IN THE FIELD

17 NOV 43.

"B"

Trial of D19088 Spr Robert Dufresne
10 Cdn Fd Pk Coy

Trial Witness for Prosecution.

Capt F. J. Mills 87 Cdn Arty Coy
R CASC.
sworn states

About 2300 hrs 29 Oct 43 I was at the police station in Dorking Surrey. Spr Dufresne (whom I recognise) Sgt Allowick, Mr Andrews and others were there. Spr Dufresne turned to me and said "If you're responsible for getting me into any trouble I will remember you and I will get you" I made no reply to him but I told the police when they could get me later. At the time I was making a report at the police station about an incident which occurred that night and in which Spr Dufresne was involved. He made the statement in an aggressive tone of voice.

Cross Examined

Dufresne had been drinking but he knew what he was doing and saying in my opinion. I thought he was threatening me.

RP 83(B) complied with

[illegible]

2nd Witness for Prosecution

Sgt. Frank Field Dorking Police Force

sworn, states

About 11 pm. I saw the accused at Dorking Police Station.
Capt Mills whom I know was there also. Capt Mills spoke to the accused. I heard the accused say to Capt Mills "You are trying to make trouble for me, I am a married man with 4 children if you make trouble for me, I will get you, you come from Canada the same as I do and I will remember you there."
Defrenne was very aggressive when he made this statement.

Cross Examined

Defrenne had been drinking but I think he knew what he was doing.

RP 83(B) complied with

a57

Defence

1st Witness for Defence

D19088 Spr Robert Defreene
10 Cdn Tr Pk Coy
Sworn, States

At the time in question in the Police Station I said to Capt Mills "I am a married man. I have a family and I just have my trades pay and I have a pass until one o'clock and I want to go back to camp. If I go back too late the major is strict and maybe I will lose my trades' pay if I am late. If I am in trouble I'm going to remember that. You're from Canada the same as I am. I'm going to remember that." I was not drunk but I had a few drinks and it makes me talk a lot. I swear that I didn't mean anything by that. I had been there about 5 minutes before I said these words. The Sgt. showed me the way to get back home with his flashlight and I went home quietly.

Cross Examination

I didn't say "If you make trouble for me I will get you."

JA It is possible that I said the words "I will get you" but I would be very surprised if I did say them.

RP 83(b) complied with

[illegible]

The prosecutor makes a closing address.
The defending officer makes a closing address.

awg

Summary of Evidence
In the Case of
D 19088 Spr Robert Dufresne of 10 Edn Fd Pk Coy (C.A.O.)
A Soldier of the Canadian Army. The accused is informed of his rights.
The O.C. directs that the evidence be taken under oath.

First Witness for the Prosecution:
Capt F.J. Mills 87 Edn Arty Coy R.C.A.S.C. (C.A.O.) having been duly sworn states:

At approx. 2300 hrs 29 Oct 43, having given my name as witness to the fracas which had just occurred and in which Spr Dufresne was involved, I was standing at the desk in the Dorking Police Station and Spr Dufresne was standing beside me. Spr Dufresne told me that he had just started to receive his Trades Pay and if I were responsible for him losing this and getting into trouble, he would remember me and that he would get me. This was witnessed by a Police Sergeant.

The accused declines to cross-examine.

F.J. Mills, Capt.
F.J. Mills, Capt.

Second Witness for the Prosecution

Police Sergeant, #9 Frank Field, stationed at Dorking Police Station, having been duly sworn states:

At the time and date in question I came off patrol and entered the Police Station. I saw the accused soldier whom I now know to be Spr Dufresne, standing there in

Cont'd

the Police Station. As I was standing there an officer whom I now know to be Capt Mills came in. I wasn't paying much attention but I heard the accused say to Capt Mills "You're trying to make trouble for me." He then remarked that he was a married man with a family and added: "If you make trouble for me - I'll get you. You come from Canada, the same as me and I shall remember you there."

Cross examined by the accused.

Q1 "Do you think I really meant a threat in my remarks?"
A1 "You made the remarks in a very aggressive tongue - I should say that you meant it.

Frank Field. P.S.A.
Frank Field.

The accused person having been duly cautioned in accordance with R.P.A (E)

"I do not wish to make a statement."

Certified that R.P.A complied with

In the Field
9 Nov 13

[illegible] Capt RLC
Officer detailed to take the summary

SUMMARY OF EVIDENCE

IN THE CASE OF

D-19088 Spr. Robert DUFRESNE of 10 CDN. FD. PK. COY. (C.A.O.)

A soldier of the Canadian Army. The accused is informed of his rights.

The O.C. directs that the evidence be taken under oath.

FIRST WITNESS FOR THE PROSECUTION:

Capt. F.J. Mills, 27 Cdn. Arty. Coy, R.C.A.S.C. (C.A.O.) having been duly sworn states:

At approx. 2300 hrs 29 Oct 43, having given my name as witness to the fracas which had just occurred and in which Spr. Dufresne was involved, I was standing at the desk in the Dorking Police Station and Spr. Dufresne was standing beside me. Spr. Dufresne told me that he had just started to receive his Trades Pay and if I were responsible for him losing this and getting into trouble, he would remember me and that he would get me. This was witnessed by a Police Sergeant.

The accused declines to cross-examine.

Signed:
F.J. Mills - Capt.

SECOND WITNESS FOR THE PROSECUTION:

Police Sergeant, 89 - Frank Field, stationed at Dorking Police Station, having been duly sworn states:

At the time and date in question I came off patrol and entered the Police Station. I saw the accused soldier, whom I now know to be Spr. Dufresne, standing there in the Police Station. As I was standing there an officer whom I now know to be Capt. Mills came in. I wasn't paying much attention but I heard the accused say to Capt. Mills "You are trying to make trouble for me". He then remarked that he was a married man with a family and added "If you make trouble for me - I'll get you. You come from Canada, the same as me and I shall remember you there".

Cross-examined by the accused.

Q 1 "Do you think I really meant a threat in my remark?"

A 1 "You made the remark in a very aggressive tongue - I should say that you meant it.

Signed:
Frank Field.

The accused person having been duly cautioned in accordance with R.P. 4 (2)

"I do not wish to make a statement".

The accused at this point does not wish to call witnesses in his defence.

CERTIFIED THAT R.P. 4 COMPLIED WITH.

IN THE FIELD
9 NOV 43.

(R.G. Gillespie) Capt, R.C.A.
Officer detailed to take the summary.

Upon it appearing to me, an authority having power to mitigate, remit or commute the punishment awarded by the sentence that the findings upon the first and second charges, each laid under AA 41, on charge sheet No 1 in respect to the trial of D-19088 Spr Dufresne R.A. held on 25 Nov 43 are invalid and have been set aside, I, having regard to the finding upon the first charge laid under AA 8(2) on charge sheet No II in respect to the trial of the same accused held on 26 Nov 43, mitigate the punishment as awarded by the court and confirmed by the confirming officer to ninety days detention.

In the Field
26 Dec 43

(F.J. Montague) Major-General
Senior Officer
Canadian Military Headquarters

PROMULGATED AND EXTRACTS TAKEN

Accused	Date	Signature of Offr
D.19088 Spr. Robert Dufresne	4 Jan 44	[illegible]

Upon it appearing to me, an authority having power to mitigate, remit or commute the punishment awarded by the sentence that the findings upon the first and second charges, each laid under AA 41, on charge sheet No 1 in respect to the trial of D-19088 Spr Dufresne R.A. held on 25 Nov 43 are invalid and have been set aside, I, having regard to the finding upon the first charge laid under AA 8(2) on charge sheet No II in respect to the trial of the same accused held on 26 Nov 43, mitigate the punishment as awarded by the court and confirmed by the confirming officer to ninety days detention.

P J Montague

(P.J. Montague) Major-General
Senior Officer
Canadian Military Headquarters

In the Field
24 Dec 43

PROMULGATED AND EXTRACTS TAKEN

Accused	Date	Signature of Offr
D.19088 Spr. Robert Dufresne	4 Jan 44	R Dufresne for Capt

5Q-144

Pte Dufresne V E

5Q-144

Pte Dufresne V E

RECORDED AT CMHQ IN AB 160, 5 G 194

FIELD GENERAL COURT-MARTIAL

CFA06 (In lieu of AFA91) 40/P & C/1698 (1944)

4388

Convened by Order of Lt-Col N.M. GEMMELL Comd 9 Cdn Inf Bde dated 12 JUL 45

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C123697 Pte Victor Ernest Dufresne. SD+G Highrs.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 41	Not Guilty	Guilty	
2nd	AA 17	Guilty	Guilty	
3rd	AA 40	Not Guilty	Guilty	
4th	AA 41	Not Guilty	Guilty	
5th	AA 22	Not Guilty	Guilty	
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn b.)

~~As present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 28 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for fifteen (15) months

(Sgd) E.M. Bull Judge-Advocate, if any. May -23 Jul 45 Date awarded. (Sgd) A.K. McTaggart Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further orders~~.(1)

(1. AA 57A. Delete if not used.)

(Sgd) N.M. Gemmell Lt-Col

Date 26 Jul 45 (N.M. Gemmell) Lt-Col Comd 9 Cdn Inf Bde Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. 30 July 45. Signature of Offr. Lt Steward Capt.

C123697 Pte. DUFRESNE V.E.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

PROCEEDINGS REVIEWED [illegible] 20 July 45

REVIEWING OFFICER, JAG BRANCH

ACCUSED.

(For joint trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C123697	Pte		VICTOR ERNEST	DUFRESNE	SD+G Highrs.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 17 JUL 45 18, 20 and 23

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 36182

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to F.H. VANDENBERG, HQ 9 C I B and R. LINN KAGER, HQ 3 C I D as interpreters? Ans No, Sir

Interpreters sworn.(1) Do you object to 83596 S/Sjt J.R. McPHAIL CM&C as shorthand writer? Ans No, Sir

Shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No, Sir. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJ.	A.K. McTAGGART	HLI o/C
Member	LT.	D.M. McDONALD	HQ 9 Cdn Inf Bde
Member	Lt.	J.J. MATHEWS	HLI of C.
Judge-Advocate	MAJ.	E.B. BULL	HQ 3 Cdn Inf Div.
Prosecutor	Lieut	J.C. Kirby	SD+G Highrs
Defending Offr	Capt	C. Hutchens	N.N.S. Highrs

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 3.)

A8. The accused ~~stands~~ before arraignment makes(s) (no) ~~no~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or as one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 61; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~reviewed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C, D + E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

FB160 C2 P5

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respecti circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court u proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs*

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duti Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not und stand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your inter the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be u in evidence against you after you change your plea. If, however, it appears to the Court that your statem affects only the amount of punishment to which you are liable, you will not be advised to change your plea and y will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No, sir
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.~~(1) The Court decides (not) to advise accused to change h ~~(their)~~ plea(s) of Guilty to Not Guilty on 2nd charge(s). ~~The accused is (are) so informed, and he (they) changes his (their) plea(s) on charge(s). Part I of the Schedule is accordingly amended.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex E, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded b using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him ~~(them)~~ again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No sir.(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) ~~(two)~~ opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a *prima facie* case against the accused on the first charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened and the President announces that the submission is disallowed on the first charge(s), ~~and allowed on the charge(s),~~ and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 80(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans I wish to give evidence. Do you intend to call witnesses on your behalf ? Ans No sir. ~~Are they witnesses as to character only ? Ans~~
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the 1, 3, 4 & 5th charge(s), being subject to confirmation, will be promulgated later.(1) ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is (later) amended.~~(2)
(1. *AA 54(3), (4), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and deals with under Record Form B or C.*)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Sir
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex P and Ex Q respectively.(3)
(1. *MFB 255 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes, sir.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(4), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 364.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 14 May 45		Pte	1	AA sec 19 Drunkenness(1st off)	CSM Wilson GF	forf 28 dys	9 Jun 45	Maj JA Forman A/OC	Total - 30 dys pay
7 Jun 45				AA sec 15(1) AWL from 0915 hrs 7 Jun to 1300 hrs 8 Jun 45 (1 day 7 hrs 45 mins)	CSM Wilson GF	pay			
8 Jun 45			2	AA sec 19 Drunkenness(2nd off)					

Certified to be true copy taken from original copy
in my custody.

(W V Bateman) Lt RA Actg
Offr i/c Regt'l Books

Exhibit "G"

No C123697 Name DUFRESNE V.E. | Sqn, Battery, or Company | Corps CIC | Date of enlistment 21 Mar 44 | Trade Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAM/136 (5412)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc JCRayLt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
St John Que	30 Jun 44	Pte		Previous sheet destroyed after 6 mons service..CE.. 21 Sep 44 AWL from 2359 hrs 25 Jun to 0600 hrs 30 Jun 44 (3 dys 6 hrs 1 min) AA sec 15(1)	documentary evidence	4 dys pay sum forf	30 Jun 44	Lt-Col WH Watson	auto forf 4 dys pay
Farnham Que	2 Oct 44			AWL from 2200 hrs 2 Oct to 2045 hrs 3 Oct 44 (22 hrs 45 mins) therefore missing draft AA sec 12(1a)	documentary evidence	14 dys det	4 Oct 44	Col AT Howard	auto forf 1 dy's pay
Field	3 Mar 45	Pte		AA sec 15(1) AWL from 2230 hrs 3 Mar to 2310 hrs 4 Mar 45 (40 mins)	Sgt Plumridge	forf 2 dys pay	6 Mar 45	Lt-Col J Runyon	

(P10)

Exhibit "F" Army

ARMY FORM B.

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
0123697	Private	Dufresne V.E.	S D & G Highlanders

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15(1) 4 times.

For AA Sec 19 2 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 30 Jun 44

Date of last entry in Field Conduct Sheet 8 Jun 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. ~~[illegible]~~

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 43 days in military custody, i.e., 15 days in open arrest, 28 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 23 years

6. The date of his attestation is 21 Mar 44

7. The service which the accused is allowed to reckon is N/A

8. The accused is in possession of‡ nil

‡State the military decorations (if any) held by accused.

9. ~~[illegible]~~ N/A

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27833) Wt.24939/3404 24,000 7/44 A.& E.W.Ltd. Gp.698 Forms/B.296(War)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N/A		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 23rd day of July 1945

H. W. Bateman Jr.
Capt.
S. D. G. Higher

17 Jul 45.

I have this morning examined C123697 Pte Dufresne V.E.

and find him fit to undergo trial by Court Martial.

Capt.

(M.O., S D & G Highlanders)

18 July 1945

I Certify that I have this morning examined C.123697 Private Dufresne, V.E. and I find him fit to undergo trial by Court Martial.

M.O., S.D. & G. Highlanders

20 Jul 45.

Certified that I have examined 0123697 Pte Dufresne V.E.

and I find him fit to undergo trial by Court Martial.

(M.O., S D & G Highlanders)

I CERTIFY that I have this morning examined C.123697 Private Dufresne, V.E. and I find him fit to undergo trial by Court Martial.

23 Jul 45

R. Elliott Capt.
M.O., S.D. & G. Highlanders.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-123697	Pte	Victor Ernest	DUFRESNE	S & G Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 Jul 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not possible to delay the trial for reasons to a superior quality of service)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) those Offr to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	A F McTAGGART	HLI of C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J S FLEMING	Nth NS Highrs
Lt	D H McDONALD	Hq 3 Cdn Inf Bde

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	J J MATHEWS	HLI of C

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Maj	E B BULL	Hq 3 Cdn Inf Div

On Active Service in the Fd

in HOLLAND (Country.)

Dat 12 Jul 45

(Signed personally. RP 105 fn 2.) (N M Gemmell) Lt-Col — Lt-Col (Rank.)

Commanding Comd 9 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (PAM 90 (in lieu of AFA 3) 40/P & R/1697 (8142))

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused, No. C123697 Private VICTOR ERNEST DUFRESNE, of the Stormont Dundas and Glengarry Highlanders, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
A.A. Sec. 41

WHEN ON ACTIVE SERVICE, committing a civil offence, that is to say, stealing,
in that he,
in the Field in Holland, on the 10th day of June, 1945, stole the sum of Four Hundred (400) Guilder, the property of MARRIAGJE PRINS, of the City of Amsterdam, wife of Paulus Lamfers, of the same place.

SECOND CHARGE
A.A. Sec. 19

WHEN ON ACTIVE SERVICE, drunkeness,
in that he,
in the Field in Holland, on the 10th day of June, 1945, was drunk.

THIRD CHARGE
A.A. Sec. 40

WHEN ON ACTIVE SERVICE, conduct to t he prejudice of good order and military discipline,
in that he,
in the Field in Holland, on the 10th day of June, 1945, did create a disturbance in a civilian cafe at 131 Van Anstelstraat in Hilversum, Holland.

FOURTH CHARGE
A.A. Sec. 41

WHEN ON ACTIVE SERVICE, committing a civil offence, that is to say, assault, contrary to Section 47 of "The Offences Against the Persons Act, 1861"
in that he,
in the Field in Holland, on the 10th day of June, 1945, assaulted WILLEM VERBEEK, of the City of Hilversum, civil policeman, thereby occasioning him actual bodily harm.

FIFTH CHARGE
A.A. Sec. 22

WHEN ON ACTIVE SERVICE, when in arrest, escaping,
in that he,
in the Field in Holland, on the 10th day of June, 1945, when under close arrest, escaped.

(J. C. Stothart) Major,
A/ Officer Commanding,
Stormont, Dundas & Glengarry Highlanders, C.A.C.

In the Field, Holland,
11 July 1945.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(N M Gammell) Lt-Col
Comd 9 Cdn Inf Bde

In the Field
12 Jul 45.

CASE OF

C.123697 Private Victor Ernest DUFRESNE, Stormont Dundas and Glengarry Highlanders, a soldier of the Canadian Army Overseas.

OPENING ADDRESS BY PROSECUTOR

Sir, as the facts of this case are rather complicated I will make an opening address. The accused has already pleaded guilty to the charge of drunkenness, and the prosecution intends to prove the accused guilty of the remaining four charges. The prosecution will show that between 1700 and 1900 hours on the 10 June 45 the accused entered a cafe at 131 Van Amstelstraat in Hilversum, Holland, operated by it's proprietress, Dinie Versteeg. In the cafe there were, among others, Mr. and Mrs. Lamfers of Amsterdam and Pte. W.A. Bartlett of 9 Cdn Inf Bde, as well as the father and mother of the proprietress. The accused was accompanied by one, Pte. W.R. Moore. The evidence of the prosecution will show that as a result of the presence of the accused at the Cafe certain disturbances took place, such as fighting, smashing, and that as a result of his pugnacious attitude fright was caused to the guests, and that he actually assaulted one of them. The evidence will also show that at the rear of the Cafe stood two bicycles, belonging to Mr. and Mrs. Lamfers of Amsterdam. One bicycle had on it the handbag of Mrs. Lamfers which contained 400 guilders, which was the total savings of the household money of the two of them. It will be shown that the accused stole that money. After leaving the Cafe the accused proceeded down Van Amstelstraat and three independent witnesses will show that the accused assaulted the Head Agent of the Civil Police of Hilversum, who in the execution of his duty received actual bodily harm at the hands of the accused. Finally the Provost arrived in a Jeep and three witnesses will testify that the accused was arrested by the Provost and put in the back of a 1500 wt. to be taken to headquarters. On the road there two witnesses will testify that the accused leaped out of the back of the truck and ran into a yard and that the Provost gave chase; that the accused was rearrested and taken back to the truck and from there on to the Provost Headquarters. This is a brief summary of the prosecution's case against the accused. I intend giving evidence myself in this case, and according to Rules of Procedure, I forget which section, I should give my evidence immediately after my opening address. I would like to forego giving evidence at this time as at a later time I could make it fit in so much better with other evidence. However, it is for the Court to decide if I will be allowed to do so.

QUESTION BY THE JUDGE ADVOCATE

Mr. Defending Officer, have you any objection to the Prosecutor giving his evidence at a later stage of the proceedings, or, any comments to make?

ANSWER BY THE DEFENDING OFFICER

I have no objections, sir.

JUDGE ADVOCATE

Mr. Prosecutor, you will be allowed to give your evidence when you desire to do so.

CASE OF

C.123697 Private Victor Ernest DUFRESNE, Stormont Dundas and Glengarry Highlanders, a soldier of the Canadian Army Overseas.

1ST WITNESS for the PROSECUTION — Josephine Elizabeth Philipsen, 131 Amstelstraat, Hilversum, (Mrs. Den Enting) Netherlands, having been duly sworn is examined by the Prosecutor:

Q.1 You are Josephine Elizabeth Philipsen, wife of A.J. Den Enting, and residing at 131 Amstelstraat, Hilversum, Netherlands?
A.1 Yes.

Q.2 Will you tell the Court in your own words what happened on the 10 Jun 45, at approximately 5 o'clock in the afternoon?
A.2 At 5 o'clock that day two Canadian soldiers came into the Cafe.

Q.3 Do you either of those Canadians in this room?
A.3 Yes. (Indicates the accused)

Q.4 At what address is this Cafe?
A.4 131 Amstelstraat, Hilversum, Netherlands.

Q.5 Will you proceed with what happened that day?
A.5 The two Canadians came into the Cafe and they would trade cigarettes for gin. My daughter was standing behind the counter and she did not want to trade cigarettes for gin. These soldiers kept on trying so my daughter left the Cafe and went into the back room.

Q.6 What room do you mean by the back room?
A.6 The living room.

Q.7 Then what happened?
A.7 The two soldiers followed her into the small room and then my daughter went to the small bar in the living room and got a bottle of gin. One of the soldiers took two packages of cigarettes out of a box in his pocket.

Q.8 Is the soldier in this room now who took the cigarettes out of his pocket?
A.8 No, he is not not in here, sir.

Q.9 Go on?
A.9 My daughter then went to the kitchen and one of the soldiers followed her.

Q.10 Is that soldier in this room now?
A.10 Yes,(indicates the accused)

Q.11 Go on.
A.11 He took off the kitchen cupboard a bottle of vinegar and then I told him that it was only vinegar but the soldier put it into his pocket. I tried to stop him and asked him not to take it, so, the soldier asked,"what do you want", and then the soldier went into the living room again and my daughter told the soldier to leave the room. I then missed a bottle of gin, or, my daughter missed a bottle of gin.

Q.12 Was the accused present when you missed the bottle of gin?
A.12 The soldiers were in the road across from the Cafe. I went into the street to find the soldier, and there I saw a Canadian soldier with a bottle of gin in his pocket.

Q.13 Was the soldier you saw with the gin the one who is in this room now?
A.13 No, but the soldier told another soldier that this fellow did take the bottle out of the room.

Q.14 Which soldier spoke to which soldier?
A.14 There was a strange soldier and so he told me.

Q.15 Who was this strange soldier that told you?
A.15 One of the accused soldiers. He told me that he bought the bottle of gin.

Q.16 Is this the accused soldier that is in the room now?
A.16 No.

Q.17 Go ahead with your story.
A.17 I followed the soldiers with my husband and then I went home again. At about 7 o'clock the same two soldiers came back and they were drunk.

Q.18 And on what day was this?
A.18 It was on the same day, Sunday.

Q.19 Can you remember the date?
A.19 I don't know for sure but it was about five or six weeks ago.

Q.20 Proceed with your story.
A.20 This time the soldiers came to the side door which was closed, and so I told my daughter...

Q.21 I do not want to hear of any conversations that took place but only of what you did.
A.21 I could see the two accused because there was a glass window. They came to the door so my daughter and I opened the door and let them in and then my other guests came out of the living room.

Q.22 Who were these other guests?
A.22 Mr. and Mrs. Lamfers and my husband and a Canadian soldier.

Q.23 Do you know the name of the Canadian soldier?
A.23 No, I do not know his name. Then Moore told me that he wanted to trade cigarettes for gin and so I asked the Canadian soldier to tell them that I did not have any gin.

Q.24 Was this Canadian soldier the same one as referred to in the last question?
A.24 Yes.

Q.25 Please continue?
A.25 And so one of the soldiers punched the Canadian guest in the eye.

Q.26 Is the soldier who did this in this room now?
A.26 Yes. (Indicates accused) And then they started running around the room and around the billiard table and he seized him by his throat..

Q.27 Who do you mean by he?
A.27 This one. (indicates the accused) He took my Canadian guest and threw him on the floor. Then the Canadian Soldier ran out of the Cafe.

Q.28 Which Canadian soldier ran out of the Cafe?
A.28 The beaten soldier. Then the other Canadian soldier told me that he wanted some gin.

Q.29 Is the Canadian soldier who wanted the gin in this room now?
A.29 Yes. (indicates the accused) I told him I didn't have any and so he went into the living room. The other soldier with him stayed in the Cafe. I heard him opening the door in the living room. Later we missed four packages of cigarettes.

Q.30 When did you miss these cigarettes?
A.30 As soon as the Canadian soldiers left the Cafe. While this soldier was in the living room the other soldier standing in the Cafe shouted O.K. every while.

Q.31 Did you see the accused go into the living room?
A.31 Yes.

Q.32 Did you see what he was doing in there?
A.32 No, I could just tell by the sound that he was into the cupboard.

Q.33 What else did you hear?
A.33 I heard the opening of the kitchen cupboard.

Q.34 Did you hear anything else?
A.34 I heard him go out of the kitchen into the back yard.

Q.35 Did you hear this or see it?
A.35 I saw it.

Q.36 And then what happened?
A.36 The Canadian soldiers went into the barn where we had two bicycles.

Q.37 You had seen these two bicycles in the barn?
A.37 Yes, we had put them there.

Q.38 Who do you mean by, "we"?
A.38 My husband and the man who owned the bicycles.

Q.39 You saw those two men put the bicycles into the barn?
A.39 Yes.

Q.40 What else did you hear while the accused was in the living quarters?
A.40 I did hear that they went into the barn where we had some empty bottles.

Q.41 When the accused was in the living quarters was there anyone else there besides him?
A.41 No.

Q.42 How long was the accused in the living quarters?
A.42 A long ten minutes, I do not know for sure.

Q.43 Why did you leave the accused in the living quarters alone?
A.43 We were afraid of the soldiers, they were drunk.

Q.44 What happened after that?
A.44 They were a long time in the back yard, then they came into the Cafe again.

Q.45 Who do you mean by they?
A.45 Moore and this other Canadian soldier (indicates the accused).

Q.46 And then what?
A.46 Both my daughter and I were standing in the corner door.

Q.47 The corner door of what?
A.47 Of the Cafe.

Q.48 When did you next see the accused?
A.48 I went into the street.

Q.49 My question was, "when did you next see the accused"?
A.49 We were standing in the corner door of the Cafe and I saw the two soldiers walking with a Dutch policeman.

Q.50 You mean the two soldiers and the Dutch policeman were walking side by side?
A.50 I saw the two Canadian soldiers jump out of a car and jump over a fence into a side street.

Q.51 Did you see the two soldiers go out of the Cafe?
A.51 Yes.

Q.52 How long was it from when the two soldiers went into the barn until they went out the door of the Cafe?
A.52 It was about ten minutes time.

Q.53 Did you notice anything different about these two soldiers?
A.53 They were drunk and so Mr. Lamfers said, "Everything is Kaput".

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q.54 Is this Cafe open on Sunday's?
A.54 Yes.

Q.55 Do you speak English?
A.55 No.

Q.56 Had the accused been in the Cafe before that day?
A.56 I had never seen him before.

Q.57 Was he promised gin for cigarettes if he came back later?
A.57 No.

Q.58 But he did get gin for cigarettes the first time he was there?
A.58 Yes, he took the gin he did not have it given to him.

Q.59 Did the Canadian soldier who was a guest in the house speak Dutch?
A.59 No.

Q.60 Why did the Canadian soldier go to the door when the others came up?
A.60 I asked him to see the Canadian soldiers and to talk to them.

Q.61 But he did not speak Dutch, how did you ask him?
A.61 I figured it out with motions made with my hands.

Q.62 Was the Cafe not open at that time?
A.62 Yes the Cafe was open but the side door was closed, only the front door was open.

Q.63 Did you tell the Canadians, or make signs with your hands, for them to go away?
A.63 Yes, that was the second time they came.

Q.64 Where did this side door lead to?
A.64 That door led to a side street.

Q.65 What room does this door lead into?
A.65 Through the side door into the corridor and to the private room in the Cafe.

Q.66 If your Cafe was open why could the soldiers not come in by the side door?
A.66 My brother-in-law died and so I do not like that guests enter by the side door.

Q.67 Why did you not tell your Canadian guest to tell the soldiers to come around to the front door?
A.67 I was afraid of the two soldiers as they were drunk.

Q.68 When the two soldiers went into the living room and then into the kitchen, where were you?
A.68 I was at that moment at the private door in the Cafe.

Q.69 You did not see them go into the kitchen?
A.69 I did not see but I did hear that they were in the kitchen and opened the door of the cupboard.

Q.70 You did not see them leave the kitchen either?
A.70 No, I could not see them.

Q.71 Could you hear them?
A.71 Yes, I could hear the empty bottles.

Q.72 Where were those empty bottles?
A.72 They were in the barn.

Q.73 Did you see them go into the barn?
A.73 I did not see because I was standing in the Cafe, but I could hear.

Q.74 Do you know whether the door of the barn was shut or not?
A.74 The door of the barn was open. We open it every morning.

Q.75 How far, in your opinion, were you standing from the barn when you heard the bottles being rattled?
A.75 About the length of this room, maybe a little bit longer.

Q.76 How many metres would that be?
A.76 About 8 or 9 metres, I do not know for sure.

Q.77 Were there not two rooms and a yard between where you were standing and the barn you refer to?
A.77 Yes, there is the living room and the kitchen.

Q.78 How large are these rooms?
A.78 I do not know how many metres but they are small rooms.

Q.79 Are the rooms as large as this room we are now in?
A.79 Both together are as large as this room.

Q.80 You were asked what had happened on the 10 Jun 45, later you were asked as to the date these things occurred, you answered then that you were not sure; could it not have been the 12 Jun 45 that this happened?
A.80 It might have been.

THE PROSECUTOR DECLINES TO RE-EXAMINE THIS WITNESS

QUESTIONED BY THE COURT

Q.81 You stated that two soldiers walked with a civilian policeman down the street and then that the two soldiers jumped from the truck and over a fence. How did the soldiers get from the side of the policeman into the truck, and what happened between the time they left the policeman and got over the fence?
A.81 I did say that the soldiers jumped out of the truck, jumped over the fence and the police caught them and put them back in the truck

Q.82 Who put the Canadian soldiers in the truck?
A.82 The Canadian police.

Q.83 And you said the Dutch police also got into the truck with the Canadians?
A.83 I did not say that.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH RULE OF PROCEDURE 85 (B)

THE WITNESS WITHDRAWS

2ND WITNESS for the PROSECUTION Abraham Johannes Den Enting, 131 Amstelstraat, Hilversum, Netherlands, having been duly sworn, is examined by the Prosecutor:

Q.84 What is your name?
A.84 Abraham Johannes Den Enting.

Q.85 And where do you live?
A.85 At 131 Amstelstraat, Hilversum.

Q.86 And what country is that?
A.86 In the Netherlands.

Q.87 Do you recognize the accused who is sitting over there?
A.87 Yes.

Q.88 When did you first see this accused?
A.88 At 5 o'clock on a Sunday afternoon.

Q.89 On what day of the month was that?
A.89 It was about 6 weeks ago.

Q.90 What month?
A.90 It was in June.

Q.91 What part of the month of June?
A.91 In the beginning of the month.

Q.92 Can you guess at the day of the month, the date when you first saw the accused?
A.92 My guess is the 10 Jun 45, but I do not know for sure.

Q.93 What was the accused doing when you first saw him on that day?
A.93 He entered the Cafe.

Q.94 And what did he do then?
A.94 He asked if he could trade cigarettes for gin.

Q.95 Of whom did he ask that question?
A.95 He asked it to my daughter.

Q.96 What did your daughter do?
A.96 My daughter told him that she did not have any gin and that she would not trade gin for cigarettes. Then my duaghter left the Cafe and went into the living room.

Q.97 What did the accused do then?
A.97 He followed her into the living room and then he went into the kitchen.

Q.98 What did you see the accused do in the kitchen?
A.98 He took a bottle of vinegar out of the kitchen cupboard. Then he left.

Q.99 Did you see the accused leave the Cafe?
A.99 Yes.

Q.100 When did you see the accused again?
A.100 At 7 o'clock the same day.

Q.101 Under what circumstances did you see the accused at 7 o'clock?
A.101 He was drunk.

Q.102 What was the accused doing when you saw him the second time?
A.102 He tried to go into the side door but it was locked.

Q.103 Why was the side door locked?
A.103 We were afraid and so we locked the side door.

Q.104 What happened at the side door?
A.104 They came to the side door and then my daughter and my wife opened the side door. My Canadian guest tried to tell the two Canadian soldiers to go away.

Q.105 Do you know the name of this Canadian guest?
A.105 No, I do not know his name.

Q.106 Was he a soldier?
A.106 Yes.

Q.107 Then what happened?
A.107 This accused kicked my Canadian guest in the face.

Q.108 He kicked him in the face?
A.108 Yes, he kicked him with his fist.

Q.109 And then what happened?
A.109 These two men fought together across the pool table and then on the floor, then this accused fell on my Canadian guest and then they

stood up and shook hands with each other.

Q.110 What did the accused do then?
A.110 Then he left the Cafe and went into the living room.

Q.111 Was anyone else in the living room?
A.111 At that precise moment there was nobody.

Q.112 Did you see what the accused was doing in the living room?
A.112 No.

Q.113 Could you hear him?
A.113 Yes, I heard him open and close the cupboard.

Q.114 Did you hear anything else?
A.114 No.

Q.115 How long was the accused in the living room?
A.115 About 10 minutes.

Q.116 And there was no one else in the living room at that time?
A.116 There was nobody in the living room except the accused and the other soldier would not let us in the living room.

Q.117 Who do you mean by the other soldier?
A.117 I do not know his name.

Q.118 Have you seen him here today?
A.118 Yes.

Q.119 Then by the other soldier you mean the one who was with this accused on that occasion?
A.119 Yes.

Q.120 After the accused had gone into the living room when did you next see him?
A.120 I saw him when he came out again after about 10 minutes.

Q.121 And what was he doing then?
A.121 He had a bottle of alcohol with him. He took a shot out of the bottle and then he left the building.

Q.122 Did you see the accused go into the back shed?
A.122 No, I am sorry, I did not see him.

Q.123 How many, or,who were your guests that afternoon?
A.123 Mr. and Mrs. Lamfers of Amsterdam, and a Canadian soldier, I do not know his name, and there was my daughter and my wife.

Q.124 When did Mr. and Mrs. Lamfers arrive at the Cafe?
A.124 About 2o'clock on that Sunday afternoon.

Q.125 By what means did they come?
A.125 They came to visit me.

Q.126 By what means did they come from Amsterdam?
A.126 They came by bicycles.

Q.127 What did they do with the bicycles after they arrived?
A.127 At first they were standing in the Cafe and after we put the bicycles against the barn.

Q.128 Who do you mean by we?
A.128 Mr. Lamfers and myself.

Q.129 At what time did you put them against the barn?
A.129 It was after 3:30.

Q.130 Were the bicycles equipt with any bags?
A.130 Yes.

Q.131 Who's bicycle was equipt with bags?
A.131 The man's bicycle had two bags, one on each side of the bicycle.

Q.132 Did you ever, that day, go near the shed again?
A.132 After the Canadian soldiers had gone I went to the barn.

Q.133 And what did you find at the barn?
A.133 That the bikes were lying on the ground and that the two bags were open.

Q.134 Did you see anyone other then the accused go to the shed that afternoon?
A.134 I saw Mrs. Lamfers go to the barn.

Q.135 When did she go to the barn?
A.135 As soon as the Canadians had left.

Q.136 Did she go to the barn before or after you did?
A.136 She went before me.

Q.137 How long did she remain in the barn?
A.137 Only a few seconds.

Q.138 And then what happened?
A.138 She came back yelling.

Q.139 And what else was she doing?
A.139 Then she went into the street and after that I did not follow her.

Q.140 How long have you known Mrs. Lamfers?
A.140 About 8 or 9 years.

Q.141 When she came back from the barn did she appear the same as usual?
A.141 She was very nervous, she was crying.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q.142 Were the two soldiers drunk the first time they came to the Cafe?
A.142 They were hardly drunk.

Q.143 Were they drunk the second time they came to the Cafe?
A.143 Yes.

Q.144 What made you think they were drunk?
A.144 They did not do normal things.

Q.145 What did they do?
A.145 They did everything just as if they were crazy.

Q.146 Do you think that they knew what they were doing?
A.146 When they came the second time I do not believe they knew what they were doing.

Q.147 You have said the side door was locked because you were afraid. What were you afraid of?
A.147 We saw that there was something wrong with the two soldiers when we saw them coming up the street and so we locked the side door.

Q.148 Did you use the side door otherwise?
A.148 If it is warm weather the side door is left open.

Q.149 Do people enter the Cafe from the side door?
A.149 When the door is open, yes.

Q.150 You have said that you put the two bicylces in the shed and again that you put them against the shed, which is correct?
A.150 They were against the shed.

Q.151 Do you remember having been examined before concerning these instances?
A.151 Yes.

Q.152 Did you say at that time that you put the bicycles in the shed or against the shed?
A.152 I did say that I put the bicycles against the barn.

Q.153 When you were examined before did you not say, "on her arrival earlier in the day I had put her bicycle in that shed"?
A.154 There is a barn. Between the kitchen and the barn, surrounded by walls, is a yard, that also is called the barn.

Q.155 Which barn did you refer to when you said, "I put the bicycles in that shed"?
A.155 I mean the barn without the roof on it, so it is the back yard.

Q.156 On which bicycle were the bags?
A.156 On the man's bicycle.

Q.157 Were there any bags on the other bicycle?
A.157 No.

Q.158 When you were examined before, do you remember saying, "On her arrival earlier in the day I had put her bicycle in that shed and in so doing did notice that there were two bags attached to her bicycle, one on each side of the rear wheel". Were those bags on her bike or were they on the man's bike?
A.158 They were on the man's bike.

THE PROSECUTOR DECLINES TO RE-EXAMINE THIS WITNESS

QUESTIONED BY THE COURT

Q.159 You have said, in reference to the accused, "he asked if he could trade cigarettes for gin, and my daughter said she had no gin for cigarettes". Was the soldier looking for gin or for cigarettes?
A.159 He had cigarettes with him and he would trade the cigarettes for gin.

QUESTIONED BY THE JUDGE ADVOCATE

Q.160 You have stated that the accused went into the living room and that you heard some cupboards being opened?
A.160 Yes, that is right.

Q.161 Did anybody go into the living room after the accused went in?
A.161 No.

Q.162 The other Canadian soldier never went into the living room?
A.162 First he was standing in front of the door which leads to the living room and after that he entered the living room too.

Q.163 Where were you standing while the two of them were in the living room?
A.163 I was standing in the Cafe.

Q.164 Could you see into the living room?
A.164 Through the window you could see into it.

Q.165 Did you see into the living room?
A.165 Yes, I did see into the living room.

Q.166 What did you see?
A.166 I could not see anything.

Q.167 Did you see the accused and the other soldier go out of the living room?
A.167 Yes.

Q.168 Where did you see them go?
A.168 I saw them go through the main door.

Q.169 The main door of what?
A.169 The main door of the Cafe.

Q.170 How long after they went into the living room was if before they came out of the living room?
A.170 About 10 minutes.

Q.171 And do you know what they were doing during that 10 minutes?
A.171 No.

Q.172 Were you standing by the door to the living room for all the 10 minutes that they were in the living room?
A.172 Yes, I was.

Q.173 Is there any other door out of the living room?
A.173 No.

Q.174 So the soldiers could not go out of the living room into the shed without coming out of that door of the living room?
A.174 They had to go through the living room door.

Q.175 And the two soldiers did not go out into the barn to your knowledge?
A.175 Yes, they went through the doorway where I was standing and went into the barn.

Q.176 You now say you saw them come out through that door. A few minutes ago you said they did not come out of that door. Which is correct?
A.176 They did come out.

(The witness makes a drawing of the plan of his house. Drawing produced to the Court and marked EXHIBIT "A")

Q.177 Did you see the accused or the other Canadian soldier go out of the living room into the kitchen?
A.177 No.

Q.178 So, as far as you know, while the accused was in the living room he stayed in the living room?
A.178 Yes, I could not see.

Q.179 Is there any other way of getting into the back yard, other then through the kitchen?
A.179 Yes, there is a gate but it was looked.

Q.180 Where is that gate?
A.180 In the back yard.

Q.181 Did you notice the condition of the bags when you took the bikes out to the back yard?
A.181 Yes, they were tied together with two straps and were on both sides of the bicycle.

Q.182 Were the bags closed?
A.182 Yes.

Q.183 When you came out after the soldiers had left were the bags in the same condition?
A.183 Yes, only that they were open.

Q.184 You have stated that you do not think the accused and the other soldier knew what they were doing, is that right?
A.184 The second time I do not think they knew what they were doing.

Q.185 Could they walk?
A.185 Yes, but not too good.

Q.186 Could they talk?
A.186 Yes.

Q.187 And they could discuss the transfer of cigarettes for gin?
A.187 They made signs with their hands so we knew what they would have.

Q.188 Could you understand their signs?
A.188 No, I could not understand.

Q.189 Then how did you know that they wanted gin for cigarettes?
A.189 They showed me the cigarettes and made signs with their hands.

Q.190 Then you could understand their signs?
A.190 Yes.

QUESTION BY THE JUDGE ADVOCATE

Mr. Defending Officer, have you any further cross-examination, which might have arisen through my examination of the witness?

ANSWER BY THE DEFENDING OFFICER

Yes, sir.

CROSS-EXAMINATION BY THE DEFENDING OFFICER (WITH THE PERMISSION OF THE COURT)

Q.191 When you were examined before you said, "I then went into the shed and I saw that the two bicycles were on the floor and I noticed that the straps on both of the bags on the bicycle of the wife of Paulus Lamfers were unbuckled". Is that correct?
A.191 I do not know exactly. The bicycles were lying one on top of the other and I do not know whether it was Mr. or Mrs. Lamfers bicycle.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH RULE OF PROCEDURE 83 (B).

THE WITNESS WITHDRAWS

At 1230 hours on the 17 Jul 45 the Court adjourned until 1400 hours on the 17 Jul 45.

On the 17 Jul 45 at 1400 hours the Court reassemble pursuant to adjournment, present the same members as when adjourned.

3RD WITNESS for the PROSECUTION: Dinie Versteeg, 131 Amstelstraat, Hilversum, Netherlands, having been duly sworn is examined by the Prosecutor:

Q.192 You are Dinie Versteeg, 131 Amstelstraat, Hilversum, Netherlands?
A.192 Yes.

Q.193 I show you this drawing. Is this a fair replica of the place where you live?
A.193 Yes.

(Prosecutor produces to the Court a drawing of the plan of the house at 131 Amstelstraat, Hilversum, Holland. Accepted by the Court and marked EXHIBIT "B")

Q.194 Who is the owner of the business of this Cafe?
A.194 I am.

Q.195 Do you recognize the accused who is sitting over there?
A.195 Yes.

Q.196 When did you first see him?
A.196 It was on a Sunday, I don't remember the date.

Q.197 In what month was this?
A.197 In June, I believe it was the 10th of June. He came to my Cafe.

Q.198 What did the accused do when he came to your Cafe?
A.198 He wanted to trade cigarettes for gin.

Q.199 In what part of your dwelling did you see the accused?
A.199 He first came into the Cafe, he then went into the parlour and then into the kitchen.

Q.200 Did you give the accused permission to go into the living room of the house?
A.200 No.

Q.201 What guests, if any, did you have in your Cafe?
A.201 I had some guests in the living part of the house but I don't know what guests were in the restaurant.

Q.202 What did the accused do in the living room?
A.202 He wanted to trade cigarettes for gin but I did not want to because it was not enough. After that he went to the kitchen and took a bottle of vinegar.

Q.203 Did the accused have your permission to do that?
A.203 No.

Q.204 Were there any other Canadian soldiers in your dwelling?
A.204 Not at 5 o'clock, that was the first time, but later I remember that there was one other soldier.

Q.205 What was his name?
A.205 Bill, I do not know his surname.

Q.206 During the visit of the accused, what did Bill do?
A.206 He was sitting at the table.

Q.207 Did he sit at the table all the time?
A.207 Yes, during the first visit, he was there during the first visit.

Q.208 When did the first visit end?
A.208 About a quarter past five.

Q.209 After that time did you see the accused again?
A.209 Yes, at about 7 o'clock.

Q.210 Was this soldier named Bill still on the premises?
A.210 Yes. He was not in the restaurant, he was in the living part.

Q.211 What did Bill do during the second visit?
A.211 I asked him to go to the restaurant to speak with the other two.

Q.212 What else did he do?
A.212 The accused and Bill had a fight.

Q.213 Describe the fight?
A.213 Bill went over to the two soldiers to tell them that I had nothing to trade, then the accused smashed him so that he fell to the floor.

Q.214 Then what happened?
A.214 They went to the living part and smashed a window pane.

Q.215 Who smashed the window pane?
A.215 I do not know who did it.

Q.216 Did you see the window pane being smashed?
A.216 I heard it. I heard glass smashed.

Q.217 Do you know what pane of glass was smashed?
A.217 It was the window pane of the living room door.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q.218 What time does you Cafe open on Sundays?
A.218 At 10 o'clock.

Q.219 What time does it close?
A.219 There is no certain closing time. One time may be 9 o'clock, there is no certain time.

Q.220 Does it sometimes close earlier than 9 o'clock?
A.220 Most of the time it is after 9 o'clock, it depends on how busy it is.

Q.221 On the Sunday in question was it closed at 7 o'clock?
A.221 No.

Q.222 You have said that you do not know what date this incident occurred, you said, "I guess it was about the 10th", what made you say, "I guess"?
A.222 I think it was about 6 weeks ago, so that is why I say the 10th. I did not write the date on a slip of paper.

Q.223 Could it have been a week before or a week after that date?
A.223 Yes, it might have been.

Q.224 Do you speak English?
A.224 No.

Q.225 How did you tell Bill what to say when he went to the side door?
A.225 I told him with my hands.

Q.226 What did you tell Bill to tell them?
A.226 I told Bill to tell them that I had nothing to trade and for them to go away.

Q.227 Are you sure that it was the accused who struck Bill?
A.227 I am almost sure that it was the accused.

Q.228 Is there a wall around your property?
A.228 At the back there is a wall.

Q.229 Is there a wall between the back yard and the Street?
A.229 Yes.

Q.230 Is there a door in the wall?
A.230 Yes.

Q.231 Was that door locked on the Sunday in question?
A.231 Yes.

Q.232 How do you know it was locked?
A.232 Because I locked it myself.

Q.233 When did you lock it yourself?
A.233 In the afternoon.

Q.234 What kind of a lock is on the door?
A.234 There is a piece of wood hanging on two nails and there is a lock on it.

Q.235 What kind of a lock?
A.235 It is a common lock.

Q.236 Is it the type of lock you use a key in?
A.236 Yes.

Q.237 Where was the key?
A.237 In the drawer of the glass cupboard of the kitchen.

Q.238 Do you know if the key was removed from that drawer that day?
A.238 When they put the bikes at the back side of the house then the key was removed. After that I placed it back in the drawer.

Q.239 Were the bikes taken through the door in the wall?
A.239 Yes.

Q.240 Was the door locked after the bikes were taken through?
A.240 Yes.

Q.241 Who locked the door then?
A.241 I think it was my father.

Q.242 Do you know for sure if it was your father locked the door?
A.242 I am not sure who did it.

Q.243 Do you know for sure that the door was locked after the bikes were taken through?
A.243 Yes, I am sure.

Q.244 How do you know?
A.244 I am sure because I went around the back from the street and I could not go in because it was locked.

Q.245 Why did you go to the door from the street side?
A.245 I wanted to to to the street from the inside.

Q.246 When did you want to go to the street from the inside?
A.246 About 5:15.

Q.247 Why did you want to go to the street?
A.247 I wanted to go around to enter my restaurant at the front side.

Q.248 Could you not go to the restaurant through the house?
A.248 The soldiers were in the house and I could not go past them.

Q.249 Did you go through that door before the soldiers left?
A.249 No, I went to the door but it was locked and I went back to get the key and then they were away.

Q.250 Did you see the soldiers after they went into the living room?
A.250 Do you mean at 7 o'clock?

Q.251 Yes, at 7 o'clock.
A.251 Yes, I saw them standing in the front, so I left the restaurant because I was afraid.

Q.252 You saw them standing in the front of what?
A.252 In the front of the restaurant.

Q.253 Did you see the soldiers go into the kitchen at any time?
A.253 At 5 o'clock I saw them go into the kitchen but not after that time because I went outside.

Q.254 You have said the soldiers were standing in front of the Cafe when you tried to go through the door to the street? Was that at 7 o'clock?
A.254 I tried to go out the back side door at 5 o'clock.

Q.255 How high is the wall between the court yard and the street?
A.255 I could not say.

Q.256 Approximately how high?
A.256 I have no idea.

Q.257 Is it as high as I am?
A.257 It is a bit higher.

Q.258 Very much higher?
A.258 About a foot higher.

THE PROSECUTOR DECLINES TO RE-EXAMINE THIS WITNESS

NO QUESTIONS BY THE COURT

QUESTIONED BY THE JUDGE ADVOCATE

Q.259 At what time did Mr. and Mrs. Lamfers come to your Cafe?
A.259 At about fifteen minutes to two.

Q.260 At what time were the bikes put into the courtyard?
A.260 At about 3:30.

Q.261 From 3:30 until 7 o'clock how many people went from the Cafe into the courtyard, to your knowledge?
A.261 There was nobody.

Q.262 How do you know?
A.262 To my knowledge nobody went into the courtyard.

Q.263 Where were you during all this time?
A.263 From 3:30 until 5 o'clock I was in the Cafe and after that I went to my bedroom.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH RULE OF PROCEDURE 88(B)

THE WITNESS WITHDRAWS

4TH WITNESS for the PROSECUTION — Marriagje Prins, 64 Marco Polo Straat, Amsterdam, Netherlands, having been duly sworn is examined by the Prosecutor:

Q.264 You are Marriagje Prins of 64 Marco Polo Straat, Amsterdam, Netherlands?
A.264 Yes.

Q.265 Are you married?
A.265 Yes.

Q.266 What is the name of your husband?
A.266 Paulus Lamfers.

Q.267 Where does he live?
A.267 In Amsterdam at 64 Marco Polo Straat.

Q.268 Do you recognize the accused who is sitting over there?
A.268 Yes.

Q.269 Where have you seen him before?
A.269 I saw him in Hilversum at 131 Amstelstraat, in the Cafe.

Q.270 Who lives at that address?
A.270 The widow Versteeg.

Q.271 On what day did you see the accused there?
A.271 I think it was the 18th of June.

Q.272 On what day of the week was it?
A.272 It was on a Sunday.

Q.273 At what time of the day did you arrive there?
A.273 At about 2 o'clock.

Q.274 How did you get from Amsterdam to this address?
A.274 On my bicycle.

Q.275 Did you travel alone?
A.275 My husband was with me.

Q.276 How did he travel?
A.276 He was on his bicycle.

Q.277 When you arrived what happened to the bicycles?
A.277 They were put in the Cafe first and after that they were taken to the courtyard.

Q.278 Who took them into the courtyard?
A.278 Mr. Den Enting and my husband.

Q.279 Who took your bicycle?
A.279 Mr. Den Enting.

Q.280 Did your bicycle have any bicycle bags on it?
A.280 My bicycle had a dog bag on it and my husbands bicycle had double bicycle bags.

Q.281 On what part of the bicycle were these bicycle bags?
A.281 They were on the back part of the carrier.

Q.282 Do you know what those bicycle bags contained?
A.282 Yes.

Q.283 What did they contain?
A.283 On one side were two raincoats and on the other my handbag.

Q.284 Do you know what the handbag contained?
A.284 In my handbag was another bag and in this bag were ration cards, identity card and a small purse.

Q.285 What did the small purse contain?
A.285 400 guilders in paper money and in another small purse there were coins, I do not know how many.

Q.286 Do you remember the denominations of the 400 guilders which were in the purse?
A.286 Yes. one 100 guilder note, ~~X~~ two 50 guilder notes, two 20 guilder notes, one 25 guilder note and thirteen 10 guilder notes and five one guilder notes.

Q.287 Will you describe to the Court this money?
A.287 How do you mean describe it.

Q.288 Was it new money?
A.288 The money was used, there may have been some new money.

Q.289 Do you recognize this money? (A number of guilders of different denomination is shown to the witness)
A.289 Yes, I do.

Q.290 Whose money is it?
A.290 It is ours, my husband's and mine.

Q.291 How do you recognize that money as being yours?
A.291 Because I had arranged it the same way as it is arranged now.

Q.292 How much money is there here now? Will you count it? (Prosecutor hands money to the witness)
A.292 (Witness counts the money). There are 382 guilders here. That is not right.

Q.293 Please count the money again and tell the Court what denominations of money you have there?
A.293 (Witness re-counts money). There are one 100 guilder note, two 50 guilder notes, two 20 guilder notes, 9 ten guilder notes, one 25 guilder note, and ~~Seven~~ 1 guilder notes.

(The Prosecutor produces to the Court one 100 guilder note, two 50 guilder notes, two 20 guilder notes, one 25 guilder notes, nine 10 guilder notes and seven 1 guilder notes - a total of 382 guilders. Notes are accepted by the Court and marked EXHIBIT "C")

Q.294 Where was this money on that day?
A.294 In my purse in the handbag which was in the carrier bag on the bicycle.

Q.295 On whose bicycle was it?
A.295 On my husbands bicycle.

Q.296 Did you see your husbands bike being taken to the courtyard?
A.296 Yes I did.

Q.296 Were the bicycle bags closed or open?
A.296 They were closed.

Q.297 Did you at any time go to the bicycles while they were in the back yard?
A.297 Yes, I went to the courtyard just after they took the bicycles there because I wanted to see if the door was locked.

Q.298 Was the door locked?
A.298 Yes, they had placed a piece of wood before the door.

Q.299 Was that the only means by which the door could be locked?
A.299 Besides that the door was locked with a key and the key was still in the door.

Q.300 Did you at any time that day see anyone else go into that courtyard?
A.300 I did not see anyone go out there.

Q.301 About what time did the accused arrive at the Cafe?
A.301 At 5 o'clock.

Q.302 And when did he leave?
A.302 The first time?

Q.303 Yes, when did he leave the first time?
A.303 About 15 minutes past 5.

Q.304 When did you next see the accused?
A.304 At 7 o'clock.

Q.305 And when did he leave that time?
A.305 It was about 15 minutes to 8.

Q.306 Where were you all the time the accused was there for the second time?
A.306 I was standing in the sitting room but there was such a noise that I went to the Cafe.

Q.307 What was this noise?
A.307 They were fighting.

Q.308 Who was fighting?
A.308 One of the two, the black fellow, this accused, and another Canadian.

Q.309 Did the accused stay in the Cafe all the time during his second visit?
A.309 He was in the Cafe and after that he went to the living part.

Q.310 For how long was the accused in the living quarters?
A.310 It would be about 10 minutes.

Q.311 Was there anyone else in that room besides the accused?
A.311 No.

Q.312 Did you see the accused in the living quarters?
A.312 No, because we were not allowed to go in there.

Q.313 Why were you not allowed to go in there?
A.313 The other soldier, the small one, barred the doorway.

Q.314 Did you at any time go to the courtyard that day?
A.314 Only when we first arrived, I went there to see if the door was locked.

Q.315 Did you go to the back yard at any time after the soldiers left?
A.315 Yes, I went there after they left.

Q.316 How long after they left?
A.316 Directly after they left.

Q.317 Why did you go there then?
A.317 I wanted to see if my money was still there.

Q.318 What did you find when you got to the bicycles?
A.318 The bicycles were against the wall and the bags were open and the money was gone from the purse in the bag.

Q.319 Was the purse open or closed?
A.319 The purse was open and thrown into the bag.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q.320 How do you know the denominations of the notes?
A.320 I am sure that they were such notes because they are all I had and I had handled them myself.

Q.321 When had you last counted the money?
A.321 It would be the week before because I get every week my money.

Q.322 Do you mean a week before the Sunday referred to?
A.322 I get my money weekly on Friday night, so I put the money together and I counted it.

Q.323 And which Friday night do you refer to?
A.323 The Friday night before the Sunday.

Q.324 You can only recognize the money because it is arranged the way you think the money was arranged in your purse?
A.324 Yes.

Q.325 If it were rearranged in another way would you recognize the money?
A.325 I do not think so because it is used money.

Q.326 You do not remember whether the money was used money or not, yet you remember the denominations, how is that?
A.326 I recognize the money because it is arranged in the same way.

Q.327 Are you sure that all the notes you were shown, Exhibit "C", were notes that were in your purse on that day in question?
A.327 Yes, I am sure.

Q.328 How many one guilder notes did you have in your purse?
A.328 Five.

Q.329 How many one guilder notes were you shown just a few minutes ago?
A.329 I believe there were seven or eight.

Q.330 Then how can you say that all those notes were yours?
A.330 There was money fell out of his pocket.

Q.331 How do you know money fell out of his pocket?
A.331 I did not see it but I heard it.

Q.332 Were you watching your bikes all the time you were in the Cafe that afternoon?
A.332 No, I wasn't, but nobody can enter the courtyard.

Q.333 How high is the wall of the courtyard?
A.333 I do not know. It was the first time that I was there.

Q.334 How do you know that no one could enter the courtyard?
A.334 Because when I arrived I went to the courtyard to see if the door was locked and it was.

Q.335 Could anyone get over the wall?
A.335 No, because there was wire on top of it.

Q.336 What kind of wire?
A.336 It was like an iron fence on top of the wall, and trees on top of that.

Q.337 What kind of a tree grows on top of the wall?
A.337 It is not exactly a tree but a vine that grows over walls.

Q.338 What kind of an iron fence was on top of the wall?
A.338 I have not seen it.

THE PROSECUTOR DECLINES TO RE-EXAMINE THIS WITNESS

QUESTIONED BY THE COURT

Q.339 Have you any other means of identification of the money that was in the bag, other than the arrangement of the money?
A.339 The way it was arranged, I can identify the money.

Q.340 Was there any unusual form of currency?
A.340 There were some different kinds of 10 guilder notes.

QUESTIONED BY THE JUDGE ADVOCATE

Q.341 You have said that when the bicycles were put into the back yard that the bags were closed, is that correct?
A.341 Yes.

Q.342 How were they closed?
A.342 They were closed with leather straps.

Q.343 And how were these fastened?
A.343 With a buckle.

Q.344 When you came out after the soldiers had left were the bags still fastened?
A.344 No, they were open.

Q.345 Did you see the accused or the other soldier go into the courtyard at any time?
A.345 Yes, both of them.

Q.346 When was this?
A.346 Between 7 o'clock and 15 minutes to 8.

Q.347 Where were you when you saw them go?
A.347 In the Cafe.

Q.348 How could you see from the Cafe?
A.348 I wanted to look but one soldier pushed me back so I could not see.

Q.349 So you did not see the accused and the other soldier actually go into the courtyard?
A.349 He had been at the back for sometime so he must have been in the courtyard.

Q.350 You only think he went into the courtyard?
A.350 It must have been because he came back only after a while.

Q.351 But you did not see the accused go into the courtyard?
A.351 No, I did not see it.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH RULE OF PROCEDURE 83 (B).

THE WITNESS WITHDRAWS.

5TH WITNESS for the PROSECUTION — Paulus Lamfers, 64 Marco Polo Straat, Amsterdam, Netherlands, having been duly sworn is examined by the Prosecutor:

Q.352 You are Paulus Lamfers, of 64 Marco Polo Straat, Amsterdam, Netherlands?
A.352 Yes.

Q.353 Are you married?
A.353 Yes.

Q.354 What is your wife's name?
A.354 Marriagje Prins.

Q.355 Do you recognize the accused who is sitting over there?
A.355 Yes. (Indicating the accused).

Q.356 When did you see him?
A.356 On a Sunday when my wife and I paid a visit in Hilversum.

Q.357 On what date was that?
A.357 The 10 June 1945.

Q.358 Where in Hilversum did you see him?
A.358 At a Cafe at 131 Amstelstraat, Hilversum.

Q.359 How did you travel from Amsterdam to Hilversum?
A.359 On a bicycle.

Q.360 What time did you arrive at 131 Amstelstraat?
A.360 Between 1:30 and 2 o'clock.

Q.361 Was there anyone with you?
A.361 Yes, my wife.

Q.362 And how did she travel?
A.362 Also on a bicycle.

Q.363 Whom did you visit there?
A.363 The family Den Enting.

Q.364 When you arrived there what did you do with the bicycles?
A.364 In my first statement I said they were brought right to the back yard but I now say that first they were in the Cafe.

Q.365 Who took the two bicycles into the courtyard?
A.365 Mr. Den Enting and myself.

Q.366 Whose bicycle did you take to the courtyard?
A.366 I took my own bicycle there.

Q.367 Did your wife's bicycle have any bicycle bags on it?
A.367 No.

Q.368 Did your bicycle have any bicycle bags on it?
A.368 Yes.

Q.369 When you left your bicycle in the courtyard, can you recall whether the bicycle bags were open or closed?
A.369 They were closed.

Q.370 How were they closed?
A.371 With leather straps and a buckle.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH RULE OF PROCEDURE 83 (B).

THE WITNESS WITHDRAWS.

5TH WITNESS for the PROSECUTION — Paulus Lamfers, 64 Marco Polo Straat, Amsterdam, Netherlands, having been duly sworn is examined by the Prosecutor:

Q.352 You are Paulus Lamfers, of 64 Marco Polo Straat, Amsterdam, Netherlands?
A.352 Yes.

Q.353 Are you married?
A.353 Yes.

Q.354 What is your wife's name?
A.354 Marriagje Prins.

Q.355 Do you recognize the accused who is sitting over there?
A.355 Yes. (Indicating the accused).

Q.356 When did you see him?
A.356 On a Sunday when my wife and I paid a visit in Hilversum.

Q.357 On what date was that?
A.357 The 10 June 1945.

Q.358 Where in Hilversum did you see him?
A.358 At a Cafe at 131 Amstelstraat, Hilversum.

Q.359 How did you travel from Amsterdam to Hilversum?
A.359 On a bicycle.

Q.360 What time did you arrive at 131 Amstelstraat?
A.360 Between 1:30 and 2 o'clock.

Q.361 Was there anyone with you?
A.361 Yes, my wife.

Q.362 And how did she travel?
A.362 Also on a bicycle.

Q.363 Whom did you visit there?
A.363 The family Den Enting.

Q.364 When you arrived there what did you do with the bicycles?
A.364 In my first statement I said they were brought right to the back yard but I now say that first they were in the Cafe.

Q.365 Who took the two bicycles into the courtyard?
A.365 Mr. Den Enting and myself.

Q.366 Whose bicycle did you take to the courtyard?
A.366 I took my own bicycle there.

Q.367 Did your wife's bicycle have any bicycle bags on it?
A.367 No.

Q.368 Did your bicycle have any bicycle bags on it?
A.368 Yes.

Q.369 When you left your bicycle in the courtyard, can you recall whether the bicycle bags were open or closed?
A.369 They were closed.

Q.370 How were they closed?
A.371 With leather straps and a buckle.

Q.371 What did those bicycle bags contain?
A.371 There were some bags of bread, two raincoats, my wife's handbag and some tools.

Q.372 Did you see what was in your wife's handbag?
A.372 No, I did not check it, but I know what was in it.

Q.373 How do you know what was in it?
A.373 I know because I put the handbag in there myself and the small handbag was always in the big handbag.

Q.374 Did you see anything in the small handbag?
A.374 I have not seen it but the things which belong in the small handbag are always in there.

Q.375 What things, normally, belong in that small handbag?
A.375 A pocket book with money and other women's affairs.

Q.376 Do you know how much money was in there?
A.376 Yes.

Q.377 How do you know that?
A.377 I know it exactly because I know exactly what we possess.

Q.378 What did you possess?
A.378 400 guilders.

Q.379 Is that your total money possesions?
A.379 It was the total possesions besides some guilders I had in my own pocket.

Q.380 Why did your wife carry all your savings with her?
A.380 It is just a custom because in the day time I am not at home so my wife has got the savings.

Q.381 Why did your wife have your total savings with her that Sunday?
A.381 It was safe in her handbag.

Q.382 After you left those bicycles after putting them away, did you at any time that day go back to them?
A.382 No, not until after the soldiers left.

Q.383 About what time did you go to the bicycles?
A.383 About 9:30.

Q.384 On that same day?
A.384 Yes, on the same day.

Q.385 Did you at any time see anyone go to the bicycles after you had put them away?
A.385 No.

Q.386 Did you see the accused go to the bicycles that day?
A.386 No, I could not see.

Q.387 Do you know the denominations of the 400 guilders which you say were in your wife's handbag?
A.387 Yes.

Q.388 How did you get to know that?
A.388 Because I saw them and counted them on Friday evening.

Q.389 What were those denominations?
A.389 There was one 100 guilder note, two 50 guilder notes, two 20 guilder notes, one 25 guilder note, fifteen 10 guilder notes and five 1 guilder notes.

Q.390 What was the total money that you counted that night?
A.390 400 guilders.

Q.391 According to the denominations you have given me the total comes to 420 guilders, how do you explain that?
A.391 That is not right, I think I said one 20 guilder note too much.

Q.392 Did you see your wife go to the bicycles after the soldiers went away?
A.392 No.

Q.393 When you went to the bicycles that evening what did you find there?
A.393 They stood against the wall, there was nothing extraordinary to be seen because my wife had been there before me.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q.394 You do not exactly know what was in your wife's purse, you just think you know,is that correct?
A.394 I know it for sure.

Q.395 How do you know for sure, did you see what was in the purse?
A.395 I saw it on Friday evening.

Q.396 Did you see it after Friday evening?
A.396 No.

Q.396 How can you be sure that what you saw on Friday evening was what was in the purse on Sunday afternoon.
A.396 Because my wife did not need any money before Sunday.

Q.397 In whose possession was the purse from Friday evening to Sunday afternoon?
A.397 My wife had it.

Q.398 Could you recognize these notes if you saw them again?
A.398 No.

Q.399 How many doors were there in the wall from the courtyard to the street?
A.399 One door.

Q.400 There were no other doors leading out of that courtyard?
A.400 Yes, there were but I did not know it at that time.

Q.401 How many doors are there leading out of that courtyard?
A.401 Two.

Q.402 Where is the other door?
A.402 Just opposite the door leading to the street.

Q.403 Do you know if this other door was locked that Sunday afternoon?
A.403 Yes, it always locked, but I never checked it.

Q.404 How do you know it was locked when you have just said that you did not know it was there at that time?
A.404 I did not know it was there but according to the people it was always locked.

Q.405 You, though, do not know whether it was locked or not?
A.405 No.

THE PROSECUTOR DECLINED TO RE-EXAMINE THIS WITNESS

NO QUESTIONS BY THE COURT

QUESTIONED BY THE JUDGE ADVOCATE

Q.406 From the time you put the bicycles in the back yard until after the two soldiers left could anyone in the Cafe have gone to the back yard without you seeing them?
A.406 No, because there no one else in the Cafe.

Q.407 Did you see the soldiers go into the back yard at any time?
A.407 No, because they had to go through the living room, through the kitchenm and into the yard.

Q.408 Therfore, you could not see them go into the courtyard?
A.408 No.

Q.409 Did you see either soldier go into the back part of the house?
A.409 Yes.

Q.410 You have mentioned two doors in the courtyard. Do you mean there were two doors to the outside street, or, one to the street and one into the house?
A.410 There is one door to the street and the other I do know where it leads to, I believe to the neighbours next door, but it is locked on the inside.

Q.411 I produce Exhibit "B", is this a fair representation of the building in question?
A.411 Yes.

Q.412 Will you mark with the letter "A" where this second door is in the courtyard?
(Witness marks on Exhibit "B", with an "A", where the second door should be)

Q.413 Was there no one else at all in the Cafe during the time the soldiers were there?
A.413 Yes, there was.

Q.414 You have just said that nobody could have gone into the courtyard because there was no one else in the Cafe?
A.414 The soldiers were in the Cafe while other people were there, after that they went to the living part of the house.

Q.415 But there were other people in the Cafe during the time the soldiers were there?
A.415 Yes.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH RULE OF PROCEDURE 83 (B).

THE WITNESS WITHDRAWS.

6TH WITNESS for the PROSECUTION Head Agent of Police, William Verbeek, 247 Hilversweg, City of Hilversum, having been duly sworn is examined by the Prosecutor:

Q.416 You are William Verbeek of 247 Hilversweg of the City of Hilversum, Holland?
A.416 Yes, sir.

Q.417 What is your civilian occupation?
A.417 I am a Head Policeman of Hilversum.

Q.418 Of what Police?
A.418 Of the municipal police of Hilversum.

Q.419 Do you recognize the accused who is sitting there?
A.419 Yes.

Q.420 When, where and under what circumstances did you have anything to do with the accused?
A.420 I don't exactly remember the date. It was on the corner of Van Amstalstraat and Hilvertsweg in Hilversum.

Q.421 What month was it that you saw the accused?
A.421 I cannot remember the date, I cannot remember the month.

Q.422 What day of the week was it?
A.422 I think it was a Sunday evening.

Q.423 When you saw the accused what was he doing?
A.423 He slapped a civilian on the face. I stood between the soldier and the civilian to prevent another slapping. The accused took my tunic and put me aside. For a second time I placed myself between the civilian and the soldier to prevent more fighting and then the accused kicked me on the right leg.

Q.424 Then what happened?
A.424 After that a woman came to me and said.....

Q.425 I do not want to know what the woman said. Was the accused present when this lady came up and spoke to you.
A.425 I do not know for sure.

Q.426 Going back to the trouble with the accused. Will you describe in detail to the Court what actually happened between the accused and yourself?
A.426 First when I came up he slapped a civilian on the face then he took me by my breast and put me aside, then I went over to the civilian again and again I got between the civilian and the soldier, then he wanted to box with me and he wanted to slap me again. I got a kick on the leg, then the lady came up and then the soldier came up and struck me to my chin and I fell to the ground, then I fled away.

Q.427 Were you hurt at all?
A.427 My hip was hurt when I fell to the sidewalk, my right leg was wounded and my head was hurt.

Q.428 Did you have any open wounds as a result of the accused assaulting you?
A.428 I had an open wound on my right leg.

Q.429 How big was this open wound?
A.429 About 10 centimetres long.

Q.430 For how long was the wound in your right leg open?
A.430 For ten days.

Q.431 Did you require any medical attention as a result of this instance?
A.431 The doctor who was checking me said I did not need any medical assistance, but my checking doctor came to me.

Q.432 Did you or did you not require medical assistance?
A.432 No, I did not.

Q.433 Did you have medical attention?
A.433 No.

Q.434 Did a doctor give you any medical treatment?
A.434 I had to take a rest for eight days.

Q.435 Did a doctor do anything for you?
A.435 No, I treated myself.

Q.436 For how long after this instance did you feel any bodily pain?
A.436 For about eight days.

Q.437 Did you go to work at all during those eight days?
A.437 No.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q.438 When you first saw the soldiers were the civilians following them?
A.438 Yes.

Q.439 Why do you think the civilians were following them?
A.439 Because they were under the influence of liquor, they slapped them.

Q.440 Were the civilians very near to the two soldiers?
A.440 No.

Q.441 Were they doing anything besides following the soldiers?
A.441 They only followed the soldiers.

Q.442 How far were they behind the soldiers?
A.442 About 5 metres.

Q.443 Did the soldier try to send the civilians away?
A.443 Yes.

Q.444 Did any of the civilians go away?
A.444 The soldiers went after the civilians and they went away but they came back again.

Q.445 If the civilians were 5 metres away from the soldiers how were the soldiers able to slap them?
A.445 There was one passing by and he got slapped in the face.

Q.446 Did this civilian passing by say anything to the soldiers?
A.446 No.

Q.447 Were there any Canadian Provost in the vicinity at the time?
A.447 No.

Q.448 You did not see any Provost in the vicinity at all?
A.448 Not at first. After I had fled they came.

Q.449 Was the civilian that was slapped by the soldier the same civilian whom you got between and the soldier to prevent him from being slapped again?
A.449 Yes.

Q.450 Did the civilian that was slapped try to hit the soldier?
A.450 No.

Q.451 Did the soldier chase that civilian?
A.451 Yes.

Q.452 Did the civilian try to get away?
A.452 Yes.

Q.453 Did you have any sort of weapon with you at the time?
A.453 Yes.

Q.454 What weapon did you have?
A.454 I had a revolver and a piece of rubber, it was a rubber stick.

Q.455 Did you use either weapon?
A.455 I got the rubber stick out of my pocket but had no time to use it.

Q.456 Did you make any threatening motions with the rubber stick?
A.456 Yes.

Q.457 Was that before the soldier hit you on the chin?
A.457 Yes.

Q.458 Was it before the soldier kicked you on the right leg?
A.458 It was after I got a kick on the right leg.

Q.459 Have you any mark on your leg now to show where the wound was?
A.459 No.

Q.460 Have you any marks on your body to show where you were hurt?
A.460 No.

THE PROSECUTOR DECLINES TO RE-EXAMINE THIS WITNESS

QUESTIONED BY THE COURT

Q.461 How often did the doctor come to see you?
A.461 Twice.

Q.462 What did he do when he came to see you?
A.462 He told me I had to take a rest.

Q.463 Did he do anything to your leg? Did he touch it?
A.463 I showed him the wound and the rest I did myself.

Q.464 Did the doctor give you any advice?
A.464 I had to put a wrapper on it again.

Q.465 Did the doctor put anything on your leg?
A.465 I did that myself.

Q.466 How many Canadian soldiers were involved in this fight on the street?
A.466 There were about 25 present but only one slapped me.

Q.467 Would you recognize the one Canadian soldier who was fighting with you?
A.467 Yes.

Q.468 Where is he now?
A.468 There. (Witness indicates accused).

QUESTIONED BY THE JUDGE ADVOCATE

Q.469 When you say there were 25 present do you mean that there were 25 soldiers or that there were 25 soldiers and civilians?
A.469 There were about 25 soldiers.

Q.470 How many civilians were there there?
A.470 At least 100.

Q.471 Were you in uniform at this time?
A.471 Yes.

Q.472 Were you on police duties at the time?
A.472 Yes.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH RULE OF PROCEDURE 83(B).

THE WITNESS WITHDRAWS.

7THE WITNESS for the PROSECUTION — Inspector of Police, Johan Hendrik Helweg, 6 Jan Steenlaan, of the City of Hilversum, Holland, having been duly sworn is examined by the Prosecutor:

Q.473 You are Inspector of Police, Johan Hendrik Helweg of 6 Jan Steenlaan Hilversum, Holland?
A.473 Yes.

Q.474 Did you see the last witness who just left this room?
A.474 Yes.

Q.475 Do you know him?
A.475 Yes.

Q.476 What is his name?
A.476 He is William Verbeek, an agent of police at Hilversum, Holland.

Q.477 Do you recognize the accused?
A.477 Yes. (Indicates the accused)

Q.478 When did you first see him?
A.478 On a Sunday evening, the 10 June 45, about 7:30 in the evening.

Q.479 Where did you see the accused at that time?
A.479 In the Hilvertsweg.

Q.480 Under what circumstances did you see the accused at that time?
A.480 He was dressed in uniform, had no hat on, he had no tunic on, he was in his shirt.

Q.481 Were there any other circumstances concerning the accused at that time?
A.481 There was another soldier, a little one, with him, they were driving the public into the street.

Q.482 Do you mean they were chasing them on the street?
A.482 Yes.

Q.483 Was there anyone with you at the time?
A.483 Yes, Verbeek was with me.

Q.484 What did you see Verbeek do?
A.484 He went to Dufresne and tried to calm him.

Q.485 Who do you mean by Dufresne?
A.485 The accused who is here.

Q.486 Then what happened?
A.486 The accused threatened Verbeek with his fists, but at first he only threatened him, then I saw the accused beat Verbeek on the chin and he knocked him down. Verbeek fell backwards to the ground. Then Verbeek fled away and the accused chased him. Verbeek tried to handle his rubber stick but he could not manage it.

Q.487 Why could he not manage it?
A.487 He could not keep the accused away from his body.

Q.488 What else did you see that evening?
A.488 Then the military police came.

Q.489 When the military police came what happened?
A.489 I went with the military police to get Dufresne. Civilians told me that they were somewhere behind the houses. The Provost then arrested the soldiers, I only showed them where to go.

Q.490 Did you see the military police arrest Dufresne?
A.490 Yes, I saw it.

Q.491 How did the arrest take place?
A.491 He did not do it voluntarily.

Q.492 What do you mean by, "He did not do it voluntarily"?
A.492 The accused opposed the arrest.

Q.493 Then what did the Provost do with Dufresne?
A.493 They brought him to their car, but before they brought him to the car he had a fight with the Provost.

Q.494 What else did you see?
A.494 With many difficulties the Provost got him to the car. I did not see any more particulars. Then I went with the Provost in a Jeep after the truck.

Q.495 Who all was in the truck?
A.495 Dufresne and I do not know the others.

Q.496 Did you see anything when you followed the truck in the Jeep?
A.496 About 300 metres further down the street there was a soldier wanting to stop the truck.

Q.497 And what else did you see?
A.497 This soldier indicated that the man had fled away.

Q.498 Did you see the man in the truck go away?
A.498 No, I did not see it, I only saw him sitting in a side street on a wall.

Q.499 After this incident when did you next see Verbeek?
A.499 I saw him the next morning, the 11 Jun 45.

Q.500 Did you notice anything in particular about him?
A.500 He was walking with difficulty.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q.501 How are you so sure that you saw the accused at 7:30 on 10 Jun 45?
A.501 Because they called me from the office. Maybe it was a quarter of an hour earlier or later.

Q.502 How do you remember that it was the 10 June?
A.502 I wrote it down.

Q.503 How did you happen to be on that street at that particular time?
A.503 Someone came to the office to tell me that there was a fight on the street.

Q.504 Who was fighting?
A.504 There was a soldier fighting a civilian, a drunk soldier.

Q.505 How do you know that this accused's name is Dufresne?
A.505 Because I went with the Provost to the headquarters and it was investigated there.

Q.506 Did you investigate it or did the Provost?
A.506 The Provost.

Q.507 Did they know his name at the time of the investigation?
A.507 They asked him for his identification card.

Q.508 Who told you what his name was?
A.508 Cpl. Quinn.

Q.509 How far were you from Verbeek when he was allegdly fighting with the soldier?
A.509 About 200 metres.

Q.510 Was Verbeek's back towards you?
A.510 No, his side was turned to me.

Q.511 How many people were there at the time?
A.511 I can not say for sure but there were quite a few soldiers and civilians.

Q.512 Were the group of people surrounding Verbeek and the soldier?
A.512 No, they were not surrounding them, they were at one side of the street.

Q.513 Did you summon the Provost?
A.513 No, when I came to the office they had sent for the Provost already.

Q.514 Do you speak English?
A.514 Yes, a bit.

Q.515 If one man told another man he was under arrest would you understand that?
A.515 Yes.

Q.516 Did the Provost say to Dufresne, "You are under arrest"?
A.516 I did not hear that.

THE PROSECUTOR DECLINES TO RE-EXAMINE THIS WITNESS

QUESTIONED BY THE COURT

Q.517 How far were you from the Provost at the time that you think the accused was arrested?
A.517 About three or four metres.

Q.518 After these soldiers were put in a vehicle you say you saw them sitting on a fence in a side street, or was it on a wall?
A.518 It was more or less of a shed.

Q.519 Were they alone on this shed?
A.519 There were just the two men on the shed.

Q.520 And you recognized the two men?
A.520 Yes.

Q.521 Are either of these men present here now?
A.521 There is one here, (indicates the accused) and I saw the other one in the sitting room.

Q.522 Was the vehicle stopped close to them at that time?
A.522 Yes.

Q.523 Did it appear that they had permission to be up on that shed?
A.523 No.

Q.524 Did they appear to be excited while they were up on the shed?
A.524 No.

Q.525 What happened when you came upon the scene?
A.525 The Provost tried to get them to the ground when they came there.

Q.526 Did they succeed?
A.526 Yes.

NO QUESTIONS BY THE JUDGE ADVOCATE

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH RULE OF PROCEDURE 85(B).

THE WITNESS WITHDRAWS.

At 1715 hours on the 17 Jul 45 the Court adjourned until 0930 hours on the 18 Jul 45.

On the 18 Jul 45 at 0930 hours the Court reassemble pursuant to adjournment, present the same members as when adjourned.

THE WITNESS for the PROSECUTION — Peter de Weerd, 154 Van Amstelstraat, Hilversum, Holland, having been duly sworn is examined by the Prosecutor:

Q.527 You are Peter de Weerd, 154 Van Amstelstraat, Hilversum, Holland?
A.527 Yes.

Q.527 What were you doing on the evening of the 10 Jun 45?
A.527 I was sitting in front of the window pane of my house.

Q.528 And what did you see while you were sitting there?
A.528 I saw two soldiers passing with a lot of civilians behind them.

Q.529 Do you recognize the accused who is sitting here?
A.529 Yes. (Indicates the accused)

Q.530 Where have you seen the accused before?
A.530 I saw the accused on the opposite side of the street.

Q.531 On what day?
A.531 It was on a Sunday.

Q.532 What date of the month was it?
A.532 I do not remember the date.

Q.533 What day of the week was it?
A.533 It was a Sunday.

Q.534 What month was it?
A.534 It was June.

Q.535 What part of June was that?
A.535 I can not remember.

Q.536 What was the accused doing when you saw him?
A.536 I saw the accused walking on the other side of the street, playing with a bottle, and chasing after the people.

Q.537 How many people were there there?
A.537 There were about 100.

Q.538 What else did you see the accused doing?
A.538 He chased after the people and then a policeman came.

Q.539 Do you know the name of that policeman?
A.539 No.

Q.540 Had you ever seen this policeman before?
A.540 No.

Q.541 But you saw the policeman at that time?
A.541 Yes.

Q.542 Where did you see him?
A.542 On the Hilvertsweg. He put down his bicycle and went up to the soldier to quiet the soldier.

Q.543 From that day to this day have you seen the policeman again?
A.543 Yes, I saw him once in Hilversum and I saw him here yesterday.

Q.544 How was this policeman dressed yesterday?
A.544 In a uniform.

Q.545 You have said that this policeman went up to the accused, will you continue your story from there?
A.545 He went up to the accused to quiet him and the accused pushed him away. Then the accused wanted to chase the civilians again and the policeman went up to him again and then they started to fight.

Q.546 Who started to fight?
A.546 The soldier started to fight, and then the policeman got the rubber stick out of his pocket, the soldier slapped the rubber stick out of his hand and then slapped the policeman so that he fell to the ground. I saw no more then because there was such a scrimage. Then the policman fled away. Then the soldier went further on in the Hilvertsweg from Amstelstraat.

Q.547 Then what did you see?
A.547 The soldiers went behind a house and then the military police came.

Q.548 Anything else?
A.548 The military police took the soldiers with them. They had some trouble to take them. They did not want to go in the truck, they objected to it.

Q.549 What did the military police do with the accused?
A.549 One went to the truck and did not fight, but this one fought but they took him to the truck.

Q.550 Will you tell the Court exactly what happened from the time the military police arrived so far as it concerns the accused?
A.550 When the military police came to the soldiers they were behind a civilian house. The police went up to them at the back of the house and took them with them to the truck. At the truck two or more fell to the ground, but I did not see who it was because there were so many around the truck. At this time some money fell out of the accused's pocket.

Q.551 And what happened then?
A.551 One soldier picked up the money and put it in the Jeep and then another one grabbed it away.

Q.552 Who put the money in the Jeep?
A.552 It was a soldier but I do not know who it was.

Q.553 Do you know who the soldier was who took the money from the Jeep?
A.553 No.

Q.554 Did you see anything else with respect to the accused after that incident?
A.554 He came up from the ground and was put in the truck and then the truck drove away. Then after approximately 100 metres they both sprang out of the truck.

Q.555 Who do you mean by both?
A.555 Both the accused, one who is here and the other sitting in the waiting room.

Q.556 What happened then?
A.556 They ran off but the military police got them again and any more I did not see.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q.557 At the time of the scrimage between the police and the accused, you say you did not see it exactly, is that right?
A.557 Yes, that is right, I was afraid and I went back some distance.

Q.558 How much distance did you go back?
A.558 About 25 metres.

Q.559 Were there civilians between you and the two men who were fighting?
A.559 There were civilians and soldiers walking around between the scrimage.

Q.570 You are sure you could see the two men fighting?
A.570 Yes.

Q.571 When the Provost returned with the accused and the fighting occurred, you say several men fell to the ground and that some money fell out of the pocket of the accused. How can you be sure the money fell from the pocket of the accused?
A.571 Because I was standing quite near to the fighting.

Q.572 How near were you to the fighting?
A.572 At 2 metres distance.

Q.573 Yet you do not know how many soldiers fell to the ground, is that not unusual?
A.573 The accused was on the ground and another one was sitting on him, and then some money fell out of his pocket.

Q.574 Money fell out of whose pocket?
A.574 Out of the accused's pocket.

Q.575 You said before that two or more fell to the ground, is that right?
A.575 I did not say so, I said the accused was on the ground and another was sitting on top of him, then two or three other men gripped him.

Q.576 Could the money not have fallen out of some other persons pocket?
A.576 No.

Q.577 You have said you did not see this exactly, but still, you are sure that the money fell out of the accused's pocket.
A.577 I said I did not see the scrimage exactly with the policeman, but I saw the scrimage near the Jeep quite exactly because I was not at more than two metres distance.

Q.578 When the truck moved for 100 metres you say you saw the two men jump out of the truck and run away. How could you recognize the men at 100 metres distance?
A.578 When they were in the truck I saw that it wasn't finished so I walked in the same direction as the truck and so when they jumped out I saw them.

Q.579 What do you mean when you say you knew it wasn't finished?
A.579 I saw that they were springing out again.

Q.580 Were there other soldiers in the truck?
A.580 The military police and one or two more soldiers.

Q.581 Could it not have been one or two of the other soldiers that sprung out of the truck?
A.581 No, it could not be that because he was sitting in the back of the truck with his feet out?

Q.582 Who was sitting in the back of the truck with his feet out?
A.582 The accused.

Q.583 Are you sure it was the accused who jumped out of the truck, or, do you think it was the accused who jumped out of the truck?
A.583 I am sure it was the accused.

Q.584 You could definitely recognize him at that distance?
A.584 He was sitting at the back of the truck with his feet out so it could not have been another one.

THE PROSECUTOR DECLINES TO RE-EXAMINE THIS WITNESS

NO QUESTIONS BY THE COURT

QUESTIONED BY THE JUDGE ADVOCATE

Q.585 What kind of money fell out of the accused's pocket?
A.585 It was some folded money.

Q.586 Did you notice anything in particular about this money?
A.586 As far as I could see I saw a 20 guilder note, a 10 guilder, for the rest I could not see because someone grabbed it from the ground.

Q.587 Was it Holland money?
A.587 Yes.

Q.588 Did you notice, approximately, how many notes there were in the bundle?
A.588 About 15 to 20 notes, I think, but they were folded.

Q.589 Do you remember giving evidence at a Summary of Evidence a few weeks ago?
A.589 Yes.

Q.590 Do you remember saying, "I could not see how many notes there were but they were a folded bunch of about 15 or 20 notes, which I am sure was Dutch currency. I saw one bank note of 25 guilders and I believe I saw one bank note of 20 guilders"?
A.590 Yes.

Q.591 Is what you said then true?
A.591 Yes.

Q.592 Now you say you thought you saw one 20 guilder note and one 10 guilder note.
A.592 I said just now I saw one 25 guilder note and it may have been more, but I only saw one so I saw one 20 guilder and one 10 guilder note.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH RULE OF PROCEDURE 83(B).

THE WITNESS WITHDRAWS.

(The Prosecutor announces that the evidence of the next witness is not contained in the Summary of Evidence, but that notice has been given to the accused and Defending Officer of his intention to call such witness, under RP 76. The Defending Officer has no objection.)

9TH WITNESS for the PROSECUTION — F.76046 L/Cpl MacIsaac, G., of the S D & G Highlanders, having been duly sworn is examined by the Prosecutor:

Q.593 You are F.76046 L/Cpl MacIsaac, G., of the S D & G Highlanders?
A.593 Yes, sir.

Q.594 What are your military duties?
A.594 I am company clerk of "C" Company.

Q.595 Who is your CSM?
A.595 CSM Wilson, sir.

Q.596 Can you remember his number?
A.596 As I recollect it is D.86195.

Q.597 Do you know his initials?
A.597 Yes, sir, they are G.E.

Q.598 Do you recognize the accused, who is sitting over there?
A.598 Yes, sir.

Q.599 To what company does he belong?
A.599 To "C" company, sir.

Q.600 As a clerk of "C" company are you familiar with the broad facts of this case?
A.600 No, sir, I am not.

Q.601 Do you know with what the accused is charged?
A.601 No, sir.

Q.602 Where were you on the evening of the 10 Jun 45?
A.602 As close as I can remember it was the evening before I went on a 72 hour leave and I was in the Orderly Room getting ready to go on leave.

Q.603 What else happened that evening?
A.603 CSM Wilson came in and gave me some Dutch money to hold for him.

Q.604 How much money did he give you?
A.604 362 guilders, sir.

Q.605 Did you count it?
A.605 Yes, sir.

Q.606 Can you remember the denominations of the money?
A.606 No, sir.

Q.607 Do you remember the denominations of any of the notes?
A.607 No, sir, not to be sure.

Q.608 What did you do with that money?
A.608 I placed it in an envelope and put it in the orderly room box.

Q.609 Then what happened concerning the money?
A.609 In the morning I turned the money over to CSM Wilson.

Q.610 What morning was that?
A.610 Monday morning.

Q.611 If I should show you that money again would you recognize it?
A.611 I am afraid not, sir.

Q.612 Was there anything peculiar about that money?
A.612 I did not examine the money sir.

Q.613 Will you tell the Court what this money looked like?
A.613 That is hard to do, sir, it was just ordinary Dutch money as far as I can remember.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q.614 On what date did you go on your 72 hour leave?
A.614 On the 11 Jun 45, sir.

Q.615 You have said you put the money into an envelope. Did you seal that envelope?
A.615 I can not recall, sir.

Q.616 Then you say you put it into the orderly room box. Is that box kept locked?
A.616 No, sir.

RE-EXAMINED BY THE PROSECUTOR

Q.617 When you handed the money to CSM Wilson the next morning, was the money in the envelope?
A.617 Yes, sir.

Q.618 You saw the money in the envelope?
A.618 Yes, sir, but I did not count it to see if it was still all there.

NO QUESTIONS BY THE COURT

QUESTIONED BY THE JUDGE ADVOCATE

Q.619 Who has access to that box?
A.619 Practically anyone who comes along, sir.

Q.620 In whose custody is the box?
A.620 It is just the orderly room box where all orderly room papers are kept.

Q.621 Were you in the orderly room all the time the money was there?
A.621 Yes, sir.

Q.622 Did anyone else go into the box?
A.622 No, sir, I did not see anyone else touch the box.

Q.623 Were you awake all night watching that box?
A.623 No, sir.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH RULE OF PROCEDURE 83(B).

THE WITNESS WITHDRAWS.

10TH WITNESS for the PROSECUTION — Lieutenant H. Bateman, Adjutant, S D & G Highlanders, having been duly sworn is examined by the Prosecutor:

(The Prosecutor announces that the evidence of this witness is not contained in the Summary of Evidence, but that notice has been given to the accused and the Defending Officer of his intention to call such witness, under RP 76. The Defending Officer has no objection).

Q.624 You are Lt. H. Bateman, Adjutant of the S D & G Highrs?
A.624 Yes.

Q.625 What were you doing on or about the 10 Jun 45?
A.625 I was A/Adjt of the S D & G Highlanders.

Q.626 Do you recognize the accused?
A.626 Yes.

Q.627 Will you tell the Court what you know of certain facts in this case as they concern the accused?
A.627 On the 11 Jun 45 I was A/Adjt and someone gave me an envelope and said there was money in it.

Q.628 Do you know who gave you the envelope?
A.628 I think it was CSM Wilson.

Q.629 Go on from there?
A.629 I put the envelope in my opinions file, and then in my pending file, then Sgt. Brocklebank said.....

Q.630 What did you do?
A.630 I gave Sgt Brocklebank the envelope.

Q.631 Did you see what was inside the envelope?
A.631 Yes, there was money in it.

Q.632 What kind of money?
A.632 Guilders.

Q.633 Do you know how many guilders there were in the envelope?
A.633 No.

Q.634 What did you see Sgt. Brocklebank do with the money?
A.634 Sgt. Brocklebank took the money out of the envelope and showed it to the accused.

Q.635 Have you seen that money or the envelope since that time?
A.635 No.

Q.636 For how long was that money in your pending file?
A.636 For approximately two hours.

Q.637 Was the envelope open or closed?
A.637 It was closed until Sgt Brocklebank opened it.

NO CROSS EXAMINATION BY THE DEFENDING OFFICER

NO RE-EXAMINATION BY THE PROSECUTOR

NO QUESTIONS BY THE COURT

NO QUESTIONS BY THE JUDGE ADVOCATE

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH RULE OF PROCEDURE 83(B)

THE WITNESS WITHDRAWS.

11TH WITNESS for the PROSECUTION — B.7671 Sgt. Brockelbank, W.R., 3 Cdn Provost Coy, having been duly sworn is examined by the Prosecutor:

(The Prosecutor announces that the evidence of this witness is not contained in the Summary of Evidence, but that notice has been given to the accused and the Defending Officer of his intention to call such witness, under RP 76. The Defending Officer has no objection).

Q.638 You are B.7671 Sgt. Brockelbank, W.R., of the 3 Cdn Pro Coy?
A.638 Yes, sir.

Q.639 Do you know the accused?
A.639 I recognize him, sir.

Q.640 What do you know of the facts of this case as they concern the accused?
A.640 I investigated the circumstances surrounding the arrest of the accused with respect to several complaints as launched by the duty corporal from our company on the night of 10 Jun 45.

Q.641 And what did you do as a result of your investigation?
A.641 I examined the various statements obtained from the witnesses concerned.

Q.642 What do you know concerning certain Dutch money in this case?
A.642 During the examination I learned that certain sum of money had been, or, had, supposedly, fallen from the pocket of Duffresne. I interviewed the prisoner.....

Q.643 When did you actually handle any money in this case?
A.643 On the 11 Jun 45 I obtained an envelope containing 362 guilders from the Adjutant of the S D & G Highlanders.

Q.644 When did you last see this Adjutant?
A.644 On the 11 Jun 45, sir.

Q.645 Was the Adjutant you received the money from the last witness?
A.645 Yes, sir.

Q.646 You say you received an envelope from the Adjutant?
A.646 Yes, sir.

Q.647 What did you do with that envelope?
A.647 I attached the envelope with it's contents to my report and forwarded it to Headquarters.

Q.648 What was inside the envelope?
A.648 362 guilders, sir.

Q.649 What did you do with that money?
A.649 I replaced it in a new envelope, sealed the envelope, and placed the orderly room stamp on it. I then attached it to the file and submitted it through the usual channels. I initialed the envelope.

Q.650 I produce to you an envelope. Can you tell me if this is the envelope you speak of?
A.650 Yes, sir, that is it. That is my signature on the envelope.

(The Prosecutor produces to the Court a brown envelope; same is accepted by the Court and marked EXHIBIT "D")

CROSS EXAMINED BY THE DEFENDING OFFICER

Q.651 What do you mean when you say, "The usual channels"?
A.651 The usual procedure is, in any case where evidence has been collected and is to be submitted, is to have that evidence attached to the investigation report and held in the company strong box until it is called for.

Q.652 Did this report and the envelope go directly from you to your CO?
A.652 Yes, sir.

Q.653 Did you pass it to him yourself?
A.653 Yes, sir.

THE PROSECUTOR DECLINES TO RE-EXAMINE THIS WITNESS

NO QUESTIONS BY THE COURT

QUESTIONED BY THE JUDGE ADVOCATE

Q.654 When the Adjutant of the S D & G Highlanders handed you the envelope was it sealed?
A.654 Yes, sir.

Q.655 And you broke the seal?
A.655 Yes, sir.

Q.656 And after that you put the money in the envelope which is Exhibit "D"?
A.656 Yes, sir.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH RULE OF PROCEDURE 83(B).

THE WITNESS WITHDRAWS.

18TH WITNESS for the PROSECUTION — Lieutenant J.C. Kirby, S D & G Highlanders, the Prosecutor in this case, having been duly sworn, gives evidence:

On the 30 Jun 45 I attended No. 3 Provost Company at Hilversum, Holland, and saw the Commanding Officer, and, as a result of a certain request made by me, the Commanding Officer took out a brown envelope from his file. Exhibit "D" is the same envelope. In my presence the Commanding Officer broke the seal on that brown envelope and took out a number of Dutch bills. Both he and I counted that money and it totaled the sum of 362 guilders. Ever since that time that money has been in my personal possession until produced on trial yesterday. The money is Exhibit "C".

CROSS EXAMINED BY THE DEFENDING OFFICER

Q.657 What do you mean by, "your personal possession"?
A.657 I had it some of the time on my person and some of the time in my valise with my folder.

Q.658 Whenever it was not in your trunk it was on your person, is that right?
A.658 Yes.

NO QUESTIONS BY THE COURT

NO QUESTIONS BY THE JUDGE ADVOCATE

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH RULE OF PROCEDURE 83 (B).

THE WITNESS RESUMES HIS SEAT.

The Prosecutor announces that he does not intend to call the following witness, who gave evidence at the Summary of Evidence:
A.28509 Pte Bartlett, W.A., RCASC, att HQ 9 Cdn Inf Bde
D.82736 Cpl Quinn, F.F., No. 3 Cdn Pro Corps
Jan Franssen, 220 Van Amstelstraat, Hilversum, Holland.

The Defending Officer states that he does not require these witnesses for purposes of cross examination.

The Prosecutor asks that this case be adjourned until D.86195 CSM Wilson, G.E., S D & G Highlanders, a witness in this case, returns from UK leave.

The Court grant the Prosecutor's request.

At 1100 hours on the 18 July 45 the Court adjourned until 1000 hours on the 20 July 45.

On the 20 July 45 at 1000 hours the Court reassemble pursuant to adjournment, present the same members as when adjourned.

PROSECUTOR TO THE COURT

Sir, I regret to report that one of the witnesses for the Prosecution, namely, D.86195 CSM Wilson, G.E., of the S D & G Highlanders, has not yet returned from UK leave. I have made inquiries and have learned that CSM Wilson was suffering from boils on the back of his neck and was receiving medical attention for same. In an effort to get him back I have made application to the Adjutant of his unit that further application be made to A Branch, 9 Cdn Inf Bde, to get CSM Wilson back on the highest priority. Therefore, I move that this case be further adjourned until Monday, 23 Jul 45, at 1000 hours.

QUESTION BY THE JUDGE ADVOCATE

Is this witness an essential witness?

ANSWER BY THE PROSECUTOR

Yes, sir, he is absolutely essential to the prosecution of this case.

QUESTION BY THE COURT

Mr. Defending Officer, have you any objection.

ANSWER BY THE DEFENDING OFFICER

No, sir, I have no objection to make.

At 1015 hours on the 20 July 45 the Court adjourned until 1000 hours on the 23 July 45.

On the 23 July 45 at 1000 hours the Court reassemble pursuant to adjournment, present the same members as when adjourned.

15TH WITNESS for the PROSECUTION — D.86195 CSM Wilson, G.E., S D & G Highlanders, having been duly sworn is examined by the Prosecutor:

Q.659 You are D.86195 CSM Wilson, G.E., S.D.& G. Highlanders?
A.659 Yes, sir.

Q.660 What is your employment?
A.660 I am the CSM of C Coy.

Q.661 Do you recognize the accused?
A.661 Yes, sir.

Q.662 What company is the accused in?
A.662 He is in C Coy, Sir.

Q.663 Will you tell the Court what you were doing on the evening of 10 Jun 45?
A.663 On 10 Jun 45 I was in Hilversum and I was summoned to a disturbance that was being carried on in a street not far from where I live. On arrival at the scene of the disturbance I saw one of my chaps, Pte. Dufresne, having trouble with a Provost corporal. I told him to quit his fighting and to go with the Cpl. I had a little tussle with him but he came to the truck. When we reached the truck he tried again to escape, and there was another tussle, but we managed to get him into the truck. He had two escorts, or three, in the truck with him. The truck proceeded down the street. I came behind in a Jeep. A short distance down the street I was stopped by one of the escort who told me something as a result of which I saw, when I arrived at the truck, that Dufresne was gone from the truck, and had gone down a street into a yard. I went to the yard and again asked Dufresne to go back to the truck. He did so. We then proceeded down the street to Provost Headquarters and Dufresne was taken over by the staff there.

Q.664 When you took Dufresne back to the truck the second time did you sit in the truck with him?
A.664 No, sir, I did not go to the truck.

Q.665 But you saw the accused in the yard?
A.665 Yes, sir.

Q.666 Who was with the accused the first time you put him in the truck?
A.666 A L/Cpl from the Provost, Pte Moore, Pte Dufresne and Sgt Haley, that was all, sir.

Q.667 Did you see anything of any money that evening?
A.667 Yes, sir. The money I saw was lying on the drivers seat of the Jeep which belonged to the Provost Corps. As I was wrestling with Pte. Moore I saw the money on the seat and there was a Jeep from our own company came up, I asked my man to take the money and go away. When I arrived back at Headquarters I asked the man to hand over the money and I took it to the orderly room clerk and asked him to put it in an envelope and to guard it for me.

Q.668 Was there any conversation at all between you and the accused?
A.668 Very little, sir.

Q.669 What did you see the orderly room clerk do with the money after you gave it to him?
A.669 I did not see what he did with it. The following morning he handed it back to me in an envelope.

Q.670 You saw the envelope?
A.670 Yes.

Q.671 When you saw the envelope was it sealed or unsealed?
A.671 It was sealed.

Q.672 How much money was in the envelope?
A.672 The amount was written on the outside, I did not open it.

Q.673 How did you know there was money in the envelope?
A.673 It felt as if there were money in it.

Q.674 Then what did you do with the envelope?
A.674 I took it to Major Thompson.

Q.675 What did you see Major Thompson do with the envelope?
A.675 He put the envelope on his desk and told me he would look after it.

Q.676 Did you count the money at all?
A.676 No, sir.

Q.677 Can you describe the money?
A.677 I know there were a bunch of bills, some were 10 guilder notes and some 20 guilder notes. I can not remember any more.

Q.678 Of what country was the money?
A.678 It was Dutch money.

Q.679 Do you know how many bills there were?
A.679 No, sir.

Q.680 Could you give an approximate number?
A.680 I am afraid not, sir.

Q.681 Were there more then ten bills?
A.681 Yes, sir.

Q.682 Were there more then 20 bills?
A.682 No, sir.

Q.683 What was the name of this person who you ordered to pick up the money from the driver's seat of the Jeep?
A.683 Pte. MacEacheran.

Q.684 Where is he now?
A.684 He is in Germany, sir.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q.685 You say you ordered Pte. Dufresne into the truck; did you tell him that he was under arrest?
A.685 No, sir.

Q.686 Was Pte. Dufresne drunk?
A.686 Yes, sir, he was.

Q.687 Was he very drunk?
A.687 Not so drunk that he didn't know what he was doing, he was not too drunk.

Q.688 He was not too drunk for what?
A.688 He was not too drunk to understand or recognize.

Q.689 Do you think he understood that he was under arrest?
A.689 I could not say, sir, it was my order that he proceed to the truck.

Q.690 You did not say to him, "You are under arrest"?
A.690 No, sir.

Q.691 You say the amount of this money was written on the outside of the envelope. What was the amount written there?
A.691 362 guilders, sir.

Q.692 You say that when you were taking Dufresne to the truck he tried to escape. Do you mean escape or break away?
A.692 I was standing talking to him and he ran away. I ran after him and brought him back.

Q.693 Did you at any time tell the accused he was under arrest?
A.693 No, sir.

THE PROSECUTOR DECLINES TO RE-EXAMINE THIS WITNESS

NO QUESTIONS BY THE COURT

QUESTIONED BY THE JUDGE ADVOCATE

Q.694 Was the accused under arrest?
A.694 After being put under escort he was under arrest.

Q.695 Was the accused under Provost escort or an escort from your own company?
A.695 There were both, sir.

Q.696 When you first saw him was he under escort from your own company?
A.696 No, sir, not when I first saw him. At first he was with a Provost escort. A Provost Cpl was trying to get him into the truck.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH RULE OF PROCEDURE 83 (B).

THE WITNESS WITHDRAWS.

14TH WITNESS for the PROSECUTION — Major B.M. Thompson, S D & G Highlanders, having been duly sworn is examined by the Prosecutor:

(The Prosecutor announces that the evidence of this witness is not contained in the Summary of Evidence, but that notice has been given to the accused and the Defending Officer of his intention to call such witness, under RP 76. The Defending Officer has no objection).

Q.697 You are Major B.M. Thompson of the S D & G Highlanders?
A.697 Yes.

Q.698 What is your employment in the Army?
A.698 I am company commander of C Coy, S D & G Highlanders.

Q.699 What is the name of your CSM?
A.699 CSM Wilson.

Q.700 Have you seen CSM Wilson here today?
A.700 Yes, he is outside here.

Q.701 Do you recognize the accused who is sitting over there?
A.701 Yes, the accused is a member of my company.

Q.702 What do you know with respect to the facts of this case?
A.702 The day after I understand the instance took place CSM Wilson told me what he knew of the case. I only know what CSM Wilson told me. CSM Wilson came to me with some money which had been taken from the accused.

Q.703 Did you see the money?
A.703 The money was in an envelope.

Q.704 Did you see the money?
A.704 I can not say that I saw the money. I do not remember whether I saw it or not. I may have glanced at it casually. The amount of the money in the envelope was marked on the outside.

Q.705 What did you do with the envelope?
A.705 I handed it over to the adjutant.

Q.706 What is the Adjutant's name?
A.706 Lt. Bateman.

Q.707 How soon after you received the envelope from CSM Wilson did you hand it over to Lt. Bateman?
A.707 Almost immediately. At that time I was A/OC and the Adjutant and I were in the same room.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q.708 You say you are the Company Commander of C Coy?
A.708 Yes, starting today. At the time of this incident I was 2 IC, and CSM Wilson gave me the money for that reason.

Q.709 Do you remember what date that was?
A.709 I can not say exactly, it was the early part of June.

THE PROSECUTOR DECLINES TO RE-EXAMINE THIS WITNESS

NO QUESTIONS BY THE COURT

NO QUESTIONS BY THE JUDGE ADVOCATE

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH RULE OF PROCEDURE 83 (B).

THE WITNESS WITHDRAWS.

THE PROSECUTION IS CLOSED

SUBMISSION BY THE DEFENDING OFFICER

I submit that the Prosecution has failed to establish a prima facia case on the first charge, for the following reasons: There has been no evidence to indicate that at any time the accused was in the vicinity of the money, allegdly in the handbag of Mrs. Lamfers. In that respect Mrs. Den Enting has stated that she thought the accused was in the yard where the handbag was by reason of the fact that she heard bottles rattling. I would like to point out that she also stated she had bottles in the kitchen where she kept the syrup, and also that the accused had a bottle with him. Secondly, there is no indication that the money that fell out of the accused's pocket had been any money which Mrs. Lamfers had, allegdly, in her handbag. Mrs. Lamfers said she could identify the money because of the way it was arranged, and she has no other way of recognizing it. The Court saw Mrs. Lamfers arrange and rearrange the money in this Court room. Thirdly, I submit that there has been insufficient evidence that the money which witnesses say they saw fall out of the accused's pocket is the money that was handed over to Lt. Bateman. This money was picked up by a soldier and put into the Jeep and then another soldier took it from the Jeep, this soldier could have been Pte MacEacheran, from there it went to the orderly room clerk who says it was put into the orderly room box. I contend there are gaps in the sequence of the handling of this money. This first soldier who picked up the money has not been identified, has not given evidence, no one seems to know who he was. Pte MacEacheran is not here to state that he did pick the money up from the Jeep. Also during the night the money was left in the orderly room box it could have been taken by anyone. The clerk was asleep, the box was not locked, and the clerk does not know whether the envelope containing the money was sealed or not.

ANSWER BY THE PROSECUTOR

I submit that there is sufficient evidence offered by the Prosecution to merit this case to the members of the court. The Court will recall there are a number of instances of strong circumstantial evidence that the accused is guilty of stealing that money. First, Mr. and Mrs. Den Enting and daughter, Mr. and Mrs. Lamfers, all state that the bicycle bags were closed before the accused arrived on the scene, yet, directly after the accused left the Cafe, Mrs Lamfers and Mr. Den Enting both found that the bicycle bags were open and showed signs of having been tampered with. Secondly, the accused and his companion, Moore, were in the yard, or, in the part of the premises leading to the courtyard. They were there alone for 15 minutes and had ample opportunity to take the money. All five witnesses state that neither themselves or anyone else went into that courtyard from when the bicycles were put there until after 7 o'clock when the accused had left the Cafe. Thirdly, the prosecution has put forward sufficient evidence that that only way into the courtyard was from the kitchen itself. The evidence reveals that there is a wall, a high wall, surrounding the courtyard, with an iron, barbed wire on top of it. The gate leading into the side street was securly locked and barred. Mrs. Lamfers was apparently satisfied that her money was safe in that courtyard, and she took all precautions because

that 400 guilders was all the money she had in the world. Fourthly, Mrs. Lamfers, despite cross-examination, stoutly maintains that the money that fell out of the pocket of Pte Dufresne is her money, and it is an exceedingly singular fact that the denominations of the 362 guilders, so far as the lesser amount would allow, tallies with what Mrs. Lamfers says she had in her purse. I have shown by a series of witnesses that the money that fell out of Pte Dufresne's pocket was the money which is in Court, and which has been identified by Mrs. Lamfers as her money. I submit that this Court can take judicial notice of the common and ordinary things of life. I am sure that every member of this Court has at some time been very very certain of a fact and still unable to find a reason for so being. Such is the case of the certainty Mrs Lamfers had in identifying the money which was filed as an exhibit before this Court. I submit that a prima facia case has been established.

NO REPLY BY THE DEFENDING OFFICER

JUDGE ADVOCATE

Mr. President and members of the Court, the Defending Officer has made a motion, at the end of the Prosecution's case, that the prosecution has not made out a prima facia case on the first charge of stealing. I must, shortly, and in a very few words, tell you what stealing is. Stealing is the taking, without the consent of the owner, frauduently, and without colour of right, any property, and carries it away, with the intention at the time of taking it to permanently deprive the owner thereof. So, the essential ingredients in order to establish theft are, lack of consent of the owner, frauduently taking and carrying away of property with intention to permanently deprive the owner thereof. Now, the Defending Officer's motion is simply that the Prosecutor has not produced enough evidence on which you could, if you heard no more, convict the accused of that charge. At this stage it is not/incumbent on you, as the Court, to believe or disbelieve any evidence you have heard. In other words, it is now your function to determine whether or not you have sufficient evidence to determine the guilt or innocence of the accused. If you are satisfied at this stage of the innocence of the accused you can, of course, allow the submission, but, if you think there is more than a thread or tittle of evidence to support the charge, then you may proceed with the trial.

The President announces that the Court is closed to consider the submission by the Defending Officer

The Court is reopened and the President announces that the submission by the Defending Officer has been disallowed, and that, accordingly, the Trial will proceed.

1ST WITNESS for the DEFENCE C.123697 Pte. Dufresne, V.E., S D & G Highlanders, having been duly sworn is examined by the Defending Officer:

Q.710 Will you tell the Court what you can remember of what you did on the 10 Jun 45?

A.710 On the 10 June 45 at approximately 2 o'clock in the afternoon I was walking down Amstelstraat in Hilversum and I met a Dutch civilian. I asked him where I could get a bottle of schnapps. He pointed out a Cafe to me. I went into the Cafe and asked if they had any schnapps. They said they had some for cigarettes or for trade. I told her I had two pairs of silk stockings. She wanted to see the silk stockings so I went after them. I came back with the silk stockings and she gave me a bottle of gin for them. I remember drinking the bottle of gin in the school house, but even before the bottle was finished I can't remember if I was even in the line up for supper. I just went blind. That is all I can tell of the case, sir.

CROSS EXAMINED BY THE PROSECUTOR

Q.711 Who did you speak to when you went into the Cafe the first time when you tried to barter silk stockings for gin?
A.711 It was the lady, the one with the eyes that stick out.

Q.712 Do you mean it was the daughter?
A.712 I do not know for sure who she is, sir.

Q.713 About what time did you leave the Cafe after that first visit?
A.713 At about 2:30, sir.

Q.714 And from there you say you went to the school?
A.714 Yes, sir.

Q.715 What time did you go there?
A.715 Right after I left the Cafe.

Q.716 Who was with you at the time you went to the school?
A.716 Pte. Moore.

Q.717 For how long did Pte Moore remain with you at the school?
A.717 I could not say, sir.

Q.718 Where did you go after you left the school?
A.718 I don't remember leaving the school.

Q.719 At what time did you return to the Cafe for the second time?
A.719 I don't remember returning.

Q.720 Do you remember fighting with Pte. Bartlett?
A.720 No, sir.

Q.721 Have you ever seen Pte. Bartlett?
A.721 I only saw him at the Summary of Evidence.

Q.722 Do you remember taking a bottle of vinegar from the Cafe?
A.722 No, sir.

Q.723 You state that you do not remember anything after you had a drink of gin in the school house, is that right?
A.723 Yes, sir.

Q.724 You heard the witness state that you took a bottle of vinegar?
A.724 There was no evidence like that, sir.

Q.725 You were here when both Mrs. Den Enting and her daughter stated that you followed the daughter into the kitchen and took a bottle of vinegar?
A.725 It could not have been during the first visit because I remember everything I did then.

Q.726 Do you remember taking a drink out of a bottle of vinegar?
A.726 No, sir.

Q.727 What was the first thing you remember after you took that drink in the school house?
A.727 I took more than one drink, sir.

Q.728 What is the first thing you remembered after you finished drinking the bottle?
A.728 I don't remember finishing the bottle.

Q.729 What is the first thing you remember after drinking in the school house?
A.729 I don't remember, sir.

Q.730 What is the first thing you remember after you don't remember?
A.730 I remember being at Provost Headquarters.

Q.731 Do you remember seeing the Provost before that time?
A.731 No, sir.

Q.732 Did you see CSM Wilson that day?
A.732 No, sir.

Q.733 Do you remember anyone hitting you that day?
A.733 No, sir.

Q.734 Do you remember seeing two bicycles that day?
A.734 No, sir.

Q.735 What part of the premises of the Cafe do you remember being in?
A.735 When I got the gin for the stockings I was in the Cafe itself.

Q.736 You went into the living room too at that time?
A.736 No, sir, the lady went into the living room and came back with gin and put it on the counter.

Q.737 You did not follow her into the living room?
A.737 No, sir.

Q.738 When you left the Cafe for the second time who were you with?
A.738 I don't remember being there a second time.

Q.739 Do you remember a crowd of people that afternoon or evening?
A.739 No, sir.

Q.740 How did you come out of your drunken state, was it gradual or suddenly?
A.740 It seems I came to at the Provost Headquarters. When I saw the Provost there I realized where I was.

Q.741 Do you remember breaking a window?
A.741 No, sir.

Q.742 What did you do after you left the Cafe, after your second visit?
A.742 I have just said that I can not remember a second visit.

Q.743 What door did you leave the Cafe by after your first visit?
A.743 The front door. I don't know if there is a second door.

THE DEFENDING OFFICER DECLINES TO RE-EXAMINE THIS WITNESS

QUESTIONED BY THE COURT

Q.744 On the 10 June, when these alleged instances took place, you say you did visit that Cafe at about 2 o'clock?
A.744 Yes, sir.

Q.745 Had you at any other time, any other day, during your time in that district been a visitor at that Cafe?
A.745 No, sir.

Q.746 When was your last leave?
A.746 That was back in Canada, sir.

Q.747 You have never had a leave from the Continent of Europe?
A.747 No, sir. My leave was due last month.

Q.748 Was that a 48 hour leave or a long leave?
A.748 A long leave, sir.

Q.749 How about 48 hour leaves? Have you had any of those on the Continent?
A.749 No, sir.

Q.750 Have you ever drawn money from your Paybook for any other reason than for leave?
A.750 No, sir.

Q.751 This lady that gave you the bottle of gin, where did she get it from?
A.751 I do not know I stood in the Cafe while she got it.

Q.752 Where were you standing when she gave you the bottle of gin?
A.752 In the corridor, sir.

Q.753 Where did she come from with the bottle of gin?
A.753 I could not see where she came from. She just came in the door. I don't know whether it was from a living room, a kitchen, or what.

NO QUESTIONS BY THE JUDGE ADVOCATE

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH RULE OF PROCEDURE 83 (B).

THE WITNESS WITHDRAWS.

THE DEFENCE IS CLOSED

CLOSING ADDRESS BY THE PROSECUTOR

Sir, first of all I would like to state to the Court that the law is, as the Judge Advocate will tell you, that drunkeness is no excuse for any crime, and that drunkeness only goes to mitigation of punishment. It is for the members of the Court to judge how drunk the accused was. You have heard his evidence, and he did not explain, on cross-examination, the story about the vinegar very well. CSM Wilson stated that the accused was drunk but not so drunk as not to understand what he was doing. Mr. Den Enting stated the accused was drunk but he also said that he could walk around reasonably well. Under cross-examination he stated that he thought the accused was not so drunk as not to know he was in a Cafe. Also the accused was not so drunk that he was unable to fight with some agility, as the evidence shows that he beat up Pte Bartlett pretty soundly, and no person as drunk as the accused wishes to imply he was could do that. That is a point for the Jury to decide, that is, how drunk the accused really was. The Prosecution need not prove the guilt of the accused beyond all shadow of doubt. In as complicated a case as this it is almost impossible to prove the case conclusively beyond all doubt. I submit that the Court as jury must judge, gauge, weigh the evidence the same way as any reasonable man carrying on a business would do. With this standard of judgement in your minds I ask the court to recall all the evidence which has been given by the prosecution.

All the offences committed by the accused were committed on the 10th day of June 1945. Two witnesses were positive on this point, namely Sgt. Brocklebank of the Provost Corps and Inspector Helweg. They are both members of the arm of the law; they should know because that is the result of their training. William Verbeek , the allegedly assaulted policeman, is almost sure it was on 10 Jun 45. Mr. Bateman is almost positive of the date as is L/Cpl MacIsaac, who went on leave the next day. All the other witnesses are certain it was on a Sunday during the first part of the month. There are only two Sundays during the first part of the month, the 3rd and the 10th. Mrs. Den Enting thought that the date was the 13th and the nearest Sunday to the 13th is on the 10th. They all state that the date of the offence was 5 or 6 weeks ago. Mr. Lamfers is almost sure that the incidents took place on the 10th. I submit to the Court therefore that these offences did take place on the 10th, because it is the 10th June, 1945, Sunday, the one date that predominates over all other dates mentioned. There is a definite chain of events leading from one witness to the other linking together all those witnesses on that one day. I would like to point out to the Court that if all the witnesses had definitely and positively stated that the day was the 10th, the Court would have had reason for strong grounds of suspicion with regard to the witnesses, particularly after such a long period of 6 weeks has elapsed since the offences took place.

Dealing first with the charge of creating a disturbance at 131 Amstelstraat, Hilversum. The facts given in evidence by Mr. & Mrs. Den Enting and their daughter, Josephine Philipsen, all coincide. The sum total of their evidence on this charge definitely established that the accused did create a disturbance in a civilian cafe at 131 Amstelstraat. There is no question at all with regard to the degree of disturbance. Look at the facts as offered by the evidence. The accused followed the daughter into the living room without permission. The Cafe is a public place, but not so the living quarters. He also followed the daughter into the kitchen without permission, and while there took a bottle of vinegar. An attempt was made to get the bottle back from the accused. The conduct of the accused during the first visit can be described as obnoxious. It was so obnoxious in fact that Mr. Den Enting, on seeing the accused approach the side door, bolted that door. The accused in the company of Moore persisted so that Mrs. Den Enting and her daughter went to the door, and as a result of a request

made to him, another Canadian soldier, named Bill, who was a guest at the house, went to the door. Evidence is offered that Bill talked to the accused and then suddenly the accused hit Bill in the face with his fist. Blood was seen and a tussle insued in the Cafe over the billiard table. The accused was seen standing over and then lying on top of Bill, who was on the floor. Mr. Den Enting gave evidence that the accused remained in the living quarters alone, that they heard the opening and closing of cupboard doors. On my question as to why they allowed the accused to remain alone in the living room, both Mr. and Mrs. Den Enting stated that they were afraid to go in. I submit to the Court that this charge of creating a disturbance has been proved by the prosecution.

With regard to the charge of stealing 400 guilders from Marriagie Prins, of Amsterdam, the evidence definitely establishes the identity of Marriagie Prins as the person named in the charge sheet. Both she and her husband state that in a bicycle bag on the bicycle of Mr. Lamfers the wife has her purse. The purse contained a pocket book, which in turn contained 400 guilders in Dutch currency. Both she and her husband went so far as to state the exact denominations of the notes. They both counted the money on the Friday evening before that Sunday. Mr. Lamfers stated that this 400 guilders was their total savings and household money; for that reason they both knew exactly what they had, as people in their straightened circumstances would normally know, these circumstances being further aggravated by the present disorganized economical condition of Holland. They guarded this money very carefully because it was all they had. It was safer, Mr. Lamfers stated, to take the money with them wherever they went, than to leave it at home. On arrival at 131 Van Amstelstraat, the bicycles were put in the courtyard to the rear of the Cafe, and leaned against a shed there. Mr. and Mrs. Den Enting, their daughter and Mr. and Mrs. Lamfers, five witnesses, definitely state that the bicycle bags on Mr. Lamfers bicycle, in which were the 400 guilders, were closed by means of leather straps and buckles. The evidence of all five witnesses again state that Dufresne and Moore were in the living quarters alone for about 15 minutes and the opening and closing of cupboards was heard during that time. No one saw what the accused was doing in the living quarters, but a rattle of empty bottles was heard and further evidence was given by Mr. Den Enting that empty bottles are kept in the shed. The accused and Moore emerged from the living room into the Cafe and left. Evidence was given by Mrs. Lamfers that directly the accused left the premises, she went to the bicycles. This is corroborated by Mr. Den Enting, who saw her go there, remain there for about a minute and return into the house. As she entered the house he stated that she was weeping, yelling and in a very nervous state. The members of the Court saw that woman while she gave evidence and will agree with me that she is a woman of that type of temperament, who would become exceedingly upset, and undergo such emotional disturbances, particularly if all her and her husband's savings and household money were stolen. She found that the bicycle bags were unbuckled and her handbag has been tampered with. Mr. Den Enting immediately afterwards went to the bicycles and also found the bags open. Mr. and Mrs. Den Enting, their daughter, and Mr and Mrs. Lamfers all state definitely that they saw no person go and they themselves did not go into the courtyard between 1700 hours, when the accused first arrived, and the time the accused left after the second visit, which was approximately 1930 hours. During the 15 minutes the accused was in the living quarters alone there was every opportunity to proceed into the courtyard. He was heard opening and closing cupboards, so he was in a ransacking mood. Further evidence was given by Mr. and Mrs. Den Enting and daughter, and by Mr. and Mrs. Lamfers as to the security of the courtyard from outside interference. In evidence they stated that the only way anyone could get into the courtyard was through the kitchen door, as there is a high wall around the courtyard, with a barbed wire fence on top of it, and that the entrances to the courtyard were locked and securely barred. All this evidence with regard to the theft is merely circumstantial. It is obvious that all money looks the same unless there are special markings on it. The Court will take judicial notice of the fact,

I am certain, that it is foreign to normal human behaviour for a person to put a special marking on every bill he gets or to take the serial number of every bill which passes through his hands. It is also unusual that a person should count his money every day. Mrs. Lamfers is sure that the money is her money. You yourselves have experienced the same feeling many times of being unable to give a reasonable explanation for a feeling. That the money which Mrs. Lamfers identifies in Court as hers is the same money that fell out of the pocket of the accused is, I submit, definitely proven. Every person in the chain of transfer of that money was called as a witness. The defence has attempted to break this chain by inferring that this money was in the custody of various persons who were vulnerable to theft. It is sufficient to state that the total of the money, by the evidence, remained 362 guilders all along the line and is it not preposterous to suppose a thief would replace money he had stolen with other money?

There is a certain legal doctrine which is particularly applicable to this case, namely, the doctrine of recent possession. This doctrine is very well put in MML, Chapter VII, Section 66, Page 124. It states here that if a person is found in possession of goods recently stolen there is strong presumption that he stole, or received with knowledge that they were stolen. The onus of proving guilty knowledge always remains upon the Prosecution. A Jury or Court Martial may, in the absence of any explanation by the accused, find him guilty. However, the Prosecution is going further than it needs to. It is actually proving the circumstances under which the accused came to possess the stolen 400 guilders. The evidence is purely circumstantial and it cannot be otherwise. So called circumstantial evidence is evidence and such evidence alone can lead to the pronunciation of guilt by a jury. There are two leading cases on circumstantial evidence: In Rex v Palmer (1856), Cockles Cases 4th Edition, Page 61, the accused was on trial for murder. Evidence was admitted that the prisoner was heavily indebted to the deceased, that the prisoner obtained poison, the conduct of the prisoner was relevent to his being guilty, after the death of the deceased, the accused was eager to have the body fastened down in the coffin, that he tried to bribe the post boy to overturn the carriage which was carrying a bottle to London for chemical analysis, that he tampered with the postmaster and with the coroner. Lord Campbell, C.J. stated in his charge to the jury that witnesses have got to state that they saw the deadly poison administered by the prisoner or mixed up by the prisoner.....(from bottom Page 61). In the case of Dowling v Dowling, 1860, 10 Irish Common Law Reports, Page 236, (quotes). Evidence has shown that there was sufficient opportunity during the time the accused was in the living quarters alone for him to take that money. The Prosecution submits therefore that the accused is guilty of stealing 400 guilders. As far as the difficult nature of this case will allow, the prosecution has offered sufficient evidence to find the accused guilty.

On the fourth charge, that is the charge of assaulting William Verbeek, in the City of Hilversum, and thereby occasioning him bodily harm, I submit the accused is guilty beyond a shadow of a doubt. The evidence of William Verbeen himself is conclusive. The bodily harm was actual. The wound in his right leg below the knee was open for 8 days. He was attended by a doctor. He had bodily pains for a few days as a result of the fall he took when the accused socked him under the chin. He was unable to fulfill his duties as a policeman for 8 days and his doctor prescribed rest. Inspector Helweg visited him on the morning after the fight and that witness states that Verbeek could move around only with difficulty. Two other eye witnesses of the incident between Verbeek and the accused corroborate Verbeek's evidence, namely Inspector Helweg and Peter de Weerd. No clearer evidence on a charge like this can be obtained. I submit that the accused is guilty of this offence. May it be noted by the Court that at the time of the alleged assault on Verbeek he was in policeman's uniform, and therefore the accused

was aware that Verbeek occupied an official position.

With regards to the fifth charge of escaping when in arrest. Here again the evidence is clear and conclusive. CSM Wilson was instrumental and aided in the arrest and again in the re-arrest. The accused was obviously in close arrest, why otherwise would an escort be put in the 1500 wt with them? The Court is entitled to take judicial notice of matters within their general military knowledge (R.P. 74). Although CSM Wilson did not actually see the accused jump out of the vehicle, the accused was not in the vehicle when it stopped. There are also two independent witnesses, Inspector Helweg and Peter de Weerd, who saw the accused actually jump out of the truck. They also corroborate the evidence of CSM Wilson of both the arrest and the re-arrest. Mrs. Den Enting too, saw the Provost chase the accused. This was not a mere attempt to escape. The break by the accused from the escort and captors was complete and he had to be arrested all over again. I submit to the Court that the accused is guilty of escaping from close arrest.

CLOSING ADDRESS BY THE DEFENDING OFFICER

Sir, in so far as the first charge is concerned I reitterate, no evidence is before the Court of the fact that the accused left the living quarters of the Cafe. Mrs. Den Anting has stated that she heard rattling of bottles. Evidence given by Mrs. Den Enting and by Mr. Den Enting shows that bottles were also kept in the kitchen, and that the accused had a bottle with him. The Prosecution has brought out the fact that the bags on the bicycles were buckled with leather straps at the time the bicycles were left in the courtyard. The evidence has also brought out that the last person in that courtyard was there shaking a table cloth at 4 o'clock. There is a space of nearly three hours and fifteen minutes during which time no one of the family were in the courtyard, or did they see anyone else enter it. There is a gate to the courtyard leading to the neighbours property. No one has been able to state whether or not that gate was locked. In so far as the high wall is concerned it is a seven foot wall and quite scalable. I submit that besides the fact of the rattling of bottles there was no evidence given that the accused might have been in the courtyard. Also a gap of three hours and fifteen minutes would be ample time for what the Prosecutor has called outside interference. On the matter of identification of notes, which allegedly fell from the pocket of the accused during a fight with the Provost, and which Mrs. Lamfers claims are hers and were taken from her purse, there has been no identification of those notes other than the arrangement of the notes. I contend that ~~ex~~ no identification whatsoever has been made. Mrs. Lamfers arranged and rearranged those same notes in this Courtroom and when asked if the only way she could identify them was by the arrangement, she answered, yes. So far as the sequence of the possession of the notes is concerned I contend there has been a break. Peter de Weard has stated that he saw another soldier pick the notes up and put them on the seat of a Jeep. This other soldier has not given evidence, has not been identified by name by anyone. CSM Wilson has given evidence that he told Pte MacEacheran to pick the notes up from the seat of the Jeep, but who the other soldier was who picked the notes from the ground is not known. Pte MacEacheran has not given evidence at this Trial either. As to the date of these alleged offences might I suggest that the reason why the witnesses could even come close to the date was by reason of the fact that they were all asked what happened on the 10 Jun 45. All the witnesses are very well aware of what this case is about, so, when they were asked what happened on the 10 Jun 45 they naturally would assume that this was the date on which these circumstances happened. Even at that they were by no means sure of it. I suggested to one of them, could it have been the 17 June and the answer was, "Yes, it could have been". The Prosecution has stated that drunkenness does not go as an excuse for a crime itself but rather to mitigation of punishment. Yet, when what stealing means in law was read the words fraudulently and with intent to deprive were used. Surely it goes to whether or not fraud was present and whether or not any intention to deprive permanently was there. You have heard the evidence of various witnesses. Mr. Lamfers when asked if the accused was very drunk at the time said, "Yes", and when further questioned as to whether he thought the man knew what he was doing said, "I don't think he knew what he was doing". Also you have heard the evidence of the accused on oath, and he states that he does not remember what happened after a bottle of gin was consumed in the school at around 2:30 in the afternoon. I submit that the accused was too drunk to have the necessary intention. The case of the Prosecution, as has already been stated, rests on certain very material particulars, entirely circumstantial evidence. So far as the first charge is concerned I direct the attention of the Court to Page 88 of MML, which says, before a Court findsan accused person guilty on circumstantial evidence it must be satisfied not only that the circumstances are consistent with the accused having committed the act, but are consistent with any conclusion that the

accused is the guilty person.

In so far as the other offences are concerned. I might point out that the Prosecution has intimated that creating a disturbance is following a person into a room and drinking from a bottle of vinegar. I leave it to the Court to decide if that is creating a disturbance. You have already heard the CSM state that he did not inform the accused that he was under arrest. Surely it is conceivable for the CSM of your company, if he sees you are having a bit of trouble, to see that you get home all right. CSM Wilson has definitely stated that he did not place the accused under arrest. In so far as all of the charges are concerned I would remind the Court that the Prosecution must prove the guilt of the accused beyond all reasonable doubt. By reason of the facts I have stated, insofar as the first charge is concerned and the evidence of the accused, and in view of the points brought out in the other charges, I feel the accused should not be found guilty of the charges stated.

SUMMING UP BY THE JUDGE ADVOCATE

Mr. President and Members of the Court, it is now my function as Judge advocate to sum up. First of all I wish to make it clear as to what the function of the Judge Advocate is on a Trial of this nature. The function of the Judge Advocate is to advise the Court on all points of law involved. In the case itself the Court, in the final analysis, is the judge of the law, as well as the facts, but, you should take your law from me unless you have very good grounds to the contrary, and even then you must record your reasons for refusing to take that law, as defined by me. As far as the facts are concerned, you the Court are the only judges, you and nobody else are the judges. If I have at any time during this trial, either in questioning of witnesses, or, by any comments made by me, or, if I should say anything during this summing up that would lead you to believe that I am expressing an opinion on the facts of this case, or of the guilt of innocence of the accused, you must disregard my comments or remarks completely. In other words, any views I have on the facts of the guilt or innocence of the accused is of no interest to you whatsoever. I repeat, you are the sole judges, you are the only judges of the facts of this case. You must form your own opinion of the facts. I should also add that if I should refer to any facts given in evidence it is your recollection of the facts, or evidence, and not mine that you should take. You should have no difficulty on this score because the evidence has been taken down by a Court Reporter and I will lay before you a complete transcript of the evidence taken up to this time, not including the evidence taken this morning. If at any time during your deliberations you have any doubt as to the evidence you can re-open the Court and the shorthand writer will read to you from his notes.

The accused stands charged with the offence of stealing, under Army Act, Section 41. I might say that if this alleged offence were committed in Canada or England same would be tried by the civil courts, but in the Canadian Army on active service, in a foreign country, the Army must try all offences allegedly committed because there are no civilian courts with jurisdiction over our soldiers. Accordingly, the first charge is simply a civilian offence of stealing, which under Army Act 41, is tried by a court martial. Irrespective of the technical wording of the charge the charge is simply one of theft. I will tell you what stealing or theft is in law. It is well defined in KML, Chapter VII, Para 80, at Page 118. A person steals who without the consent of the owner fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen, with intent at the time of such taking, to permanently deprive the owner thereof. You will see therefore that the necessary ingredients are five in number: The lack of consent of the owner, which in this case, if it was a theft, there can be no argument. Second, fraudulently and without colour of right. All that means is a person taking something to which he is not entitled. The "takes" is the third ingredient, which is the essential ingredient of theft. The taking can be actual taking by a person with his hands, and a person may take something although, physically, he does not take it. He may take it through an agreement with another person who does the actual taking through his instructions. The next essential is carrying away. There must be a carrying away. A man who puts his hand in another persons pocket to take money but actually does not pull it out of the pocket does not actually take anything away. Then last is the intent to permanently deprive the owner at the time. It must be the intention of the person taking that it is done permanently. In other words, a person who takes something but intends to return it, that is not a permanent taking because at the time of taking the thing the intention was to return it.

I do not propose to go into the evidence in this case for two reasons; first, both the Prosecutor and the Defending Officer have ably reviewed the evidence before you, and brought to your attention

the main facts of the case. Secondly you have, and I wish you to take particular notice of the transcript of the evidence before you, which you can read. In order to convict the accused on the first charge you must be satisfied, in a manner which I will tell you later, that the accused by himself, or in concert with another person, actually stole this money of a sum of 400 guilders, on, or about, the day in question. The case of the Prosecution in this respect is evidence that the money was in a particular place, and that the accused was also in, or near, that place at a time when he could not be seen by other people, or, was not seen by other people, and that immediately, or, shortly, after the accused had left that place the money was found to be missing. The Prosecutor alleges that there was a theft that afternoon in the place described, and that the accused had the opportunity to commit that theft. The Prosecutor has endeavoured to produce to the Court evidence that on that same day, at a different place, certain money was found on the person of the accused. You have heard a great deal of evidence on where the money went and of the various hands through which it passed. All that is merely to tie up that the actual money produced to the Court was the money which, allegedly, fell out of the accused's pocket. It is for you to decide whether , under all the circumstances shown, you are satisfied that the money produced in Court, and marked as an exhibit in this case was the money that fell out of the accused's pocket. The Prosecutor has endeavoured, by circumstantial evidence, to suggest that that money, in view of the denominations, is in all likelihood the money or part of the money which was allegedly stolen. The Prosecutor in the third phase has gone further then merely to show by circumstantial evidence that this sum of money, by reason of it's denominations, was the same money that was stolen, or part of it, but has produced a witness who states that it is the money. It is for you to decide whether or not you can give credence to that evidence, or whether it is more of an opinion then a fact. You have heard the reasons given as to why the money is identified. As far as the Defence is concerned, the Defence takes a strong view that the evidence is not sufficient, and the Defending Officer submits to the Court that you should not find the accused of theft on such evidence. It is a matter for you to determine what part of the evidence you believe and what conclusions you can come to in that respect. The burden of proof, the proof that the accused committed this offence, or, this alleged theft, rests on the Prosecution. I will go into this at a little greater length at the end of my summing up. As the Prosecution stated this morning it is my duty to bring to the Court's attention what might be called a special rule, or, not so much a special but a variation or ramification of the rule, and that is the Doctrine of Recent Possession. It is set out in Para 66 of Chap. VII of MML at Page 124, it reads, "If a person is found in possession of goods recently stolen there is a strong presumption that he stole them, or, received them with the knowledge that they were stolen...(reads) The onus is still upon the Prosecution to prove him guilty. If you are satisfied beyond a reasonable doubt that this money that fell out of the pocket of the accused was the money that was allegedly taken sometime before from the bicycle bags, then there is a presumption that it was stolen by the accused, in the absence of any reasonable explanation as to how the money came into his possession. Remember, however, that first of all you must be satisfied that that money was the money that was stolen.

I will just say one or two words about principals and accessories. A person who commits an offence himself is guilty as the perpetrator and can be tried as such. If two or more people jointly commit an offence, each taking some part, but neither taking necessarily all, each of the parties are liable to be tried, charged and indicted throughout as principals and as perpetrators. I wont go into the definitions of principals in the first or second degree because I do not think it is particularly applicable to this case. I will say that if two or more people jointly commit a crime, each taking some part, but no necessarily the whole part in the offence, each

is as guilty as if he had committed the offence himself.

I should say a word as to drunkenness as a defence. There is a principle of English law that drunkenness is no excuse for crime. The normal rule that a man intends the natural results of his actions applies. However, where intention is of the essence of the offence, such as murder, drunkenness can in certain circumstances be an excuse. I will read to you from Archibold's, 31st Edition, Page 17 and 18 (reads). You can take it from me that unless the accused was so drunk that he did not know what he was doing, or, did not know the nature and consequences of his acts, or, did not know that he was doing wrong, then it is not an excuse. If his drunkenness was such that it merely effected his desires or his judgement that is no excuse. It must be to the extent that he did not appreciate the nature and consequences of the acts he was doing. However, as was stated by one of the counsel, drunkenness, even if it does not go to that stage can have an effect on the sentence. I would like to mention one more thing in connection with drunkenness that I have found is very material and is not always understood. The mere fact that a man does not remember what happened while he was drunk does not necessarily mean that at the time he did not know what he was doing. In other words, a man can intend to drive a vehicle and be extremely drunk, and he knows enough to put in the key and to drive, but the next day does not remember having had the vehicle out. That is all I will say with respect to the first charge.

On the third charge, which is a purely military offence of conduct to the prejudice of good order and military discipline in that he created a disturbance, you have heard all the evidence and it is simply a matter for you to determine whether or not a disturbance was caused by the accused in that Cafe and, if so, was it to the prejudice of both good order and military discipline. It is a straight question of fact.

I now come to the fourth charge, the assault charge. This like the first charge is a civilian offence made a military offence by virtue of Army Act, Section 41. The language forming the charge is technical but it boils down to nothing more than an assault upon a certain person, that assault resulting in actual bodily harm. An assault is defined as an attempt to commit a forcible crime against the person of another, such as an attempt to commit a battery. It includes a battery committed as well as an attempt to commit a battery. In legal language a battery is a beating and wounding. To beat in legal language means not merely to strike forcibly with the hands or a stick or anything, but also merely the touching of laying hold, however trifling, of another's person or clothes, in an angry, revengeful, rude or insolent manner. For instance, the pushing of a person off the street in an angry manner would be an assault, or, if a person attempts to hit another person and misses, it is an assault; if he hits him it is an assault also. There are various other definitions but these are sufficient. An assault must be without consent, for instance a prize fight is not an assault. From these remarks you will appreciate that if hands are laid upon a person without his consent same constitutes an assault, and no bodily harm need ensue. In this particular charge it has been alleged that the assault did cause actual bodily harm. In order to convict on this charge you not only have to find that it was an assault on the policeman but you must find that assault caused actual bodily harm. Actual bodily harm includes any hurt or injury which would interfere with the health or comfort of the person assaulted. It does not need to be serious, it does not need to be permanent, it just has to be an actual injury. If you find there was no actual bodily harm you can find him guilty of common assault rather than assault as alleged. That is a right you have. There are numerous defences to assault which I should mention, one is such a thing as an accident or mishap. If you come to the conclusion that the striking of this policeman was an accident then there was no assault. If there was consent it would be no offence. Self defence is a defence of assault. If you were satisfied that the accused was assaulted by this policeman and was merely defending

himself you could find him not guilty. On the other hand you will recall that the policeman was in the performance of his duty and that has a great bearing on the charge; if the policeman was using no more force than necessary, which he was entitled to do, and in doing so was assaulted, in that case the defence of self defence on the part of the accused could not be justified.

As to the fifth charge, once again this is a strictly military offence of escaping, and it is a straight question of fact as to whether the accused did escape when in arrest. You have no direct evidence of anyone who actually put him in arrest but you have all the surrounding circumstances. It is for you to decide whether or not he was, in fact, in closed arrest, and, if so, did he escape when in that condition. That is the question of fact for you to determine.

You have heard about, "circumstantial evidence", and it is necessary for me to say a few words in this respect. There is direct evidence and there is circumstantial evidence. Direct evidence of the most obvious type is when someone sees an offence committed. Sometimes that evidence is good and sometimes it is not good, because people do not always see things the same. Circumstantial evidence is evidence of an intricate nature in which circumstances are brought before the Court in an attempt to satisfy the Court beyond a reasonable doubt that these circumstances can only be consistent with the commission of the offence. I will read from Para 42 of Chapter 6 in MML, Page 8 (reads). I have so warned you.

As far as credibility of witnesses is concerned, that is a matter entirely for you to decide. You may believe all or part of the evidence of any witness, you may believe part of the evidence and reject the other part, or, you may reject the evidence totally. In other words, you ar the sole judges of what part you will believe and what part you will not believe. You are of course, in weighing evidence of witnesses to remember their interests in the case, and whether their interests would tend to effect their evidence. You will of course give due consideration and great care to the remarks of both the Prosecutor and the Defending Officer, and, if anything, most care should be given to the remarks of the Defending Officer.

It is a principal of British justice that the accused is innocent until proven guilty. It is not for him to come to this Court to prove he is innocent, but it is for the Prosecutor to prove him guilty. It has been said that that is the most golden thread running through British jurisprudence. If the Prosecution does not prove that the accused is guilty of all or any of these offences beyond a reasonable doubt you must find the accused not guilty. By a reasonable doubt I do not mean a fanciful doubt or a doubt conjured up in the mind through weakness or fear. I mean a doubt of such a nature as would influence a business man in taking action or refraining from taking action in a business matter. If after hearing all the evidence you are sure of the innocence of the accused or have a reasonable doubt of his guilt, then you must acquit. It is unnecessary for me say, but I will say, that you will try the case on the evidence heard in this Courtroom and not on anything you may have heard outside. You have sworn to try the case on the evidence and that is the evidence before you here.

JUDGE ADVOCATE

Mr. President, are there any further matters on which you wish me to advise the Court?

ANSWER BY THE PRESIDENT

No, sir.

JUDGE ADVOCATE

Mr. Prosecutor, are there any further matters on which you wish me to advise the Court?

ANSWER BY THE PROSECUTOR

No, sir.

JUDGE ADVOCATE

Mr. Defending Officer, are there any further matters on which you wish me to advise the Court?

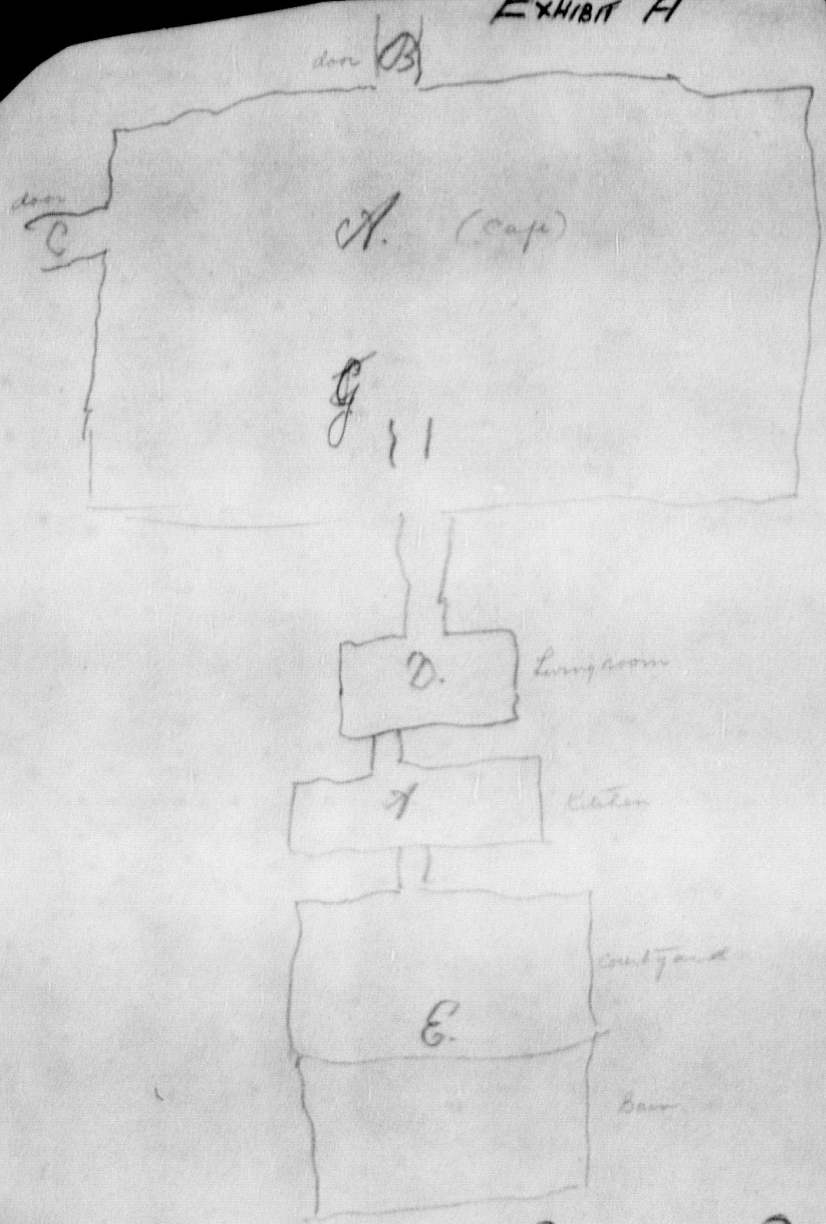
ANSWER BY THE DEFENDING OFFICER

No, sir.

PLEA IN MITIGATION BY THE DEFENDING OFFICER

Sir, I realize I need say little about the service record of the accused. I will just point out that he came into the Army one year ago last March, he came overseas last November and came to the Continent in February of this year. I have questioned his Commanding Officers as to his conduct in the field and all have stated that he was a very satisfactory soldier in action. As further evidence to the good intentions of this soldier he was an early volunteer for the Canadian Army in the Pacific Force. On the day in question the accused was admittedly drunk and he committed certain offences which I am certain he would not have otherwise committed. I need not direct your attention to the paragraph in MML which states what consideration the Court should give to the offences when the accused was in that condition. He has already spent 43 days in both open and close arrest. I ask you, in view of the above facts, to be as lenient as possible with the accused.

EXHIBIT "A".



PLAN of ENTING PREMISES
DRAWN By MR ENTING in Court

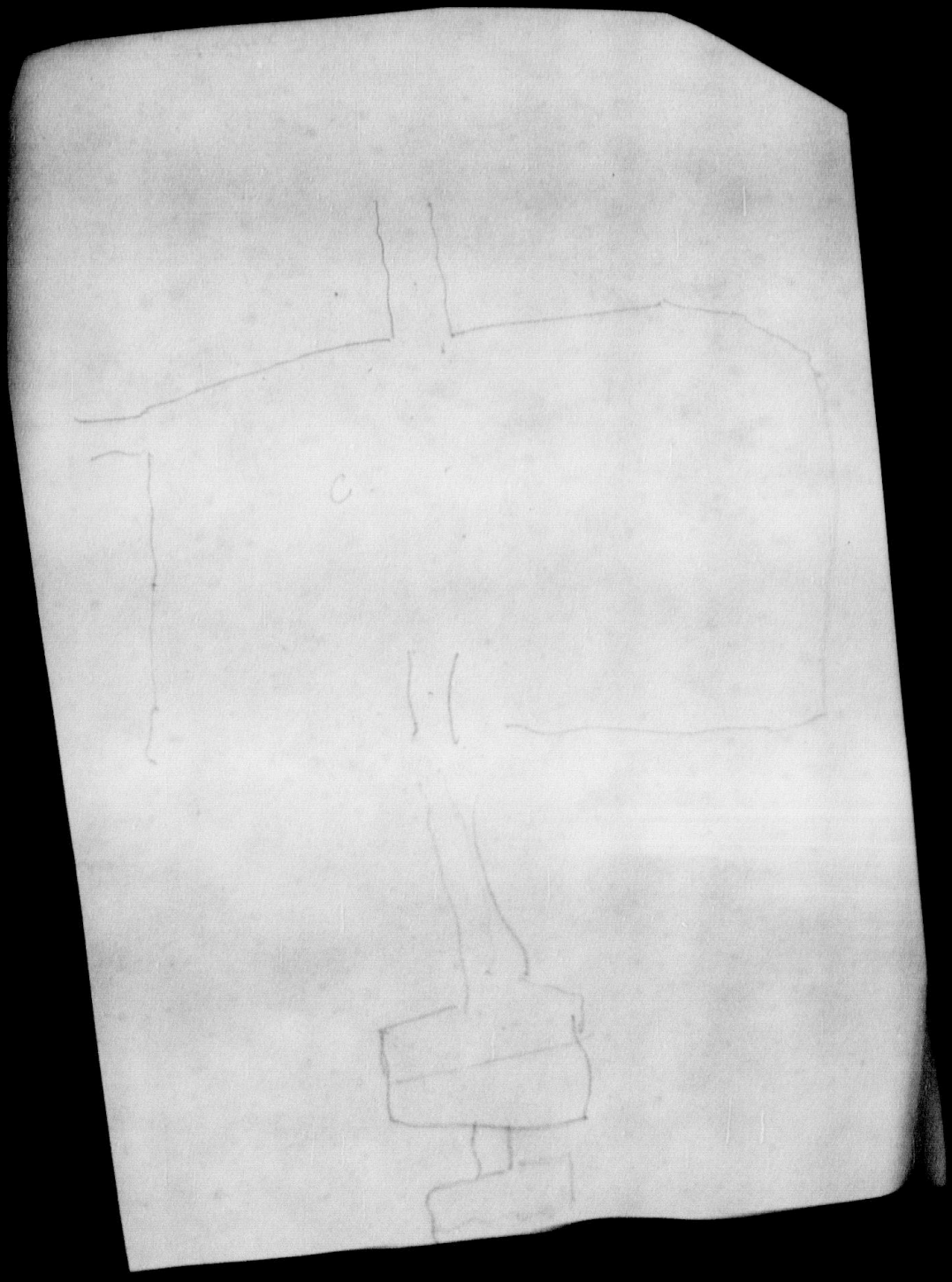
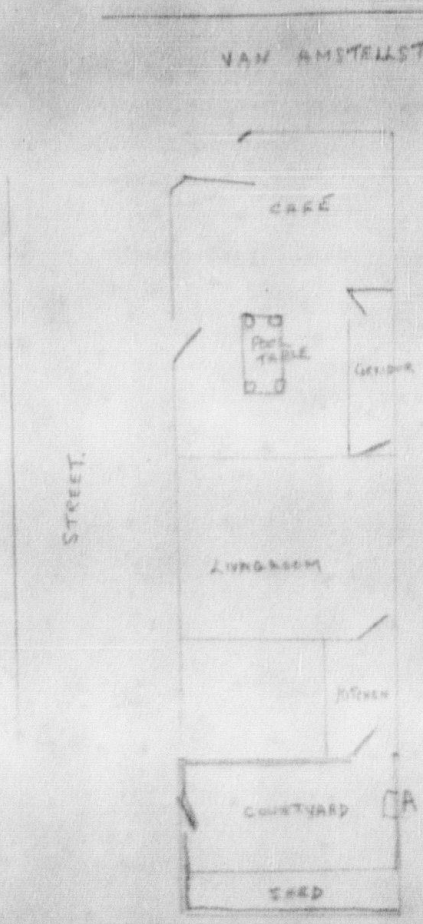


Exhibit "B"
AK Wf



In the Case of C.123697 Pte Dufresne, V.E., SD & G Highlanders:

Exhibit "C" is one 100 guilder note, two 50 guilder notes, two 20 guilder notes, nine 10 guilder notes, one 25 guilder note and seven 1 guilder notes. Fastened around these notes is a strip of paper on which is written in ink, "Dufresne Case, Exhibit "C", A.K. McT", and, "Moore Case, Exhibit "B", A.K. McT".

In the Case of C.123697 Pte Dufresne, V.E., SD & G Highlanders:

Exhibit"D" is a brown envelope with broken seal. On seal is written in ink, "Contents, 562 guilders", and the initials "R.N.R.B. Sgt". Seal is stamped with, "No. Provost Coy - C.A.A.F.", in four places. On the envelope is written in ink, to the right of the seal, "Dufresne Case, Exhibit "D", A.K. McT", and, "Moore Case, Exhibit "A", A.K. McT".

Exhibit "E"

SUMMARY OF EVIDENCE in the case of C123697 Pte Dufresne V.E., Stormont Dundas and Glengarry Highlanders, a soldier in the Canadian Army Overseas.
By direction of the commanding officer the Summary of Evidence is taken on oath.
Mr. Bart Bos, of Gerardus Gulliam and J.B. Laughlin, both of Hilversum, Holland, are duly sworn as interpreters.

1st witness for the Prosecution

Josephine Elizabeth Philipsen of 131 Amstelstraat, of the City of Hilversum, wife of A.J. Den Enting, of the same place, Metal Worker, having been duly sworn, states through the Interpreter, Mr. Bart Bos;

On 10 Jun 45 at Hilversum I was living with my daughter, Dinie Versteeg of 131 Amstelstraat, Hilversum who was the proprietress of a cafe at that address. At approximately 1700 hrs on that day a soldier whom I now recognize (here the witness identifies and indicates C123697 Pte Dufresne V.E.) followed my daughter into the kitchen. My daughter returned to the living room and I heard the cupboard in the kitchen being opened and looking around I saw Dufresne take a bottle of vinegar from the cupboard and put the bottle in his tunic. I tried to take the bottle out of his tunic. He threatened me by raising his fist and making an angry face and angrily saying a few words which I did not understand. I returned to the livingroom followed by Dufresne with the bottle of vinegar. There were a number of guests in that room and I heard the accused and another soldier whom I now recognize (here the witness points out and identifies C123712 Pte Moore W.R.), speaking to my daughter in the livingroom. I heard my daughter say to them that she was unwilling to barter cigarettes for gin, or words to that effect. I noticed that a bottle of gin was missing from the livingroom. Dufresne and Moore passed from the livingroom, through the cafe, out the front door with Dufresne still carrying the bottle of vinegar. I saw a lump under Moore's tunic. I followed them outside. I saw the upper part of the bottle of gin protruding from Moore's tunic and I entreated with him to give back the bottle of gin, but he would not. My husband and I followed them both to a school about five minutes walk away, where we lost sight of them. Then we returned to the cafe. Both Dufresne and Moore were obviously under the influence of liquor because they did not walk quite steadily and they both smelled of liquor. At approximately 1900 hrs I was sitting in the livingroom with the same guests while my daughter was in the cafe. I heard a noise at the side door of the cafe as if someone trying the knob, followed by a banging on the door. I went to that door and I saw Dufresne banging on the door and Moore with his hand on the knob. I motioned and said in Dutch to them through the door, which had a window in it, that the cafe was closed. Dufresne threatened me with his fist as if he were going to break the window, and cried "open, open", while Moore revealed a carton containing cigarettes by opening his tunic and also cried "open, open". I unlocked the door but didnt open it. Pte Bartlett, who was one of the visiting guests in the livingroom, and whom I now recognize (here the witness identifies A28607 Pte Bartlett R.A.), went to the door. I am not sure who actually opened the door and I understood from what Pte Bartlett said to the two soldiers that I had no gin and to go away. I saw Dufresne hit Bartlett in the eye with his fist, I think it was the left eye, which began to bleed heavily. I saw the soldier, Dufresne, deal Bartlett many blows with his fist. Bartlett staggered back and fell on the floor in the corner of the cafe.

Then I saw Dufresne lay on Bartlett and grasp him by the throat. Bartlett became blue in the face. I became frightened and started to cry. Then Dufresne released Bartlett and stood up. Moore went to Bartlett and patted him on the shoulder, but Bartlett motioned him to go away. I grasped the knob of the door leading into the livingroom to prevent either Dufresne or Moore from going in, when Dufresne touched me on the arm and said, "We want Gin, give us gin", or words to that effect. I repeated over and over to him, "We have none. we have none". Dufresne then became angry and threatened me by raising his fist. My daughter ran to us and cried in Dutch and motioned to Dufresne not to touch her mother. I then went with my daughter to the main entrance of the cafe. Dufresne went into the living quarters and Moore stood in the cafe by the door leading into the livingroom. I heard a window being smashed in the direction of the living quarters and saw Moore look into the livingroom and say, "Okay" a few times. My guests, who were in the living room, left by the main front door and they appeared to me to be frightened. Then Moore went into the living room and both Dufresne and he were in the living quarters alone for about 10 minutes. Throughout that time I heard their voices and the opening and closing of cupboards and drawers. I then saw them leave for they came into the cafe and left by the main door. Dufresne had a stone bottle which belonged to my daughter in his hand. I saw him raise it to his lips in the cafe before he left and outside the cafe he threw the bottle away. I locked the doors. I saw a Dutch policeman follow the two soldiers. Some minutes later I saw two Provost soldiers chasing Dufresne and Moore into a yard. During the second visit both Dufresne and Moore were badly under the influence of liquor. They were drunk, their walk was unsteady, their speech thick and they both smelled of liquor.

The accused declines to cross-examine this witness.

J. E. Philipsen

2nd witness for the Prosecution

Abraham Johannes Den Hnting, 131 Amstelstraat, Hilversum, Holland, metal worker, having been duly sworn, states through the interpreter, Sgt Bos;

At approximately 1700 hrs 10 Jun 45 at Hilversum I saw two soldiers come into the cafe at 131 Amstelstraat operated by my daughter, Minnie Versteeg, widow. (Here the witness points out and identifies these two soldiers as 6123697 Fte Dufresne and 6123712 Fte Moore W.R.). I saw them both approach my daughter in the cafe and I gathered from what they said and from their gestures that they wished to barter cigarettes for gin. I heard my daughter say, "Please go away. I have no gin", or words to that effect. While I stayed in the cafe, my daughter went into the living room and both the soldiers followed her into that room. I heard the soldiers speak with my daughter and then I also went into the living room. While in that room I saw the taller soldier, whom I now recognize (here the witness points out 6123697 Fte Dufresne W.R.) in the kitchen take a bottle of vinegar from a cupboard and put it in his tunic. In the living room at the time were besides myself, my wife and daughter, the other of the two soldiers (here the witness points out 6123712 Fte Moore R.R), four other guests and a Canadian soldier called Bartlett. (Here the witness points out A28609 Fte Bartlett W.A.). I tried to calm both Dufresne and Moore by talking quietly with them, but they were unwilling to do what I asked. There had been a bottle of gin standing on a barrel in the living room by the kitchen door during the time Dufresne and Moore were in the living room. Suddenly I noticed that it was no longer there. I then saw that Moore had the upper part of that same bottle of gin protruding out of his tunic. The two soldiers then went into the cafe and out the side door of the cafe. My wife and I followed both the soldiers and I saw Dufresne take a drink out of the bottle of vinegar and in a surprised manner spit it out and throw away the bottle. I followed them to a school about five to six minutes walk away, where my wife joined me a few minutes later. I saw the two soldiers go into the school. My wife and I then returned to the cafe. My impression of them was that both Dufresne and Moore were under the influence of alcohol. They were somewhat steady in their walk but in a merry mood and their breaths smelled of liquor.

At 1900 hrs on the same day I was standing behind the counter in the cafe. I saw Dufresne and Moore approaching the side door of the cafe, whereupon I bolted the side door hurriedly. These two soldiers made unmistakable gestures to me that they wanted the door opened. My wife and Bartlett went to the side door. My wife unbolted and opened the door. I saw Bartlett try to prevent them from entering the cafe by pushing them gently out the door. Suddenly I saw Dufresne hit Bartlett a blow in the eye with his fist and Bartlett began to bleed from the side of his head. Then I saw Dufresne pick up Bartlett bodily and throw him clear across the billiard table onto the floor on the other side and Bartlett laid on the floor. Then Dufresne laid on top of Bartlett. I could not see what Dufresne was doing on top of Bartlett. He was there for about five seconds then both Dufresne and Bartlett rose to their feet. Moore joined them and they all shook hands. Dufresne went into the living quarters and I heard a window being smashed. Later I saw that the window in the door which leads from the

hallway into the livingroom was broken. The size of the window broken was about 120 cms by 30 cms and was etched glass, the cost of which to replace will be between 10 and 15 Guilders. Dufresne was all alone in the living quarters. Moore, myself and all the rest of the people were in the cafe. Moore was standing in the cafe by the door leading into the living room. I attempted to go into the living room through that door but I was stopped by Moore who said something in english and who gently pushed me back. Moore stood there for about a quarter of an hour and now and then looked into the living quarters and shouted, "Okay". Then Moore went into the living quarters too. All the other people including myself stayed in the cafe. The two soldiers remained alone in the living quarters for from 10 to 15 minutes and I heard clearly the opening and closing of cupboards. I saw them go through the kitchen out the back door through the backyard into a shed at the rear. About 10 minutes later the two soldiers came back through the living room into the cafe, Dufresne holding a stone bottle which belonged to my daughter, in his hand. Dufresne put the stone bottle to his mouth and then put it into his pocket. They both left through the main door. Immediately upon the two soldiers leaving the cafe, I saw the wife of Paulus Lamers of the city of Amsterdam, who was a guest all this time, go into the shed into which both Dufresne and Moore had gone. On her arrival earlier in the day I had put her bicycle in that shed and in so doing did notice that there were two bags attached to her bicycle, one on each side of the rear wheel. I am quite certain that when I put the bicycle in the shed the straps on the bags were buckled. Paulus Lamers put his own bicycle in the shed before I put his wife's in. In about one minute's time of her entering the shed, she came out. I saw that she was weeping and was very upset. I then went into the shed and I saw that the two bicycles were on the floor and I noticed that the straps on both of the bags on the bicycle of the wife of Paulus Lamers were unbuckled. I stood both the bicycles up.

During this second visit Dufresne and Moore were very much under the influence of liquor, much more so than during their first visit. Their manner of walking was unsteady and their breaths smelled of liquor.

The accused declines to cross-examine this witness.

N. J. van Eeten

3rd witness for the Prosecution

Dinie Versteeg, 131 Amstelstraat, Hilversum, Holland, widow of B.G.M. Den Anting, lat of the same place, having been duly sworn, states through the interpreter, L.B. Vaughlin.

I am the proprietress of a cafe at 131 Amstelstraat, Hilversum. At about 1700 hrs on 10 Jun 45 I was standing behind the counter of my cafe when two soldiers entered. I recognize the soldiers as being present here today. (The witness indicates and identifies C123697 Pte Dufresne W.R. and C123712 Pte Moore W.R.) From their gestures and showing cigarettes and uttering the word "gin" I understood that they wished to barter cigarettes for gin - 300 cigarettes for one litre of gin. I went into the living room and was followed by both the soldiers, who I did not invite into that room. There they made the offer again as I was on my way into the kitchen, this time offering 200 cigarettes. I refused. I went into the kitchen followed by Dufresne, again without permission. Dufresne picked up a bottle of vinegar in the kitchen and returned with it to the livingroom. I followed him and tried to take the vinegar away from him, but I was unsuccessful. I went out the back door with the intention of going outside the premises and entering the cafe by the front door, but the back gate leading into the street was locked and I could not go out. I then returned to the living room and found that the soldiers had left the premises. Then I noticed that a bottle of gin belonging to me which had been standing in the living room by the kitchen door was missing. I never bartered gin for cigarettes with either Dufresne or Moore.

At 1900 hrs I was in the living room of my home and my father was behind the counter in the cafe. I heard a knocking at the side door of the cafe and I saw my mother go to the door. I went into the cafe and saw both Dufresne and Moore on the other side of the door. I had visitors in the living room including a Canadian soldier called "Bill". I opened the door by pulling the bolts and swinging the door wide. As a result of what an acquaintance of mine told Bill, he went up to Dufresne and Moore, who were already in the cafe. I noticed that both Dufresne & Moore were drunk because they were not in a state to be approached with reason, they did not talk coherently and their gaits were woggly. I saw Dufresne attack Bill and as far as I could see, Dufresne grabbed Bill by the front of his clothes and worked him to the floor and all I saw was Dufresne standing over Bill. Bill got to his feet and then Dufresne and Moore asked me to go back to the living room to talk things over. I refused. The door leading to the living room was closed. Dufresne stood by that door while Moore went into the living room. My mother attempted to go through that door but Dufresne prevented her from so doing by adopting a threatening attitude with upraised arm. I went to my mother and pulled her away from the door. I left the cafe and went outside. I saw nothing more except as I entered the cafe by the front door Dufresne and Moore passed me on their way out. I saw one of the two soldiers raise a red stone bottle to his lips. The bottle I recognized as being my property and later I missed one such bottle. I keep filled bottles of such kind in the cafe and living room and empty ones in the back shed. I noticed on entering my premises that the glass in the door leading into the living room was broken and I also

missed four packages of cigarettes. The pane of glass will cost about four guilders to replace. Since the 1 may 4b I have no license to sell hard liquor and any such liquor on my premises was for private use only.

The accused declines to cross-examine this witness.

4th witness for the Prosecution

A28609 Pte Bartlett W.A., HQABC attached to HQ 9 Cdn Inf Bde, having been duly sworn, states.

Between 1630 and 1700 hrs 10 Jun 45, while I was visiting in the living room at a cafe in Hilversum, the address of which I do not know, the daughter of the two civilian witnesses who I see here today (Here the witness points out Abraham Johannes den Anting and Josephine Elizabeth Philipsen, his wife) came into the living room followed by two soldiers. I see these same two soldiers here today. (Here the witness points out C123697 Pte Dufresne W.E. and C123712 Pte Moore W.H.). Bargaining ensued between the daughter and Dufresne and Moore for the bartering of 300 cigarettes for one bottle of gin. One of the soldiers laid a carton of 300 cigarettes on the table and the daughter picked up the cigarettes and put them in a cupboard. I then saw the daughter pour something from one bottle into another and hand the filled bottle to one of the two soldiers. I heard them protest and say that they wanted a larger bottle for the cigarettes and I also heard one of them offer 300 Guilders for another bottle. I then saw one of them leave the living room to go into a pantry. When he came out I saw the neck of a bottle protruding from his tunic. One of the soldiers took the 300 cigarettes from the cupboard and they both made for the door of the livingroom with the two bottles. The women protested and tried to stop them. Moore made a motion with his right hand towards the inner pocket of his tunic and said, "If you dont get out of the, way, I'll shoot you", or words to that effect. They pushed their way out of the living room and that is all I saw of them for the time. During the episode they were both under the influence of liquor because they both talked gaily.

At 1900 hrs on the same day I was still in the living room of the cafe when, I think it was the mother, came to me. As a result of what she said to me, I went with her to a door through which I saw Dufresne and Moore. The door I saw was bolted. Someone, I think it was the mother, unbolted the door and I opened it. Dufresne asked me if the lady of the house had another bottle of liquor. I told him that I couldnt say as I was only a guest in the house. Then Dufresne pushed me around the cafe with the flat of his hand against my shoulders. He hit me with his fist three or four times, one or the blows landing just below my left eye where slight bleeding resulted, and one of the blows knocked me down. I tried to talk him out of it. Then we both got up and he apologized and said that he was sorry that he did it. I then noticed Moore in the cafe and I saw the neck of a bottle which I did not see there when he entered the cafe sticking out of his tunic. Dufresne was with me in the cafe with a number of other people until the time he left with Moore. I do not know where Moore was during the scuffle, but Dufresne and Moore left the cafe out the front door right after the scuffle ceased.

During the second visit both of the soldiers were more under the influence of liquor then when they were during the first visit. They spoke angrily and I cant recall if I did smell any liquor on either of them.

The accused declines to cross-examine this witness.

Wa Bartlett

FIFTH WITNESS
FOR THE PROSECUTION

D 82736 Cpl QUINN, F.F., of the Canadian Provost Corps, on the strength of No.3 Cdn Provost Coy., a soldier of the Canadian Army Overseas, having been duly sworn, states:-

I am D 82736 Cpl Quinn, F.F. On the evening of 10 Jun 45, I was on mobile patrol in the city of Hilversum. As the result of what the Dutch Civilian Police told me, I proceeded to a cafe situated on AMPLESTRAAT. On arrival there I was approached by Pte BARTLETT, who I identify here today, and I noticed that there was a small cut just above his left eye. As a result of what Pte Bartlett told me, I proceeded down the street towards the centre of the city. I saw two Canadians soldiers walking along the street and when they turned around and saw C 37222 L/Cpl BADOUR, W.J. and myself approaching in a jeep, fled into a neighboring civilian backyard. L/Cpl Badour immediately jumped out of the jeep and gave chase and caught one of the soldiers, whom I now identify and recognize (indicating C 123697 Pte DUFRESNE, V.E.). L/Cpl Badour turned Pte Dufresne over to me and then gave chase after the other soldier. I warned Pte Dufresne that he was under arrest and ordered him to accompany me to Provost HQ. Pte Dufresne refused to obey the order by struggling with me. He grabbed the collar of my tunic. At this time a Sergeant, of the Glengarrians, who I now recognize and identify (indicating D 86195 CSM Wilson, G.E.) came on the scene and ordered Pte Dufresne to release the hold on my collar and accompany me to Provost Headquarters. Pte Dufresne refused to obey the order of the Sergeant Major by releasing my collar and beginning to argue and struggle with the Sergeant Major. After a few minutes the Sergeant Major again ordered Pte Dufresne into the waiting 15 cwt belonging to the Glengarrians. Pte Dufresne then walked towards the truck. At the same time L/Cpl Badour had captured the other Canadian soldier, who I now recognize and identify (indicating C 123712 Pte MOORE, W.R.) and was approaching us at the truck. I then ordered both Dufresne and Moore to get into the truck. Pte Moore immediately got into the truck, but Pte Dufresne again started to struggle with L/Cpl Badour and had to be forcibly put into the truck by L/Cpl Badour. I then ordered three Glengarrians soldiers to act as escorts to Ptes Dufresne and Moore and ordered them into the back of the truck, which they did. L/Cpl Badour rode with the driver of the 15 cwt. As the 15 cwt slowly moved off and the Sargeant Major and I were preparing to follow in the jeep, Ptes Dufresne and Moore jumped out of the moving 15 cwt and fled into a neighboring civilian backyard. The Sargeant Major and I immediately gave chase. Both Dufresne and Moore had stopped running when they reached the backyard and I ordered them back to the truck. They both obeyed the order and got into the truck. We then proceeded to our Provost HQ where in the presence of both Dufresne and Moore an inspector of the civilian police stated that 400 Guilders had been taken from this cafe on Amplestraat. Whereupon I ordered that both Dufresne and Moore be searched but the total amount of money onboth of them did not nearly equal the amount of money alledgedly stollen. PteDufresne had on his person 14 Guilders and 50 cents and Pte Moore had 30 Guilders. I am not aware of any other money concerned in this case.

In my opinion both Ptes Dufresne and Moore had been drinking for I smelled the liquor on their breath, but were not drunk in comparison to the many cases of drunkenness I have seen.

F F Quinn Cpl
D 82736 Quinn, F.F.
No.3 Cdn Provost Coy.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

6th Witness for the Prosecution

No. D 86195 C.S.M. Wilson, G.E. of the Stormont, Dundas and Glengarry Highlanders, a soldier of the Canadian Army Overseas, having been duly sworn, states:

At 1930 hrs on 10 June 1945 in the City of Hilversum as a result of what a Glengarrian soldier told me, I proceeded to a house, the address of which I am not aware. I saw Pte. Dufresne, whom I recognized as being on the strength of the Company of which I am C.S.M., struggling with a Corporal of the Provost Corps. I ordered Pte. Dufresne to go peacefully with the Provost Corporal, which he did. On arriving at the jeep Pte. Moore, who I recognized as being on the strength of the Company of which I am the C.S.M., and a L/Cpl. of the Provost Corps were there. Lying on the driver's seat of the jeep I saw a pile of bills of currency, which I ordered on e of the men of my Company to pick up and to safe-keep. I have no idea how this money came to be lying in the jeep. Later, on checking the amount of that money, I found it to total 372 Guilders. I turned this money over to B.H.Q. of S.D. & G. Highlanders.

Dufresne and Moore were put into a 15 cwt. truck with two other escorts. On the way to Provost H.Q., Dufresne and Moore jumped out of the 15 cwt. and fled into a neighbouring yard. I ordered them to get back into the truck, which they did and I accompanied them to Provost H.Q.

The accused declines to cross examine this witness.

(D 86195 C.S.M. Wilson, G.E.)

7th Witness for the Prosecution

Jan Franssen, of 220 Van Amstelstraat, of the City of Hilversum, building contractor, having been duly sworn states through the interpreter, Bart Bos:

At about 1930 hours on Sunday, 10 June 1945, I was sitting in the backroom of my house at 220 Van Amstelstraat in Hilversum reading when I suddenly saw a pair of elbows appear through two window panes of the room in which I was sitting. Then I heard the crash of smashing glass and I saw a small Provost soldier, who wore white straps, struggling with another soldier, whom I now recognize as the accussed (Here the witness indicates the accused, C 123697 Pte. Dufresne, V.E.) I saw the small Provost soldier go away with the accused and I locked my kitchen door. The size of each of the two panes of glass which were broken, was 140cms by 42½ cms, which would cost 10 Guilders to replace both.

The accused declines to cross-examine this witness.

J. Franssen.

(Jan Franssen)

8th Witness for the Prosecution

Johan Hendrik Helweg, of 6 Jan Steenlaan, of the City of Hilversum, Inspector of Police, having been duly sworn, states:

At about 1930 hrs on 10 June 1945 in Hilversum, as as a result of information received by me, Head Agent Verbeek and I proceeded to the corner of Van Amstelstraat and Hilvertsweg in Hilversum. There I saw two Canadian soldiers who I now recognize here to-day. (Here the witness points out and indentifies C 123697 Pte. Dufresne, W.E. and C 123712 Pte. Moore, W.R.) Dufresne was without a tunic or a hat but had rolled sleeves. Moore had a tunic on but no hat. Verbeek went up to Dufresne and attempted to calm him down and to stop him from chasing the crowd of civilians and soldiers who had gathered. I saw Dufresne hit Verbeek under the chin with his fist. Verbeek tried to reach for his rubber stick. The next thing I saw was Verbeek lying on the ground. Verbeek got onto his feet and went away with Dufresne following him.

Then one Provost car with two Provost arrived and I went with them in the car after Dufresne. I did not see Moore. I saw Dufresne standing to the rear of a house on Van Amstelstraat with another soldier. Behind Dufresne I saw two windows which were broken. The two Provost with me went to Dufresne to arrest him. Dufresne struggled but he was taken away by the Provost, and I saw Dufresne struggling again with the Provost on the street by the jeep. I remember that the name of one of the Provost was Corporal Quinn. The next morning I saw Verbeek at his home and I saw that he could walk only with great difficulty.

The accused declines to cross-examine this witness.

H. Helweg

(Johan Hendrik Helweg)

9th Witness for the Prosecution

Willem Verbeek, of 247 Hilversweg, of the City of Hilversum, head agent of police, having been duly sworn, states through the interpreter Bart Bos:

At about 1930 jours on the 10 June 45 in Hilversum I went with Inspector Johan Hendrik Helweg to the corner of Van Amstelstraat and Hilvertsweg in Hilversum. There at the intersection I saw two soldiers who were rather unsteady in their walk. The same two soldiers I recognize as being here to-day. (Here the witness points out and indetifies C 123697 Pte. Dufresne, V.E. and C 123712 Pte. Moore, W.R.) Behind them walked many civilians. The soldiers tried to send the civilians away. The people who did not go away were beaten by Dufresne who I saw use his open hand and fist at least threeetimes on the crowd of civilians. I saw Dufresne, the biggest of the two beat a civilian. I posted myself between them but Dufresne quickly seized me by the tunic and pushed me to the side. Immediately I posted myself again between Dufresne and that civilian. Dufresne tried to hit me in the jaw with his fist but I parried the blow. I pulled my rubber stick and immediately Dufresne kicked me on the shin just below the right knee. This blow was very painful. Then Dufresne hit me under the chin with his fist and I fell on the ground on my back. I hurt my hip and back badly as I fell against the side of the pavement. I rose again and tried to go away but was followed by Dufresne. The behaviour of the soldier I found very brutal and indescent. I have an open wound on my right leg and I had pains on my body for 5 days. For seven days I was under treatment of my doctor. For 8 days I was not able to fulfill my duties. I personnaly incurred no medical expenses as these were paid for out of a fund.

The accused declines to cross-examine this witness.

Verbeek

(Wilem Verbeek)

10th Witness for The Prosecution

Peter de Weerd, 154 Van Amstelstraat, Hilversum, having been duly sworn, states through the interpreter, Bart Bos.

At 1915 hrs on 10 Jun 45 I was sitting in my room at 154 Van Amstelstraat, Hilversum. I saw in Van Amstelstraat opposite my house, two soldiers who seemed to be drunk in that their manner of walking was not quite regular. Those same two soldiers I see here today. (Here the witness points out and identifies C123697 Pte Dufresne V.E. and C123712 Pte Moore W.R.). They were followed by several civilians and now and then the two soldiers tried to send them away. I followed them and they went into Hilversweg. On Hilversweg I saw the head agent of police who I know to see but whose name I do not know. A see him here today. (Here the witness points out Willem Verbeek). Verbeek tried to interfere in the affair by speaking to one of the soldiers. Suddenly Verbeek was attacked by the bigger of the two soldiers whom I now recognize. (Here the witness points out C123697 Pte Dufresne V.E.). The head agent pulled his rubber stick but before he could use it he was kicked by Dufresne and Verbeek fell to the ground. Verbeek then tried to go away but was followed by Dufresne and another soldier who I see here today. (Here the witness points out C123712 Pte Moore W.R.). The latter was not aggressive. As there were many civilians around I could not see further details. Both of the soldiers ran away and tried to hide themselves in the garden behind the house at 220 Van Amstelstraat, Hilversum.

A Provost jeep came up containing two civilian police and two Provosts. The Provosts chased after these two soldiers and I saw them arrested by the two Provosts. I saw Dufresne resist being arrested and it took the Provosts and two other soldiers to hold him. Dufresne fell on the ground and I saw some bank notes fall out of his back trouser pocket. I could not see how many notes there were but they were a folded bunch of about 15 or 20 notes, which I am sure was Dutch currency. I saw one bank note of 2[illegible] Guilders and I believe I saw one bank note of 20 Guilders. A soldier whom I did not know picked up the money, and threw it into the front of the Provost jeep. Immediately another soldier who I did not know took the money out of the jeep.

Both Dufresne and Moore were put into a small truck which drove away. I saw that in the Egalantierstraat they both jumped out of the rear of the truck and ran away. I saw them both arrested by Military Police and saw them put into the truck again and driven away. I do not know whether I will be able to recognize the soldier who took the money out of the jeep nor can I recall special details or marks about his person.

The accused declines to cross-examine the witness.

P de Weerd

11th Witness for the Prosecution

Marriagje Prins, 64 Marco Polo Straat, Amsterdam, Holland, wife of Paulus Lamfers of the same place, having been duly sworn, states through the interpreter, I.B. Caughlin.

At about 1330 hrs 10 jun 45 my husband and I arrived at 131 Amstalstraat, Hilversum, where we visited. Our bicycles were put in the cafe proper. At about 1400 hrs both bicycles were removed to the shed at the rear of the cafe by Mr. Enting and my husband, Mr Enting taking my bicycle. My husband's bicycle had two bags, one bag slung over each side of the rear wheel. One of the bicycle bags contained my handbag which held my pocketbook containing 400 Guilders. One of the compartments of the pocketbook contained 380 Guilders and the other compartment contained two notes of 10 Guilders each. I noticed that when my husband took his bicycle to the shed both bicycle bags had their straps buckled. Directly after my husband and Mr Enting took the bicycles to the shed, I went outside the back door and I saw that the gate leading from the back enclosure to the street was barred and I considered the money safe. There was another door on the opposite side of the small enclosure but I am not certain if this was locked. I looked into the shed and saw both the bicycles there and noticed that both bicycle bags were buckled. I saw no-one at anytime go into the shed. I saw two soldiers on the premises of the cafe and a fracas ensued as a result of their presence. I see the same two soldiers here today. (Here the witness indicates C123697 Pte Dufresne V.E. and C123712 Pte Moore W.R.) At approximately 1930 hrs immediately after the soldiers left the premises, I went to the shed. I saw that the two bicycles were standing outside the shed leaning against it. I saw that both the bicycle bags were open. I thereupon checked my handbag which was closed and in the bicycle bag. On opening the handbag I found my pocket book not to be in the same compartment of the handbag as in which I left it. I checked the contents of the pocketbook and found it empty. There was no money in the pocketbook. My 400 Guilders were gone. I reported the matter to the Dutch Auxiliary Police. The denominations of my 400 Guilders were as follows -

1 note of 100 Guilders
2 notes of 50 Guilders
2 notes of 20 Guilders
1 note of 25 Guilders
13 notes of 10 Guilders
5 notes of 1 Guilder

The notes were not new money and they looked as if they had been handled rather a lot.

Question - Do you recognize this money? (Here I produce 362 Guilders composed of the following denominations)

1 note of 100 Guilders
2 notes of 50 Guilders
1 note of 25 Guilders
2 notes of 20 Guilders
9 notes of 10 Guilders
7 notes of 1 Guilder which was held by No. 3 Cdn Pro Coy as evidence in this case).

Answer - Yes, it is mine.

Question - How do you know it is your money?

Answer - By its appearance. I cant tell you why, but it is mine. (Here the witness counts the money) There are 362 Guilders here and I say that this is my money which was of the 400 Guilders in my handbag.

The accused declines to cross examine this witness.

Marrigje Prins

12th witness for the prosecution

Paulus Lamers, 64 Marco Polo Straat, Amsterdam, Holland, having been duly sworn, states through the interpreter, A.D. Laughton.

My wife, Marriagje Prins, and I, cycled to 131 Amstalstraat, Hilversum, on 10 Jun 45. Immediately on our arrival there at about 1330 hrs I put my bicycle in the back enclosure of the cafe and leaned it against the outside wall of the shed. I had one set of two bags draped over the rear wheel of my bicycle. When I left my bicycle there, I am not sure whether the bicycle bags were buckled or unbuckled, but it is usual for me to keep them buckled. One of the two bicycle bags contained my wife's handbag. In the handbag was a pocket book containing 400 Guilders. The denominations of the notes of the 400 Guilders were;

1 note of 100 Guilders
2 notes of 50 Guilders
2 notes of 20 Guilders
13 notes of 10 Guilders
5 notes of 1 Guilders
1 note of 25 Guilders

At about 2100 hrs on that day I next went to my bicycle and found it still there. I did not investigate the bags. My wife's bicycle had been put there by Mr Anting beside mine. I did not see anyone go to the bicycles during the day. I did not actually see the 400 Guilders in my wife's handbag. I know the money was there because it is our custom that my wife always carries our savings and household money with her in her handbag. It is our custom not to leave any money in our house when we leave it, but to take it all with us as a matter of safety. I know the denominations of the 400 Guilders because people in our circumstances know exactly what money they have. The 400 Guilders was our total savings and household money.

The accused declines to cross-examine this witness.

Paulus Lamers.

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or to give evidence on oath and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of 17 pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c), (d), (e) and (f) have been complied with.

J. S. Kirby Lt

J. S. Kirby, Lt.
Officer detailed to take the Summary of Evidence.

In the Field in Holland,
20 June 1945.

NOTICE OF INTENTION
in pursuance of Rules of Procedure sec. 76
re C123697 Private Dufrene, V.E.

1. Under the above Rule of Procedure the prosecution intends to call as witnesses at the trial of the above accused the following persons:
(1) Lt. J. C. Kirby, S. D. & G. Highlanders.
(2) B.76718 A/Sgt Brocklebank, W.R., No.3 Cdn Provost Coy.
(3) Lt. H. Bateman, S.D. & G. Highlanders.
(4) F. 76046 L/Cpl MacIsaac, G.

2. The evidence to be given by Lt. J.C. Kirby will be along the following line: On 30 Jun 45 he attended No.3 Cdn Pro Coy. As a result of a request made by him, the commanding officer of that Provost Coy in the presence of this witness broke the seal on a brown envelope and took out the sum of 362 Guilder, which was counted by both the witness and the C.O. The witness departed with the money in his possession, leaving a receipt for same. Ever since that day the same 362 Guilder has been in his personal possession.

3. B. 76718 A/Sgt Brocklebank, W.R. will give evidence along the following line: On the 11 or 12 Jun 45 he attended the R.O.R. of S.D.G. Highlanders with reference to the above case. An envelope was handed to him by the A/Adj of the unit. On opening the envelope later he found it to contain 362 Guilder. The witness put this money into a brown envlope and personally sealed and initialled same. (The envlope with the money will be offered as an exhibit to the court.)

3. Lt. H. Bateman will give evidence along this line: He was A/Adjt on 10 Jun 45. On that day a white envelope was handed to him by some person. On the arrival of Sgt. Brocklebank the witness handed this envlope to the Sgt. The witness saw the Sgt. open the envlope and take out some money.

4. F.76046 L/Cpl Mac Isaac, G. will state that he is the clerk of "C" Coy of which D86195 CSM Wilson, G.E. is the CSM. On the evening of 10 Jun 45 CSM Wilson handed the witness some money for safe keeping. Witness counted the money and found it to total 362 Guilder. On morning 11 Jun 45 witness returned that money to the CSM.

Dated this 16th day of July, 1945.

J.C. Kirby Lt
Prosecuting Officer.

Duplicate Original of this Notice personally delivered to the Defending officer by myself at 2100 hrs on 16 July 45 J.C. Kirby Lt.

NOTICE OF INTENTION
in pursuance of Rules of Procedure Sec.76
re C.123697 Private Dufresne, V. E.

1. Under the above Rule of Procedure the Prosecution intends to call as a witness at the trial of the above accused Major B. M. Thompson.

2. The evidence to be given by Major B.M. Thompson will be along the following line: On 11th day of June, 1945, CSM Wilson, G. E. gave him a white envelope and was told what it did contain. The witness immediately gave the envelope to Mr. H. Bateman.

Dated this 22nd day of July, 1945.

C Kirby, Lt.
Prosecuting Officer.

I certify that a true copy of this Notice was delivered to the Defending officer by me on 22 July 45 at 1330 hrs.
C Kirby Lt.

LIST OF WITNESSES FOR THE PROSECUTION in the case of C123697 Pte Dufresne W.E., Stormont Dundas and Glengarry Highlanders.

1.	Josephine Elizabeth Philipsen,	131 van Amstelstraat, Hilversum.
2.	Abraham Johannes Den Anting,	131 van Amstelstraat, Hilversum.
3.	Dinie Versteeg Den Anting	131 van Amstelstraat, Hilversum
4.	A28609 Pte Bartlett W.A.	HQASC attd to HQ 9 Cdn Inf Bde
5.	D82736 Cpl Quinn F.F.	No. 3 Cdn Provost Coy
6.	D80178 CSM Wilson C.S.	S D & G Highlanders
7.	Jan Franssen	220 van Amstelstraat, Hilversum
8.	Johan Hendrik Helweg	6 Jan Steenlaan, Hilversum
9.	Willem Verbeek	247 Hilversweg, Hilversum
10.	Peter de Weerd	104 van Amstelstraat, Hilversum
11.	Marriagje Prins	64 Marco Polo Straat, Hilversum
12.	Paulus Lamers	64 Marco Polo Straat, Hilversum

LIST OF WITNESSES FOR THE DEFENCE in the case of C123697 Pte Dufresne W.E., Stormont Dundas and Glengarry Highlanders

N I L

LIST OF EXHIBITS in the case of C128697 Pte Durresne W.E., Stormont Dundas and Glengarry Highlanders.

N I L

STATEMENT OF THE ACCUSED, C123697 Pte Duffresne V.E., Stormont Dundas and Glengarry Highlanders

I ~~do not~~ wish to have an officer appointed to defend me at my trial by Field General Court Martial.

(V.E. Duffresne)

4P-129

Pte. Dufty A.A.

4P-129

FIELD GENERAL COURT-MARTIAL

CPA96 (To Use of AFAN) 40/P & B/1098 (6144) 4/38B

Convened by Order of LT/COL J R C PANGMAN A/Comd 4 CDN INF BDE dated 11 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B67485	PTE	ALBERT ALEXANDER	DUFTY	R HQT C

certified true copy
D J A
Cdn Sec G.H.Q. 2 Echn 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) HOLLAND on (*date*) 13 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36. 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) ~~is~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 (b). 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1340 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ N/A

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~N/A~~ as interpreter ? Ans .....

The Interpreter is sworn.(1) Do you object to ~~N/A~~ as shorthand writer ? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	K W	MacIntyre	Essex Scot
Member	Capt	S T	Galbraith	R H L I
Member	Capt	D H	Prior	R Regt C
~~Substitute~~				
Prosecutor	Lieut	N	Hutton	R Regt C
Defending Offr	Capt	RCA	Cumberland	R Regt C

Questions by President: Is the Prosecutor a lawyer ? Ans NO. Is the Defending Offr a lawyer ? Ans NO.(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused B67485 Pte Dufty A A before arraignment makes(s) (no) ~~no~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in ABI rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~considered~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Vol IV Fol 21

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B67485 Pte Dufty AA

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~XXXX

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) and to call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. N.O.(5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para* E3 *of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement (1)~~ The Court decides (not) to advise accused to change his ~~(their) plea(s) of Guilty to Not Guilty on~~ plea of Guilty to Not Guilty on one charge(s). ~~The accused is (are) so informed, and he (they) (1) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed ~~the President records finding(s) of~~ Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if charged to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p. 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 80(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....Do you intend to call witnesses on your behalf ?
Ans.....Are they witnesses as to character only ? Ans.....
(*1. RP* 115. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 93, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(*3*) (*b*), *RP* 45, 120(*A*). *2. AA* 54(*3*), *RP* 45, 117. *The alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Yes
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)
(*1. MFB* 351 *or AFB* 296. *2. MFM* 6. *3. RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes(2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 126, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 1323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(*3*), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*18*), (*d*)(*1*), *KR Can* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No B67485 Pte DUFFY, Albert Alexander, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE — WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

Sec 15 (1)

Army Act — - in that he -

In the Field, absented himself without leave from 2000 hrs, 4 Nov 44 and remained absent until apprehended at 1500 hrs, 25 Dec 44 by the Canadian Provost Corps in the city of Antwerp, Belgium. (Total Absence: 50 days 19 hrs.)

signed
(R.M. Lendrum) Lt-Col,
Officer Commanding,
1 Bn The Royal Regt of Canada.

In the Field
6 Jan 45.

TO BE TRIED BY FIELD GENERAL COURT/MARTIAL

signed
(J E C Pangman) Lt-Col
A/Comd - 4 Cdn Inf Bde

In the Field
11 Jan 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B67485	Pte		ALBERT ALEXANDER	DUFTY	R REGT C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 11 Jan 45 endorsed by me [redacted] "To be tried by Field General Court-Martial";

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [redacted]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	D W MacIntyre	Essex Scot
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

A capt to be detailed by CO RHLI

A Capt to be detailed by CO RHLI

(Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

A Capt to be detailed by CO R Regt C

(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

N/A

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in HOLLAND signed LT/COL

(Country.) (Signed personally. RP 105 fn 2.) (Rank.)

(J E C PANGMAN)

Dat 11 Jan 45 A/Commanding 4 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 93 (In lieu of AFA 3) 40/P & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE
KR (CAN) Para 557

I certify that I have this morning examined No B6/485 Pte Lufty A A of R Regt C and in my opinion he is fit to undergo trial by court-martial.

Station In the Field

Date 13 Jan 45

signed Capt

Medical Officer.

PLEA OF MITIGATION

B67485Pte Dufty A A

The fact that Pte Dufty is a good and reliable driver I personally vouch for having been in direct contact with him for 21 months as transport officer of the Royal Regiment of Canada. That he absented himself at MacMalin while on a duty consisting of transporting personnel to an ENSA party disapates any suggestion at hindering the unit operationally. The circumstances surrounding his personal affairs and particulars of service does in a way small way justify his action. Pte Dufty is married with two children, the youngest he has never seen. His wife has been ill and compassionate leave was applied for and according to correspondence from Canadian Section Current Headquarters 2nd Echelon, which I have seen. Would same have been granted if he had been able to hold out a little longer. He has had two brothers killed in this war, one in Italy and one in France, a pretty big

contribution from one family. He has four years nine months service to his credit. And yet here is a man who has expressed his eagerness to Drive without pay if it was it within your power to award a forfeiture at the equivelant of a substantial detention sentence. You are however empowered to award forfeitures of pay up to 90 days, and I submit that when you decide on an equitable and fair sentence that you make three months of it as a forfeiture of pay in order that Pte Lufty may be re-employed in a useful purpose that much sooner. In perusing his MFM 6 undue emphasis on the several minor entries is not justifiable in view of his long service.

Correspondence re Pte Lurtys personal affairs seen by Court

Exhibit "A"

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at **In the Field** on the **28th** day of **November** 19**44**, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. **B67485 Pte Dufty A A**

DECLARATION.

The Court declare, **That B67485 Pte Dufty A A, illegally absented himself without leave from 1 Bn The Royal Regiment of Canada, at 2000 hrs, 4 Nov 44, and that he is still absent this date 28 Nov 44.**

Capt R C A Cumberland PRESIDENT
1 Bn The Royal Regt of Canada.

Lt A H Krieger, Member
1 Bn The Royal Regt of Canada.

Names of President and Members

Lt G H James Member
1 Bn The Royal Regt of Canada.

Signature of Commanding Officer Lt-Col R M. Lendrum,
OC 1 Bn The Royal Regt og C.

CERTIFIED TRUE COPY.

G H James Lt
Signature of Officer having custody of the Original Record.

(21200) Wt.10085/791 130,000 4/42 A. & E. W. Ltd. Gp.698
(22499) Wt.29652/1800 100,000 10/42 " " Forms/B.115/58

CERTIFICATE UNDER SECTION 165 (I) (11) OF THE ARMY ACT

I certify that No. B67485 Pte Dufty A A
Royal Regt of Can was arrested in Antwerp at 1500 hrs
on 25 Dec 44 and at the time of his arrest he was wearing Military
uniform

Exhibit "B"

signed
R.O Dunn
No. 7 Cdn Pro Coy
i/c Antwerp Det.

List of Exhibits for the Prosecution

(1) Lt G.H. James

List of Exhibits:

(A) Army Form B 115

(B) Certificate of Apprehension

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No B67485 Pte DUFTY, Albert Alexander 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas:-

The accused is informed of his rights.

By Direction of the Commanding Officer the Summary of Evidence is taken on oath:

FIRST WITNESS

For the Prosecution

Lt G.H. Jones, 1 Bn The Royal Regiment of Canada, an officer of the Canadian Army Overseas, having been duly sworn, states:

I am Lt G H James, Asst-Adjt, and in charge of all regimental documents for 1 Bn The Royal Regiment of Canada. I present herewith Army Form B 115, Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier, which shows that the accused, B67485 Pte Dufty, A.A., whom I now recognize, was declared illegally absent from this unit as of 2000 hrs 4 Nov 44 and still absent on 28 Nov 44, the day on which the Court of Inquiry was held. I also present herewith Certificate of Apprehension in accordance with Sec 163 (1) (jj) AA, which shows that the accused was apprehended by the Canadian Provost Corps in the city of Antwerp, and which is annexed hereto and marked as Exhibit "B".

The accused declines to cross-examine this witness.

(G.H. James) Lt.

The accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statment or to give evidence on oath or to call witnesses in his defence at this point.

I certify that the foregoing Summary of Evidence, consisting of ONE page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (b) (ii) (E) (F) and (G) have been complied with.

signed
(N. Hutton) Lt,
Officer Detailed to Take Summary

In THE FIELD
8 Jan 45

Place	Date of offence	Rank	Cases of drunkenness
Field	30/11 43	Pte	
Field	11 Feb 44	Pte	
Field	9 Feb 44	Pte	
Field	24 Aug 44	Pte	

E "E"

No B67485 Name DUFTY A.A. Sqn, Battery or Company

Date of last entry in Company Conduct Sheet

No and date of last drunk

Place	Date of offence	Rank	Cases of drunkenness	
				Sheet
Field	4-1-44	Pte		AA Sec 15(1) to 0215 hrs
Field	18/2 41	Pte		AA Sec 15(1) 18/2/41 to 1 (5 hrs 40 m
Field	18/8 41	Pte		AA Sec 15(1) 18/8)41 to 1
Field	8/3/43	Pte		AA Sec 15(1)

GRT

Er "E"

No B67485 Name DUFTY A.A. | Sqn, Battery or Company | Corps CI.C. | Date of enlistment 3-4-40 | OC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period most reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc TJ MacArthur Capt (Major)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 3 Oct 40 NIL Entries NIL DRUNK				TJ MacArthur	
Field	4-1-44	Pte		AA Sec 15(1)AWL fr 2359 hrs 4/1/44 to 0215 hrs 5 Jan 41 (2 hrs 15 mins)	SJT Carson Cpl Chirnside	7 days CB	5/1/44	Lt Young	
Field	18/2/41	Pte		AA Sec 15(1)AWL fr 0600 hrs 18/2/41 to 1140 hrs 17/2/41 (5 hrs 40 mins)	Sjt McCartney Cpl Churnside	7 days CB	18/8/41	Major Clarkson	
Field	18/8/41	Pte		AA Sec 15(1)AWL fr 0600 hrs 18/8)41 to 1100 hrs 18/8/41	CSM Jacobs Cpl Penn	7 days CB 7 days pay	18/8/41	Lt-Col GH Basher	
Field	8/3/43	Pte		AA Sec 15(1) 17 hrs 7 mins	Lt Stothers Sjt Price	Forf 17 days pay FRI 149(2)	12/3/43	Lt-Col Nicholls	Forf 1 days pay FR&I 149 (1) (a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30/11 43	Pte		AA Sec 40 Cond etc entered Sjts mess to obtain beer, neglecting to leave and turn over Veh keys when so ordered.	A/RSM Howard CSM Ruggles Sjt Smith	7 days CB	2/1243	Lt-Col FS Wilder	
Field	11Feb 44	Pte		AA 15 (1) AWL from 2359 hrs 11 Feb 44 to 1755 hrs 12 Feb 44.	Cpl Purdy	Forf 3 Days pay under FR&I 149 (2)	16 Feb 44	Lt-Col A M Young	
Field	9 Feb 44	Pte		AA 40 Neglect etc Neglected maintain MD Vehicle	Capt RCA Cumberland	Forf 3 days pay FR&I 149 (2)	11 Mar 44	Lt-Col A M Young	
Field	24 Aug 44	Pte		AA 15 AWL FROM 2000 hrs 24 Aug 44 to 1600 hrs, 24 Aug 44. CERTIFIED TRUECOPY & CORRECT COPY ORIGINAL DOCUMENT IN MY POSSESSION: signed G H James Lt Officer IC Records, 1 R Regt C	CQms Peaks	5 days C B	29/8/44	Capt E L McGiverin	E L McGiverin Capt

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
847465	Pte	Lafty A A	1 H Regt C

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For Sec 15 (1) AA	4 times	times
For Sec 40 A A	1 times	times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

or

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted.~~ or

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 71 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, or ~~The accused at the present time is under sentence of~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for 117 days in civil custody, and 19 days in military custody, making a total of 19 days, of which 117 days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 21 years

6. The date of his ~~enlistment~~ attestation specified in his ~~attestation paper~~ record of service is 3 Apr 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 9 ~~mons~~

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 9 mons service.

9. The accused is entitled to reckon 4 yrs 9 ~~mons~~ service for the purpose of determining his pension, etc.

10. ~~The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of, or entitled to (state any military decoration or award).~~

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer [illegible] the regimental rank of~~

~~(In the case of an officer.) The accused holds in the army the rank of dated, and in his regiment (or corps or department) the rank of dated~~

W1.5007/1309 20M. 6/40. P. Ltd. T10-3.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th day of Janua ry 45

signed
(O.E. James) Lt.,
[illegible]

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion

In the rank of _____ years.

In the rank of _____ years.

In the rank of _____ years.

In the rank of _____ years.

(INSTRUCTION—If any matter in any of the above paragraphs cannot be ruled from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such source as are available and the paragraph corrected and dated accordingly.)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: Be7485 Pte Durty AA

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of Kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for one year

(Sgd) ..... Judge-Advocate, if any. 19 Jan 45 Date awarded. (Sgd) K W MacIntyre Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 171 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be kept committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) JHQ Fergusson Lt-Col

Date 1b Jan 45 A/ Commanding 4 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
Be7485 Pte Durty AA	1b Jan 45	GH James Lt 1 R Regt C

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

HP-129

FIELD GENERAL COURT-MARTIAL CFAFM (In lieu of AFAM) 40/P & R. Loose 16(44) 4/38B

Convened by Order of LT/COL J H Q FARGUHAR A/Comd 4 Cdn Inf Bde dated 11 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
Be7485	Pte	ALBERT ALEXANDER	DURTY	R Regt C

certified true copy
J W Haig Major
D J A.,
Cdn Sec G H Q 2 Feb 21 Army Gp

D.J.A. Cdn Sec G H Q 2 Feb 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date) 19th Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is duly amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 2. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1230 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the OC.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~Major~~ as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans .....(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	K W	MacIntyre	Essex Scot
Member	Capt	S T	Salmraith	R H L I
Member	Capt	D R	Prior	R Regt C
~~Judge-Advocate~~				
Prosecutor	Lieut	M	Hutton	R Regt C
Defending Offr	Capt	RCA	Cumberland	R Regt C

Questions by President: Is the Prosecutor a lawyer? Ans ..... Is the Defending Offr a lawyer? Ans .....(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See JA p 2.)

A8. The accused Be7485 Pte Durty A A before arraignment makes(s) (no) ~~no~~ plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposit., the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is adjourned~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Vol IV Fol 21

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or call witnesses as to character and make an address in mitigation of punishment.[2]
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused : Do you wish to make a statement ? Ans. NO K.W. .....[5]
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para L1 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court cautions him accordingly.~~ The Court decides (not) to advise accused to change his (~~their~~) plea(s) of Guilty to Not Guilty on ~~COUNTS~~ charge(s). ~~The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings(s) of Guilty in Part I of the Schedule.[1]
(*1. RP 35(B). If any plea(s) re (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C , initialled and read aloud by the President.[1]
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*1. Under B5 such parts only of the Summary of Evidence etc, to relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....[1]
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(*1. Delete remainder of this para, if submission not made. 2. Arguments or submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(*1. AA 54(3) (6), RP 43, 120(A). 2. AA 54(7), RP 42, 117. This alternative annoucement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Forms B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?[1]
Ans. .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Services[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.[3]
(*1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?[1] Ans. .....[2]
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(*1. Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to convict all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 108, 119(A), KR Con 308, 326, 343-346. Overseas AO 309, 2323, MML p 80, 737-739. As to sentences assigned for civil offences (for the law of England see AA 41(1), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 344. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 367. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No B67485 Pte DUFFY, Albert Alexander, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE — WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE.

Sec 15 (1) Army Act — - in that he -

In the Field, absented himself without leave from 2000 hrs, 4 Nov 44 and remained absent until apprehended at 1500 hrs, 25 Dec 44 by the Canadian Provost Corps in the city of Antwerp, Belgium. (Total Absence: 50 days 19 hrs.)

signed
(R.E. Lendrum) Lt-Col,
Officer Commanding,
1 Bn The Royal Regt of Canada.

In the Field
8 Jan 45.

TO BE TRIED BY Field General Court/Martial

signed
(J E C Langman) Lt-Col
A/Comd - 4 Can Inf Bde

In the Field
11 Jan 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B67488	Pte		ALBERT ALEXANDER	DUFFY	R Regt C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 11 Jan 45 endorsed by me, (or by an offr of my staff thereto) To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ~~, and that it is not practicable to delay the trial for reference to a superior qualified offr~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reason I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D W MacIntyre	HQ&S Regt C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
	A Capt to be detailed by CO R Regt C	
	A Capt to be detailed by CO R Regt C	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	A Capt to be detailed by CO R Regt C	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
	R/A	

On Active Service in the Fd

in	(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)
	BULLARD	signed (J B C FARQUHAR)	Lt/Col

Dat 12 Jan 45 A/Commanding 4 Can Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 98 (To Item 42 AFA 3) 60-7-8 D.L.S.&T. (5143)

(See overleaf for notes and rules for use on trial.)

MEDICAL OFFICER'S CERTIFICATE
KR (CAR) Para 557

I certify that I have this morning examined No B67485 Pte Dufty A A of R Regt C and in my opinion he is fit to undergo trial by court-martial.

Station In the Field signed Capt

Date 13 Jan 45 Medical Officer.

MEDICAL OFFICER'S CERTIFICATE
KR (CAR) Para 557

I certify that I have this morning examined No B67485 Pte Dufty A A of R Regt C and in my opinion he is fit to undergo trial by court-martial.

Station In the Field signed Capt

Date 15 Jan 45 Medical Officer.

PLEA OF MITIGATION

B67485Pte Dufty A A

The fact that Pte Dufty is a good and reliable driver I personally vouch for having been in direct contact with him for 21 months as transport officer of the Royal Regiment of Canada. That he absented himself at Meehalin while on a duty consisting of transporting personnel to an ENSA party disapates any suggestion at hindering the unit operationally. The circumstances surrounding his personal affairs and particulars of service does in a way small way justify his action. Pte Dufty is married with two children, the youngest he has never seen. His wife has been ill and compassionate leave was applied for and according to correspondence from Canadian Section Current Headquarters 2nd Echelon, which I have seen. Would same have been granted if he had been able to hold out a little longer. He has had two brothers killed in this war, one in Italy and one in France, a pretty big

contribution from one family. He has four years nine months service to his credit. And yet here is a man who has expressed his eagerness to drive without pay if it was it within your power to award a forfeiture at the equivelant of a substantial detention sentence. You are however empowered to award forfeitures of pay up to 60 days, and I submit that when you decide on an equitable and fair sentence that you make three months of it as a forfeiture of pay in order that Pte Lalty may be re-employed in a useful purpose that much sooner. In perusing his RMC 6 undue emphasis on the several minor entries is not justifiable in view of his long service.

Correspondence re Pte Berrys personal affairs seen by Court

Exhibit "A" Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 28th day of November 19 44, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B67485 Pte Duffy A A

DECLARATION.

The Court declare, That B67485 Pte Duffy A A, illegally absented himself without leave from 1 Bn The Royal Regiment of Canada, at 2000 hrs, 4 Nov 44, and that he is still absent this date 28 Nov 44.

CERTIFICATE UNDER SECTION 165 (1) (ii) OF THE ARMY ACT

I certify that No. H67488 Pte Darty A A of
Royal Regt of Can was arrested in Antwerp at 1600 hrs
on 25 Dec 44 and at the time of his arrest he was wearing military
uniform

signed

Exhibit "B"

R.O Dunn
No. 7 Can Pro Coy
i/c Antwerp Det.

List of exhibits for the Prosecution

(1) Lt C.H. James

List of exhibits:

(A) Army Form B 11b

(B) Certificate of Apprehension

SUMMARY OF EVIDENCE

Summary of evidence in the case of No B67485 Pte Duffy, Albert Alexander 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas:-

The accused is informed of his rights.

By Direction of the Commanding Officer the Summary of Evidence is taken on oath:

FIRST WITNESS

For the Prosecution

Lt G.R. Jones, 1 Bn The Royal Regiment of Canada, an officer of the Canadian Army Overseas, having been duly sworn, states:

I am Lt G R James, Asst-Adjt, and in charge of all regimental documents for 1 Bn The Royal Regiment of Canada. I present herewith Army Form B 11b, Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier, which shows that the accused, B67485 Pte Duffy, A.A., whom I now recognize, was declared illegally absent from this unit as of 2000 hrs 4 Nov 44 and still absent on 28 Nov 44, the day on which the Court of Inquiry was held. I also present herewith Certificate of Apprehension in accordance with Sec 105 (1) (jj) AA, which shows that the accused was apprehended by the Canadian Provost Corps in the city of Antwerp, and which is annexed hereto and marked as exhibit "R".

The accused declines to cross-examine this witness.

(G.R. James) Lt.

The accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or to give evidence on oath or to call witnesses in his defence at this point.

I certify that the foregoing summary of evidence, consisting of ONE page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (b) (d) (e) (f) and (G) have been complied with.

signed
(S. Hutton) Lt,
Officer Detailed to Take Summary

In the Field
8 Jan 45

Ex "E"

No B67485 Name DUFTY A.A. Sqn, Battery or Company Corps CI.C. Date of enlistment 3-4-40 GC Badges Service or Proficiency Pay MFM 6 (AFB 1 40/P&S/130 38)

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc TJ MacArthur Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 3 Oct 40	NIL Entries	NIL DRUNK		TJ MacArthur	
Field	4-1-44	Pte		AA Sec 15(1)AWL fr 2359 hrs 4/1/44 to 0215 hrs 5 Jan 41 (2 hrs 15 mins)	SJT Carson Cpl Chirnside	7 days CB	5/1/44	Lt Young	
Field	18/2 41	Pte		AA Sec 15(1)AWL fr 0600 hrs 17/2/41 to 1140 hrs 17/2/41 (5 hrs 40 mins)	Sjt McCartney Cpl Churnside	7 days CB	18/8/41	Major Clarkson	
Field	18/8 41	Pte		AA Sec 15(1)AWL fr 0600 hrs 18/8)41 to 1100 hrs 18/8/41	CSM Jacobs Cpl Penn	~~18/8/41~~ 7 days CB 7 days pay	18/8/41	Lt-Col GH Basher	
Field	8/3/43	Pte		AA Sec 15(1) 17 hrs 7 mins	Lt Stothers Sjt Price	Forf 17 days pay FRI 149(2)	12/3/43	Lt-Col Nicholls	Forf 1 days pay FR&I 149 (1) (a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishments awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30/11/43	Pte		AA Sec 40 Cond etc entered Sjts mess to obtain beer, neglecting to leave and turn over Veh keys when so ordered.	A/RSM Howard CSM Huggles Sjt Smith	7 days CB	2/1243	Lt-Col FS Wilder	
Field	11Feb 44	Pte		AA 15 (1) AWL from 2359 hrs 11 Feb 44 to 1755 hrs 12 Feb 44.	Cpl Purdy	Forf 3 Days pay under FRAI 149 (2)	16 Feb 44	Lt-Col A M Young	
Field	9 Feb 44	Pte		AA 40 Neglect etc Neglected maintain MD Vehicle	Capt RCA Cumberland	Forf 3 days pay FRAI 149 (2)	11 Mar 44	Lt-Col A M Young	
Field	24 Aug 44	Pte		AA 15 AWL FROM 1000 hrs 24 Aug 44 to 1600 hrs, 24 Aug 44. CERTIFIED TRUECOPY & CORRECT COPY ORIGINAL DOCUMENT IN MY POSSESSION: signed G R James Lt Officer in Charge, 1 R Regt C	CQms Peaks	3 days C B	29/8/44	Capt E L McGiverin	E L McGiverin Capt

Ex "D"

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
B67485	Pte	Durty A A	1 R Regt C

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 607, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For Sec 15 (1) AA	4 times	times
For Sec 40 A A	1 times	times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct.~~

or

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted, or~~

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 23 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. ~~The accused has been in confinement awaiting trial on the present charge for~~ The accused has been in confinement awaiting trial on the present charge for [illegible] days in civil custody, and 19 days in military custody, making a total of 19 days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 20 yrs 2 mths

6. The date of his ~~enlistment~~ attestation specified in his ~~attestation paper~~ record of service is 5 Apr 40.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 9 mths

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 9 mths service.

9. The accused is entitled to reckon 4 yrs 9 mths service for the purpose of determining his pension, etc.

~~10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or award)).~~

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer, last held the regimental rank of~~

~~(If the case of an officer.) The accused holds (or the only rank of~~ ~~was~~ ~~and he last regularly (or acted or temporarily) the rank of~~ ~~dated~~

WAR OFFICE (M.M. 1/94. P. Lad. 7/43.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 43, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th **day of** January 45

signed
(G.E. James) Lt.,
Officer IC Records, 1 R Regt C

13. **The accused has served as a non-commissioned officer continuously, without reduction, to the present day.**

Date of Promotion

In the rank of _____ years.

In the rank of _____ years.

In the rank of _____ years.

(INSTRUCTION: *If any matter in any of the above paragraphs cannot be stated from the regimental book, the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be inserted from such source as are available and the paragraph concerned amended accordingly.*)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B67485 Pte Duffy A.A

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Deft	Deft	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present~~ under sentence for ~~/~~ beginning on (date) ~~/~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for one year.

(Sgd) ~~/~~ Judge-Advocate, if any. 13 Jan 45 Date awarded. (Sgd) L n/a on Duties Lieut-Col President. (RP 48, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ~~/~~ (Sgd) ~~/~~ Commanding ~~/~~

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) ~~/~~ Pte Pte Pte

Date 15 Jan 45 A/Commanding 4 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
B67485 Pte Duffy A.A	16 Jan 45	J.S. James Lt 1 R Regt C

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160

4P-129

CPA96 (In lieu of AFA2) 40/P & R/1668 (20-6)

FIELD GENERAL COURT-MARTIAL

4/38B

10 FEB 1945 A.H.Q.

Convened by Order of LT-COL J E C PANGMAN A/Comd 4 CDN INF BDE dated 11 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-67485	PTE	ALBERT ALEXANDER	DUFFY	R REGT C

PROCEEDINGS REVIEWED

J. Rudiger Lieut Capt. 21 Feb 45

REVIEWING OFFICER, 1AD BRANCH CMHQ.

PROCEEDINGS REVIEWED 2 Feb 45 Gen. Staff (G) 2 Echelon 2 Infantry Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 13 Jan 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 1988

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for words and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1340 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~/~~ as interpreter? Ans ~~/~~

The Interpreter is sworn.(1) Do you object to ~~/~~ as shorthand writer? Ans ~~/~~

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2) ~~/~~

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	J E C Pangman	Comd Inf Bde.
Member	Capt	ST Galbraith	RHLI.
Member	Capt	DR Pain	R Regt C.
~~Judge-Advocate~~	~~/~~	~~/~~	~~/~~
Prosecutor	Lieut	N Hatton	R Regt C.
Defending Offr	Capt	RCA Cumberland	R Regt C.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See Dir p 33.)

A8. The accused B 67485 Pte Duffy A.A before arraignment make(s) (no) ~~no~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 20, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) & call witnesses as to character and make an address in mitigation of punishment.[2]
(*I. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s) & If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[1], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[2], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[3]

President to accused : Do you wish to make a statement ? Ans. No.[4]
(*I. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.~~[1] The Court decides (not) to advise accused to change his (~~then~~) plea(s) of Guilty to Not Guilty on ~~.....~~ charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s).~~ ~~Part I of the Schedule is amended accordingly.~~
(*I. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(*I. RP 37(D). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.[1]
(*I. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*I. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*I. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....[1]
(*I. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(*I. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]
(*I. RP 39(C), 114, KR Con 333. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(*I. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*I. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(*I. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(*I. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(*I. AA 54(2) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?[1]
Ans. No.
(*I. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet/s[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 162(1) (g) (h), and (ii) they purport to refer to (a) soldier/s bearing the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. D and Ex. E respectively.[3]
(*I. MFB 205 or MFB 296. 2. MFM 6. 3. RP 46, KR Con 158. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?[1] Ans. No.[2]
(*I. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(*I. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(*I. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 343-346. Overseas RO 309, 2323. MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Con 344. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 347. As to assembly and dispersal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No B-67485 Pte DUFTY, Albert Alexander, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

Sec 15 (1) Army Act

- in that he -

In the Field, absented himself without leave from 2000 hrs, 4 Nov 44 and remained absent until apprehended at 1500 hrs, 25 Dec 44, by the Canadian Provost Corps, in the city of Antwerp, Belgium. (Total Time Absent: 50 days, 19 hrs.)

R M Lendrum

(R.M. Lendrum) Lt-Col,
Officer Commanding,
1 Bn The Royal Regt of Canada.

IN THE FIELD
8 Jan 45.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

J E C Pangman

(J E C Pangman) Lt-Col
A/Comd - 4 Cdn Inf Bde

IN THE FIELD
11 Jan 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-67485	PTE		ALBERT ALEXANDER	DUFTY	R REGT C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 11 Jan 45 endorsed by me, ([redacted] to be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [redacted]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj	K W MacIntyre	Essex Scot
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

A Capt to be detailed by CO RHLI

A Capt to be detailed by CO R Regt C

(Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

A Capt to be detailed by CO R Regt C

(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

N/A

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in HOLLAND (Country.) — [signature] (Signed personally. RP 105 fn 2.) — LT-COL (Rank.)

(J E C PANGMAN)

Date 11 Jan 45 — A/ Commanding 4 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/F & S/1697 (8143) *(See overleaf for oaths and notes for use on trial.)*

MEDICAL OFFICER'S CERTIFICATE
KR (Can) Para 557

I certify that I have this morning examined No B-67485 Pte Dufty, A. A. of 1 R Regt C and in my opinion he is fit/[redacted] to undergo trial by court-martial.

Station In The Field

Date 13 Jan 45.

J A Olacke, Capt
Medical Officer.

Plea of Mitigation

B 6[illegible]48,5 Pte Dufty A.A.

The fact that Pte Dufty is a good and reliable Driver I personally Vouch for Having been in Direct Contact with Him for 21 months as Transport Officer of the Royal Regiment of Canada.

That He absented Himself at Mechelen ~~is evidence~~ while on a Duty Consisting of Transporting personal To an ENSA Party Dissapoles any Suggestion of Hindering The unit operationally

The circumstances Surrounding His personal affairs and particulars of Service Does in a Smoke way justify His action

Pte Dufty is married with two Children The youngest he Has never Seen His wife Has been ill and Compassionate Leave was applied for and according To Correspondence from Canadian Section General Headquarters 2d Echelon which I Have Seen

Would now have been granted if He had been able to hold out a little longer. He has had 2 Brothers killed in this war one in Italy and one in France. A pretty big contribution from one family. He has 4 years 9 months service to his credit.

~~[illegible]~~

And yet here is a man who has expressed his ~~[illegible]~~ eagerness to drive without pay if it was within your power to award a forfeiture of the equivalent of ~~[illegible]~~ a substantial retention sentence.

You are however empowered to award forfeitures of pay up to 90 days. And I submit that

When you decide on an
equitable and fair sentence
that you ~~you~~ make ~~it to~~ 3 months
of it as a forfeiture of pay
~~[illegible]~~ in order that Duffy ~~may~~
be re-employed in a useful
purpose that much sooner -

In perusing His MFM 6
undue emphasis on the several
minor entries is not justifiable
in view of His long service -

[illegible]

Correspondence re Pte Duffy's personal
affairs seen by Court

Exhibit C

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No B-67485 Pte DUFTY, Albert Alexander, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas:-

The accused is informed of his rights.

By Direction of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS

For the Prosecution

Lt G.H. James, 1 Bn The Royal Regiment of Canada, an officer of the Canadian Army Overseas, having been duly sworn, states:

I am Lt G.H. James, Asst-Adjt, and in charge of all regimental documents for 1 Bn The Royal Regiment of Canada. I present herewith Army Form B 115, Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier, which shows that the accused, B-67485 Pte Dufty, A.A., whom I now recognize, was declared illegally absent from this unit as of 2000 hrs, 4 Nov 44, and still absent on 28 Nov 44, the day on which the Court of Inquiry was held. I also present herewith Certificate of Apprehension in accordance with Sec 163 (1)(JJ) AA, which shows that the accused was apprehended by the Canadian Provost Corps in the city of Antwerp, and which is annexed hereto and marked as Exhibit "B."

The accused declines to cross-examine this witness.

(G.H. James) Lt.

The accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statment or to give evidence on oath or to call witnesses in his defence at this point.

I certify that the foregoing Summary of Evidence, consisting of ONE page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

(M) Hutton) Lt,
Officer Detailed to Take Summary.

IN THE FIELD
6 Jan 45.

EXHIBIT "A" Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 28th day of November 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-67485 Pte Dufty, A.A.

DECLARATION.

The Court declare. that B-67485 Pte Dufty, A.A., illegally absented himself without leave from 1 Bn The Royal Regiment of Canada, at 2000 hrs, 4 Nov 44, and that he is still absent this date, 28 Nov 44.

Names of President and Members

Capt R.C.A. Cumberland, PRESIDENT
1 Bn The Royal Regt of Canada.

Lt A.H. Krieger, MEMBER
1 Bn The Royal Regt of Canada.

Lt G.H. James, MEMBER
1 Bn The Royal Regt of Canada.

Signature of Commanding Officer Lt-Col R.M. Lendrum,
OC 1 Bn The Royal Regt of C.

CERTIFIED TRUE COPY.

G.H. James Lt

Signature of Officer having custody of the Original Record.

(21299) Wt.10082-791 150,000 4/42 A & E.W.Ltd. Gp.698
(22499) Wt.2955-1800 100,000 10/42 " " Form: B.115/58

CERTIFICATE UNDER SECTION 163 (I) (jj) OF THE ARMY ACT.

I certify that No. B67485 Rank Pte Name Duffy A A of Royal Regt Flan Regiment was arrested in Antwerp at 1500 hrs. on date 25 Dec. 44 and at the time of his arrest he was wearing Military Uniform ~~or Plain Clothes~~.

John 95

EXHIBIT "B"

[signature] .....Lieut
R.O. DUNN
No.7. Cdn. Prov. Coy.,
i/c Antwerp Det.

Ex D

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
B-67485	Pte	Durty, A.A.	1 R Regt C

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of **entries** in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For Sec 15 (1) Army Act	4 times	6 times
For Sec 40 Army Act	1 times	2 times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct.

or

There are no entries in the conduct sheets of the accused.

2. ~~The accused has not been previously convicted.~~ or

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 76 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time. ~~The accused at his present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and ~~24~~ 19 days in military custody, making a total of ~~24~~ 19 days, of which ~~Nil~~ Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ ~~attestation paper~~ is 26 yrs

6. The date of his ~~attestation~~ specified in his ~~record of service~~ ~~attestation paper~~ is 3 Apr 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 9 mos

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 9 mos service.

9. The accused is entitled to reckon 4 yrs 9 mos service for the purpose of determining his pension, etc.

10. ~~The accused is in possession of, or entitled to, no military decorations or military reward (or is in possession of or entitled to these) (any military decorations or reward).~~

11. ~~(If the accused is a warrant officer.)~~ The accused before he was made a warrant officer held the regimental rank of

12. ~~(In the case of an officer.)~~ The accused holds in the army the rank of ~~dated~~ and in the regiment (or corps department) the rank of ~~dated~~

WT.28870/P.B.M. 600. 5/40. P. Ltd. 770/5.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		- Nil -		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th **day of** Jan 45.

(G.E. James) Lt,
Officer IC Records, 1 R Regt C.

13. **The accused has served as a non-commissioned officer continuously, without reduction, to the present date.**

	Date of Promotion.
In the rank of _____	_____ **years.**
In the rank of N/A	_____ **years.**
In the rank of _____	_____ **years.**

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information, may be collected from such sources as are available and the paragraph concerned amended accordingly.)

No B-67485 Name DUFTY A.A. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 13/4/40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/150 (3488)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc T.J. MacArthur, Capt. | Character

EX

Date	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (licensing with trial	By whom awarded	Remarks
				Sheet Destroyed 3 Oct 40 NIL Entries NIL DRUNK			T.J. MacArthur, Capt.		
Field	4/1/41	Pte		AA Sec 15(1)AWL fr 2359 hrs 4/1/41 to 0215 hrs 5 Jan 41(2 hrs 15 min)	Sjt Carson Cpl Chirnside	7 days C.B.	5/1/41	lt-Young	
Field	18/2/41	Pte		AA Sec 15(1)AWL fr 0600 hrs 17/2/41 to 1140 hrs 17/2/41 (5 hrs 40 min)	Sjt McCartney Cpl Chirnside	7 days C.B.	18/2/41	Major Clarkson	
Field	18/8/41	Pte		AA Sec 15(1)AWL fr 0600 hrs 18/8/41 to 1100 hrs 18/8/41	CSM Jacobs Cpl Penn	7 days F.P. 7 days pay	18/8/41	lt-Col G.R. Basher	
Field	8/3/43	Pte		AA Sec 15(1)AWL 17 hrs 7 min	lt-Stothers Sjt Price	Forf 17 days pay Pnl 145(2)	12/3/43	lt-Col FL Nicholls	Forf 1 days P (illegible)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30/11/43	Pte		AA Sec 40 Cond etc entered Sjts mess to obtain beer, neglecting to leave & to turn over veh keys when so ordered.	A/RSM Howard CSM Ruggles Sjt Smith	7 days C.B.	2/12/43	Lt-Col FS Wilder	
Field	11 Feb 44	Pte		AA 15(1)AWL from 2359 hrs 11 Feb 44. to 1755 hrs 12 Feb 44.	Cpl Purdy	Forf 3 d. pay under FR&I 149 (2)	16 Feb44	Lt-Col A.M.Young	Forf 1 d. pay under FR&I 149 (1)(a).
Field	9 Feb 44	Pte		AA 40 Neglect, etc. Neglected to maintain W D vehicle	Capt RCA Cumberland	Forf 3 d. pay FR&I 149(2)	11 Mar 44	Lt-Col A.M.Young	
Field	24 Aug 44	Pte		AA 15 AWL from 1000 hrs 24 Aug 44 to 1600 hrs, 24 Aug 44.	CQMS Peake	5 days C.B.	29/8/44.	Capt. E.L. McGiverin	E.L. McGiverin, Capt.

CERTIFIED TRUE & CORRECT COPY OF ORIGINAL DOCUMENT IN MY POSSESSION:

G.H. James

(G.H. James) Lt.
Officer IC Records, 1 R REGT C.

MM-145
CPL DUFTY H.V.

mm-145

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty-first day of August, 1943.

Whereas it appears to me, the undersigned, an officer in Command of HQ 2 Cdn Corps Tps RCASC, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~[I am unable to appoint —~~

*~~(1. Three Officers to form the Court.~~

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely —]~~

*Omit if not applicable.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	A.L. Morris	34 Cdn Corps Tps Coy RCASC

Members.

Rank.	Name.	Regiment.
Capt.	A.D. Cossabcom	HQ 2 Cdn Corps Tps RCASC
Lt.	A.C. Bagg	34 Cdn Corps Tps Coy RCASC

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed

Lt.-Col.

Commanding HQ 2 Cdn Corps Tps RCASC
Convening Officer.

Judge-Advocate
Capt. G.H. Jermyn
ADVA - 2 Cdn Corps

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B.84149 Cpl. DUFTY, H.V. 33 Cdn Corps Tps Coy RCASC	First Charge Conduct to the Prejudice of Good Order and Military Discipline - A.A. Sec. 40.	Guilty	Guilty	Confirmed JBS
	Second Charge Conduct to the Prejudice of Good Order and Military Discipline - A.A. Sec. 40.	Guilty	Guilty	Confirmed JBS
	Third Charge Conduct to the Prejudice of Good Order and Military Discipline - A.A. Sec. 40. (See Charge Sheet attached)	Guilty	Guilty To forfeit all ordinary pay for a period of 28 days A L Mann Major 23 Aug 43 J.G. Hemingway Capt J.A.	Confirmed JBS 26 Aug 43

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) J B [illegible] Lt.-Col. (Signed) A L Mann Major
Commanding HQ 2 Cdn Corps Tps RCASC — J.G. Hemingway Capt J.A.
Convening Officer (*c*) — *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23 rd day of August 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~) The shorthand writer
*(4. The officers under instruction)
were duly sworn. (5) The judge - advocate

*Omit if not applicable.

Signed this 23 rd day of August 19 43.

J.G. Hemingway Capt — A L Mann Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 782 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this [illegible] 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

JBS

Signed this 26th day of Aug 19 43.

J B [illegible] Lt.-Col.
Confirming Officer.

Promulgated and extracts taken in the case of
(*a*) (Dated) 27 Aug 43 (Signed) [illegible]

Promulgated and extracts taken in the case of
(Dated) (Signed)

Promulgated and extracts taken in the case of
(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(33579) W—46179 50 10/43 [illegible] Cp 498

CHARGE SHEET

The Accused, B.84149 Corporal Howard Victor DUFTY 33 Canadian Corps Troops Company, R.C.A.S.C., a soldier of the Canadian Army Overseas, is charged with, when of active service:-

First Offence
A.A.Sec 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field on 11 August, 1943 used a Canadian Government Vehicle, namely, a Harley-Davidson motorcycle, No. CC.1039972, and petrol for his private purposes and without authority.

Second Offence
A.A.Sec 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the town of Fleet at about 2215 hours on 11 August 1943 did carry an unauthorized passenger on the rear fender of a Canadian Government motorcycle, namely, No. CC.1039972.

Third Offence
A.A.Sec 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field on 11 August 1943 was knowingly in possession of and made use of a Transport Work Ticket, No. U-7-17, which had been altered after it was signed by an officer from "Unit Area" to "2nd Corps Area".

(W.H.Copeland)Major
Commanding 33 Cdn Corps Tps Coy
R.C.A.S.C.

FIELD
19 Aug 43

To be tried by Field General Court Martial.

Field
19 Aug 43

H.Q. Comd
2 Cdn Corps Tps
R.C.A.S.C.

MEDICAL OFFICER'S CERTIFICATE

K.R. (Can.) Para 557

I certify that I have this morning examined No 684149

Cpl Duffy H.V of 33 Cdn. C. Coy R.C.A.S. and in my opinion he is

fit to undergo trial by court-martial

Station Field

Date 23 Aug 1943.

J. N. Campbell Capt. R.C.A.M.C.
Medical Officer.

A L [illegible]

PAGE I

Record of Proceedings of a Field General Court Martial

Held in the Field in Corg Land (Country) on 23 Aug 43 (Date) to try

Accused B-94149 Cpl. Howard Victor Flutty (Number)(Rank)(Christian Names)(Surname) _____ (Unit)

	Rank	Name	Unit
President	Maj.	A. L. Morris	34 Edm Corps Tps Coy RCASC
Member	Capt.	A. D. Cornabourne	HQ 2 Edm Corps Tps RCASC
Member	Lt.	A. C. Bagg	34 Edm Corps Tps Coy RCASC
Judge Advocate (if any)	Capt.	J. N. Jennyd	H.Q. 2 Edm Corps.
Officers Under Instruction (if any)	Lt.	R.M.C. Turner	2 Edm M.A.C. RCASC
Prosecuting Officer	Capt.	T. J. L. Wilkinson ~~M.A. Mac Pherson~~	33 Edm Corps Tps Coy RCASC
Lawyer? Ans		Yes. No.	
Defending Officer	Capt.	M.A. Mac Pherson ~~Wilkinson~~	33 Edm Corps Tps Coy RCASC
Lawyer? Ans		Yes.	

(The following procedure must actually be carried out)

1. The President produces the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs.P.17(E), 22(A)).

   (If a waiting member substituted, record is on separate sheet, initialled by the President and attached hereto). (For form of record see M.M.L. p.742 top).

2. The President, in closed court (R.P.22, fn 1) reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted (A.A.49; Rs.P.106, 107), that the accused is (are) amenable to Military Law, and that each charge discloses an offence (Rs.P.23,108).

3. The accused is (are) brought before the Court and at 1514 hours the trial commences.

4. The Prosecuting Officer produces a Medical Certificate under K.R.(Can) 557 (See CMHQ Circular Letter 173) that the accused has (have) this day been examined and is (are) fit to undergo trial by Court Martial. The certificate(s) is signed by the President and attached to the proceedings.

(Over)

~~5. President to ascertain:~~

~~Q - Do you object to ____ as interpreter?~~
~~A - ____~~

~~The interpreter is duly sworn. (Form of oath on Page "D").~~

Sgt. Corporal B82775
Q - Do you object to ____ as shorthand writer?
A - NO SIR

The shorthand writer is duly sworn. (Form of oath on Page "D").

6. The Convening Order is read in the hearing of the accused. The names of the President and Members of the Court are read to the accused and they severally answer to their names (R.P.25).

7. President to accused:

Q - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A - NO SIR

(If objection is made it is recorded on separate sheet, initialled by the President and attached hereto. (R.P.25). (For form of record see M.M.L. p. 742 Variation).

8. The President, Members, Judge-Advocate and Officers under Instruction are duly sworn (Rs.P.26, 27). (Forms of oath on page "D").

9. The Charge Sheet(~~s~~) is (~~are~~) signed by the President.

10. The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (A.A.46(8)).

(If special plea(s) is (are) made for separate trial on one or more charges (Rs.P.62(8), 108); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.130; R.P.57), such pleas and evidence (if any) are recorded on separate sheet(s), initialled by the President and attached hereto). (For form of record see M.M.L. p. 744, 745, Variations).

11. Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge	GUILTY	Fifth Charge	
Second Charge	GUILTY	Sixth Charge	
Third Charge	GUILTY	Seventh Charge	
Fourth Charge		Eighth Charge	

(For procedure on alternative charges, see R.P. 37(A) and fn. 2). (For form of record see M.M.L. p. 744 Instructions).

Further proceedings are recorded on pages hereto attached.

PAGE 'A'

(For use when accused pleads "Guilty" to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President).

1. The President complies with R.P.35(B) by ascertaining that the accused understands the nature of the charge(s) (fn. 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B) & fn. 3) and advising him to withdraw his plea if he thinks the accused ought to plead "Not Guilty" thereto.

2. The finding(s) of the Court is (are) recorded on p. 2 of A.F.A.3.

3. President to accused:

Q - Do you desire to make any statement of the circumstances in reference to the charge(s)? (R.P.37(B)).

A - NO SIR

(Statement (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

4. The Summary of Evidence is read aloud, in the presence of the accused, signed by the President and attached to the proceedings.

(If no such Summary, sufficient evidence for determination of the sentence is taken and recorded on separate sheets, initialled by the President and attached hereto). (R.P.37(B)).

5. President to accused:

Q - Do you wish to make any statement in mitigation of punishment? (R.P.37(C)).

A - NO SIR

(Statement (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

(If from paras. 3, 4 or 5 it appears to the Court that the accused did not understand the effect of his plea see Man.P. 37(B) fn. 3; 37(C); 37(D) fns. 5 & 6; M.M.L. p. 747 Variations).

6. President to accused:

Q - Do you wish to give evidence yourself or to call any witnesses as to character? (R.P.37(C)).

A - NO SIR

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto).

7. Statement of Character and Service (A.F.B.296 or M.F.B.355) and Field Conduct Sheet (M.F.M.6), signed in the manner required by A.A.163(1)(h) and purporting to refer to the accused by his number, rank, name and Corps, are produced to the Court, read, marked "X", and "Y", signed by the President and attached to the proceedings. (R.P.46; Overseas R.C.3131).

8. President to accused:

Q - Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)).

A - YES SIR

(Address (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

(Over)

9. The President announces:

" The Court is closed for consideration of the sentence. The sentence to be awarded by the Court, being subject to confirmation, will not be announced but will be promulgated later and the proceedings in Open Court are accordingly terminated".

10. The Court is closed to consider the sentence.

11. The sentence is recorded, dated and signed by the President (R.P.50) on p. 2 of A.F.A.3.

(Punishments, A.A.44; M.M.L. p.130-134; K.R.(Can)563-566; Overseas R.Os.309, 2323).
(One sentence is awarded in respect of all offences, R.P.48).
(For form of sentence see M.M.L. p.756-759).

12.

A L Macmillan
(Signature of President)

G Termyn capt
J.A.

(2 Cdn Corps 15-6-43)

STATEMENT BY DEFENDING OFFICER CAPTAIN M.A. Mac PHERSON RE' CPL. DUFTY IN MITIGATION OF PUNISHMENT.

I am sure that the court will have considerable difficulty in this case because there are a number of circumstances which appear to be a blatant disregard to orders. Surley as you will note there is no such suggestion.

You will note that Cpl Dufty was absent without leave, as a matter of fact Cpl Dufty had permission to go to Fleet. The accused had two brothers whom he had not seen for two and a half years. I submit it was perfectly natural to see his younger brothers as soon as possible when they were as close as that.

The person being carried on his Motorcycle was one of his young brothers. You will note that the only reason against this was that the brother was not carrying a crash helmet.

An outstanding thing in this case is the good behaviour of the accused, he has been an excellent soldier for almost now four years. The accused informs me he has only once been up to Company Orderly Room and that for a very minor charge of 3 days C.B. which practically constitutes a clean sheet. He has been an N.C.O. for two and a half years. He was a Lance Corporal for one year.

It is submitted that the excellent character offsets the balance of evidence produced against him, four years without a Regimental Entry, he most certaily deserves consideration not to mention compassionate grounds. Cpl Dufty is twenty four years old, single and his record while he has been in this Company is exemplary. The reason why we have not Character Witnesses ...and there are many who could come forward.....is that two officers are otherwise engaged one is on Wheels and the other myself. The accused was an N.C.O. of mine for four months and gave no cause for criticism other than normal prodedure. I recommended him for promotion to Corporal as a reliable hard working N.C.O. It is therefore recommended that you do not revert him to the ranks, if so you will spoil a man and his services will not be good.

The punishments you have are sufficient, you may award 28 to 30 days forfeiture of pay, or loss of pay as the case may be. Nothing is to stop the Court from these measures ...and...it would be far more suitable. A man with so much to his credit as this man has namely four years excellent service calls for consideration. Gentlemen,

Defence Counsel.

A L Morrison
President

A.

Army Form G 3518

TRANSPORT WORK TICKET.

No. U-7-17

Make of Vehicle Harley Davidson Class M/c Solo W.D. No. CC 1039972 Date —

Unit 33 Cdn C.T. Coy Section C Pln Driver's Name B84149 Cpl Dufty H Hour of Parade —

For whom journey is performed. (1) 1943	FULL Details of load and service. (2)	Petrol	ROUTE. From (3)	To (4)	Via (5)	Signature of person authorising journey (6)	TIME TAKEN. From (7)	To (8)	Miles (9)
33 Cdn C.T. Coy July	Wheels II	26	Burford	Wheels II	Wheels II	[illegible]	[illegible]	[illegible]	1247
33 Cdn C.T. Coy 21 July 43	Duty D.R.		Burford	Unit Area	Via Dorking	[illegible]	[illegible]	10701 / 10720	69
33 Cdn C.T. Coy 24 July	Convoy	2	Burford	Epsom	Leatherhead	[illegible]		10744 / 10774	30
33 CDN C.T. Coy 28 July	Pln Duties	2	Burford	Unit Area	Dorking	[illegible]		10774 / 10814	40
33 CDN C.T. COY 29 JUL 43	Pln Duties		Burford	Unit Area	Dorking	[illegible]		10814 / 10829	15
33 CDN C.T. Coy 19 August 43	Pln Duties		Burford	2nd Corps Area	Dorking	[illegible]			

TOTAL ...

SPEEDOMETER READINGS.

	Miles
(10) In	
(11) Out	9351
Mileage	

PETROL.

	Galls.
(12) Held at Start	3
(13) *Add*—Amount drawn	
(14) *Deduct*—Remains on completion ...	
(15) Quantity Consumed ...	

(16) TOTAL hours out on duty

(17) Signature of Driver

(18) Countersigned

Rank

O.C. ←

CHARGE #657 - 658 Army Form B 252
(See King's Regulations)

R.C.A.S.C. Regiment

33rd Can. C.T. Coy. Battery / Squadron / Troop or Company

CHARGE against No. B-84149 Rank Cpl.

Name DUFFY, H.V.

Place FLEET Date of Offence 11/8/43

OFFENCE WHILE ON ACTIVE SERVICE

(1) Driving a W.D. vehicle without proper authority.

(2) Carrying an unauthorized passenger.

AUG 1 [illegible]

Capt

Names of Witnesses:—

A-9098, Cpl. Boyce, W.C. No.7 Provost Coy.

M-3823, L/Cpl. Thomlinson, W.M. " "

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

IN THE CASE OF: Reg. No. B-84149 8
Cpl. Dufty, M.V.
R.C.A.S.C.
33rd Cdn. C.T.Coy.

Statement of **EVIDENCE**

At approx. 2215 hrs. 11 Aug. 43, while on patrol in the town of Fleet in company with L/Cpl. Thomlinson. I had occasion to check the a/m N.C.O. who was driving a Harley Davidson M/C #CC.1039972 and carrying a passenger on the rear fender not wearing a crash helmet. The a/m was in possession of work ticket No. U-7-17 and had been authorized for a trip from Burford to Dorking. We escorted him to this H.Q. and after questioning was allowed to proceed to his unit.
ATTACHED FIMD WORK TICKET #U-7-17.

W. R. Boyce Cpl.
(A-9092, Boyce, W.C.)

I have read over and corroborate the above statement.

W. H. Thomlinson L/Cpl.
(M-3825, Thomlinson, W.H.)

REMARKS

RESULT OF CHARGE TO BE FORWARDED TO H.Q. OF FORMATION.

#657

LIST OF EXHIBITS

EXHIBIT "A" Work Ticket U-7-17

EXHIBIT "B" Army Form B 252 with
Statements by:
A.9092 Col. Boyce, W.C. and,
M.3823 L/C. Thomlinson, W.N.
on reverse side.

Summary of Evidence in the case of
B.84149 Cpl. Dufty, H.V. of
33 Canadian Corps Troops Company RCASC

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

First Witness Prosecution

Lieut. S.M. Adams, 33 Canadian Corps Troops Company, R.C.A.S.C. having been duly sworn states:-

"I am Lieut. S.M. Adams, 33 Canadian Corps Troops Company, R.C.A.S.C. I am Officer i/c "B" Transport Platoon. I know the accused. He is a section corporal in my platoon. He was a section corporal when I assumed charge of the platoon in January, 1943. He has Harley Davidson motor bike No. CC.1039972, signed over to him. I recognize Transport Work Ticket No. U-7-17. It is the Work Ticket for the motor bike in question (Work Ticket marked Exhibit "A"). On 11 August 1943 Cpl. Dufty had his usual duties as a section corporal to perform. He had no duties to perform which required him to be in Fleet. I did not authorize a journey to Fleet nor did anyone else to my knowledge. Work Tickets in my platoon are made out for Unit Area unless the vehicle is required to go out of the Unit Area. It was not known that the motorbike in question was out until the accused reported to the guard on returning that night.

The accused declines to cross-examine this witness.

S.M. Adams Lt.
"S.M. Adams, Lt."

Second Witness Prosecution

A.9092 Cpl. Boyce, W.C. No. 7 Provost Coy.

The evidence of A.9092 Cpl. Boyce, W.C., No.7 Provost Coy consists of a signed statement attached hereto and marked "Exhibit "B"". I certify that owing to the exigencies of the service including the expense and loss of time involved the attendance of this witness could not be readily procured.

The accused stated that he did not wish to cross-examine this witness.

.....
Officer Taking the Summary of Evidence.

Third Witness Prosecution

M.3823 L/Cpl. Thomlinson, W.N. No. 7 Provost Coy.

The evidence of M.3823 L/Cpl. Thomlinson, W.N. No. 7 Provost Coy consists of a signed statement attached hereto and marked "Exhibit "B"". I certify that owing to the exigencies of the service including the expense and loss of time involved the attendance of this witness could not readily be procured.

The accused stated that he did not wish to cross-examine this witness.

.....
Officer taking the Summary of Evidence

Fourth Witness Prosecution

Capt. A.E. Wisking, 33 Canadian Corps Troops Company, R.C.A.S.C. having been duly sworn states:

"I am Capt. A.E. Wisking, 33 Canadian Corps Troops Company, R.C.A.S.C. I am Adjutant of the Company. I recognize Transport Work Ticket U-7-17 marked "Exhibit "A"" and the last signature authorizing a journey on 11 August 1943 is mine. The Work Ticket has been altered since I signed it. The words "2nd Corps Area" were not in Column 4 when I signed it and it was altered from "Unit Area".

The accused declines to cross-examine this witness.

A.E. Wisking Capt
"A.E. Wisking, Capt"

The accused was duly warned pursuant to R.P. 4 (e) and declined to make a statement.

I, Lieut. M.I. Friedman, of 33 Canadian Corps Troops Company R.C.A.S.C. do certify that the above Summary of Evidence consisting of two pages was taken by me at Coy H.Q. 33 Canadian Corps Troops Company R.C.A.S.C. in the presence and hearing of the accused and that R.P. 4 (c) (d) (e) and (f) was complied with, this 19th of August, 1943.

M.I. Friedman
(M.I. Friedman) Lieut.
Officer taking Summary of Evidence.

I wish to have Lieut. S.M. Adams appointed to defend me at my F.G.C.M.

H.V. Dufty
"H.V. Dufty"

A. Thompson

No. B84149 Name DUFTY, H.V. Sqn., Battery, or Company "Y" Corps R.C.A.S.C. Date of enlistment 13 Sep 39 G.C. Badges N.A. Service or Proficiency Pay N.A.

M.F.M. 6 (A.F.B. 122) 175M—7-41 (1219-25), H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet N.A. No. and date of last drunk N.A. Period not reckoning towards freedom from extra fine N.A. Sheet No. 1 Signature O.C. Company, etc. (W.H. Copeland, Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Sheet destroyed: 13 Sep 41: last entry NIL :cases of drunkenness: NIL ; last instance on NIL ;

Signature. A.E. Wisking Capt

CERTIFIED TRUE COPY OF THE ORIGINAL RECORD IN MY CUSTODY

A.E. Wisking....Capt & Adjt
(A. E. Wisking)

A L Moore
Major
President

(P.T.O.)

X

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B.84149	Cpl.	DUFTY, H.V.	33 Cdn Corps Tps Coy R.C.A.S.C.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	NIL	times &	NIL	times.
For		times		times.
For		times		times.
For		times		times.
For		times		times.

~~[illegible]~~

~~xx~~

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or

~~[illegible]~~

3. The accused is not under sentence at the present time, ~~[illegible]~~

~~xxxxxxxxxxxx xxxxxx~~

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 0 days in military custody, making a total of 0 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~xxxxxxxxx~~ attestation paper is 23 yrs. 11 mos

6. The date of his ~~xxxxxxx~~ attestation specified in his ~~xxxxxxxxxx~~ attestation paper is 13 Sept 39

7. ~~[illegible]~~

8. ~~[illegible]~~

9. ~~[illegible]~~

10. The accused is in possession of, or entitled to, no military decoration or military award ~~[illegible]~~

11. ~~[illegible]~~

12. ~~[illegible]~~

~~xxxxx~~

(*[illegible]) Wt.[illegible] 75,000 12/40 A.& E.W.Ltd. Cp.[illegible]

A L McMaster

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B. 84149 Rank Cpl. Name DUFTY, H.V. of 33 C.T. COY Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispositions with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23 day of August 1943

Adjutant 33 Cdn Corps Troops Coy R.C.A.S.C.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion.
In the rank of Lance-corporal	1 yr. 3 mos. 3 weeks years,	2 May 41
In the rank of Corporal	1 year years,	22 Aug 42
In the rank of	years,	

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

48-81

Ste. Dugas J. 7.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F/6175 Pte JOSEAH FREDERICK DUGAS. W.N.S.R.

	Charge. (Insert "alternative" where applicable)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	15(1). AA.	GUILTY.	GUILTY.	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p. 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 39 days, of which No days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of ninety (90) days.

(Sgd) ~~Judge Advocate, if any~~. 27 JAN 45 (Sgd) President. (RP 47, 50.)

Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For dates and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the findings(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be held in military custody in prison or detention barracks until further orders.~~(1) YES

(1. AA 57A. Delete if not used.)

Date 30 Jan 45 (Sgd) Commanding Major Gen Inf. Comdg. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F/6175 Pte Dugas J. F. W.N.S.R.	1 Feb 45	Lieut-Col. A.A.G.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 45-81.

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P.A.H./1008 (2864)

Convened by Order of Lt. Col. H. P. BELL-IRVING, A/Comd 3 Can. Inf. Bde dated 26 JAN. 45

20 FEB 1945 RECEIVED

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS REVIEWED 23 Feb 45

Can Sec 2 Echelon AFHQ

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F/6175	Pte	Lance Capt. 23 Feb 45	JOSEAH FREDERICK	DUGAS	W.N.S.R.

J. Rivière

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY. on (date) 27 JAN. 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

2H-144

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans ~~The Interpreter is sworn.~~(1) ~~Do you object to~~ as shorthand writer? Ans ~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 108(2). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR.	R.M. HORSEY	C.Y.R.
Member	CAPT.	A.A. DUBE	R22R.
Member	LIEUT.	J. LAPORTE	W.N.S.R.
Judge-Advocate	N/A		
Prosecutor	CAPT.	E.D. HERSEY.	W.N.S.R.
Defending Offr	LIEUT.	O.E. LACROIX	W.N.S.R.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See Instrs p 2.)

A8. The accused F/6175 Pte JOSEAH FREDERICK DUGAS before arraignment makes(s) (~~has made~~) no objection to the composition of the Court.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C-104 A-1/132

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 4.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 47(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), & call witnesses as to character and make an address in mitigation of punishment.[2]
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans ~~No~~ .[5]
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1) "The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~Post~~ charge(s). The accused is (are) so informed, and he (they) changes (~~his (their)~~ plea(s) on ~~charge(s)~~. Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~were~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.[1]
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to that Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....[1]
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 73 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115).)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[2] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 365. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B&(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(*1. AA 54(2) (b), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1][2]
Ans ~~No~~ .
(*1. If evidence has already been given by accused or his witnesses as to his character, deletes this para. RP 37(C) fn 4, 46 fn 5. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (~~copies~~) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex P, and Ex C, respectively.[3]
(*1. AA 165 or AFB 296. 2. AFB 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 5 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans YES IN MITIGATION BY MY DEFENDING OFFICER .[2]
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(*1. AA 54(5), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if present~~.
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges on all charge sheets on which accused found guilty: RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 343-346, Overseas MO 109, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3), 68(1), KR Con 344. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused,
F96175 Pte Joseph Frederick [redacted]AS, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, CMF, when on active service, is charged with,

1st Charge
Sec 15 (1)
Army Act

WHEN ON AVTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the Field, in Italy , at approximately 1330 hrs 9 Dec 44 absented himself without leave from his platoon and remained absent until surrendering himself to the Military Police in BARI at approx 2130 hrs 19 Dec 44.(Total time absent 10 days 8 hrs)

In the Field
21 Jan 45

F. E. Hiltz
(F E Hiltz) Lt Col
Comd, West N S R

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
26 Jan 45

H P Bell-Irving
(H P Bell-Irving) Lt-Col
A/Comd 3 Cdn Inf Bde

H.

1810
25 [illegible]

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/P&S/1697 (S&S)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F96175	Pte		Joseph Frederick	DUGAS	WNSR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 26 Jan 45 endorsed by me, (~~or by an officer subordinate to me~~)" To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable that this Trial should be held in accordance with the directions contained in a separate dated Order~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. (~~I authorize (a) those offrs to form the Court, (b) as Fd Officer President, for the reasons I have stated above~~)

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

(~~I also appoint a Judge-Advocate to the (Mr appointed) hereunder~~)

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	B M Horsey	CYR
(Rank.)	*(Must be named. RP 106.)*	*(Unit.)*

MEMBERS.

Capt	A A Dube	R22R
Lt	J LaPorte	WNSR
(Rank.)	*(Named or detailed. RP 106.)*	*(Unit.)*

WAITING MEMBER.

Lt	W C Gallagher	CYR
(Rank.)	*(Named or detailed, if any. RP 106.)*	*(Unit.)*

JUDGE-ADVOCATE.

(Rank.)	*(Must be named, if any. RP 106.)*	*(Unit.)*

On Active Service in the Fd

in Italy *(Country.)*

[signature] *(Signed personally. RP 105 fn 2.)* Lt-Col *(Rank.)*

Date 26 Jan 45

A/ Commanding 3 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined,

No. F96175 PTE. Dugas J. F. of the West Nova Scotia Regiment,

and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Capt. [illegible]
Medical Officer

In the Field,

Date 27 Jan. 45.

F-96175 PTE. DUGAS, J.F E-3

PLEA IN MITIGATION

You see before you a soldier who has always given his superiors the best of co-operation. This man has been in Italy since November 43. He has seen action in the Gothic and Hitler lines. He made a mistake and acknowledges it; but this is his first offense. Surely, the Court must show clemency to a man, whom, harassed by fear and worry nevertheless surrendered himself voluntarily. Human nature is weak and irreparable damage may be caused by the loss of a single day's liberty to one so young. Therefore, gentlemen, I ask the minimum sentence for this man. I thank you.

C. Lacroix Lt.

SUMMARY OF EVIDENCE in the case of F96175 Pte Joseph Frederick DUGAS, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, CMF, when on Active Service,.

Evidence taken upon oath.

By the order of Lt col F E Hiltz, Comd, West N S R .

First Witness for Prosecution — D82567 Sgt Aubry H, West Nova Scotia Regiment, having been duly sworn states :-

I am D82567 Sgt Aubry, H, platoon Sgt of # 10 platoon "B" Coy West Nova Scotia Regiment. At approximately 1330 hrs 9 Dec 44 I fell in my platoon and called the roll and found that F86175 Pte Dugas, J F was absent. I checked the platoon area but he could not be found and I then reported his absence to the company CSM. Pte Dugas did not report back to my platoon at any time since.

Signed Sgt Aubry H

The accused declines to cross examine this witness.

Second Witness for Prosecution — F82274 Cpl McInnis J W, West Nova Scotia Regiment, having been duly sworn states :-

At approximately 1330 hrs 9 Dec 44 I was present when Sgt Aubry, H, platoon Sgt of No 10 platoon, called the roll and found that F96175 Pte Dugas, J F was absent. I helped to search the area but could not locate Him.

Signed J.W. McInnis

The accused declines to cross examine this witness.

Third Witness for Prosecution — Capt A J W Dyer, West Nova Scotia Regiment, having been duly sworn states :-

I am Capt A J W Dyer, Adjt and Officer in charge of Regimental Records for the West Nova Scotia Regiment. I produce as evidence in the case of the accused F96175 Pte Dugas, J F a certificate of surrender under Sec 163(i)(j) Army Act showing the accused as having surrendered himself to the Military Police in BATI at approximately 2130 hrs 19 Dec 44. Marked as exhibit "A" and attached to the summary.

Signed A J W Dyer Capt

The accused declines to cross examine this witness.

The accused having been duly cautioned as follows: "Do you wish to make any statement or to give evidence upon oath ? You are not obliged to say anything or to give evidence unless you wish to do so, but, whatever you say or any evidence that you give will be taken down in writing and may be given in evidence", declines to make a statement or to give evidence upon oath.

Certified that Rule of Procedure 4 (c) (d) (e) & (f) have been complied with.

Taken down by me, in the Field, in the presence and hearing of the accused this 21st day of Jan 1945.

In the Field
21 Jan 45

H. Marshall
.....
(Officer taking Summary)
Lieut N.S.R.

Certificate under Section 163 (i) (j) Army Act

I Captain J.F Neal Certify that No F 36175 Rank Pte

Name Dugas JF of the West Nova Scotia Reg of Canada

surrendered himself to No 60290 Rank CPL Name J.Hill

at Bari on the 19th Dec 44 at about 2130 hrs as a

deserter absentee without leave.

Captain

Commanding 2 Provost Company C.M.Police

(Commanding Officer of the person or portion of His Majesty's Forces to whom surrender was made).

E4. "A"

P.S.5. /B/M1052/10M/10-44

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F96175	Pte	Joseph Frederick	DUGAS, West Nova Scotia Regiment

1. The following is a fair and true summary of the entries in the ~~regimental and squadron, battery or company~~ Field conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 672, K.R., 1940.

* The entries herein stated should correspond with the number of entries in the conduct sheets, provided leave given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For	10 Entries times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, Nil

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted.

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time. ~~The accused at the present time is under sentence for~~

~~beginning on the~~ day of

4. The accused has been in confinement, awaiting trial on the present charges, for No days in civil custody, and 39 days in military custody, making a total of 39 days, of which No days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 23

6. The date of his ~~commission~~ attestation ~~specified~~ in his ~~record of service~~ attestation paper is 7 Jan 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, ~~no military decoration or military award~~ (or is in possession of or entitled to (*state any military decoration or reward*)). CVSM & Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated

and in his regiment (or corps or department) the rank of N/A dated

(Pencil) B 4

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. F96175 Rank Pte Name Dugas, J F of West NSR Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or station of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		Nil.		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27 day of Jan 45

Adjt
West Nova Scotia Regiment.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of , years,

In the rank of , years

In the rank of , years,

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

No. F96175 Name Dugas, J F | Sqn, Battery, or Company | Corps | Date of enlistment 14-1-42 | GC Badges | Service or Proficiency Pay | MFM 6 (A.F.B. 122) 40/P&S/138 (34252)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed 14-7-42, completed six months service Auth: RO 2084									
				Certified true copy from the Regimental Book in my custord 23 Jan 45.					

Officer i/c Regt'l Records,
West Nova Scotia Regiment.

(FTO)

LIST OF WITNESSES IN THE CASE OF: F96175 Pte Joseph Frederick DUGAS
West Nova Scotia Regiment.

PROSECUTION : D82567 Sgt Aubry, H West NSR
F82274 Cpl McInnis J W, West NSR
Capt A J W Dyer, West NSR

DEFENCE : NIL

EXHIBITS : Certificate of Surrender under Sec 163 (i)(j) marked as Exh "A" and attached to summary.

Statement by the accused as to a defending officer :-
If I am to be tried by Court Martial on charges now pending against me, I wish to have, ... to act in my behalf.

In the Field

J F Dugas
(Signature of Accused)

This is to certify that I, F96175 Pte Dugas, J F ..... West NSR have been given free of charge, a copy of the Summary of Evidence Charge Sheet, documents etc, relating to my trial by Court Martial.

In the Field

J F Dugas
(Signature of Accused)

5 R-41
Cfn. Dugas, O.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused D 109695 Cfn Offr Dugas 41 AD RCEME attd 28 Cdn Armd Regt

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 40	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ——— beginning on (date) ——— (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF BJ55 or AF B296.)

Time in confinement awaiting present trial—a total of 22 days, of which Nil days were spent in hospital.(2)
(1. See RP 46(A) fn 2. Information should be found on MF BJ55 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of ninety (90) days.

(Sgd) [signature] Maj. 27 July 45 (Sgd) [signature] President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ——— (Sgd) ——— Commanding ———

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) [signature]
(E.V. Smith) Lt Col.,
Date 28 Jul 45 A/ Commanding 4 Cdn Armd Bde.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D 109695 Cfn A Dugas	31 July '45	J.A. Turgeon Maj CO 28 CAR (BCR)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 13 AUG 1945 JAG BRANCH C.M.H.Q.

RECORDED [illegible] IN AG 160. S R 41

CPA86 (To item of AFA2) 40/P & R/1608 (6/45)

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Lt-Col. G.D. Wotherspoon Comd 4 Cdn Armd Bde dated 25 July 45

ACCUSED.

(For the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

No. (a) Prmnt R. (b) Appmt, A/R or A/Appmt. Full Christian Names. Surname. Unit.

D 109695 Cfn Offr Dugas 41 AD RCEME attd 28 Cdn Armd Regt.

PROCEEDINGS REVIEWED

R Lueneburg Capt 21 Aug 45

PROCEEDINGS OF TRIAL.

PRESIDING OFFICER, JAG BRANCH C.M.H.Q.

Held in the Fd in (country) Holland on (date(s)) 27 July 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for CCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to ——— as interpreter?~~ Ans ———
~~The Interpreter is sworn.(*) Do you object to ——— as shorthand writer?~~ Ans ———
~~The shorthand writer is sworn.~~(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No S.F.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major G.H.T. Duguid	HQ Sqn 4 Cdn Armd Bde
Member	Capt W. D'A. Dolan	21 Cdn Armd Regt (GGFG)
Member	Capt. F.W. Hill	22 Cdn Armd Regt (CGG)
Judge-Advocate	Major E.E. Wasson	RJA HQ 4 Cdn Armd Div
Prosecutor	Lieut. A.K.L. Eaves	28 CAR
Defending Offr	Lieut. F.C. Shirriff	28 CAR

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (*)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 85 (3) and fn 2 were not followed. See Dir p 2.)

A8. The accused ——— before arraignment make(s) (no) ——— plea ———(1)
(1. If a special plea is made for separate trial on one or more charges (RP 63(C), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental Fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AE rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of J A see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of J A or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO S.T. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement~~ (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is ~~(are)~~ so informed, ~~and he (they) change(s) his (their) plea(s) on ..... charge(s).~~ Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 113(A). See Notes in Part I of Schedule. 2. RP 44(B).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(7) (d), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes. as to Character
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)
(*1. MFB 255 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes by my Defending Officer (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas AO 309, 1313, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined

No. D 109695 Rank Cfn Name DUGAS, Omer

Of 41 L.A.D., attached to 28 Cdn Armd Regt(BCR)

and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station Hengelo(O) - Holland

Date 27 July 45

J S Mullins Capt.

Medical Officer

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D109695	Cfn		Omer	DUGAS	41 LAD att 28 Cdn Armd Regt
XXXXXXXXXXXXXX			XXXXXXXXXXXXXXXXXXXXXX		XXXXXXXXXXXXXXXX

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, ~~has~~ (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 25 Jul 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	G.H.T.	DUGUID	HQ Sqn 4 Cdn Armd Bde

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	W.D'A	DOLAN	21 Cdn Armd Regt (GGFG)
Capt	F.W.	HILL	22 Cdn Armd Regt (CGG)

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt	R.H.	SMITH	28 Cdn Armd Regt (BCR)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Major	E.E.	WASSON	DJA 4 Cdn Armd Div.

On Active Service in the Fd

in Holland (Country.)

G. D. Wotherspoon (Signed personally. RP 105 fn 2.) Lt Col (Rank.)

(G D deS Wotherspoon)

Dat 25 Jul 45

Commanding 4 Cdn Armd Bde.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA 95 (In lieu of AFA 3) 40/P A S/1697 (8148)

(See overleaf for oaths and notes for use on trial.)

C H A R G E S H E E T

D-109695 Cfn Omer DUGAS, 41 L.A.D. attached to 28 Cdn Armd Regt(ECR), a soldier of the Canadian Army Overseas, is charged with, whilst on active service:-

ONE CHARGE
A.A. 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE in that he

in the field on or about 29 May 45 did improperly attempt to traffic in Dutch currency by transmitting Dutch currency to an address in England.

J.W. Toogood

(J.W. TOOGOOD) Major
A/Commanding Officer
28 Cdn Armd Regt(ECR)

Hengelo
Holland
9 Jul 45

Remanded for FGCM -

J.W. Toogood

(J.W. TOOGOOD) Major
A/Commanding Officer
28 Cdn Armd Regt(ECR)

Hengelo
Holland
14 Jul 45

To be tried by Field General Court Martial.

J.D. Wotherspoon

(G D deS Wotherspoon) Lt Col.,
A/Comd 4 Cdn Armd Bde.

Field,
25 Jul 45.

3

Summary of evidence in the case of D 109695 Cfn Omer DUGAS, 41 L.A.D. attached to 28 Canadian Armoured Regiment(BCR), Canadian Army Overseas, charged with:-

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE A.A. 40

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS:- Captain F H Owen, Adjutant, 28 Cdn Armd Regt(BCR), having been duly sworn, states:-

Exhibit "A"

I am Adjutant of the 28 Cdn Armd Regt(BCR) and as such have charge of all documents and books in the unit. I submit to the court the following documents:-
1. Certificate of Cyril Henry Robert Laming, censorship officer, certifying that he had examined letter written by the accused to Mrs Dugas, 28 Blaxland House, White City Estate, London W 12, England enclosing two(2) Dutch Notes, total value seventy(70) Guilders, marked Exhibit "A" and attached hereto.
2. Submission slip from Deputy Chief Censor referring to the accused's letter and to the contents of the letter, marked Exhibit "B" and attached hereto.
3. Letter referred to in Exhibit "A" marked Exhibit "C" and attached hereto.
4. Green envelope bearing the accused's signature and referred to in Exhibit "A", marked Exhibit "D" and attached hereto.
5. Extract from Part II Orders for 41 LAD, attached to 28 Cdn Armd Regt(BCR) showing D 109695 Cfn Dugas,O. taken on strength of that unit wef 8 Mar 45 from 4 Cdn Armd Bde Wksp, marked Exhibit "E" and attached hereto.

The accused declines to cross-examine the witness.

.....
(Signature of witness)

SECOND WITNESS:- Captain J R M Bell, RCAPC, Paymaster attached to 28 Cdn Armd Regt(BCR), having been duly sworn, states:-

I am the Paymaster of the 28 Cdn Armd Regt(BCR) and as such I can identify the signature of the accused, D 109695 Cfn Dugas,O. I recognize the signature "O.Dugas" on the Green envelope, which is attached to the proceedings marked Exhibit "D", as being that of the accused D 109695 Cfn Dugas,O.

The accused declines to cross-examine this witness.

.....
(Signature of witness)

THIRD WITNESS:- Captain W T Thompson, RCEME, Officer Commanding 41 L.A.D. attached to 28 Cdn Armd Regt(BCR) having been duly sworn, states:-

I am Capt W T Thompson, Officer Commanding 41 L.A.D. attached to 28 Cdn Armd Regt(BCR). I submit the following documents:-
1. Certified true copy of extract from Part II Order dated 9 Nov 44 issued by the 4th Cdn Armd Bde Wksp showing that D 109695 Cfn Dugas,O. was taken on strength 4 Cdn Armd Bde Wksp wef 28 Oct 44, marked Exhibit "F" and attached hereto.
2. Certified true copy of extract from Part I Order of 4 Cdn Armd Bde Wksp dated 24 Nov 44 republishing 4 Cdn Armd Div Routine Order 2905 forbidding black market exchanges of Dutch currency, marked Exhibit "G" and attached hereto.

(continued on page 2)

THIRD WITNESS (continued) I obtained these two documents from the 4 Cdn Armd Bde Wksp.

The accused declines to cross-examine this witness.

W. I. Thompson Capt
(Signature of witness)

QUESTION TO THE ACCUSED

The accused was warned as follows:-

"Do you wish to make any statement or give evidence on oath ? You are not obliged to say anything or give evidence unless you wish to do so, but, whatever you say or any evidence you give will be taken down in writing and may be used in evidence."

THE ACCUSED

"I have nothing to say at this time"

G Lucas
(Signature of accused)

The accused declines to call any witnesses in his own behalf.

Certified that R.P. 4 (C) (D) (E) (F) and (G) have been complied with.

I certify that the foregoing summary of evidence consisting of two(2)pages was taken down by me in writing in the presence and hearing of the accused this 9th day of July 1945.

Hengelo
Holland
9 July 45

H R Howitt Lieut
(H R Howitt) Lieut
Officer detailed to take
Summary of Evidence

TO: D-109695 Cfn Dugas O., 41 L.A.D. att 28 Cdn Armd Regt(BCR)

Notice is hereby given to you that G-45079 SQMS Peacock J.E., 4 C.A.B. workshop will be called to give evidence for the prosecution at your trail. This evidence is not contained in the Summary of Evidence. The new evidence is as follows:-

I am G-45079 SQMS Peacock J.E. of 4 C.A.B. workshop and was on strength of 4 C.A.B. workshop on the 24 Nov 44. I act as chief clerk of my unit and as such it is one of my duties to publish and post Part 1 Orders of the unit. On or about the 24 Nov 44 while the accused was on strength of this unit a Unit Part 1 # 74 d/24 Nov 44 Order republishing Div Routine Order # 2905 forbidding trafficking in Dutch currencey was posted in all sections and in all messes and on the unit notice board.

(H.R.Hewitt) Lieut
Officer detailed to
take Summary of Evidence.

Idea of Mitigation

Mr. Dugas is a married man having two children. He is thirty years of age and has but eight years of public schooling. He does not read english very well but understands.

He has no job to return to after repatriation and with the aid of all gratuities available, he is hoping to purchase for himself a small business to carry on with in civilian life.

Mr. Dugas has convinced me that he was unaware of the seriousness of this crime, trafficking dutch currency into foreign exchange. Since Mr. Dugas has been with the Ugd.

up until this time, he has proven from all reports a reliable and trustworthy soldier in action. So with this plea of mitigation I leave this sentence of Cfn Dugas in the hands of the Court hoping that they will be as lenient as they can see fit.

F. W. Hill Capt.
recorder.

TO: D 109695 Cfn Dugas, O.

Take notice that Capt A. Gusen, will be called to give notice at your trial as follows:-

I am Capt A. Gusen, 21/c 4 CAB Wksp. I have examined Pt II order, dated 9 Nov 44, and Pt II order, dated 24 Nov 44, and the extracts of these orders presented to the court as Exhibit "F" and Exhibit "G" are certified true copies.

J.R. Howitt Lieut

(H.R. Howitt) Lieut
Officer detailed to take
Summary of Evidence.

EXHIBIT "A"

EVIDENCE AND POWERS OF ATTORNEY ACT 1940
SECTION 2 (1)(a)

CERTIFICATE OF A COMPETENT OFFICER

I the undersigned CYRIL HENRY ROBERT LAMING

an Army Officer appointed for duties concerned with the examination of Postal Packets hereby certify that the Green Envelope attached hereto addressed "Mrs Dugas 28 Blaxland House White City Estate London W 12 England", and letter attached hereto commencing "Dearest Darling Here I am again after another long absence....", and ending ".....so I'll quit now and see you again soon.", with two Dutch Notes total value 70 Gulden attached hereto enclosed,

constituted or formed part of a postal packet which on the 3rd. day of JUNE 1945 was examined by an authorised examiner within the meaning of the Evidence and Powers of Attorney Act, 1940, Sec 2(2)(a).

Dated in the Field this THIRD day of JUNE 1945.

Cyril H R Laming Signature.

Capt. Rank.

The officer giving the certificate must be engaged in censorship duties and must not be below the rank of Captain.

SECRET

SUBMISSION SLIP

EXHIBIT "B"

From: DEPUTY CHIEF CENSOR. Submission No. [illegible]

Date: 3 Jun 45. Type of letter: ~~Ordinary~~. S.G. ~~[illegible]~~

Sender	Addressee:
No. D 109695 Rank Cfn	Name Mrs DUGAS,
Name DUGAS, A.	Address 28 Blaxland House, White City Estate, London W.12.
Unit 41 LAD, RCEME,	
Address att 28 Cdn Armd Regt, CAO.	
Date of letter ~~or Postmark~~ 29 May 45.	Language ENGLISH.
Censor Stamp No. 10724.	
Original letter	**Submitted to**
Submitted ~~Excised~~	GSI (c), c/o Rear HQ, 21 Army Gp, BLA.
~~Photographed~~ ~~Released~~	
~~Condemned~~ ~~Returned to sender~~	
(Strike out words not applicable)	

Nature of irregularity, or extract: Page: 3 to 4 Line: 13 4.

ATTEMPT TO DEAL IN FOREIGN CURRENCY:-

"....so I am sending you 70 of them and I want you to send me back five pounds in ten shillings note so that I can buy guilders off the boys I will try to give them ten shillings for a ten guilders if I can work that we would make a good profit.....".

Encl:- Dutch Currency notes value 70 Gulden.

Examined by: Capt. CHR. LANING. Group:

LL/GHQPP/[illegible]

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

EXHIBIT "C"

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

May 29th

D109695 Cfn Dugas O.
41 CAD RCEME
att'd 28 Can Armd Regt
(BCR) CAO

Dearest Darling

Here I am again after another long absence, sorry darling but I couldn't do any better since we arrived in Holland late Saturday night we had parades after parades and celebrations after celebrations, regimental's as well as civilian's but its all over now and I hope they will leave us alone for a while.

How's you to-day I haven't heard from you for the

4/71 CFA 179

PLEASE WRITE ON BOTH SIDES

CANADIAN LEGION WAR SERVICES Inc.
CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES
ON ACTIVE SERVICE
CANADIAN Y.M.C.A. OVERSEAS
THE SALVATION ARMY CANADIAN WAR SERVICES

last four days hope all is well.

Some of the boys there left this morning for there home to England as the second batch this month already the second bunch come back before the month is over but now that they get down days it takes a longer time which means that I'll have to wait longer.

I'll have a look at your last three or four letter to see what there is to talk about.

PLEASE WRITE ON BOTH SIDES

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

3

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

Do you know that your last letter is dated the 22nd that is seven days ago so hope all is fine (again)

Sorry dearie hope you didn't count on the 400 guilders too much because here we can hardly get any thing for tobacco as you see the people are very poor and not even penny they have but I managed to get a little so I am sending you 700 of them and I want you to send me back five pounds in ten shillings notes so that I can buy guilders off

4/71 CTA 176

PLEASE WRITE ON BOTH SIDES

4

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

the boys I will try to give them ten shillings for a ten guilders if I can work that we would make a good profit and that would be more money for you, we could spend it towards dressing you and Paul for the big trip, I am getting worse than a Jew lately I am in for every penny I can get the more we can get the smoother things will go so if you'll send me the ten ten shillings notes I'll be able to send you more

4/71 CFA 170

PLEASE WRITE ON BOTH SIDES

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

5

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

money and so we go along more of it can be kept by you ok.? x

There is a rumour that we (Artillery) might go to England soon we are suppose to turn in all our equipments, trucks, trucks etc then I suppose we will be too hard to transport us from one place to another so we might not go to England as to have to use all kind of transportation to take our station to us here.

Darling will you stop worrying about me going

PLEASE WRITE ON BOTH SIDES

CANADIAN LEGION WAR SERVICES Inc.
CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES
ON ACTIVE SERVICE
CANADIAN Y.M.C.A. OVERSEAS
THE SALVATION ARMY CANADIAN WAR SERVICES

to Canada house etc what
do you think I want to take
you with me as much as
you want to come if not
more and you can be
sure that I will not
let things slip by until
it's too late

Darlin I don't see at all
why you want to get drunk
to tell me that you love
me I am certain you
could do it if you were
to very bad but if a few
drinks will help you then
I am all yours to get them
for you and I'll help you
drink the rest of your life

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

7/

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

if you think you can love me more.

So Paul is getting a ship of the old block a little more every day well I must say that I don't mind that a bit but I hope he hasn't all the faults I have, as for my qualities well I don't know if I have enough to be envied by anyone. Hope you didn't waste money on a room yet darling better wait until I tell you when because as things are now we are told when

4/71 CFA 170

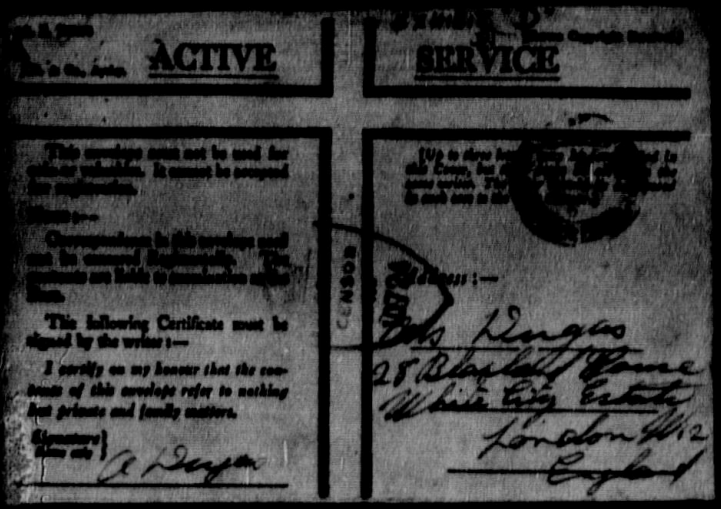
PLEASE WRITE ON BOTH SIDES

CANADIAN LEGION WAR SERVICES Inc.
CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES
ON ACTIVE SERVICE
CANADIAN Y.M.C.A. OVERSEAS
THE SALVATION ARMY CANADIAN WAR SERVICES

me will get it two weeks ahead of time the only thing me and me are sure of the exact day we get there but I'll have plenty of time to write and tell you to expect me on such and such a week. Glad to see that you got some thing for Xmas darling I don't know of I'll ever see them again but still we promised to help them and they deserve it all Well darling I guess this will be all for now all I see in your letters is that there is little to

CANADIAN LEGION WAR SERVICES Inc.
CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES
ON ACTIVE SERVICE
CANADIAN Y.M.C.A. OVERSEAS
THE SALVATION ARMY CANADIAN WAR SERVICES

talk about or things that would only bring mare bad arguments and I don't want to fight with you so I'll quit now and see you again soon.



[illegible] Copyright Reserved

ACTIVE SERVICE

This envelope must not be used for [illegible]. It cannot be accepted for registration.

[illegible]:—

Correspondence in this envelope need not be [illegible]. The contents are liable to examination at the [illegible].

The following Certificate must be signed by the writer:—

I certify on my honour that the contents of this envelope refer to nothing but private and family matters.

Signature [illegible] A Dugas

[Up to three [illegible] in this Cover, but [illegible] the same writer. The [illegible] in each case to the [illegible]

CENSOR

Address:—

Dos Dugas
28 Blaxland House
White City Estate
London W12
England

A. F. W1678

J.D. & Co., Apsley.

EXHIBIT "D"

[Crown Copyright Reserved.]

ACTIVE SERVICE

This envelope must not be used for coin or valuables. It cannot be accepted for registration.

NOTE:—

Correspondence in this envelope need not be censored Regimentally. The contents are liable to examination at the Base.

The following Certificate must be signed by the writer:—

I certify on my honour that the contents of this envelope refer to nothing but private and family matters.

Signature } *Name only* } A Dugas

[*Up to three letters may be forwarded in this Cover, but there must be all from the same writer. The [illegible] should be addressed in such case to the [illegible] Censor.*]

CENSOR

Address:—

Mrs Dugas
28 Blaxland House
White City Estate
London W12
England

EXHIBIT E

NO 41 CDN LIGHT AID DETACHMENT RCEME
(Att 28 Cdn Armd Regt)
Part II Orders issued by
CANADIAN SECTION 2nd ECHELON HEADQUARTERS
21 ARMY GROUP

Last Order No. 6 10 Mar 45

No 7 24 Mar 45

"A" OFFICERS

N I L

"B" OTHER RANKS

1. STRENGTH INCREASE
(a) TOS from 4 Cdn Armd Bde WKSP RCEME wef 8 Mar 45 Auth - RCEME 4 Cdn Armd Div ME/6-0-1 d/16 Mar 45.
D109695 Cfn DUGAS O. Dvr Oper "C"

2. LEAVE OF ABSENCE
(a) Granted 9 days PL to UK with allowance in lieu of rations and proceeded wef dates shown
F-95529 L/Cpl BLAKENEY D.E. 9 Mar 45
L-18250 A/Armt S/Sgt HEWISON R.W. 20 Mar 45

(b) Granted 9 days PL on Continent with allce in lieu of rations and proceeded wef 4 Mar 45 Returned from 9 days PL on Continent wef 13 Mar 45.

F-20411 A/Armt S/Sgt GILROY I.O.
F-95172 Cpl NEWCOMBE H.E.

(c) Granted 9 days PL on Continent with allce in lieu of rations and proceeded wef 16 Mar 45.
D-16115 Pte GUILBAULT R.
D-117446 Cfn WHELEN P.J.

(d) Returned from 9 days PL to UK wef 19 Mar 45.
F-95529 L/Cpl BLAKENEY D.E.

3. APPOINTMENTS & PROMOTIONS
(a) To be A/Cpl wef 19 Mar 45
H-64619 Cfn THORLEIFSON A.O.

4. STRENGTH DECREASE
(a) SOS to 28 CDN ARMD REGT wef 18 Mar 45 Auth - EAR 4/1106 d/18 Mar 45
F-95172 Cpl NEWCOMBE H.E. Veh Mech APV "A"

(b) SOS to 44 CDN LAD RCEME (Att 15 Fd Regt RCA) wef 17 Mar 45 Auth - RCEME 4 Cdn Armd Div ME/6-0-1 d/16 Mar 45
B-52672 Pte SALYKIN F.

(c) SOS to 1 INCR (A) - 41 CDN LAD (C) wef 15 Jan 45
D-122611 Pte HILL J.A.

Page 2 follows.

NO 41 CDN LIGHT AID DETACHMENT RCEME
Part 11 Orders No 7 d/24 Mar 45.

"C" - 1 INCR (A)

5. STRENGTH INCREASE
(a) TOS from 41 CDN LAD RCEME (Att 28 Cdn Armd Regt) wef 16 Jan 45
D-122611 Pte HILL J.A.

Sgd (G.E. MARIN) Lt
for Officer IC
Cdn Sec 2 Ech HQ 21 A Gp

/ewm

Certified that this is a true copy of original document now held in my custody.

(W.H. OWEN) Capt.
Adjutant
28 Cdn Armd Regt (BCR)

/ahm

EXHIBIT "F"

EXTRACT FROM PART II ORDER NO 51 DATED 9 Nov 44.

1. STRENGTH INCREASE

(f) TOS from X-4 List RCEME (13 Bn) wef 28 OCT 44 Auth - ARCO 4/395 d/22 OCT 44.

D109695 Cfn DUGAS O Dvr Op "C"

CERTIFIED TRUE COPY

for A. Gusen Capt
(R E LANE) MAJ OC
4 CDN ARMD BDE WKSP RCEME

EXHIBIT "G"

EXTRACT FROM PART I ORDER NO 74 DATED 24 Nov 44

311. EXCHANGE OF CURRENCY (4 DRO 2905)

1. All ranks will be informed that trafficking in currency is a FGCM offence.

2. This particularly applies to black market exchanges of DUTCH currency for either BELGIAN or ENGLISH.

CERTIFIED TRUE COPY

A. Gusen Capt
for (R E LANE) MAJ GC
4 CDN ARMD BDE WKSP RCEME

CERTIFICATE FOR DEFENDING OFFICER

I do not desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

or

[redacted]

.....
Signature of accused

Capt. W.T.S. Thompson RCEME 41 LAD
att'd. 28 CAR.
having been duly sworn states:-
I recognize the accused as Cfn Dugas.
I am officer i/c 41 LAD. The accused was posted to LAD Mar. 15 as driver operator.
I have known him since then. I have found him to be a conscientious soldier. He was a reliable man in action. I have had no trouble with the accused whatsoever.
(RP. 83B complied with)

L18250 S/Sgt. Hewison R.W. RCEME.
att'd 28 CAR.
41 LAD. having been duly sworn states:-
I recognize the accused as Cfn. Dugas.
I am attached to 28 CAR. I always found accused very efficient and willing. I have known him since early part of March.
He was reliable in action. I have never had trouble with him apart from this affair. (RP 83B complied with)

No. D109695 Name DUGAS | 0 Sqn, Battery, or Company | Corps RCOC | Date of enlistment 20 June 41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAM/108 (3rd)

Date of last entry in Company Conduct Sheet: n/a | No. and date of last drunk: n/a | Period not reckoning towards freedom from extra fine: n/a | Sheet No 1 | Signature OC Company, etc: (H S Holmes(Capt.) Adjutant

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 20/12/41. Last entry 16/12/41. Nil-drunk. (H.S.Holmes) Capt.					
Field	11/3/43	Pte	-	AWL 15(1) 1430 hrs 11/3/43 until 1445 hrs 11/3/43 Total abs 15 min)	Sgt AB Gardner AQMS Thorpe WL	14da CB	15/3/43	Capt A.F. Bachan	
Field	26/2/43	Pte	-	AA 40 Conduct to the Prej,etc. Improperly disposing of rations.	Documentary	28 days detention	2/4/43	Brig.McCarter	
Field	14/1/44	Pte	-	AA 15(1) AWL 2 days 13 hrs	ASM McCuaig W.T.	14 days pay FRAI 149(2)	19/1/44	Maj.T C Bramer	Auto forf 3 days pay FRA I 149(1)a
Field	16/3/44	Pte	-	AA 15(1) 2359 hrs 16/3/44 to 1445 hrs 20/3/44 Total absence (11dys, 14 hrs 46 mins)	CSM Turley Documentary	Awarded 21 days forf pay FRAI 149 (2)	1/5/44	W.W.Finlayson Capt	Auto forf 12 dys pay FRAI 149 (1)a

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL WPM & NOW IN MY POSSESSION					
				(P H Owen) Capt & Adjt 28 Cdn Armd Regt.(DCR)					

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-109695	Cfn	DUGAS, O.	41 LAD attached to 28 Cdn Armd Regt(BCR)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA sec 15(1) three times.

For AA sec 40 one times.

[redacted]

Date of first entry in Field Conduct Sheet 11 March 1943

Date of last entry in Field Conduct Sheet 16 March 1944

[redacted]

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for ~~six~~ 22 days in military custody, i.e., [redacted] ~~six~~ 22 days in close arrest; of [redacted]

5. The present age of the accused is 30 years and no months

6. The date of his attestation [redacted] is 20 June 1941

7. The service which the accused is allowed to reckon is up to [redacted] date of FGCM

8. The accused is in possession of CVSM and Clasp

[redacted]

‡State the military decorations (if any) held by accused.

Exhibit "X"

[redacted]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27833) Wt.24939-2404 24,000 7/44 A.S.E.W.Ltd. Gp.465 Form B.296(War)

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 27th day of July 1945

Augustus Major
A/COMD 28 CDN ARMD REGT

UUU-89

Gnr. Dugas. R.

In the Field
3 August 1944

FGCM - 22 Jul 44
B-11945 Gnr Dugas R.

12 Bn 2 CBRG.

The Court, having re-assembled by order of Brigadier A. W. Beament, CBE, VD., O-i/c Cdn Sec. GHQ 1 Ech 21 Army Group for the purpose of re-considering their finding and sentence recorded on the FGCM of B-11945 Gnr Dugas R. 12 Bn , have attentively considered the observations of the confirming authority, contained in his letter 529/FGCM/1(OIC) 1 Aug 44 attached as exhibit " X 1 " and signed by the President of this FGCM.
The Court do now revoke their findings and sentence and find the accused Guilty of absence without leave from 0900 hrs 16 Jul 44 to 2200 hrs 17 Jul 44.
The Court do hereby sentence the accused to undergo detention for forty-five days.

Signed in the Field this 3 day of Aug 1944.

(J.F.Madill)Major
President FGCM.

529/FGCM/1 (OIC)

CANADIAN SECTION GHQ 1 ECHELON "X1"
21 ARMY GROUP

1 Aug 44.

Major J.F. Madill
6 Cdn Town Major Unit.

FGCM - 22 Jul 44
B-11945 Gnr Dugas R.
12 Bn 2 CBRG.

1. A Field General Court-Martial of which you were President assembled on 22 Jul 44 to try the m/n soldier on a charge under AA 12(1)(a) to which the accused pleaded not guilty, was found guilty and sentenced to undergo detention for 12 months.

2. Under the provisions of AA 54(2) I direct that the Court which tried the accused re-assemble for the purpose of reconsidering their finding on the first charge and, if there is a new finding which involves a sentence, of passing a fresh sentence.

3. The reasons for requiring such revision are:

(a) That a perusal of the proceedings shows that there was an irregularity in the form of the charge which would prevent at law a finding of guilty on the charge.

(b) That a perusal of the proceedings shows that even if the charge had been properly drawn there was not sufficient evidence for the Court to justify the finding of guilty on the charge. The evidence was not well presented but an analysis of it indicates that the only period of AWL which was satisfactorily established was from 0900 hrs 16 Jul 44 to 2200 hrs 17 Jul 44. It is considered that there is no satisfactory evidence before the Court to show intent to desert on the part of the accused.

4. The Court will re-assemble as soon as possible. It is appreciated that the exigencies of the service will occasion some delay in this regard, but it is your duty as President to ensure that the Court re-assemble as soon as circumstances permit. The form of proceedings on revision is contained in MML p 759.

5. Before assembly the President and members of the Court should familiarise themselves with the provisions of M.M.L. pp 63-64, Art 94, A.A.54(2) and fns thereto, A.A.56(3), R.P.51(B) (1) and fns thereto, R.P.52 and fns thereto, R.P.120 (G) and fns thereto.

6. The following matters should be noted particularly:

(1) That the Court shall re-assemble in closed court and shall not receive further evidence.

(2) That if the Court does not adhere to its former finding, the finding and sentence shall be revoked, a new finding recorded and if the new finding involves a sentence, a new sentence shall be passed afresh.

(3) After revision the President shall date and sign the decision of the Court and transmit the proceedings for confirmation as required by R.P.97(B).

(A.W. Beament) Brigadier
OIC
Cdn Sec GHQ 1 Ech - 21 A Gp.

CFA 285
40/P & S/2726 (5952)

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 37(D) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO (1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....

(*1. RP 115. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf AA 95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(2) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans .....

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that those documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)

(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)

(*1. RP 27(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(7), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B114945 Gnr. Raymond Dugas 12 Bn 2 CBRG.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		Not Guilty	~~Not Guilty~~ Guilty	Guilty of absence without leave from 0900 hrs 16 Jul 44 to 2200 hrs 17 Jul 44
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under EJ.)

Sentence Awarded by the Court: ~~To undergo detention for forty nine days~~ "To undergo detention for forty five days"

(Sgd) ~~Judge Advocate~~, if any. 22 Jul 44 Date awarded. (Sgd) J F Mundill Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

(Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 71(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and Sentence confirmed

~~I direct that the accused be committed to prison or detention barracks until further ordered.~~ (1) Sgd
(1. AA 57A. Delete if not used.)

(Sgd) J F Rutherford Brig

Date 5 Aug 44 Commanding 5 Gp 6 R.V. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
B-114945 Gnr. Dugas R.	7 AUG 44	WSWatkins Lt

D.O. No. 190
8 Aug 44
1 CACRU

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 2 22289

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA81) 4/38B

Convened by Order of Lt Col W J Stewart Comd 13 Bn 2 CBRG dated 21 Jul 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R. or A/Appmt.	Full Christian Names.	Surname.	Unit.
B11945	Gnr.	Raymond	Dugas	12 Bn 2 CBRG

PROCEEDINGS REVIEWED 1 Sep 44
JCHC W. C. Inch
REVIEWING OFFICER, ~~JAG~~ BRANCH C.M.H.Q. Capt.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 22 Jul 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 9/48

A1. The President, Members, waiting Member, ~~JA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for CCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Con 557. 2. AA 46(B), RP 90 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....
The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 16; MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J F Mundill	6 CTM4.
Member	Lt	E H Babcock	13 Bn 2 CBRG.
Member	Lt.	L R Saunders	13 Bn 2 CBRG.
~~Judge Advocate~~			
Prosecutor	Lt	JC Blatchford	12 Bn 2 CBRG
Defending Offr	Capt	LE Ralleyham	12 Bn 2 CBRG

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused B11945 Gnr Raymond Dugas before arraignment make(s) (no) ~~a~~ plea ..... (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references as fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part 2 of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. AAB

LIST OF WITNESSES

in the case of

B.114945 Gnr Dugas, R.

For The Prosecution:

1. Bdr Foster T.G. ✓
2. Sgt Evoy E.M. ✓ (All of 12 C B R Bn)
3. Capt E.M. Brown. ✓

For The Defence: ---------- Nil

LIST OF EXHIBITS

"A" Certified True Extract from Pt II Order No 101.

(C.deL. Porteous) Lt.

12 Cdn. Base Rft. Bn. 20th. July 44

I request that Capt L.E.CALLAGHAN defend me at my forthcoming trial by F.G.C.M.

I certify that I have received a copy of the Charge Sheet and Summary of Evidence to be used at my Trial by F.G.C.M.

B.114945 Gnr. Dugas, R.
12 Cdn. Base Rft. Bn.

No. B.114945 Name Dugas R. Sqn., Battery, or Company — Corps R.C.A. Date of enlistment 30 Jun 42 G.C. Badges N/A Tradesmen's Rates of Pay N/A

No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No. 1. — Signature O.C. Company, etc. P.H.Kelley Capt. — Character

M.F.M. 6 (A.F.B. 122) 600M—11-41 (3609) H.Q. 1772-35-1052

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or order suspending with terms	By whom awarded	Remarks
				CERTIFIED TRUE COPY L.B.Skinner (L.B.Skinner) Capt. Adj. 12 C.B.R. Bn. Officer having custody of Original Document.					

(P.T.O.)

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B.114945 Rank Gnr. Name DUGAS R. of 12 Cdn.Base Rft. Bn. (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of crime by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22 day of July, 1944

(L.B.Skinner) Capt. Adj. 12 Cdn. Base Rft. Bn.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of ..... years, Date of Promotion.....

In the rank of ..... years, ...

In the rank of ..... years, ...

(INSTRUCTION.—If any entry in any of the above paragraph cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such records as are available and the paragraph retained amended accordingly.)

Q & C

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
B.114945	Gnr	DUGAS R.	12 Cd. Base Rft. Bn.

1. The following is a fair and true summary of the entries in the regimental ~~and squadron, battery or company~~ conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For	Nil times	Nil times
~~For~~	~~times~~	~~times~~
~~For~~	~~times~~	~~times~~
~~For~~	~~times~~	~~times~~
~~For~~	~~times~~	~~times~~

~~Number of instances of gallantry or distinguished conduct~~

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 5 days in military custody, making a total of 5 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 29 yrs 141 days

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 2 Yrs 23 Days

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 Yrs 23 Days

8. The accused is entitled to deferred pay or gratuity in respect of 2 Yrs 23 Days service.

9. The accused is entitled to reckon 2 Yrs 23 Days service for the purpose of determining his pension, etc.

10. ~~The accused is in possession of, or entitled to, no military decoration or military award~~ (*or is in possession of or entitled to (state any military decoration or reward)*).

11. ~~(If the accused is a warrant officer.)~~ ~~The accused before he was made a warrant officer last held the regimental rank of~~

12. ~~(In the case of an officer.)~~ ~~The accused holds in the army the rank of dated and in his regiment (or corps or department) the rank of dated~~

W.3707/1939 20M. 5/40. P. Lal. T.S.L.

DAILY ORDERS
by
Lt. Col. A.O. HOOD,
Commanding,
12 Cdn Base Rft Bn.

Last Order No. 100

Part 1 Orders 12 Jul 44 No. 101

.....

.....

7. WARNING FOR DRAFT.
(a) The u/m were warned for draft on 10 Jul 44.
(b) All were present on parade.
(c) Warning was given by Capt E.M. BROWN
(d) Nominal roll was certified by Major D.W.M. Cooper, Capt D.M. Slater, M 66663 RSM LACROIX T.E.A. E 6059 BSM DEMPSTER R.G. (these pers proceeding on draft) Capt. L.B. Skinner Capt T. Morgan L 6098 BSM Sheppard K 11339 Sjt Teesdale G.W. (these per not proceeding on draft.

B 115945 Gnr DRGAS R.

....(L.B. SKINNER) Capt., R.C.A.
(L.B. SKINNER) Capt., R.C.A.
Adjt. 12 Cdn Base Reinforcement Bn.

/jpg

CERTIFIED TRUE EXTRACT (L.B. Skinner) Capt Adjt 12 C B R Bn.

Ex B.

CHARGE SHEET

The accused, B.114945 Gunner Raymond DUGAS,
56 Coy, on the strength of 12 Cdn Base Rft Bn,
a soldier in the Canadian Army Overseas,
is charged with:

FIRST CHARGE
ARMY ACT
SEC 12 (1) (a)

When On Active Service, Deserting His Majesty's Service,

in that he,

In the field, having been duly warned for draft, did absent himself without leave, from 0900 hrs 16 July 44, until surrendering himself to 12 Cdn Base Rft Bn Guard, at 2355 hrs 17 July 44.

(Total Absence:- 1 day, 14 hours and 55 minutes.)

~~ALTERNATIVE CHARGE When On Active Service, Absenting Himself without leave,~~
ARMY ACT
SEC 16 (C)

in that he,

In the field, having been duly warned for draft, did absent himself without leave, from 0900 hrs 16 July 44, until surrendering himself to 12 Cdn Base Rft Bn Guard, at 2355 hrs 17 July 44.

~~(Total Absence:- 1 day, 14 hours and 55 minutes.)~~

In the Field,
20 July 44.

.....Lt-Col.
(A.O. Hood)
Commanding 12 Bn, 2 Cdn Base Rft Gp.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(A.E. Stewart) Lt.Col.
Commanding 12 Bn 2 Cdn

In the field
21 Jul 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B11945	Gnr		Raymond	BUDAS	12 CBR Bn
D132087	Gnr		Anthony	SMYK	12 CBR Bn
A42467	Pte		Stanley	PRIMROSE	13 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 21 Jul 44 endorsed by me, [redacted] "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [redacted]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	J.F. Modill (Must be named. RP 106.)	6 Cdn Town Major Unit (Unit.)

MEMBERS.

A Lieutenant (Rank.)	To be detailed by OC (Named or detailed. RP 106.)	13 CBR Bn (Unit.)
A Lieutenant (Rank.)	To be detailed by OC (Named or detailed. RP 106.)	13 CBR Bn (Unit.)

WAITING MEMBER.

A Lieutenant (Rank.)	To be detailed by OC (Named or detailed, if any. RP 106.)	13 CBR Bn (Unit.)
[redacted] (Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country)

Date 21 Jul 44

(Signed personally. RP 105 fn 2.)

W.J. Stewart Lt-Col.

(W.J. Stewart) Lt-Col.

Commanding 13 Bn 2 CBR Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (For 1st part of AFAS: AG 9 & 5/38T 18651)

(See overleaf for oaths and notes for use on trial.)

Ex 9

MEDICAL OFFICERS CERTIFICATE

(FA(Can) Form 557)
(GMHQ CL 173)

I certify that I have this day examined B114945. (No.)

Gnr. (Rank) Dugas. R. (Name) and in my opinion he is

~~fit~~ unfit to undergo trial by Court-Martial.

Station Field

Date. 22 July 44

(Sgd)
Medical Officer
(unit)

B114945. Gnr Raymond Dugas Ex E. Jno Medicine Major 1.

AA12(1)a W.O.AS deserting H.M.S. service
0900 hrs 16 July 44 1245 hrs 17 Jul 44
absent 1 day 3 hrs 45 mins (surrendered himself)

1. Witness
Bdr Foster T.G. 12 Bn CBRG duly sworn states:
Q. You recognise the accused don't you.
A. Yes.
Q. As whom?
A. As gunner in the company.
Q. You were present on muster parade on 16 July were you not?
A. Yes, I was present when Gnr Dugas name was called out & he did not answer
Q (by court) Did you look for him?
A. No, the name was called in good loud voice

2. Witness
Sgt. E Boy E.M. L.10187 12 Bn CBRG duly sworn states
Q. Do you recognise the accused?
A. Yes.
Q. As whom?
A. Gnr Dugas.
Q. Will you report how you came to know he was absent?
A. Gnr Dugas reported to me at Guard house at 1245 hrs he was sober & properly dressed.
Q. Was Gnr Dugas under escort?
A. No he was by himself

3. Witness
Capt E.M. Brown 12 Bn CBRG duly sworn states
Q. Do you recognise the accused? – A. Yes
Q. As whom.
A. Gnr Gunner Dugas.
Q. Please explain how Gnr Dugas was warned for draft 10 Jul 44
A. A warning parade was called for serials H & F. Gnr Dugas was present & answered – he belonged to H serial. On completion of this warning personnel were asked if they were clear on the nature of this warning & there were no questions asked – everyone was asked if they could hear the warning
Q. Gnr Dugas would apply to your orderly room for a pass?
A. Yes.
Q. Did he get a pass at any time during 16 or 17 July.
A. No.
Q. Will you tell the court what happened on 17 July?
A. We received warning at 0900 hrs 16 July for the purpose of putting personnel through their final jumps i.e.

2.

Mo., Do. ~~& Om.~~ no middle maps. I was informed at this parade that Gnr Dugas was absent. It was necessary to replace Gnr Dugas on the draft by another man - whose specific name is not known since other personnel were placed on the draft. At no time until the draft left (0600hrs 17 July) did Gnr Dugas report or was he reported in camp.

Q. Capt Brown, when Gnr Dugas was warned was there any hint or any way of him knowing when he was going

A. No it was not known

Q. ~~to Final Gnr Dugas was~~ Did Gnr Dugas receive information that his draft was leaving 17 Jul.

A. Not from me - The reason he was not notified was that he could not be obtained because he was A.W.L. as reported by the N.C.O of his troop at 0900hrs 16 July.

Q. How many times prior to 10 July had Gnr Dugas been warned for draft

A. I cannot say but not more than 4 warnings had been given since 3 Apr. 44

Q. Of these three times how many were cancelled?

A. I would say ~~not more than~~ not more than twice

~~Defence statement~~

Summing up - prosecution

Sir the defence has been asking leading questions showing that accused must show intent, we are not dealing with intent but cold facts, the accused was on parade & answered his name, he was told that any unauthorised failure to go with draft would mean that he would be charged with desertion he was not issued a pass therefore not authorised to miss draft. The testimony of other witness Foster testifies time he was A.W.L. & Sgt Eboy the time of return with facts before the court including the warning & statement by Capt Brown that he had to be replaced & his time of return constitute a case. In view of warning referred to I think charge should stand

Serving up Defence

The evidence that prosecution has given proves accused was absent, but being absent does not constitute desertion. The accused had no intention of deserting His M's Forces, on the contrary the fact that he returned of his own free will should leave no doubt in your mind that he did not intend to desert. Three warnings were given for draft & twice they were cancelled frankly I do not think he knew where he stood. The accused has been in camp for 6 weeks.

Accused states

Q. How long have you been in camp?
A. 6 weeks, Sir
Q. How many times have you been warned for draft?
A. These 3 or four times, Sir
Q. How many times have drafts been cancelled?
A. Several pay times
Q. Had you been warned on the 16th that the draft was to leave on Sunday
A. No Sir
Q. What was your reason for leaving camp?
A. No reason Sir
Q. ~~What up~~ Did pay day influence you?
A. No Sir
Q. Did any provost stop you or send you back to camp?
A. No Sir I returned of my own free will
Q. When you returned to camp was that the first information you had that you had missed the draft
A. No Sir
Q. Where did you receive this information
A. At 6 o'clock 17th July in Aldershot
Q. Having heard this what steps did you take
A. I returned to camp & reported into Orderly room
Q. Can

4. Prosecution cross questions Accused

Q. You received notice ~~to return~~ that draft. Leave left at 1800 hrs 17 Jul & returned at 2200 hrs did you not.

A That is correct, Sir.

Court.

Q You heard the warning on 10 July?

A Yes, Sir

Q. It was clearly given? - you knew what was said

A. Yes Sir

The defending officer states that accused has a clean sheet for 2 years. No question of failure of any duty. Was not employed by 12 Bn. at the time of absence. Accused deserves another chance and has learned his lesson. To a good soldier and will continue to be one if given a chance

22 Jul 44. In the fd.

Jno Y Madill
Major

B114945 Gnr. Dugas P.

Ex 'F'

SUMMARY OF EVIDENCE

In the case of

B 114945 Gnr Dugas R 56 Coy on the strength of 12 Cdn Base Rft Bn, Canadian Army Overseas.

BY DIRECTION OF THE COMMANDING OFFICER EVIDENCE IS TAKEN ON OATH

FIRST WITNESS For the Prosecution :

G 4207 Bdr Foster, T. G. 56 Coy 12 CBR Bn being duly sworn states:

At 0900 hrs 16 July 44 I was present at a muster parade of "H" Serial of 56 Coy. The roll was called and the accused, being a member of said Serial, failed to answer his name. I have not seen him since.

T G Foster

G 4207 Bdr Foster T. G.
12 Cdn Base Rft Bn.

The accused declines to cross examine the above Witness

SECOND WITNESS For the Prosecution :

L 10187 Sgt Evoy, E. M. 60 Coy 12 CBR Bn being duly sworn states.

On 17 July 44 I was N.C.O. in charge of 12 Bn Guard. The accused reported to the Guard Room at 2355 hrs 17 Jul 44. He was sober and properly dressed. I placed him under close arrest

E M Evoy

L 10187 Sgt Evoy, E.M.
12 Cdn Base Rft Bn.

The accused declines to cross examine the above witness

THIRD WITNESS For the Prosecution :

Capt. E.M. Brown R.C.A Comd 56 Coy 12 CBR Bn. being duly sworn states:

I am Coy Comd of 56 Coy, and the accused B114945 Gnr Dugas R is on the strength of 56 Coy. On 10 July 44 I called the roll of personnel being warned for draft. Gnr Dugas was present at this warning parade and answered his name.
The warning included the following:
" You have been selected to proceed on draft, and you are now warned that you must be present and ready to go when the draft is dispatched".
" Any unauthorized failure on your part to go with the draft when it leaves will result in your being charged with desertion on active service".
" If you are convicted of desertion the Court has the power to sentence you to a maximum sentence of penal servitude for life".
" At some time prior to the departure of the draft a parade will be called on which you must be present and at which the exact date and time of departure will be told to you.

..... to page 2

THIRD WITNESS
contd.

The warning was announced in definite, precise and unequivocal terms and in such tone of voice that no one on parade could fail to hear it or understand it. Personnel were asked if they understood the nature of the warning, and if there were any questions. There were no questions.
I submit a Certified True Extract from 12 CBR Bn Daily Order " 101 dated 12 Jul 44, in which notice of warning was published, which extract refers to the accused.

(E. L. Brown) Capt. N.C.A.
12 Cdn Base Rft Bn.

The accused declines to cross examine the above witness

The Accused Was Cautioned As Follows: "Do you wish to make any statement or to give evidence on oath ? You are not obliged to say anything or to give evidence unless you wish to do so, but anything you say or any evidence you may give will be taken down in writing and may be given in evidence".

THE ACCUSED DECLINES TO MAKE ANY STATEMENT, AND RESERVES HIS DEFENCE.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me, in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

In the Field
19 July 44

(W.C. Malloch) Lt. RCA
12 Cdn Base Rft Bn
(Officer detailed to take down Summary of Evidence).

ADDITIONAL EVIDENCE

in the case of

B 114945 Gnr Dugas R 56 Coy on the strength of 12 Cdn Base Rft Bn, Canadian Army Overseas.

BY DIRECTION OF THE COMMANDING OFFICER EVIDENCE IS TAKEN ON OATH.

THIRD WITNESS (recalled) Capt. E. M. Brown R.C.A. Comd 56 Coy 12 CBR Bn. being duly sworn states:

When the accused was reported absent, it was found necessary to replace him on the draft, by another soldier. The accused was still absent when the draft, for which the accused had been warned, departed, at 0600 hrs 17 Jul 44.

(E.M. BROWN) Capt. R.C.A.
12 Cdn Base Rft Bn.

The accused declines to cross examine the above witness

The Accused Was Cautioned As Follows: "Do you wish to make any statement or to give evidence on oath ? You are not obliged to say anything or to give evidence unless you wish to do so, but anything you say or any evidence you may give will be taken down in writing and may be given in evidence.

THE ACCUSED DECLINES TO MAKE ANY STATEMENT.
AND RESERVES HIS DEFENCE.

I certify that the foregoing Additional Evidence, consisting of one page, was taken down by me, in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), and (f) have been complied with.

In the Field
20 July 44

(N.C.MALLOCH) Lt. RCA
12 Cdn Base Rft Bn
(Officer detailed to take down Additional Evidence)

TT-102

Pte. Duggan, C.J.

RECORDED IN A.G.O. IN AB 160 1 1772102

RECEIVED 11 AUG 1944 C.M.R.S.

FIELD GENERAL COURT-MARTIAL

CPA86 (To first of AFA31) 40/P & S/1608 (40/01) 4/38B

Convened by Order of Brig G S N Gostling, ED Comd "A" GP CRU dated 22 Jul 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) oppmt, A/rank or A/oppmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H20320	Pte		Clarence John	DUGGAN	2 CIRU CIC

PROCEEDINGS REVIEWED
J.C.H. Heuffenden, Capt
11 Aug 44
REVIEWING OFFICER, JAG BRANCH, G.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*) 25/26 July 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto (P). The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1415 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial(1). ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: Do you object to ~~as interpreter?~~ Ans ~~No~~

~~The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans No~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Offr and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	C H JARDINE	2 CIRU
Member	CAPT	C H Lithgow	2 CIRU
Member	Lt	B J McGill	2 CIRU
Judge-Advocate			
Prosecutor	Lieut	W.L. Liscombe	2 CIRU
Defending Offr	Lieut	J.S. Freeman	2 CIRU

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See A9, p 3.)

A8. The accused H20320 Pte DUGGAN, C.J. before arraignment make(s) (~~made~~) no ~~a special~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 3. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans ..... (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (2).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence will be read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, H-20320 Private Clarence John DUGGAN, Canadian Infantry Corps, on the strength of 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
SECTION 8(2)
ARMY ACT

WHILE ON ACTIVE SERVICE

OFFERING VIOLENCE TO HIS SUPERIOR OFFICER,

In that He,

In the Field, at approximately 2250 hours on 16 July 1944 offered violence to B-37471 L/Cpl COOPER, G.R., his Superior Officer.

SECOND CHARGE
SECTION 40
ARMY ACT

WHILE ON ACTIVE SERVICE

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

In that He,

In the Field, at approximately 2250 hours on 16 July 1944 was creating a disturbance by fighting in a Public Place.

In the Field,
21 July 1944.

.....
(W.K. Greene) Colonel,
Commanding,
2 C.I.R.U.

To be tried by Field General Court Martial.

(G S N Gostling) Brig
Comd
"A" Gp Cdn Rft Units
CAO

Field
22 Jul 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptnt, A/rank or A/apptnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptnt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H20320	Pte	Clarence John	DUGGAN	2 CIRU CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(X) named above as the accused, being subject to military law, has ~~(jointly)~~ committed the offence(s) set forth in the Charge Sheet(X) attached and on (*date*) 22 Jul 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(X), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint an Judge Advocate (have) the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	C H JARDINE	2 CIRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
CAPT	to be detailed by OC 2 CIRU	
Lt	to be detailed by OC 2 CIRU	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
CAPT	to be detailed by OC 2 CIRU	

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (*Country*)

Date 22 Jul 44

(Signed personally. RP 105 fn 2.)

(G S N Gostling)

Brigadier (*Rank.*)

Commanding "A" Gp Cdn Rft Units CAO

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (*For list of AFAS see AFAS 40-7 & 8/1897 (Amdt)*)

(See overleaf for oaths and notes for use on trial.)

M.I.R. 2 C.I.R.U.

This is to certify that I have examined H20370 PTE DUGGAN C
on 25-7- 1944 and I find him medically fit to stand
Trial by Court Martial.

Medical Officer
2 C.I.R.U.

M.I.R. 2 C.I.R.U.

This is to certify that I have examined H20320 PTE. DIGGAN. CJ on 26 July 1944 and I find him medically fit to stand Trial by Court Martial.

Medical Officer
2 C.I.R.U.

Opening address by the Prosecutor:

The accused is being tried on two charges. The prosecution will prove that the accused assaulted, and struck a Lance-Corporal. Subsequent to this several other persons became involved in the disturbance, which took place on a public street. Therefor the accused by his act, and by subsequent assaults committed two separate offences, the second being due to the fact that the whole thing took place on a public street.

First witness for the prosecution:

Police Sergeant James Briggs, Barnsley Civil police, having been duly sworn states:

The accused is recognized by the witness.

I was on duty on New Street, Barnsley in company with police sergeant Lees of the same constabulary, when at the bottom of New Street, we saw a tallish Canadian soldier attacking another Canadian soldier. We at once went there and parted them; but the attacking Canadian soldier broke free and again attacked the smaller Canadian soldier who I then noticed was wearing a Lance Corporals stripe. At this point a woman rushed in and attacked the ~~tall Canadian soldier~~ the Lance Corporal. The lady had been walking with the Lance Corporal who had been attacked. We tried to part the lady and the tall soldier. While we were doing this another Canadian soldier rushed in and attacked the Lance-Corporal. At this point, the Canadian Provost cardrew up with a patrol inside and the two soldiers who had attacked the Lance Corporal were arrested by the Provost Corps. patrol. The Lance Corporal who had been attacked made no effort to defend himself, and tried his best to avoid causing trouble.

I recognize the accused as the tall Canadian soldier referred to in the above evidence.

The witness is cross-examined by the defending officer.

Q. Were there many people in the street.

A. There were quite a few around, since it was Sunday night.

Q. Was it sufficiently light and not too crowded for you to see the accused.

A. Yes. I could see the accused all the time.

Q. What do you mean by the fact the soldier was attacking the L/Cpl.

A. He struck the L/Cpl. on the jaw with his fist. The L/Cpl. made no resistance to the attack.

Q. When you approached to stop this fighting, did you have to use force?

A. We got between them and pushed them away and told them to clear off.

Q. Did the tall soldier cause this woman any reason to give violence

A. She was walking in company of the L/Cpl. who was attacked by the tall soldier, and no doubt was taking the L/Cpl's part.

Q. Had all this fighting ceased before the Provost arrived?

A. No.

Certified K.R. 836) complied with.

Second witness for the prosecution:

A 3648 L/Cpl Mc Curdy, A.L. having been duly sworn states.

I am A 3648 L/Cpl Mc Curdy, A.L. #3 Det. 1 Provost Coy.

I recognize the accused.

I was on duty in the town of Bradley, on the night of 16 Jul 44 in company with L/Cpl. Barnes, at about 2250 hrs. while driving by the Duke of York public house noticed a disturbance. I stopped and at the same time saw Pte. Duggan hit a civilian lady, and right after that a Police Sergeant grabbed hold of him. On his evidence we placed Pte. Duggan under close arrest. We then took him to the police station and later escorted him

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to this unit guard room.
Q. Had the police not been there what action would you take on seeing Pte. Duggan strike a civilian lady?
A. I would have obtained further witnesses and determined whether Pte. Duggan was at fault and we would have been required to take him into military custody anyway.
Q. What charge would you have held him on.
A. Creating a disturbance.

Witness is cross-examined by the Defence.
Q. Did the Civilian police lay hold on Duggan.
A. Yes.
Q. Did you see Duggan hit L/Cpl. Cooper.
A. No.
Certified R.P. 83(6) complied with.

Third witness for the prosecution
D 166631 L/Cpl. Daron, H., having been duly sworn states:
I am D 166631 L/Cpl Daron, H. # 3 Det 71 Provost Coy. I recognize the accused.
On 16 Jul 44 while on patrol in the town of Barnsley with L/Cpl. McCurdy at approximately 2250 hrs while driving past the Duke of York public house I saw the accused strike a civilian lady. By the time we got over to him the accused was in the hands of the Barnsley civil police. On their evidence he was placed under close arrest by L/Cpl. McCurdy, and was later escorted to the police station and then to the unit guard room where a receipt was obtained for the accused.
Q. When the accused struck the civilian girl do you consider that he had committed an offence.
A. Yes, he was creating a disturbance.
Q. What action would you have taken had the civilian police not been there.
A. The accused would have been placed under arrest anyway.

The defence cross-examines the witness.
Q: Did you see the accused strike L/Cpl Cooper.
A: No.
Certified K.R. 83(b) complied with.

Fourth witness for the prosecution:
D 37471 L/Cpl. Cooper, G.K. having been duly sworn states:
I am D 37471 L/Cpl Cooper, G.K. #3 Det 1 Provost Coy. C.M.P. I recognize the accused.
At approximately 2250 hrs 16 Jul 44 I was walking down the street in company with a civilian girl, and I was nearly opposite the Duke of York Public house when two Canadian soldiers who had been standing in the doorway of the public house ran across the street and attacked me. They were later identified as Pte. Ferguson and Pte. Duggan. Pte. Duggan struck me on the left ear and Pte. Ferguson attempted to strike me. Pte. Duggan then started to struggle with the civilian girl I was walking with, until two civilian police-men stopped him. I defended myself from Pte. Ferguson until L/Cpl. McCurdy and L/Cpl. Baron stopped, and grabbed hold of Pte. Ferguson. The two soldiers were placed under arrest by L/Cpl. McCurdy
Q. Were you wearing badges of your rank?
A. Yes.
Q. Who struck you first?
A. Pte. Duggan, the accused struck me.
The defence cross examines the witness.
Q. Had you had any previous disagreement with Pte. Duggan?
A. No.
Q. Did Pte Ferguson hit you?
A. He attempted to hit me.
Certified RD 83(b) complied with.
Prosecution closed.

P.V.

Statement of the accused on oath.

H 20320 Pte Duggan, C.J. 2C.I.R.V. C.I.C. having been duly sworn states:

On Thursday evening 13 Jul 44 I went to Barnsley to the Duke of York Public house. While drinking I met the before mentioned girl who joined me in a few drinks. At approximately 2015 hrs. I went into the lavatory. There I was approached by L/Cpl. Cooper, who told me to stay away from the girl at the bar. I asked him if he was in his rights in my private affairs. He said, "If you knew what is good for you, you will keep away." I went back to the bar, and continued to have a drink. L/Cpl Cooper then came up to me and asked me to go outside with him. When out on the street he asked me to go up an alley, and fight it out. That I agreed to do, until Pte. Haycock, told me to watch I didnt get myself in trouble. I went from there to the dance at the Cuban dance hall with Cpl. Dumont and did not have any further contact with the girl or the L/Cpl that evening. On Sunday 16 Jul 44 I went to Barnsley in the afternoon accompanied by Pte Ferguson. Pte Ferguson left me for a shout while and I had supper and coffee at the Bus Station. Ferguson then met me there again, and we went to the Duke of York Public house, where we met a lad who had just come from Italy. We were having a drink together and I went up to the bar for drinks. While at the bar the before mentioned girl asked me for a cigarette. I then asked her if she and her friends would join us to have a drink. They said they would if we went to their table, which we did. We had a few drinks and then Pte Baran and his girl friend from London joined us. We were all having a drink when L/Cpl Cooper came up and leaned over our table, and spoke in the before mentioned girls ear. He then went back to the bar and was drinking, when this girl left our party, and went over to him. She remained there for about two minutes and then came back and joined us. I asked her if she was still going to accompany me for the remainder of the night. She

replied "Yes" he means nothing to me as I have only known him for a week." He stayed in the bar until closing time and the party of us went out onto the street where this girl and another girl excused themselves to go to the ladies room saying "They would be right back." We waited for about twenty minutes for them to return when I saw the girl who was in my company across the street. I went over across the street and asked her if she was still going to come home with me. The L/Cpl. spoke up and said "Buggar off." I then turned to him and said you are the same man that tried to cause trouble the other night. He replied "yes," and lifted his hands and struck at me. He passed blows at each other and he hit me on the right shoulder. I slipped and fell on the street, and when I got up the girl rushed at me, and started to struggle. Then the civilian police came up, and said "Settle down." This I did immediately and stood with the civilian police the girl and Cooper in a group until L/Cpl. McCurdy and Baron took me to the Jeep. Ferguson was already in the jeep, and they took us to the police station and then to our unit guard room.

The witness is cross-examined by the prosecution.

Q. Are you trying to say that the sworn evidence of police sergeant Briggs is all a deliberate lie?
A. No.
Q. Was he telling the truth?
A. Yes.
Q. He said that he saw you attack Cooper.
A. That is right.
Q. He said that Cooper did not retaliate in any way.
A. When the fight started Police Sergeant Briggs was not there because it started on the sidewalk.
Q. Do you know that he was not there?
A. Not for sure.
Q. Do you recall him saying that he was on patrol there.
A. I recall him saying he was at the bottom of New Street when the fight started and that he came on the scene when he saw the disturbance.
Q. Do you recall him saying that he was there all evening.

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A. No

Q. Would you say that he was not there when the fight started

A. I dont know.

Q. He did not mention a fight going on when he arrived at the bottom of New St.

A. He mentioned he saw trouble and came to the scene.

Q. That he said was, "that at the bottom of New St. I saw a tall Canadian soldier attack another Canadian soldier" He said nothing of seeing a disturbance prior to that did he?

A. No.

Q. He further stated that he did not see Cooper strike a blow.

A. He may not have seen Cooper strike a blow but he did strike a blow.

Q. He said that Cooper did all he could to avoid causing trouble. didnt he.

A. In my opinion Cooper did not.

Q. As against the facts stated by the police constable, ~~that~~ you are putting your opinion as to whether he did all he could to avoid trouble or not.

A. I am stating what took place at the start of the fight.

Q. Then is the police sergeant wrong.

A. I say that Cooper did fight and strike back at the start of the fight.

Q. You have already stated that the evidence of the police sergeant is right.

A. That he saw did take place.

Q. Yet you state that the police sergeant is not correct in saying "Cooper did all he could to avoid trouble." Now is the police sergeant right or wrong.

A. He is wrong. But the police sergeant saw only approximately half of the disturbance

Q. Did you strike a civilian girl?

A. No.

Q. Then the evidence of L/Cpl. McCurdy & L/Cpl. Baron ~~are~~ was wrong.

A. Yes.

Q. Police sergeant Briggs said you struck her. Is he wrong.

A. Yes. I went to sweep her out of the way so that she would not get struck by a blow.

Q. H. L/Cpl. McCurdy, L/Cpl Baron and the police sergeant lying.

A. No.

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Q. Police sergeant Driggs stated you and Cooper were parted once but you broke away and again attacked Cooper.

A. I cannot recollect whether I was parted or not.

Q. What about the evidence of the police sergeant that you struck Cooper a very hard blow and that he was holding his jaw for some time.

A. It is quite likely he was hit as we were both striking at each other.

Q. Would this occur at the beginning of the fight.

A. I dont know.

Q. Do you recall striking Cooper a hard blow to his left cheek.

A. I recall striking at him but I dont recall any blows hitting him.

Q. Yet you say the police sergeant is probably right when he says you hit him a hard blow.

A. He is probably right.

Q. Do you remember what stage of the fight he would be referring to.

A. No.

Q. You say you can remember that he was striking back at you.

A. Yes.

Q. Why did the police sergeant not see him striking back at you.

A. I dont know.

Q. Why did he say he did all he could to avoid trouble.

A. I dont know.

Q. Do you consider the fact that Cooper cut you out with your girl friend sufficient justification for you to strike him.

A. No.

Q. Did you see that he was wearing a stripe

A. I didnt take close enough notice to him at the time.

Q. How about earlier in the evening did you notice he was a L/Capl.

A. I never noticed at any time that he was a L/Capl.

Q. Did you notice on 13 Jul 44 that he was a L/Capl.

A. No.

P IX

Q. Yet he states that he was wearing a stripe on Sunday night. Was he right?

A. I don't know.

Q. Who struck the first blow?

A. Cooper struck at me, but I got out of the way of it.

Q. Did he hit you on the right shoulder.

A. Yes.

Q. Then you slipped and fell.

A. Yes. my feet went out from under me. I had hob nails on.

Q. You immediately got up.

A. Yes.

Q. That would be all over in a matter of seconds.

A. Yes, a matter of a few seconds.

Q. At that stage the girl rushed in and started to struggle.

A. Yes.

Q. The police sergeant saw that, did he.

A. Yes he rushed in to part us.

Q. Why did you suggest in the first part of cross examination that the police sergeant did not see the beginning of the fight a couple of seconds before.

A. Because he could not have seen it or he would have stated it in his evidence.

Q. I suggest that the reason he didn't state it is that it did not happen.

A. No. the suggestion is not true.

Certified R.P. 83(b) complied with.

~~Second witness for the Defence.~~

H19108 Pte Haycock, O.C. having been duly sworn states.

I am Pte Haycock, O.C. 2C.I.R.U. and I recognize the accused.

Second witness for the Defence.

H199909 Pte Baran, K.A. having been duly sworn states.

I am Pte Baran, K.A. 2C.I.R.U. and I recognize the accused.

On the night of 16 Jul 44 Pte Duggan, myself, Pte Ferguson, a girl I had with me, two girls

they had with them were all sitting in a public house in Barnsley. After sitting there for awhile, I noticed a L/Capl. who belonged to the Provost Coy call one of the girls, the one that was sitting with Pte. Duggan, to the bar where the L/Capl. was drinking. They got into a sort of a huddle, apparently talking about something. After the conversation she came back and sat beside Pte. Duggan again. In the meantime Pte. Duggan was buying all the beer for her. At the same time the L/Capl. kept smiling and winking to the same girl. This went on until the public house closed. Pte. Duggan, Pte. Ferguson, and myself all went out with the women we had with us. As we were all standing outside I with the woman I had, I noticed that the two women that Duggan and Ferguson had, left them and I heard one of them say "He will be back as soon as we are finished." After they left I wasn't paying much attention to anyone, except the woman I had with me. After a short time, I would say twenty or twenty-five minutes, I noticed the woman that Duggan had walking across the street with the same L/Capl. that was drinking in the same public house as the rest of us. At the same time Pte. Duggan spotted her cross the street, so he walked over and as he came from behind he went in between the two of them, he sort of leaned his head across to talk to her, then the girl I was with said to me "Look what is happening across the street." As I looked I saw Duggan just getting up from the ~~ground to my mind that~~ with the Provost standing in a sort of ready and crouched position. When Duggan got up they both took a couple of swings. The girl that was with them started to kick Pte. Duggan, who in turn just pushed her aside. By this time a jeep containing four or five provost stopped right there, and some civilian police arrived there, the provost grabbed Duggan, and started with the civilian police right in the middle, to take Duggan towards the jeep and put him in it.

The prosecution cross examines the witness.

Q. Are you a pal of Duggan's?

A. I knew him and we are in the same regiment.

Q. Do you generally go out with people who are not your friends?

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P 5
A. Yes.
Q. Do you consider a man a friend because you go, and have a drink with him?
A. A drinking companion.
Q. Did you talk this matter over with him when you saw him getting in trouble
A. I knew he was in trouble as soon as he was picked up.
Q. Have you talked it over with him since?
A. No.
Q. Did you see him in the guard room at all?
A. Yes.
Q. Did you talk to him in the guard room?
A. Yes.
Q. What did you talk about?
A. Names.
Q. But not about this particular incident
A. No.
Q. Did you say anything about the incident
A. Yes.
Q. Did you talk to the depending officer about the case?
A. Yes.
Q. What public house did the drinking take place in?
A. The Duke of York.
Q. When the public house closed, you all went out.
A. Yes.
Q. The evidence of the accused was that two of the girls went to the ladies room.
A. That is right.
Q. After they left you ceased to pay much attention to what was going on
A. I didnt pay much attention.
Q. How long were you talking to your girl.
A. I dont know.
Q. When you say twenty or twenty five minutes is that probably wrong?
A. I could not swear to the time
Q. Was it after this period of time that you noticed Duggan's girl walking across the street.
A. Yes.
Q. Did the two women, after they crossed themselves go across the street to the K/Kpl.
A. I didnt see the K/Kpl. at that time.

P XII

Q. Between the time you left the public house and the time you saw the L/Capl. across the street would be how long?
A. About twenty or twenty-five minutes.
Q. What happened during that twenty or twenty five minutes.
A. ~~Pte Duggan and Pte Ferguson were~~
A. I don't know.
Q. Did you see Duggan cross the street.
A. Yes.
Q. Are you sure it was Duggan
A. Yes.
Q. You don't know him very well do you?
A. I know him as well as I answered before.
Q. Are you sure it wasn't Ferguson?
A. Ferguson went behind him quite away.
Q. Did you see Ferguson cross the street?
A. Yes.
Q. The next thing you saw was Duggan getting up from the cement.
A. No. I saw Duggan going between the Provost and the girl with his head bent as if to talk
Q. Then you looked the other way?
A. Yes.
Q. You saw the provost standing in a crouched position?
A. Yes
Q. You saw them swing at each other?
A. Yes.
Q. Did you see the L/Capl take a swing at Duggan?
A Yes.
Q. Did you see Duggan strike the L/Capl.
A. Yes.
Q. Did you see the L/Capl holding his jaw?
A. No.
Q. Were you watching the fight and did you see all that went on?
A I saw it all from time Duggan got up until the provost took him away.
Q. You said in your evidence "I don't know whether anyone got smacked"
A. I didn't see anyone get a real hit in the face and I did not see anyone get smacked.
Q. Did you see Duggan strike the girl
A. No.
Q. During the fight where were the police?
Q. Before the provost got there did you see the police?

A. No
Q. Before the police got there did you see the provost?
A. I saw the provost and the police at the same time.
Q. Could the police have been there through it all and you would not have seen them.
A. yes.
Q. Where did you stand during the whole thing?
A. In front of the Duke of York public house.
Q. The evidence of Police sergeant Briggs, was that he saw Duggan attack the L/Cpl, strike him a hard blow in the face which caused L/Cpl. to hold his jaw. Is that correct or not?
A. I dont know.
Q. Would you say the police constable is wrong.
A. From what I saw I would say he was wrong.
Q. Do you swear that Duggan did not strike the L/Cpl in the face.
A. I dont know.
Q. Do you know whether the L/Cpl. held his jaw or not.
A. I dont know.
Q. Why do you say the police constable is wrong then?
A. Because from what I saw I do.
Q. The police constable further stated that the L/Cpl did not retaliate in any way. Is he right or wrong?
A. He is wrong.
Q. The police constable said that the L/Cpl did all he could to avoid trouble. Is he right or wrong.
A. He is wrong.
Q. The police constable has told a direct lie then in regard to the two questions. Is that right?
A. I do not wish to answer the question.
Q. The police constable further stated that he saw the accused strike the girl quite a hard blow. Is that right or wrong.
A. From what I saw he pushed her, I said.
Q. Do you know the difference between a "strike" and a "push"
A. yes.

P. XIV

Q. Then if the police constable said "strike" would you say he was wrong?

A. Yes.

Q. Would you call him a liar in this respect?

A. Yes.

Q. L/Bdr. McCurdy stated that he saw the accused strike a civilian girl? Is he also wrong.

A. Yes

Q. Is he also a liar?

A. Yes.

Q. L/Bdr. Baron also states he saw the accused strike a civilian girl. Is he wrong also?

A. Yes.

Q. Are you prepared to swear police constable Briggs, L/Bdr. McCurdy, L/Bdr Baron are all wrong when they said they saw, the accused strike a civilian girl.

A. Yes they are wrong.

Q. Immediately after this fight started you remained across the road didn't you

A. Yes.

Q. Was there a crowd gathered

A. Yes there were a number of people

Q. Where were these people standing in relation to you.

A. In front and on the sides.

Q. Were they close to the scene of the fight or did they stand well back.

A. Some people were much closer to the fight than I was.

Q. Were there people standing in front of you who were closer to the fight than you were.

A. Yes.

Q. Yet you saw the whole thing without obstruction by the people in front of you.

A. Yes.

Certified R.P. 8361 complied with.

The fourth witness for the prosecution recalled and questioned still under oath. R.P. 86(d)

B 37471 L/Cpl. Cooper, G.R.

Q. Immediately prior to the alleged attack you were approached by two soldiers from across the street. In what manner did they approach you; namely from in front or behind?

A. They approached from in front

Q. Whom did the soldier approach, you or the girl

A. They approached me.

Q. On coming within approximately three feet of you what did the soldier do.

A. Duggan grabbed hold of me. ~~and I sort of turned and~~

Q. Did Pte. Duggan at any time during the affair lose his feet

A. I did not see him fall down.

Q. Did you at any time attempt to push or strike at Pte. Duggan.

A. No

Q. Did you at any time make any physical action toward him with your arms.

A. I tried to fend off his blows with my arms.

Q. Do you recall in the course of fending off his blows, hitting his body at any time

A. I never hit his body, and if at any time my hand did hit him it was on the forearm.

Q. Did Pte. Duggan address any words to the girl accompanying you

A. He said something but, I do not know what or to whom he said it.

Certified R.P. 83(b) complied with

Closing address by the defence

We have only L/Cpl. Cooper's evidence to show the manner in which he and this girl were approached. It is also apparent that the civilian policeman were not immediately at the scene of the scuffle when it first began. It is possible that blows were struck on both sides but it is the feeling of the defence that there must have been

some particular reason for these blows.
The defence rests on the opinion of the
court in accordance with the evidence
as given and that the accused may be
found not guilty.

Closing address by the Prosecution:
In reply to the statements of the defending
officer in which he states that we
have only Cooper's evidence to show
the manner in which he was approached
that evidence was not questioned at
the time it was given. The witnesses
for the defence seemed to be entirely
confused as to what did happen.
Something was said about "blows"
being exchanged but that was not
mentioned by the civilian police officer
who the accused himself has stated
must have been there a few seconds
before the civilian girl got into the
struggle, and therefor must have seen
on the accused own admission, the
whole affair. The negative evidence
of the police officer is therefor as strong
as the evidence of Cooper himself.
Even under cross-examination by the
court Cooper did not vary his evidence
in the slightest, and in fact corroborated
what the police officer said in regards
to doing all he could to avoid trouble.
That evidence was at first denied by
the witness for the defence who later
backed down when he found that he
would have to call somebody a liar.
The evidence for the defence was that
neither witness could say that the
policeman was not at the scene of the
scuffle, merely that they did not see
him. The evidence of two witnesses
for the prosecution which was also
unquestioned by the defence was that the
accused struck Cooper a blow to his
left side of his face. Witnesses for the
defence again said merely that they
did not see it. There was no denial

It is not possible I submit that blows were struck on both sides. The evidence of the accused was not corroborated by his own witness who swore that he saw no blows struck merely arms in the air, and again this witness was not prepared to state that the policeman or Cooper himself were wrong. There may have been a particular reason for the blow as the defending officer suggests but that reason was not brought out in evidence or did he see fit to call as a witness Pte Ferguson who was admitted by both defence witnesses to have been present throughout the evidence of the defence, as the blow struck on the civilian girl was not such as to discount three reliable and independent witnesses for the prosecution, who stated that they saw the accused strike the girl. The evidence of Pte. Doran I submit is so wholly unreliable after his own admission that he was not paying much attention to anybody except his girl, can be discredited by the court. He said nothing of a positive nature I submit that the first charge has been proved beyond any possible doubt particularly in view of the accused own admission that he struck L/Cpl. Cooper, No provocation on the 16 Jul 44 has been shewn.

As to the second charge the whole affair took place on a public street as was stated by all witnesses. If the accused is to be found guilty on the first charge which he has admitted, then he must also be found guilty on the second charge of creating a disturbance. It was after the blow was struck that the civilian girl became involved and consequently a public disturbance created. I submit therefor that the accused must be found guilty on both charges.

P XVIII

Defence plea in mitigation of punishment.

H 19108 Pte Haycock, O. G. 2 C.I.R.V. states

On Thursday evening 13th July 44 when leaving the Alhambra Hall, I was going toward the bus station when I saw a gathering outside the Duke of York Hall. There seemed to be a commotion and I was attracted by the presence of the Provost and one soldier whom I recognized as Pte. Duggan. I crossed the street and advanced to Pte Duggan and asked him what the trouble was. He seemed to be evoked over some challenge made by the provost. I told him to pass it up as he would naturally be up against odds. I took hold of Pte. Duggan and told him not to accept the challenge and come with me down the street, this he did. He explained the trouble as we moved down the street toward the market square. There was also in the company a P.T. Instructor, I dont know his name but I knew him to see him and to speak to him. I told Pte. Duggan I would have to go and emphasized to forget it and avoid any further trouble. We shook hands in agreement that he would do this. Upon leaving I made a remark to the P.T. Instructor to take charge to see there was no further trouble. He said he would do this.

Plea of Defending Officer in mitigation of punishment.

I wish to point out that the conduct sheet of the accused shows only minor offences and that this is his first Court Martial. Although it has not been proved that there was any reason for the accused attack on L/Capt Cooper, it would seem natural that one man is not going to strike another man without there being some reasonable cause for so doing. I suggest that if Capt Cooper removed from the company of Pte. Duggan the girl in whom he was interested, therefor the accused took the primitive way of trying to regain her. I also wish to point out that the accused has assigned pay to an aging Mother of £3.0.0 per month, also that he be given the opportunity of serving any sentence he may receive from this court in the field with his own unit.

E + A

M.F.D. 355
(23M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H-20320	Pte	DUGGAN, C.J.	2 CIRU

1. The following is a fair and true summary of the entries in the ~~Service and General Regimental and Squadron, Battery~~ ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial ~~or~~ a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Sec. 15(1)	2 times	5 times
For Sec. 40	times	1 times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions~~ of the accused by a court-martial ~~or~~ a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with ~~trial~~ under ~~A.F.A. 73~~ are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time

or,

~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for — days in civil custody, and 9 days in ~~military~~ Air Force custody, making a total of 9 days in custody, of which — days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 23 years 298 days

6. The date of his ~~commission~~ specified in his ~~record of service~~ attestation paper 21 Jun 40

~~The service which the accused is allowed to reckon towards discharge is~~

~~The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward.

C.V.S.M. with clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held ~~Air Force~~ the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit
..... dated ....., and in his regiment (or corps), the rank of
..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank .....
Unit
Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge or charges on which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 25th day of July 1944 [illegible] Major, Capt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "A" signed by the president, and annexed to the proceedings.

No. H20320 Name Duggan C.J. Sqn, Battery, or Company Corps Inf E + "B" Date of enlistment 21/6/40 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 10(FAS/156 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6/10/41	Pte		AA Sec 15 AWL 6/10/41 to 1200 hrs 7/10/41(30 hrs 30 mins)	Documentry	14 days C.B.	10/10/41	Lt-Col Dudley	2 days pay
Field	2/12/41	Pte		AA Sec 40 Improperly dressed	L/Cpl Rees	5 days C.B.	4/12/41	Capt Osler	
Field	19/1/42	Pte		AA Sec 15 AWL 0600 hrs 19/1/42 to 1800hrs 21/1/42(2 dys 12 hrs)	Cpl Ward	Admonished	23/1/42	Major Thompson	3 days pay
Field	16/5/42	Pte		AA sec 15 AWL from 0600 hrs 16/5/42 to 1400 hrs 16/5/42 (8 hrs)	Cpl Keep	7 days pay 7 days CB	18/5/42	Lt- Col Gostling	1 days pay
Field	2/12/43	Pte		AA sec 15 AWL from 1400 hrs 2/12/43 to 1400 hrs 5/12/43 (3 days)	L/C Kilborn Sgt Emmons		6/12/43	LtCol Law	13 days pay FRI 149(2)
Field	12 Mar 44	Pte		AA Sec 15 AWL 9 hrs 30 mins	Cpl Irvine L/C Ritchie	Forf 7 days pay	15 Mar 44	Major Ferguson	1 days pay FRI 149(1)(a

Certified true copy consisting of 1. pages

25 July 44

A.K. McTaggart Capt.
(A.K. McTaggart Capt.)
Officer Having Custody of Regimental Books

(PTO)

SUMMARY OF EVIDENCE

In the case of H.20320 Pte. Clarence John DUGGAN, C.I.C. on strength of 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

Police Sergeant James Briggs, Barnsley Civil Police, having been duly sworn states as follows:
I am a Sergeant in the Barnsley County Borough Police Force. At about 10.45 p.m. on Sunday, 16 July 1944, I was on duty in New Street in company with Sergeant Lickess when at the bottom of New Street we saw a tall Canadian soldier attack another Canadian soldier. We at once went down to them and saw that the tall soldier was attacking a L/Cpl. who did not retaliate in any way. They were parted once but the tall soldier broke away and again attacked the L/Cpl. On which a woman rushed at the attacking soldier and started struggling with him. We eventually got them parted and then another Canadian soldier attacked the L/Cpl. At this point the patrol of the Provost Corps joined us and the two Canadians who had attacked the L/Cpl. were arrested by the Provost Corps. We then learnt that the L/Cpl. who had been attacked was a member of the Provost Corps who was not on duty. I did not see him strike a blow, he did all he could to avoid causing any trouble.

The accused declines to cross-examine the witness.

Jas. Briggs
.....
Police Sergeant James Briggs

SECOND WITNESS FOR THE PROSECUTION

A.3648 L/Cpl. McCurdy, A.L., 3 Det. 7 Prov. Coy. Cdn. Prov. Corps, having been duly sworn states as follows:
While on duty in the town of Barnsley on 16 July 44, in company with L/Cpl. Baron. At approx. 2250 hrs while driving past the Duke of York Public House, I saw Pte. Duggan, C.J. strike a civilian girl. I stopped and by the time I got to the soldier he was in the hands of the Civil Police. On their evidence I placed the soldier, Pte. Duggan, C.J. under close arrest and escorted him to the Police Station and later to his unit's guard room where a live body receipt was obtained.

The accused declines to cross-examine the witness.

A.L. McCurdy
.....
(A.L. McCurdy) L/Cpl.

THIRD WITNESS FOR THE PROSECUTION

D.166631 L/Cpl. Baron, H., 3 Det. 7 Prov. Coy. Cdn. Prov. Corps, having been duly sworn states as follows:
On 16 July 44 while on duty in the town of Barnsley, with L/Cpl. McCurdy; at approx 2250 hours we were driving past the Duke of York Public House. I saw H.20320 Pte. Duggan, C.J., "A" Coy, 2 C.I.R.U. strike a civilian girl. He was in the hands of the civilian police when we went over from our vehicle. On the evidence of the civilian police, he was placed under close arrest by L/Cpl. McCurdy. He was then taken to the civilian police station and later escorted back to camp, and placed in the Guard Room.

The accused declines to cross-examine the witness.

H. Baron
.....
(H. Baron) L/Cpl.

In the case of H.20320 Pte. Clarence John DUGGAN, C.I.C. on strength of 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

FOURTH WITNESS FOR THE PROSECUTION

B.37471 L/Cpl. Cooper, G.R., 3 Det. 7 Prov. Coy. Can. Prov. Corps having been duly sworn states as follows: Att Approx, 2230 hrs 16 July 44, I was walking past the Duke of York Public House in company with a civilian girl, when two Canadian soldiers who had been standing in the door-way of the Duke of York Public House ran accross the road and attacked me. They were identified later as H.20320 Pte. Duggan C.J. and H.20147 Pte. Ferguson, H. both of 2 C.I.R.U.
Pte. Duggan struck me on the left ear and Pte. Ferguson attempted to strike me. Pte. Duggan then started to struggle with the girl that was with me until two Civil Policemen grabbed hold of him. I had to defend myself from Pte. Ferguson until L/Cpl. McCurdy and L/Cpl. Baron, both of No. 7 Provost Coy. Can. Provost Corps. drove up in a jeep and grabbed hold of Pte. Ferguson. On evidence from the Civil Police, Pte. Duggan and Pte. Ferguson were placed under close arrest.

Cross-examined by accused.

Q. Did you see me strike the civilian girl?

A. I saw you struggling with her but I did not see you strike her.

G.R. Cooper
(G.R. Cooper) L/Cpl

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused, and that Rule of Procedure 4 (c) (d) (e) (f) have been complied with.

In the Field
20 July 44

W.R. Johnston
(W.R. Johnston) Major
Officer detailed to take the Summary of Evidence.

LIST OF WITNESSES

List of Witnesses, in the case of H-20320 Private Clarence John DUGGAN, Canadian Infantry Corps, on the strength of 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

FOR THE PROSECUTION

1. Police Sergeant James BRIGGS, Barnsley Civil Police.

2. A-3648 L/Cpl McCURDY, A.L. 3 Detachment, 7 Provost Company, Canadian Provost Corps.

3. D-166631 L/Cpl BARON, H. 3 Detachment, 7 Provost Company, Canadian Provost Corps.

4. B-37471 L/Cpl COOPER, G.R., 3 Detachment, 7 Provost Company, Canadian Provost Corps.

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

List of Exhibits in the case of H-20320 Private Clarence John DUGGAN, Canadian Infantry Corps, on the strength of 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

FOR THE PROSECUTION

N I L

FOR THE DEFENCE

N I L

H-20320 Pte DUGGAN, C.J.

Lieut. S. Fidler

2 C.I.R.U.

C J Duggan

21 Jul 44 (H-20320 DUGGAN, C.J.) Pte

H-20320 Pte DUGGAN, C.J.

C J Duggan

21 Jul 44 (H-20320 DUGGAN, C.J.) Pte

CERTIFICATE RE WAITING MEMBER

In the case of H 20320 Pte Duggan CS CIC

I hereby certify that there were no objections to the Members who constituted the Court which tried the s/m soldier by Field General Court-Martial. The Waiting Member Capt EA McLeish was therefore permitted to withdraw.

In the Field
27 July 1944.

(C H SARDINE) Major
President.

LIST OF OFFICERS FOR INSTRUCTION

In the case of H 20320 Pte Duggan C.J.

The following Officers attended the a/m Field General Court-Martial for instruction:

Nil

In the Field

27 July 1944.

(CH SARDINE) Major

President.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans N/o Sir .....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (~~no~~) opening address.(1) Certified RP 89 B Complied with

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty of the latter charge(s).(4)~~

(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Give evidence on oath. Do you intend to call witnesses on your behalf ? Ans Yes Sir. Are they witnesses as to character only ? Ans N/o Sir.

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s) being subject to confirmation, will be promulgated later.(1) Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~

(1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans No Sir

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)

(1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes Sir (2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to swear on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 86-90, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H20320 Pte Clarence John DUGGAN - 2 CIRU - CIC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 8(2)	Not Guilty	Guilty	
2nd AA Sec 40	Not Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ... beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo Detention for a period of six (6) months

(Sgd) ... Judge-Advocate, if any. 26 July 44 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

~~PART II. MINUTE WHERE CONFIRMATION RESERVED.~~ (AA 54(5), RP 120(F), MML p 760.)

~~Date ... (Sgd) ... Commanding ...~~

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) [signature]

Date 28 Jul 44

(G S N Gostling) Brig

Commanding Comd "A" Gp Cdn Rft Units C A (O)

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H-20320 Pte Clarence John Duggan	1 Aug 44	[signature] Capt

[signature] 2 Aug 44

PART II ORDER No. 182

Adjutant 2 C.I.R.U.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

2695.
B. 99879 Pte Duggan J R

O. H. M. S.

M. F. B. 870

Correspondence to be PINNED here.

PROCEEDINGS REVIEWED

1/1/42

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this 19th day of November, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 1st Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

~~*[I am unable to appoint:~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~*(3. Three Officers having more than one year's service.)~~

~~[or the following reasons, namely:—]~~

President.

Rank.	Name.	Regiment.
Major	A. Bentley,	1 Cdn Div Amn Coy., RCASC

Members.

Rank.	Name.	Regiment.
Capt.	L.P. Baker,	1 Cdn Div Ord Workshop.
Lieut.	A. Grandjean,	1 Cdn Div Ord Fd Pk.
(waiting) Lieut.	A.T. Gardiner,	1 Cdn Div Amn Coy., RCASC

*Signed Arthur E. Potts

(Arthur E. Potts) Brigadier

T/ Commanding 1st Canadian Division.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.89879 Pte. DUGGAN, J.R., 5 Fd Amb., RCAMC	1st Charge ~~A.A. Sec 18(4)~~ AW	Guilty	Guilty	Confirmed
	2nd Charge ~~A.A. Sec 40~~ [illegible]	Guilty	Guilty 28 days Field Punishment	Arthur E Potts

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) Arthur E Potts (Arthur E. Potts) Brigadier T/ Commanding 1 Cdn Div.
Convening Officer (e)

(Signed) A Bentley Major 1 Cdn Div Amn Coy RCASC
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Twenty First day of November 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
~~2. The witnesses~~
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this 21st day of November 1941.

A Bentley Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 25 day of Nov. 1941

Arthur E Potts
Confirming Officer
(Arthur E. Potts) Brigadier
T/Comd. 1 Cdn Div.

Promulgated and extracts taken in the case of

(a) (Dated) 28 Nov. 41 (Signed) C. H. Playfair Lt Col.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] F.M. G. [illegible]

Field General Court Martial.
B.29879 Pte. Duggan, J.R.
5 Fd Amb., RCAMC

This is to certify that the requirements of R.P. 35(b) were complied with in the m/n case.

(A. Bentley) Major
President, F.G.C.M.

T

Field General Court Martial.
B.69879 Pte. Duggan, J.R.
5 Fd Amb., RCAMC

This is to certify that the requirements of R.P. 35(b) were complied with in the m/n case.

(A. Bentley) Major
President, F.G.C.M.

T

C-H-A-R-G-E S-H-E-E-T

The Accused, B89879 PRIVATE DUGGAN, J.R., 5 Field Ambulance, Royal Canadian Army Medical Corps, a soldier of the Canadian Army Overseas, is charged with when on active service:

1st Charge

A.A. Sec. 18 (4)

STEALING PUBLIC PROPERTY,

in that he,

in the Field on or about 21 Oct 41, did steal one blanket and rations consisting of four tins of condensed milk, being public property in the possession of 5 Cdn. Field Ambulance.

2nd Charge

AA Sec 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field on 21 Oct 41, carried four tins of condensed milk in his respirator haversack after having removed his respirator.

To be tried by Field General Court Martial.

Arthur E Potts
(Arthur E Potts)
Brigadier
T/Comd. 1 Cdn Div.

C. H. Playfair Lt Col
(C.H. Playfair) Lt.-Col.
Commanding 5 Cdn. Fd. Amb.

PROCEEDINGS of a FIELD GENERAL COURT MARTIAL:

In the Case Of:

B99879 Private Duggan, J.E.

5 Canadian Field Ambulance, R.C.A.M.C.

Place of Assembly: Oakeley House, Merstham, Surrey.

Time of Assembly 0940 Hours.

Date of Assembly 21 Nov 41.

Officers Detailed, under 1 CDR/5-6, dated 19 Nov 41.

President: Major A. Bentley,
1 Cdn Div Amn Coy RCASC

Members: Capt. L.F. Baker,
1 Cdn Div Ord Workshops

Lieut. A. Grandjean,
1 Cdn Div Ord Fd. Pk.

Waiting: Lieut. A.T. Gardiner,
1 Cdn Div Amn Coy RCASC

Prosecuting Officer: Capt. M.M. Brown,
5 Cdn Fd. Amb. RCAMC

Defending Officer: Lieut. A.B. McFarlane,
5 Cdn Fd. Amb. RCAMC.

President of the Court read the Convening order to the Accussed.

President Q.1. Have you any objections to being tried by any member of this Court martial?
A.1. No Sir.

President read the charges to the accussed and received the following pleas:-

1st. Charge: A.A. Sec. 18 (4) STEALING PUBLIC PROPERTY, in that he, in the Field on or about 21 Oct 41, did steal one blanket and rations consisting of four tins of condensed milk, being public property in the possession of 5 Cdn Field Ambulance.

The Accussed pleads GUILTY to this charge:

.....Cont.....

Charges Continued.

2nd Charge: A.A. Sec. 40: CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, in that he, in the Field on 31 Oct 41, carried four tins of condensed milk in his respirator haversack after having removed his respirator.

The ACCUSSED pleads GUILTY TO THIS CHARGE:

President to the Defence: Have you any statements to make in behalf of the accussed or any character witnesses to bring forth?

Defence: Yes Sir, I would like to produce three character witnesses and also make a plea for mitigation of sentence.

B89915 S.Sgt. Hopkinson G.G., 5th Cdn Fd. Amb. RCAMC having been duly sworn states:

Defence: Q.1. You have known the Accussed for a good many years, will you tell the court in your own words what you know of him?

A.1. I have known the accussed for approximately eight years, and have known his family very intimately. His father died when he was nine years of age, and his mother gave him his own way in a great deal of things and since his fathers death there had been no male in the family and Pte. Duggan has had no one to guide him as a father should. He is of a well known family, that of Tucketts the Tobacco people, his mother is a very fine woman and as long as I have known Pte. Duggan he has never been in trouble before. I might say that Duggan always had lots of money and was of a very generous nature in this regard. He was a very popular student throughout his school days and a regular member of the Y.M.C.A. at home. He attended church and Sunday school and became a leader of the younger boys back home. He is a man of very high moral standing and a very good soldier in my opinion. That is all Sir.

B89886 L/Cpl. Johnson R.D. having been duly sworn states:-

Defence. Q.1. Johnson will you tell the court briefly what you know of the accussed character?

A.1. I have known Pte. Duggan since he joined the army and I have never seen him with stolen property before.

Q.2. What is your opinion of his general character?

A.2. Very good Sir.

Q.3. He has never at any time either than as a person of high character?

A.3. Not to my knowledge Sir.

.....Cont.....

Character witnesses continued....

B89889 Pte. Todd, J.B., 5th Cdn Fd. Amb. RCAMC having been duly sworn states:

Defence: Q.1. Will you tell the court in your own words what you know about Pte. Duggan and your opinion of his general character?

A.1. I have known Pte. Duggan since 1933 and we went to school together for two years. After that I worked with Duggan and found him to be a hard worker and honest.

Q.2. Has he ever been in trouble in civilian life ?

A.2. In the eight years I have known him, he has never been in civilian court.

Q.3. You have known him since he joined the army?

A.4. Yes Sir, and he to my knowledge has been a good soldier.

Defence: That is all.

Defence: You have heard the evidence of three character witnesses and I would like to make a plea of mitigation for the accussed for the following six reasons:

(1) This is the accussed first serious offence in the army.

(2) The articles which the accussed removed were not for his own benifit but for the good of needy people that he knew in this country and who had previously been very courteous to the Accussed.

(3) He realises that his impulsive action was was wrong and serious and is fully resolved that this thing will not happen again.

(4) That, he is a very young man, being only nineteen when he enlisted in the Canadian forces.

(5) He is of good character which has been testified to by three character witnesses.

(6) He has already been in close arrest for a period of 31 days.

The case of the Defence rests at this period and hopes that every consideration of leniency is shown to the Accussed. That is all.

President of the Court:

I declare the Court closed. Pte. Duggan will be returned to his Unit where he will be held pending the promulgation of the findings of the Court by the G.O.C.

Court closed at 1010 hours

21 Nov. 41.

MEDICAL OFFICER'S CERTIFICATE

I certify that No B89879 Pte. Duggan, J.R. 75 Cdn.Fd.Amb. Regiment,

is* fit to undergo trial by Court-Martial.

L.W. Brown Capt

Signature of the Medical Officer.

*Insert "fit" or "unfit."

REQUEST FOR DEFENSE COUNCIL.

I request the services of Lt. A.B. McFarlane of 5 Canadian Field Ambulance, R.C.A.M.C. as defense Council in my Court Martial.

John B Duggan

(B-89979 Pte. Duggan, J.R.)
5 Canadian Field Ambulance.

J C Gibson Major

(J.C. Gibson) O.C. "B" Coy.
5 Canadian Field Ambulance.

No. B89879 Name Duggan John | Sqn., Battery, or Company B Coy. | Corps 5 Cdn Fd Amb. R.C.A.M.C. | Date of enlistment 13 Sep. 1939 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 123) 500M—8-39 (1703) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. I | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Harg Beks	17 Jan 40	Pte.		A.W.L. 0800 hrs 17 Jan to 2030 hrs 19 Jan 40	S. Sgt. Cunningham	Automatic Forf. 3 days pay, awarded 5 days forfeiture pay Total 8 days pay	20 Jan 40	T.R.D. Farmer	L/Col.
In the Field	22 Jan 41	Pte		WOPS A.A. Sec 40. Conduct to the prejudice etc. in that he, at Purley Ice Rink during a Sports Parade, was improperly dressed and when ordered to leave the rink refused to do so.	S/Sgt Cunningham	7 days CB	23 Jan 41	H.J. Ewart Capt.	
In the Field	11 Mar 41	Pte.		WOPS Neglected to obey standing orders in that he was absent from his billets from 2230 hrs until 2255 hrs 11 Mar 41 contrary to					

(Over)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Company Order No 1 ao A A Sec 11.	S/Sgt Cunningham	awarded 1 days F.P. 1 days forfeiture pay.	12 Mar 41	Lt/Col Farmer	
In the Field	1 May 41	Pte		W.O.A.S Neglect to obey Routine Order in that he washed, or caused to be washed a suit of Battle Dress labelled A.V. Contrary to Sec. Cdn Corps R.O. No 7 dated 17 Jan 41 A A Sec 11.	S. Sgt Cunningham	Forfeiture of 1-11 days pay.	1 May 41	C H Playfair Major.	
In the Field	29 May 41	Pte		W.O.A.S Failure to obey General Orders in that he was absent from his billets at 2230 hrs. when orders called for him to be in billets. R.A. Sec. 11	S Sgt Cunningham	7 days C.B.	29 May 41	H J Ewart Capt.	

B
No. 9879. Name Duggan John Sqn., Battery, or Company B Coy Corps 5 Gdn Fd Amb R C A M C Date of enlistment 13 Sep 39 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 300M—8-39 (1703) H.Q. 1771-45-18

Date of last entry in Company Conduct Sheet 25 Sep 41 No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25 Sep 41	Pte		W O A S absent without leave in that he did absent himself without leave from 1700 hrs 25 Sep 41 to 0530 hrs. 26 Sep 41 AA Sec 15 (SS.1)	L/Cpl Johnson RO	7 days C.B. and one days automatic forfeiture. FRI no 41(a).	26 Sep 41	J E Andrew Capt.	

Certified True Copy.
J C Gibson capt.

(P.T.O.)

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B-89879 - Pte Duggan, J.R. of the "B" Coy, 5 Cdn Fd Amb RCAMC

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

†See para. 664, K.R., 1935.

*The numbers herein stated should correspond with the number of *Entries* in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For A.A. Sec. 40	1	times	1	times.
For A.A. Sec. 11	3	times	3	times.
For A.A. Sec. 15 (ss 1)	1	times	2	times.
For		times		times.

Number of instances of gallantry or distinguished conduct,

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

706. W1.44407/2161. 10,000. 1/39. Wy. L.P. Gp. 656.
1329. W1.22116/738. 20,000. 1/39. Wy. L.P. Gp. 656. Form B296/44.

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13th day of November 1941

J C Tibbin major

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges for _____ days in Civil Custody,

and 31 ~~24~~ days in Military Custody.

Total 31 ~~24~~ days.

Of which _____ days were spent in hospital.

5. The present age of the accused according to his record of service ~~attestation paper~~ is 21 yrs. 10 mo.

6. The date of his ~~enlistment~~ attestation specified in his record of service ~~attestation paper~~ is 13 Sep. 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N. A.

8. The accused is entitled to deferred pay or gratuity in respect of _____ years' service. N. A.

9. The accused is entitled to reckon 2 years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to N. A.

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment [*or* corps *or* department] the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion.
In the rank of	, years,	
In the rank of	, years,	
In the rank of	, years,	

[INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*]

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked _____, signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

NOTE.—*A verbatim extract from the regimental books, stating fines, corrections and dispensations with trial, must be inserted.*

Description of Court by which tried, or station of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

[*Continued overleaf.*

SUMMARY OF EVIDENCE

Summary of evidence in the case of B-89879 Pte. Duggan, J.R. "B" Company, 5 Canadian Field Ambulance, R.C.A.M.C., C.A.A.F.

First Witness: B-89754 Sgt. Anderson, T.G. of "B" Company, 5 Canadian Field Ambulance.

Q.--You are B-89754, Sgt. Anderson, T.G. of "B" Company, 5 Canadian Field Ambulance?

A.--Yes sir.

Q.--You are the senior N.C.O. of "B" Company, 5 Cdn Fd Amb?

A.--Yes sir.

Q.--Will you state in your own words what you know about the charges made against B-89879 Pte. Duggan, J.R..

A.-- "On 20 Oct/41 Pte. Brown, J., assistant cook, reported the loss of a watch which had been on a shelf in the kitchen. It was decided that all the men who were working in the kitchen on that particular afternoon be asked to submit to a search. At 1700 hrs., 21 Oct/41 Pte. Duggan, J.R., who was working in the kitchen on the previous day, came to the Orderly Room to sign out. The Orderly Sergeant detained him and went for me. Pte. Duggan was asked if he was willing to be searched and he agreed. I detailed Pte. Hall to search Pte. Duggan. He found four tins of milk (exhibit A) in his respirator haversack and an army blanket (exhibit B) in the small suit case which he was carrying with him. I called Cpl. Drury who identified the milk as being the same brands as the army issue. Cpl. Goodchild recognized the blanket as an army blanket. I placed Pte. Duggan under close arrest.

Q.--Did Pte. Duggan have his respirator with him?

A.--No sir.

The accused declined to question the witness.

Thos G Anderson

John R Duggan

Taken down by me, in the field, in the presence of the Accused, on 24th Oct/41.

Rule of Procedure (4) complied with.

J.C. Gibson Major
(J.C. Gibson) O.C. "B" Coy.
5 Canadian Field Ambulance.

Second Witness:- B-89796 Cpl. Drury, R. "B" Company
5 Canadian Field Ambulance.

Q.-You are B-89796 Cpl. Drury, R., Cpl. cook of "B" Company
5 Canadian Field Ambulance?

A.-Yes sir.

Q.-Will you state in your own words what you know about these
charges against B-89879, Pte. Duggan, J.R..

A.- I was Orderly Sergeant on 21 Oct/41 and at 1700 hrs was in
the Orderly Room when Pte. Duggan, carrying a small case, signed
out. On the previous day a watch had been taken from the kitchen
and it had been decided that all working in the kitchen on that
day, should be searched when signing out. I detained Pte.
Duggan and sent for Sgt. Anderson, our senior N.C.O. He asked
Pte. Duggan if he would submit to a search and Pte. Duggan
agreed. Sgt. Anderson detailed Pte. Hall to make the search
and he found four tins of milk in Pte. Duggan's respirator
haversack and a blanket in the suit case.

The previous morning I had noticed an apparent
shortage in our milk supply and was told by Pte. Brown, the
assistant cook, that no extra milk had been used for any
purpose.

Q.-Do you know anything else about the case?

A-No sir, except that Pte. Duggan was working in the kitchen
on Monday, 20 Oct/41.

The accused declined to question the witness.

R. Drury

John R. Duggan

Taken down by me, in the field, in the presence
of the accused on 24 Oct/41.

Rule of Procedure (4) complied with.

J.C. Gibson Major
(J.C. Gibson) C.C. "B" Coy.
5 Canadian Field Ambulance.

Third Witness:- B-69901 L/Cpl. Goodchild, R.S. Q.M. of "B" Company 5 Canadian Field Ambulance.

Q.-You are L/Cpl. Goodchild, R.S. Quartermaster of "B" Company 5 Canadian Field Ambulance?

A.-Yes sir.

Q.-What do you know about these charges against Pte. Duggan?

A.-When I came into the Orderly Room at about 1700 hrs, on 21 Oct/41, I saw an army blanket packed in a small suit-case ready to be taken out. I recognized it as an army blanket. I also saw four tins of milk which I recognized as the same brands as those issued in our rations.

Goodchild R. L/Cpl

John R. Duggan

Fourth Witness:- B-69852 Pte. Hall, G.E. "B" Company 5 Canadian Field Ambulance.

Q.-You are B-69852 Pte. Hall, G.E. private clerk in the Orderly Room of "B" Company, 5 Canadian Field Ambulance?

A.-Yes sir.

Q.-What do you know about these charges against Pte. Duggan?

A.-While eating my supper at 1700 hrs, on 21 Oct/41 I was called into the Orderly Room and detailed by Sgt. Anderson to search Pte. Duggan. This was in connection with the disappearance of a watch, on the previous day, belonging to Pte. J. Brown. I found four cans of milk (exhibit A) in Pte. Duggan's respirator haversack and a blanket in Pte. Duggan's suit-case which he had with him when signing out.

Q.-Did he have his respirator with him?

A.-No sir.

G E Hall.

John R. Duggan

Taken down by me, in the field, in the presence of the accused on 24 Oct/41.

Rule of Procedure (4) complied with.

J.C. Gibson Major
(J.C. Gibson) O.C. "B" Coy.
5 Canadian Field Ambulance.

STATEMENT OF THE ACCUSED:

The accused B-89879 Pte. Duggan, J.R. of "B" Company 5 Canadian Field Ambulance, having been duly warned, made the following statement (On Oath).

"On our return from "BUMPER" scheme I was helping to unload one of the trucks. I took four cans of milk out of the rations and also one blanket from the truck.

When signing out on 21 Oct/41 I did not expect to be searched and took the blanket and four cans of milk with me. I considered that I had been cleared of any suspicion regarding the theft of the watch on the previous day, and therefore would be able to get away with the blanket and the milk unnoticed."

John R. Duggan
(B-89879 Pte. Duggan, J.R.)
5 Canadian Field Ambulance

Witness:- G.E. Hall.
(B-89852 Pte. Hall, G.E.)
5 Canadian Field Ambulance

Taken down by me in the field on 24 Oct/41.

Rule of Procedure (4) complied with.

T.C. Gibson Major
(T.C. Gibson) O.C. "B" Coy.
5 Canadian Field Ambulance.

HHH-121

PTE DUGGAN T.W.

~~DATE~~ IN RECORD OF G.C.M. #4447/21

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P & H/10[illegible]/44

Convened by Order of Brig J.R. Stewart Lough Comd G GP, C.R.U. dated 9 Mar 44
DSO, MC, VD.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C-5514	Pte		Thomas William	DUGGAN	1 CGRU

PROCEEDINGS REVIEWED
H. A. Archibald Lieut
22 Apr 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date*) 10 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnm ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. **The Court is opened.** The accused is ~~(are)~~ brought before the Court. At 1120 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~as interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to~~ ~~as shorthand writer? Ans~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt.-Col.	D.L. Redman, V.D.	2 C.R.U.
Member	Capt.	W. Fox	1 C.G.R.U.
Member	Lieut	R.W. Bonnar	1 C.I.R.U.
~~Judge-Advocate~~			
Prosecutor	Capt.	J.B. Sheff	1 C.G.R.U.
Defending Offr	Lieut	J.A. Robitaille	1 C.G.R.U.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for Information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment makes(s) (no) plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

FIELD GENERAL COURT-MARTIAL

ACCUSED

PROCEEDINGS AND ARRAIGNMENT

RECORD FORM A—OPENING PROCEEDINGS OF TRIAL

PRESIDENT OR JA WILL INITIAL ALL DEL

ENTERED IN RECORDS OF C.M. # 11 H 231

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3) 40/P & R 10/6/44

Convened by Order of Brig J.R. Stewart Lough Comd G GP, C.R.U. dated 9 Mar 44
DSO, MC, VD.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-5514	Pte	Thomas William	DUGGAN	1 CGRU

PROCEEDINGS REVIEWED
H. A. Snell Lieut
22 Apr 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 10 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1420 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 49(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to an interpreter? Ans~~
~~The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans~~
~~The shorthand writer is sworn.(2)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members ~~JA, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt.-Col.	D.F.L. Ridsmen, V.D.	1 C.G.R.U.
Member	Capt.	W. Gore	1 C.G.R.U.
Member	Lieut	R.W. Bonner	1 C.I.R.U.
~~Judge-Advocate~~			
Prosecutor	Capt.	J.B. Schaft	1 C.G.R.U.
Defending Offr	Lieut	J.A. Robitaille	1 C.G.R.U.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See DI p 2.)

A8. The accused ~~(are)~~ before arraignment make(s) (no) ~~(a)~~ plea (s).

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(a), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13C, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 29, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-5514 Private Thomas William DUGGAN - 1 CGRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 13(1)	Guilty	Guilty	
2nd AA Sec 15(1) (~~alternative~~)	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF 8355 or AF B296.)

Time in confinement awaiting present trial—a total of days, of which days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF 8355 or AF B296 submitted in evidence under E2.)

Sentence Awarded by the Court:
To undergo detention for a period of six (6) months and to be put under stoppages of pay amounting to $26.85 the loss occasioned and he has made good $26.85 the loss occasioned by the commission of the offence charged.

(Sgd) Judge-Advocate, if any. Date awarded 10 March 44 (Sgd) President (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) H. Stewart Lough Brig

Date 13 Mar 44 Commanding Commissioned Officer Commanding Troops for Con Rec Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
C-5514 Pte DUGGAN T.W.	13 Mar 44	J. Smith Lt A/Adjutant.

Part II D.O. #63 17 Mar 44
No. 1 Can. Gen. Rein. Unit. C.A. (o.s.)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. Nodet.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 2, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such pleas and, if changed to Not Guilty, try such charge(s). By use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B3 to B5 of Record Form B above.(1)
(1. *Under* B5 *such parts only of the Summary of Evidence are read as relate to the charges dealt with under* C2. *If one plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form* D *on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 40(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para. If submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. B
Do you intend to call witnesses on your behalf ?
Ans. .....
Are they witnesses as to character only ? Ans. .....
(1. *RP* ~~115~~ 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fn* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* ~~AA~~ 115. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, *117*(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, *117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form* B *or* C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No Sir
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~copies~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 355 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Only by my Defending Offr. NOTE PATT
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(4), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(1. *When several accused tried separately see RP* 120. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its purview, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 128, 182. *RP* 46-52, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas KO* 109, 2321, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(5), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused C-5514, Private Thomas William DUGGAN, General Company, No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE SEC 13(1) AA

WHEN ON ACTIVE SERVICE, FRAUDULENT ENLISTMENT

in that he

At Toronto, Ontario, Canada, on the 7th day of April 1942 when belonging to the Hastings and Prince Edward Regiment Canadian Active Service Force, without having fulfilled the conditions enabling him to enlist, enlisted in the Queen's York Rangers Canadian Army (Active), thereby obtaining a free Kit of necessaries, value, $36.85.

SECOND CHARGE SEC 15(1) A.A

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

At Hastings and Prince Edward Regiment absented himself without leave from 2359 hours 15th day of August 1941 until reenlisting in the Queen's York Rangers at 0001 hours 7th day of April 1942.

Total absence 234 days, 2 minutes.

(R.W. Frost) Colonel
OC No 1 Cdn Gen Rft Unit
Canadian Army Overseas.

Field
9 Mar 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(J.R.Stewart Lough) Brigadier
Commander "C" Group
CANADIAN REINFORCEMENT UNITS.
Convening Officer

9 Mar 44.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-5514	Pte		Thomas William	DUGGAN	1 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~XXX~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 9 Mar 44 endorsed by me, [redacted]), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; [redacted]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted] here~~to~~. XXX XXXXX
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt col	D.L. REDMAN VD (Calg Highrs)	HQ CRU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

A Capt	To be detailed by O.C.	1 CGRU
A Lt	To be detailed by O.C.	1 CIRU
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.) — J R Stewart Lough (Signed personally. RP 105 fn 2.) — Brigadier (Rank.)

Date 9 Mar 44

(J.R. Stewart Lough)
Commanding "G" Group, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT
CANADIAN ARMY OVERSEAS

Medical Officer's Certificate
K.R.(Can) para. 557.

I certify that I have this day examined,

No. C.5514 Rank Pte. Name DUGGAN, T.W.

and in my opinion is Fit to undergo trial by Court Martial.

Field
Date: 10 Mar 44.

[redacted] Medical Officer

NOTE E-3

M. President,
Members of the Court

You have heard the evidence against the accused, to all charges we have pled a dual guilty

There only remains for me to bring out to you the circumstances which have brought the accused before you on such charges.

Being the eldest son of a family of 9 children, father out of work for 10 years, the motive of being "absent without leave" was not being absent from the army but rather to help the family out of their difficulties.

He has reinlisted, not under an assumed name, he has given exactly the same particulars about himself and his family but his carefree state of mind induced him to act in such a way

with the intention
not to fraud but only to clear his conscience of his wrong situation.

His behaviour since his re-enlistment has been good, his records shows that his conduct is on the upgrade, I plead to you in using great clemency in sentencing him, and help him rehabilitating himself has he has proven the will to do so.

J. Holutaille Lt.

Christian Name Thomas William

Regtl. No. B.70257 Rank Pte. Surname DUGGAN

STATION	Date of Arrival at the Station	Date of Admission into Hospital (Day / Month / Year)	Date of Discharge from Hospital (Day / Month / Year)	DISEASE	Number of days in Hospital	Remarks on nature of the disease how contracted, if mild or severe, if completely recovered from; whether any, and if any what, disability remains; whether accidental or not; whether it occurred on duty or not; whether a Court of Inquiry was held. Date of cases and particulars of artificial teeth or surgical appliances supplied.	Signature of Medical Officer

For additional entries see M.F.M. 2 and 3 (Re)

/LP

ORIGINAL
DUPLICATE
TRIPLICATE

M.F.M. 2
A.F.B. 271
7M(M)—5-42 (4208)
H.Q. 1772-39-1645

(To be completed in triplicate. Copy designation to be shown by striking out terms not applicable.)

Unit Queen's York Rangers C.A.(A) Regimental Number B.70257

ACTIVE FORMATIONS AND UNITS OF THE CANADIAN ARMY

ATTESTATION PAPER

1. Surname DUGGAN
2. Christian Names Thomas William
3. Present address 124 Spruce St., Toronto,Ont. Can.
4. Date of birth July 14,1917
5. Place of birth Ireland (Country) Belfast (County or Province) (Town or Township)
6. Citizenship (Of What Country are You Now a Citizen)
7. Religion (state denomination) Roman Catholic
8. Trade or Calling Tinsmith
9. Married, Widower or Single Single
10. Name of next of kin Mrs.Elizabeth Duggan
11. Relationship Mother
12. Address of next of kin 124 Spruce St, Toronto,Ont.Can.
13. Do you belong to, or have you served in a Reserve Formation or Unit of The Canadian Army? YES
    1st Machine Gun Corps from 1934 to 1938.
    (If Yes, Give Unit and Dates of Service)
14. Have you served in (*a*) an Active Formation or Unit of The Canadian Army? No (Yes or No)
    (If Yes, Give Regimental No. and Unit) (*b*) Any other Naval, Military, or Air Force? No (Yes or No) (If Yes, specify Unit and Period of Service)
15. Did you serve during the Great War 1914-1918? No
    (If Yes, specify Regimental No., Unit and Dates of Service)

DECLARATION TO BE MADE BY MAN ON ATTESTATION

I, Thomas William Duggan, do solemnly declare that the above particulars are true, and I hereby engage to serve in any Active Formation or Unit of The Canadian Army so long as an emergency, i.e., war, invasion, riot or insurrection, real or apprehended, exists, and for the period of demobilization after said emergency ceases to exist, and in any event for a period of not less than one year, provided His Majesty should so require my services.

Witness: R.Thornton, Date Apr. 7 1942. T.W.Duggan (Signature of recruit)

OATH TO BE TAKEN BY MAN ON ATTESTATION

I, Thomas William DUGGAN do sincerely promise and swear (or solemnly declare) that I will be faithful and bear true allegiance to His Majesty.

Witness (Name) (Rank) T.W.DUGGAN (Signature of Recruit)

CERTIFICATE OF MAGISTRATE, JUSTICE OF THE PEACE OR ATTESTING OFFICER

The Recruit above-named was cautioned by me that if he made any false answers to any of the above questions he would be liable to be punished as provided by law.

The above questions and answers were then read to the recruit in my presence.

I have taken care that he understands each question, and that his answer to each question has been duly entered as replied to, and the said recruit has made and signed the declaration and taken the oath before me,

at Toronto,Ontario this 7 day of April 19 42

Sgd. A.Lampman ?? Major
for D.R.O.

Signature of Magistrate, Justice or Attesting Officer.

Officer or Rank and Unit or appointment.

N.B.—ATTENTION IS DRAWN TO THE FACT THAT ANY PERSON MAKING A FALSE ANSWER TO ANY OF THE ABOVE QUESTIONS IS LIABLE TO A PENALTY OF SIX MONTHS' IMPRISONMENT

Thomas William (Christian Names) — Regimental Number B 70257

EDUCATIONAL QUALIFICATIONS

		Graduation or Matriculation (Years completed)	
High School or Collegiate	1 Year Technical		NIL (Specify)
*College	NIL		
*University	NIL		

*(Name of institution, courses or years completed, and degrees obtained to be shown)

Record of Service of DUGGAN (Surname)

QUALIFICATIONS

Military 1st Machine Gun Corps from 1934 to 1938(RF) Corp.
Business or Professional NIL
Trade or Civil Tinsmith
Technical Nil
Languages English

All enlisted personnel will be taken on as Private soldiers, appointments and promotions to higher rank to be shown as provided in the space below.

Record of Promotions, Reductions, Transfers, Casualties, Reports, etc., from date taken on Strength of Field Force	Rank Shown	Effective Date	Unit	Place	Authority: Part II D.O. No. Can. Loc. etc.	Dated
Joined on appointment	Pte.	7-4-42	Q.Y.R.	Toronto	D.O. 11	8-4-42
T.O.S. on enlistment	"	7-4-42	"	"	" 11	8-4-42
Granted subsistence				Camp Borden		
3 days C.B. - A.W.L. 2 days, 6 hours. Forfeits 3 days pay & allowances.	"	18-5-42	"	"	" 33	21-5-42
168 hrs. detn. for conduct to the prejudice of good order & mil.discp.	"	25-5-42	"	"	" 35	26-5-42
Permission to marry	"	-	"	"	" 25	9-5-42
A.W.L. from 2130 hrs.	"	15-5-42	"	"	" 31	18-5-42
Forf. 3 days pay for A.W.L. 15.5.42 to 18.5.42	"	18-6-42	"	"	" 33	21-5-42
A.W.L. from 0700 hrs. 31 May 42	"	31 May 42	"	"	" 40	2 Jun 42
Ret. from A.W.L. at 1700 hrs. 2 Jun 42	"	2 Jun 42	"	"	" 42	5 Jun 42
Adm. for A.W.L. from 0700 hrs. 31 May 42 to 1700 hrs.						

For additional entries see M.F.M. 1 and 2 (a)

CERTIFICATE OF MEDICAL EXAMINATION

Name in full Thomas William Duggan — Place Toronto,Ont. — Date of Medical Examination April 6,1942

Part 1. Information obtained from the recruit.

1. Age 24 — 2. Have you ever suffered from any of the following diseases?

a. Rheumatism	NO	k. Ear disease	NO
b. Tuberculosis or pleurisy	NO	l. Eye disease	NO
c. Bronchitis or asthma	NO	m. Fits	NO
d. Heart disease	NO	n. Nervous or mental disease	NO
e. Kidney or bladder disease	NO	o. Syphilis	NO
f. Stomach or bowel trouble	NO	p. Gonorrhoea	NO
g. Rupture	NO	q. Have you ever worn glasses?	YES
h. Varicose veins	NO	r. Are you now or have you in the past received disability pension or compensation? If so, give details	NO
i. Foot trouble	NO		
j. Nasal trouble	NO		

Cat.E. Vision Sept.1939 — SGD. T.W.Duggan

I hereby declare that I have not suffered from any diseases whatsoever except as stated above.

(Signature of Applicant)

Part 2. Information obtained by medical examination. THE RECRUIT MUST BE STRIPPED.

Medical Officer's Remarks on information as stated in Part 1

1. Identification marks or scars Scar over left eyebrow. Tattoo back right forearm "Heart".
2. Height 5 feet 8 inches. 3. Weight 143 pounds.
4. Complexion Fair Eyes Blue Hair Brown 5. Development Good (Good / Fair / Poor)
6. Chest measurement—Girth on full expansion 36 inches. Range of expansion 3 inches.
7. Vision, right 20/40 left 20/70
With Glasses— right 20/25 left 20/30 8. Hearing, right W.V.20 left W.V. 20
9. Condition of mouth and teeth Good
10. Blood Pressure:— S. D. (Required if recruit is over 35 years of age, or if otherwise indicated)
11. Urinalysis Urine-Negative Reflexes Normal, Ears Normal
12. The abnormalities (congenital and pathological) found on examination are as follows:—

No.3750.

13. Chest X-Ray NEG No. Laboratory at which taken

Part 3. We, the examiners, find no evidence of the diseases mentioned in question 2, Part 1, except as reported in the remarks. We have examined the Recruit in accordance with the pamphlet "Physical Standards and Instructions for the medical examination of Recruits" and he is fgound fit for Category A.11.

Special remarks when category lower than A

SGD. ??? rank Major, R.C.A.M.C. — SGD. ?? rank Captain, RCAMC — SGD. Noble Black, rank Capt. R.C.A.M.C.

Date

VACCINATIONS, INOCULATIONS, BOARDS, RECLASSIFICATION OF MEDICAL CATEGORY

Date	Brief details and signature	Date	Brief details and signature
			Certified true copy:
			for Director of Records N.D.H.Q. OTTAWA 14 Jan 44

NOTE: Any corrections to entries made must be initialled by the Officer making them. Such Officer will indicate his rank and corps. Corrections are not to be written over the original entry.

Statement of the Service of No. B 70257 Rank Pte. Sheet No. 2

Name DUGGAN, Thomas William

Rec. of From. Reductions, Trans., Can., Reports etc.	Rank	Date	Unit	Place	Authority	Date
2 Jun 42. Forf. 3 days pay & allces. Art.149.F.R.& I.	Pte.	3 Jun 42	Q.Y.R.	Camp Borden	D.O.42	5 Jun 42
A.W.L. from 0130 hrs. 19 Jun 42	"	19 Jun 42	"	Chippawa Brks.	" 49	19 Jun 42
Ret. from A.W.L. at 2330 hrs. 19 Jun 42	"	19 Jun 42		"	" 50	22 Jun 42
Adm. for A.W.L. from 0130 hrs. 19 Jun 42 to 2330 hrs 19 Jun 42. Forf. 1 day's P.& A. A.A.15(1)	"	20 Jun 42	"	"	" 50	22 Jun 42
Posted from H.Q. Coy. to "A" Coy.	"	-	"	"	Pt.1 Order Batt.Order #50A.	6 Jun 42
A.W.L. from 0600 hrs. 5 Jul 42	"	5 Jul 42	"	"	" 61	14 Jul 42
Ret. from A.W.L. at 0110 hrs. 6 Jul 42	"	6 Jul 42	"	"	" 61	14 Jul 42
S.O.S. & is att. to #2 Voc.Trng.School for A/P inc.P.	"	17 Aug 42	"	"	" 84	18 Aug 42
Att. for R.& Q.only from Queen's York Rangers pending arrival of Docs.	"	17 Aug 42	#2 V.T.S.	Toronto	" 51	18 Aug 42
Ceases Att. for R.& Q.only and is Att. f.a.p. incl. pay 18 Aug 42.	"	18 Aug 42	"	"	" 56	24 Aug 42
~~A.W.L. from 0800 hrs. 8 Sep 42.~~	"	~~8 Sep 42~~	"	Cancelled by Toronto	D.O.71 ~~D.O. 70~~	10 Sep 42 ~~9 Sep 42.~~
A.W.L. from 0800 hrs.22 Oct 42	"	22 Oct 42	"	"	" 109	24 Oct 42
Ret. from A.W.L. at 0759 hrs. 26 Oct 42	"	26 Oct 42	"	"	" 110	26 Oct 42

Statement of the Service of No. B.70257 Rank Pte. Sheet No. 3

Name DUGGAN, Thomas William

Rec. of Pros. Reductions, Trans., Cas., Reports etc.	Rank	Date	Unit	Place	Authority	Date
Awarded 3 days C.B. and forf. 4 days Pay & Allces.for A.W.L. from 0800 hrs. 22 Oct.42 to 0759 hrs. 26 Oct. 42. Sec.15(1) A.A.(Open arrest)	Pte.	26 Oct 42	#2 V.T.S	Toronto	D.O. 110	26 Oct 42
Ceases Att. f.a.p. incl. pay on return to Queens York Rangers.	Pte.	27 Oct 42	#2 V.T.S.	Toronto	D.O. 110	26 Oct 42
Ceases Att. to #2 V.T.S. f.a.p. incl. pay	"	28 Oct 42	Queen's York Rangers	Chippawa Brks.	" 140	5 Nov 42
A.W.L. from 0700 hrs. 15 Nov.42	"	15 Nov 42	"	"	" 151	25 Nov.42
Ret. from A.W.L. at 0620 hrs. 25 Nov 42.	"	25 Nov 42	"	"	" 153	27 Nov 42
Awd. forf. of 28 days pay Sec.46 A.A. for A.W.L.from 0700 hrs. 15 Nov.42 to 0620 hrs.25 Nov 42. Forf.10 days P.& A. Art.149 P.R.& I.(Close arrest).	"	26 Nov 42	"	"	" 156	2 Dec 42
Granted New Year's Lve. with 50¢ allce. in lieu of R. per diem, from 1200 hrs. 29 Dec.42 to 1200 hrs.3 Jan 43. Art.196(4) P.R.& I.	"	29 Dec.42	"	"	" 163	12 Dec 42
Ret. from New Year's Lve. at 1200 hrs. 3 Jan 43	"	3 Jan 43	"	"	" 5	8 Jan 43
A.W.L. from 0130 hrs. 29 Jan 43	"	29 Jan 43	"	"	" 17	31 Jan 43

Statement of the Service of No. B.70257 Rank Pte. Sheet No. 4

Name DUGGAN, Thomas William

Rec. of Prom. Reductions, Trans., Cas., Reports etc.	Rank	Date	Unit	Place	Authority	Date
Ret. from A.W.L. at 2345 hrs. 31 Jan 43	Pte	31 Jan 43	Q.Y.R.	Chippawa Bks.	D.O. 17	31 Jan 43
Adm. for A.W.L. from 1200 hrs. 29 Jan 43 to 2345 hrs. 31 Jan 43. Forf. 3 days pay & allces. Art.149, F.R.& I.						
Open arrest.	"	2 Feb.43	"	"	" 22	5 Feb 43
Awarded 3 days forf. of pay Sec.46 A.A. Conduct to prejudice of Good order & Mil Disc.(Open arrest).	"	9 Feb 43	"	"	" 26	10 Feb 43
A.W.L. from 0130 hrs. 13 Feb. 43	"	13 Feb.43	"	"	" 28	13 Feb.43
Awarded 14 days detn. for A.W.L. from 0130 hrs. 13 Feb. 43 until 2355 hrs. 16 Feb.43 and Forf.4 days P.& A. Art.149 F.R.& I. Close arrest, from 2355 hrs 16 Feb. 43 until 1400 hrs. 17 Feb.43. Ent. Detn.1400 hrs 17 Feb.43. Total pay forf. 18 days.	"	17 Feb.43	"	"	" 33	19 Feb.43
Granted furlough from 16 Mar.43 to 22 Mar 43(Incl.) C.A.R.O. 699 (2)(b).Ent. to receive R. allce.50cts per diem Art.196(4) F.R.& I.	"	16 Mar 43	"	"	" 46	15 Mar 43
Ret. from furlough at 2359 hrs. 22 Mar 43	"	22 Mar 43	"	"	" 54	25 Mar 43

Statement of the Service of No. B. 70257 Rank Pte. Sheet No. 5

Name DUGGAN, Thomas William

Rec. of Prom. Reductions, Trans., Cas., Reports etc.	Rank	Date	Unit	Place	Authority	Date
S.O.S. on transf. to A-11 C.I.T.C.	Pte.	18 May 43	Queens York Rangers A-11 C.I.T.C.	Chippawa Brks.	D.O.82	18 May 43
T.O.S. from Queen's York Rangers & posted to #1 Coy.	"	19 May 43	C.I.T.C.	Camp Borden	" 117	19 May 43
Qual.for "four months" increase in pay.Art.144 F.R.& I.	"	1 Jan 43	"	" "	" 142	17 Jun 43
Re-allocated to Royal Regt.of Can.	"	17 Jun 43	"	" "	" 142	17 Jun 43
Qual. for "six months" in pay, Art.144 F.R.& I. and to wear "Mars" Badge, C.A.R.O. 2754	"	2 May 43	"	" "	" 143	18 Jun 43
Granted 12 days furlough from 26 Jun 43to 7 Jul 43 incl. and R.Allce. of 50cts per diem, R.O.699-2(b),Art.196(4)						
F.R.& I. C.A.(A), T.W. 418751	"	26 Jun 43	"	" "	" 149	25 Jun 43
S.O.S. to serial #299- 10 Jul 43	"	10 Jul 43	"	" "	" 162	10 Jul 43
T.O.S. Lincoln & Welland Regt. Posted to "A" Coy.	"	11 Jul 43	Linc.& Well. Regiment	Aldershot,NB.	" 133A	13 Jul 43
To commence pay w.e.f. 11 Jul 43	"	11 Jul 43	"	" "	" 133A	13 Jul 43
To commence R. w.e.f. 12 Jul 43	"	12 Jul 43	"	" "	" 133A	13 Jul 43
2807		16 Jul 43.	"			
EMBARKED CANADA - SAILING LIST NO. [illegible]						
DISEMBARKED ENGLAND						
Proc. Overseas 16 Jul 43.	"	16 Jul 43	"	On board Ship	D.O. 137	17 Jul 43

Statement of the Service of No. B.70257 Rank Pte. Sheet No. 6

Name Duggan, Thomas William

Rec. of Prom. Reductions, Trans., Cas., Reports etc.	Rank	Date	Unit	Place	Authority	Date
Disemb. U.K. w.e.f. 22 Jul 43	Pte.	22 Jul 43	Linc.& Well. Regt.	U.K.	D.O. 1	29 Jul 43
Awarded 4 days C.B. for an offence under Sec.15(2)AA	"	2 Aug 43	"	"	" 4	5 Aug 43
Awarded 7 days C.B. for an offence under Sec.40 A.A.	"	19 Aug 43	"	" "	" 9	21 Aug 43
Adm. to #16 F.D.S. 10 Sep.43	"	10 Sep 43	"	"	" 3	17 Sep 43
Removed from 16 F.D.S. to #12 Lt.Fld.Amb.	"	10 Sep 43	"	"	" 3	17 Sep 43
Removed from 12 Lt.Fld.Amb.to #10 Cdn.Gen.Hosp.	"	11 Sep 43	"	"	" 3	17 Sep 43
S.O.S. to #3 C.I.R.U. on Adm. to #10 Cdn.Gen.Hosp.	"	11 Sep 43	"	"	" 3	17 Sep 43
Granted 7 days P.L. with money allce, in lieu of R. F.R.& I. 789(3) & 4, 26 Aug 43.to 2 Sep 43	"	26 Aug 43	"	"	" 4	24 Sep 43
T.O.S. from Linc. & Welland Regt.while in #10 Cdn. Gen.Hosp.	"	12 Sep 43	#3 C.I.R.U.	"	" 193	17 Sep 43
Disch. from #10 Cdn.Gen.Hosp. 21 Sep.43	"	21 Sep 43	"	"	" 197	22 Sep.43
Absorbed in Per.Estab. #3 C.I.R.U. Posted to "A" Wing	"	22 Nov 43	"	"	" 252	25 Nov 43

Statement of the Service of No. _____ Rank _____ Sheet No. _____

Name _____

Rec. of Prom. Reductions, Trans., Cas., Reports etc.	Rank	Date	Unit	Place	Authority	Date

Regtl. No. C 5514 Rank Pte. Surname Duggan Christian Name Thomas

STATION	Date of Arrival at the Station	Dates of Admission into Hospital: Day	Month	Year	Discharge from Hospital: Day	Month	Year	DISEASE	Number of days in Hospital	Remarks on nature of the disease, how induced, if mild or severe, if completely recovered from, whether any particular treatment was adopted. In venereal cases state nature of primary disease, and whether necessary has been given. If no accident, state whether it occurred in duty and whether a Court of Inquiry was held. Date of issue and particulars of artificial teeth or surgical appliances supplied.	Signature of Medical Officer

For additional entries use M.F.M. 1 and 2 (b)

T-20-D-708

~~ORIGINAL~~
~~DUPLICATE~~
TRIPLICATE

M.F.M. 2
A.F.B. 271
(80 M—8-20 (1936)
H.Q. 1772-45-48

(To be completed in triplicate. Copy designation to be shown by striking out terms not applicable.)

Unit Hastings & Prince Edward Regt. C.A.S.F. Regimental Number C 5514

CANADIAN ACTIVE SERVICE FORCE

ATTESTATION PAPER

Central Registry
SEP 20 1941
M.F.M. 1 and 2

1. Surname DUGGAN
2. Christian Names THOMAS
3. Present address 124 Spruce St., Toronto, Ontario
4. Date of birth July 14th, 1916.
5. Place of birth Ireland (Country) (County or Province) Belfast. (Town or Township)
6. Religion (state denomination) R.C.
7. Trade or Calling Roofer
8. Married, Widower or Single Single
9. Name of next of kin Mrs. Elizabeth Duggan
10. Relationship Mother
11. Address of next of kin 124 Spruce St., Toronto, Ontario
12. Have you served in any Naval, Military or Air Force? No
13. If previous war service, state arm, force and regimental particulars N.A.
14. Do you now belong to or have you served in the Active Militia of Canada?

1st Fd. Machine Gun Corps, 1930-35.
(Give unit and date of attestation)

DECLARATION TO BE MADE BY MAN ON ATTESTATION

I, THOMAS DUGGAN do solemnly declare that the above particulars are true, and I hereby engage to serve in the Canadian Active Service Force so long as an emergency, i.e., war, invasion, riot or insurrection, real or apprehended, exists, and for the period of demobilization after said emergency ceases to exist, and in any event for a period of not less than one year, provided His Majesty should so require my services.

Date April 3rd, 1940 Thomas Duggan (Signature of recruit)

OATH TO BE TAKEN BY MAN ON ATTESTATION

I, Thomas Duggan do sincerely promise and swear (or solemnly declare) that I will be faithful and bear true allegiance to His Majesty.

Thomas Duggan (Signature of Recruit)

CERTIFICATE OF MAGISTRATE, JUSTICE OF THE PEACE OR ATTESTING OFFICER

The Recruit above-named was cautioned by me that if he made any false answers to any of the above questions he would be liable to be punished as provided by law.

The above questions and answers were then read to the recruit in my presence.

I have taken care that he understands each question, and that his answer to each question has been duly entered as replied to, and the said recruit has made and signed the declaration and taken the oath before me,

at Picton this 3rd day of April 1940

E. Mayhew (Signature of Magistrate, Justice or Attesting Officer.)

Major Hast. & P. E. Regt. (Office or Rank and Unit or appointment.)

N.B.—ATTENTION IS DRAWN TO THE FACT THAT ANY PERSON MAKING A FALSE ANSWER TO ANY OF THE ABOVE QUESTIONS IS LIABLE TO A PENALTY OF SIX MONTHS' IMPRISONMENT

Record of Service of DUGGAN (Surname) THOMAS (Christian Names) Regimental Number C 5514

QUALIFICATIONS

Military: 1 st Bn. Machine Gun Corps 1930-35

Business or Professional: N.A.

Trade or Civil: Roofer

Technical: 2 years.

Languages: English

EDUCATIONAL QUALIFICATIONS

High School or Collegiate: N.A. (years completed) Graduation or Matriculation: (specify)

*College: N.A.

*University: N.A.

*(Name of institution, courses or years completed, and degrees obtained to be shown.)

All enlisted personnel will be taken on as Private soldiers, appointments and promotions to higher rank to be shown as provided in the space below.

Report Date	Report From, whom received	Record of Promotions, Reductions, Transfers, Casualties, Events, etc., from date taken on Strength of Field Force	Rank Shown	Effective Date	Unit	Place	Authority Part II D.O. No. Can. List, etc.		Authority Dated
		Joined on appointment							
4-4-40	O.C.	T.O.S.Hast.& P.E.Regtl.Depot	Pte.	3-4-40	H.& P.E.	Picton	D.O.92		4-4-40
19-4-40	O.C.	S.C.S.on transfer to CI(R)TC, M.D.5	Pte.	19-4-40	H.& P.E.	Picton	D.O.104		19-4-40
20-4-40	O.C.	att to C.I.(R)T.C. from Regtl Depot	do	20-4-40	do	do	D.O. 90		20-4-40
28-5-40	"	Ceases to be attached to C.I(R)T.C-W.E.F.	"	28-5-40	"	Quebec	"	123	28-5-40
		Att.for all purposes from HAPE MD 5	"	29-5-401	IRTC	Borden	"	137	1-6-40
		Ceases to be att. from H&PER Depot	"	JUL 14 1940	"	"	"	175	JUL 14 1940
		~~TOS H&PER Depot...SOS H&PER Depot on proceeding overseas as reinforcement to CANADA CASF~~							
		~~Pte ran proceeded overseas direct from No 1 CI(R)TC MD 2~~							
		Forfeits 74 days P & A for AWL	"	15-2-41	"	"	"	57	6-3-41
		Forfeits 37 days P & A for AWL	"	30-3-41	A10 ITC	"	"	86	9-4-41
		D.O.57 amended to read "Total forfeiture 46 days P & A	"	15-2-41	"	"	"	97	23-4-41

For additional entries see M.F.M. 1 and 3 (b)

Part 3. We, the examiners find no evidence of the diseases mentioned in Question 2, Part 1, except as reported in the remarks. We have examined the Recruit in accordance with the pamphlet "Physical standards and Instructions for the medical examination of recruits" and he is found fit for Category "A"

Special remarks where category lower than A

Capt. R.C.A.M.C. President

Capt. R.C.A.M.C. Member

ABBREVIATIONS, INFECTATIONS, DIAGNOSIS, CLASSIFICATION OF MEDICAL CATEGORY

Date	Brief details and signature	Date	Brief details and signature
3-4-40	Re-examined o.r. white reports nil x-ray.		
20-4-40	Tonsillectomy		
20-4-40	Abscess Incd		
20-4-40	Tab		
21-4-40	0		
21-4-40			
22-4-40	Tonsils removed		

Examiner's remarks re above Never received any compensation or pension remarks.

History fracture right forearm child. Small varicosity right groin

Part 2. Information obtained by medical examination. The recruit must be stripped.

1. Identification marks or scars. (If operative obtain history.)

Faint vacc. scar left arm. Small scar bridge nose. 2½" vertical incised bone scar outside right knee cap.

2. Height 5'6 feet inches. 3. Weight 137. pounds. 4. Complexion Fair Eyes Blue 5. Development Good (Good / Fair / Poor)

Hair Curly auburn

6. Chest measurement—girth on full expansion 33½ inches.

Range of expansion ½ inches.

7. Vision, right 20/20 left 20/20 8. Hearing, right WT 20 left WT 20

9. Condition of mouth and teeth Good

10. The abnormalities (congenital and pathological) found on examination are as follows

None

Statement of the Service of No. C-8014 Rank Pte. Sheet No.

M.F.M. 1 & 2 (a)
20 M-21-36 (7858)
H.Q. 1772-45-11

Name DUGGIN, Thomas.

REPORT Date	REPORT From whom received	Record of Promotions, Reductions, Transfers, Casualties, Reports, etc. (Continuation of Folio 1, M.F.M. 1 or M.F.M. 2)	Rank Shown	Effective Date	Unit	Place	Authority Part II D.O. No. Cas. List, etc.			Dated
		Forfeits 109 days P.A.A.for AWL	Pte.	5-5-41	A 10170	Borden	D.O.	Pt. II	170	17-7-41
		Remission of sentence of 4 days granted	"	2-5-41	"	"	"	"	172	19-7-41
		Remission of Sentence of 10 days granted	"	11-8-41	"	"	"	"	191	11-8-41
		Declared by Court of Inquiry to be illegally absent ceases to be attached to DAIER RE depot Forfeits 26 days P&A	"	9-9-41	"	"	"	"	220	12-9-41

RECORD of the Declaration of a Court of Inquiry assembled at Camp Borden, Ont. on the ninth day of September 1941, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION

The Court declare that No. C5514 Pte. Duggan, T.

H&PER (RE)

illegally absented himself without leave

at Camp Borden, Ont. on the fifteenth day of August 1941

that he is still so absent, and that on the ninth day of SEP 41 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE		ARTICLES	VALUE	
Clothing Div. "A"					
Anklets, Web, prs.		77			
Greatcoats, Drab 1939 Patt.	17	22			
Clothing Div. "B"					
Boots, ankle prs.	4	81			
Drawers, Woollen, prs	2.	34			
Jackets, sweater	1.	71			
	$26.	85			

President
Capt. W.J. Balkwill

Member
H.D. Foster Lieut.

Member
F.J. Sims Lieut.

Signed at Camp Borden, Ont.

this 29 day of September 1941

Signature of Commanding Officer

(D.L. Bennett) Capt& Adjt.
for C. Goodday, Major
Signature of Officer having custody of original record

Certified true copy

Cmdg. A10 Infantry(Advanced)T.C.

M.F.B. 271
A.F.B. 124
1538—3-41 (9700-10)
H.Q. 1772-29-887

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Corunna Barracks, Aldershot, HANTS preliminary to my Court-Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

Signed at Aldershot, HANTS.

This 9th day of March

.....1944.....xxxx

T.W. Duggan

.....(T.W. Duggan) Pte.

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of .....
if he is available.

Summary of Evidence in the case of C-5514, Pte. Thomas William DUGGAN, General Company, No. 1 Canadian General Reinforcement Unit.

THE COMMANDING OFFICER DIRECTS THAT THE EVIDENCE BE TAKEN ON OATH

First Witness for Prosecution

Lieutenant J. Simister, Assistant Adjutant No. 1 Canadian General Reinforcement Unit, having been duly sworn, states:

I produce original documents in my possession as follows:- MFM 2 - Record of Declaration on Attestation (Triplicate Copy) of C-5514, Pte. DUGGAN T. whom I now recognise as the accused, showing him having been attested in the Hastings and Prince Edward Regiment C.A.S.F., on the 3rd day of April 1940. Attached as Exhibit "A" A.F.B. 115 Record of Declaration of a Court of Inquiry, assembled at Camp Borden, Ontario, Canada, A 10 Infantry (advanced T.C.) on the 9th day of September 1941 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any in the Arms, ammunition, equipment, Regimental necessities, or clothing of No. C-5514 Pte. DUGGAN T., the accused. Attached as Exhibit "B". I also produce copy of original document, MFM 2 Record of Declaration of Attestation, showing the accused having been attested in the Queens York Rangers C.A.(A) under Regimental No. H-70257 Pte. DUGGAN Thomas William, at Toronto, Ontario, Canada, on the 7th day of April 1942. Attached as Exhibit "C".

The accused declines to cross-examine this witness.

J. Simister

(J. Simister) Lieut.

The accused was cautioned as follows:-

Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused elected to give evidence as follows:-

First Witness for Defence

The accused C-5514 Pte. T.W. DUGGAN, General Company, No. 1 Canadian General Reinforcement Unit having been duly sworn, states:-

I first joined the Canadian Army, in 1940, in Picton, Ontario. I got in with a bunch of fellows, who drank cheap wine. I got in with them they were also in the Canadian Army, instead of bettering myself, I seemed to be getting deeper with this lot of fellows and going A.W.L. between the cheap wine and my father not working for ten years and being the oldest of nine children, I used to go home to try and help my parents. My Dad used to abuse my mother and this also got me down. I kept up like this until August 1941, when I went home and got a job helping my father roofing. I helped the family out as much as I could. No military police came to my home until about 3 months ago, in April 1942, I joined the Army again with the intentions of going Overseas, and bettering myself. While I was in Canada, with the Queens York Rangers I had two or three small crimes, A.W.L. which were caused by my girl friend turning me down. I had been keeping company with her for eight years and this was the reason. I have been in England now nine months, and have only been A.W.L. on one occasion that was over staying a pass for 1½ days. My intentions were to better myself and I believe I have done so since coming back into the Army and getting Overseas, and hope I shall be able to improve my record as I go on.

T.W. Duggan

(T.W. DUGGAN) Private

The accused does not call any witnesses for the defence at this time.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the hearing and presence of the accused and that rules of procedure 4 (C), (D), (E) and (F) have been complied with.

Field
7 Mar 44.

EX A

(J.B. Sheff) Capt. No. 1 CGRU.
Officer detailed to take Summary.

EX A

No C-5514 Name DUGGAN T. Sqn, Battery, or Company — Corps H & Per — Date of enlistment 3-4-40 — GC Badges — Service or Proficiency Pay — MFM 6 (AFB 122, 40/PAM/126 (2438))

Date of last entry in Company Conduct Sheet 22-9-40 — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 3-10-40 "J.E.M". T.O.S. # 1 CTRTC 29 May 40 D.O.# 37, 1 JUN 40 E.G. Hudgin Lt.					
Camp Borden	18-6-40	Pte		WOAS AWL from 0930 hrs 18-6-40 until 1520 hrs 24-6-40 Sec.15(1)AA.Cpl.Dainard A.A. 46	Sgt. Taylor	5 ds pay	25-6-40	Lt-Col. Campbell	7 days pay PR&I "J.E.M."
Camp Borden	7-7-40	Pte		WOAS. AWL from 7-7-40 at 0600 hrs after being warned for draft to proceed Overseas, with intent to avoid so proceeding until 2125 hrs.24-7-40 (17 ds,5hrs,25min. A.A. 12(1) a)	Sgt. Watson Maj. Inrig	Documentary 10 days pay A.A. 46	17-8-40	Lt-Col. Campbell	18 days pay PRI "J.E.M.".

EY 6 MP

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	3-9-40	Pte		WOAS and a defaulter AWL from 2015 hrs 30 Aug 40 until 0600 hrs 2-9-40 (AA 15 (1)	Cpl. Thompson	10 ds C.B. 10 ds pay AA 46	3-9-40	Lt-Col. Campbell	3 days pay FR&I "J.E.M.".
Camp Borden	11-9-40	Pte		When on defaulters AWL from 0615 hrs 11-9-40 until 1900 hrs 12-9-40 A.A. 15 (1)	Sgt. Bayley Documentary	168 hrs Detn 14 days pay A.A. 46	13-9-40	Lt-Col. Campbell	2 days pay FR&I "J.E.M".
Camp Borden	22-9-40	Pte		WOAS AWL from 0700 hrs 22-9-40 until 0615 hrs 23-9-40 AA 15(1).	Sgt. Bayley Documentary	5 days C.B.	23-9-40	Lt P.Gray	1 day pay FR&I "J.E.M."
Camp Borden	10-10-40	Pte		WOAS AWL from 2200 hrs 10-10-40 until 1600 hrs 11-10-40 AA 15(1)	Sgt. Bayley Cpl.McLeaning	168 hrs Detn 14 days pay A.A. 46	12-10-40	Lt-Col. Campbell	1 day pay FR&I "J.E.M."
Camp Borden	22-10-40	Pte		WOAS AWL from 0615 hrs 22-10-40 until 2220 hrs 6-10-40 (15 days, 16 hrs. 5 mins.(AA 15(1).	Documentary	14 ds Detn 28 ds pay A.A. 46	7-11-40	Lt-Col. Campbell	16 days pay FR&I "J.E.M."
Camp Borden	15-2-41	Pte		WOAS AWL from 2200 hrs 15-2-41 until 2245 hrs 4-3-41 17 days, 45 mins. (A.A. 15(1).	L/C Spencer	28 days Detn 28 days pay A.A. 46	5-3-41	Lt-Col. Girvan	J.E.M

C-5514 DUGGAN T. — Sqn, Battery, or Company — Corps: H & PER — Date of enlistment: 3-4-40 — GC Badges — Service or Proficiency Pay — MFM 6 (AFB 122) 40/PAS/136 (8438)

No — Name

Date of last entry in Company Conduct Sheet: 22-9-40 — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No 2 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	30-3-41	Pte		AWL from 2200 hrs 30-3-41 until 2200 hrs 7-4-41 (Total 8 days (Sec. 15 (1) A.A.)	Cpl Holmes Coc R.M.P.	28 days Detn	8-4-41	Lt-Col. Girvan	8 days pay FR&I "P.C."
Camp Borden	5-5-41	Pte		AWL 1345 hrs 5-5-41 to 0220 hrs 23-5-41 - 17 days 12hrs, 35mins.	Cpl. Upson L/C Gibson	60 days Detn	23-6-41	D.C.M.	".E.H."

Certified true copy of original document in my possession.

(J.Simister) Lieut.
A/Adjt. No. 1 CGRU
Cdn Army Overseas.

(PTO)

No B-70257 Name DUGGAN T.W. Sqn, Battery, or Company — Corps Gen List — Date of enlistment 7-4-42 — GC Badges — Service or Proficiency Pay — MFM 6 (AFB 122) 40/PAY/126 (8428)

Date of last entry in Company Conduct Sheet 31-5-42 — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No 1 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				First sheet destroyed as of 7-10-42					
Toronto	22-10-42	Pte		AA 15 AWL from 0800 hrs 22-10-42 to 1759 hrs 26-10-42.	Sgt. Dale	3 days C.B. 4 days pay	20-10-42	Capt. Dodsen	4 days pay FR&I
Chippawa	18-11-42	Pte		AA 15 AWL from 0700 hrs 15-11-42 to 0620 hrs 25-11-42	Sgt. Banks	28 days pay	26-11-42	Col. Pop	10ds Pay FR&I
Chippawa	29-1-43	Pte		AA 15 AWL from 1200 hrs 29-1-43 to 2345 hrs 31-1-43.	CSM Hardwich	Admonished	2-2-43		3 ds Pay FR&I
Chippawa	8-2-43	Pte		AA 80 Conduct to the prej.in possession of a weapon and did cause 2 rounds to be fired therefrom unlawfully.	Lt.Doordson Cpt.Morrison	3 days pay	8-2-43	Maj.Findlay	
Chippawa	13-2-43	Pte		AA 15 AWL from 0130 hrs 13-2-43 to 2355 hrs 16-2-43.	Capt Booth	18 days Detn	17-2-43	Maj.Findlay	4 days pay FR&I

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 19-8-43		Pte		AA 40 Dirty Rifle	Lieut.McDonald	7 days C.B.	19-8-43	Maj.Usher	
Field 9-12-43		Pte		WOAS AWL from 2359 hrs 9-12-43 until surrendering at 1700 hrs 11 Dec 43. Total time absent: 1 day, 17 hrs, 1 minute.AA 15(1).	Documentary	7 days F.P. forfs 7 ds pay FR&I 149(1(b)	13-12-43	Maj. Monthenice.	Forf 2 days pay FR&I 149(1)a)

Certified true copy of original document in my possession.

(J.Sinister)Lieut.
A/Adjt.No. 1 CCRU,
Cdn Army, Overseas.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C-5514	Pte	DUGGAN Thomas William	No.1 CGRU

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Sec 15 (1) A.A. 13 times.

For Sec 40 A.A. 2 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 25 June 40

Date of last entry in Field Conduct Sheet 13 Dec 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for XXXXXXXXXXXXXXXX beginning on the XXXXXXXXXXXXXXXXXXX day of XXXXXXXXXXXXXXXX

4. The accused has been awaiting trial on the present charges for ✓ days in civil custody; and for ✓ days in military custody, *i.e.*, ✓ days in open arrest, 4 pts days in close arrest; of which ✓ days were spent in hospital.

5. The present age of the accused is 26

6. The date of his ~~1/2~~ attestation / calling up for military service is 3 Apr 40

7. The service which the accused is allowed to reckon is N/A

8. The accused is in possession of‡ N/A

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of XXXXXXXXXXXXXXXXXXXXXXXXX

In the war substantive rank of XXXXXXXXXXXXXXXXXXXXXXXXX

In the acting rank of XXXXXXXXXXXXXXXXXXXXXXXXX

Ex B.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) Wt.8670/068 100,000 4/42 A.& E.W.Ltd. Gp.698
(22455) Wt.28208/1873 60,000 9/42 - - Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
D.C.M.	26 June 41 Camp Borden	Sec 15 (1) A.A. AWL from 1345 hrs 5 May 41 to 0220 hrs 23 May 41. Absent 17 days 12 hrs 35 min.	60 days detn	10 days remission

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 10th day of Mar 44.

J. Smith Lt.
(J. Minister) Lt.
Adj No.1 C.G.R.C.

THE JUDGE ADVOCATE GENERAL, Canadian Army Overseas, having advised that the sentence in these proceedings is invalid, I hereby direct that the sentence be and the same is hereby removed and the accused relieved of all consequences of such sentence, and I do hereby sentence the accused, C-5514 Pte Thomas William Duggan No1 Canadian General Reinforcement Unit, to undergo detention for a period of six (6) months, such sentence to be effective as if passed by the court-martial on 10 Mar 44.

In the Field
3 Apr 44

(J.H.Roberts)Maj-Gen
Comd
Cdn Rft Units

5-D-80

Ste. Dugnette, C. J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A 23191 Pte Clarence Joseph DUQUETTE NNSH att 1 Cdn Dis Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA sec 15(2)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N.A. beginning on (date) N.A. (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of 144 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for eighteen (18) months.

(Sgd) ..... Judge-Advocate, if any. 12 Mar 45 Date awarded. (Sgd) J.B. Bowman Major President. (RP 45, 50.)

(See back of Convening Order as to assembling and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further ordered.(1)

(1. AA 57A. Delete if not used.)

(Sgd) (G S N Goulding) Brigadier, Commanding 2 Cdn Base Aft Gp

Date 12 Mar 45 Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
A 23191 Pte Duquette, C.J.	22 Mar 45	Lt-Col. Comdg. 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN [illegible] 160 5980

RECEIVED 19 APR 1945 JAG BRANCH C.M.H.Q.

CFAF86 (To lieu of AFB's 407/P & D/1098 [illegible])

FIELD GENERAL COURT-MARTIAL 4/38B

Convened [illegible]rigadier G S N Goulding, ED Comd 2 CBRD dated 11 Mar 45

ACCUSED.

(As to joint trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 23191	Pte	Clarence Joseph	DUQUETTE	NNSH att 1 Cdn Dis Centre

PROCEEDINGS REVIEWED by Bill Capt 21 Apr 45 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fld in (country) BELGIUM on (date(s)) 12 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 26/69

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereon. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4) JMB JMB

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1430 hours trial commences. JMB

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (1).~~ JMB JMB

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to NIL as interpreter? Ans NIL

The Interpreter is sworn.(1) Do you object to NA as shorthand writer? Ans NA

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 22, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J M BOWMAN	48th Highrs att 1 Cdn Dis Centre
Member	Capt	E B Carmael	HQ 4th Cdn Armoured Div
Member	Lt	E F McManus	NNSH att 1 Cdn Dis Centre
Judge-Advocate			
Prosecutor	Capt	F C Kara	1 Cdn Officers Dis Centre
Defending Offr	Capt	N D Fowler	1 Cdn Officers Dis Centre

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B), and fn 2 were not followed. See Dir p 23.)

A8. The accused A 23191 Pte Clarence Joseph DUQUETTE before arraignment make(s) (no) (a) plea. (1) JMB

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the submissions made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references on fms to RoP cited. Insert in AB took and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. JMB

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form Part II.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. JMB

2 CBRD was PC.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on AA charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on AA charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D6.*)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans...... Do you intend to call witnesses on your behalf?
Ans..... Are they witnesses as to character only? Ans.....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 90(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*b*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 137(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO.
(1. *If evidence has already been given for accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ~~A~~ and Ex D respectively.(3)
(1. *AFB* 355 *or AFB* 296. 2. *Make* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. YES IN MITIGATION.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*b*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 309, 2323, *MML p* 90, 737-738. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1B), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, A-23191 Pte Clarence Joseph DUQUETTE, North Nova Scotia Highlanders, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE
in that he
In the Field, absented himself without leave from 0900 hrs 9 Nov 44 until apprehended at 1130 hrs 26 Feb 45 at GHENT Belgium.
(Absent 109 days 2 hrs 30 minutes)

In the Field
/# Mar 45

(A C Hood) Lt col
O C 1 Cdn Disciplinary Centre

To be tried by Field General Court-Martial

In the Field
// Mar 45

(G S N Gostling) Brigadier
Comd
2 Cdn Base Rft Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-23191	Pte		Clarence Joseph	DUQUETTE	NNS Highrs att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 11 Mar 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J M BOWMAN	48th Highrs att 1 Cdn Dis Centre

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	G B CARTWEL	RCA att 1 Cdn Disciplinary Centre
Lt	to be detailed by OC 9 CBRBn	9 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

[signature] (Signed personally. RP 105 fn 2.) (G.S.M. Gostling)

Brigadier (Rank.)

Date 11 Mar 45

Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 98 (In lieu of AFA 2) 40/F & S/1697 (6142)

(See overleaf for oaths and notes for use on trial.)

JMB

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined R22191 (No.)
Pte (Rank) Duquette, P.J. (Name) and in my opinion he is fit ~~unfit~~ to undergo trial by Court-Martial.

Station 1 Cdn Disciplinary Centre

(Sgd) (Medical Officer)

Date 12 Mar 45

Unit 1 Cdn Disciplinary Centre

MFB 24[illegible]

Ex. A.

Summary of Evidence in the case of A-23191 Pte Gerard Joseph DUQUETTE, North Nova Scotia Highlanders, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt 11 Order No. 72 dated 10 Dec 44

Exhibit "B" - Certificate of apprehension dated 26 Feb 45.

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidnece you give will be taken down in writing and may be given in evidence.

A. No.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C)(D)(E)(F) and (G) have been complied with.

(W D Hungerford) Capt
Officer detailed to take Summary of Evidence.

Dated in the Field
Mar 45

413

Plea in Mitigation in the case of A 23191 Pte Duquette C.S.

Ex. "B"

Pte Duquette enlisted 29 Jul 41 and arrived overseas 1 DEC 43. He is single and has had ~~four or~~ several ~~fine~~ offences, but all in Canada, ~~the most serious being approx. 5 days AWL~~

Pte Duquette went into action on D Day and was in action until being wounded 25 Jul 44. He arrived back in France 1 Sept 44 and stayed until 1 Nov when he was evacuated because of battle exhaustion. The next time he joined the Bn was in the rest area at Ghent. At this time Pte Duquette was still very shaky and nervous. At Leopold Barracks he was placed on guard duty, and, because of his nervous condition, fired two rounds from his rifle during the night. He was reprimanded by his Company Sergeant Major and went absent the following day because he could stand it no longer. Pte Duquette made numerous trips to the MO for sleeping tablets because he found it impossible to sleep.

Because of the good service rendered by this soldier to the date of going absent, and, because of his condition, at the time I ask the clemency of this Court by awarding the minimum sentence

W.D. Fowler Capt
Defending Officer

[illegible]

EX. "E"

PART II ORDER EXTRACT FORM

99/20/ NNS/1 (A5c)

TO: OC
1 CANADIAN DISCIPLINARY CENTRE,
Canadian Army Overseas.

7 MAR 19 45

EXTRACTS FROM: UNIT NORTH NOVA SCOTIA HIGHLANDERS

Part II Order No. 72 dated 10 DEC 44

ABSENT WITHOUT LEAVE

AWL from 0900 hrs 9 NOV 44 Still absent 0900 hrs 15 NOV 44 (5th day)
A23191 Pte DUQUETTE O J

Certified to be a true extract from the regimental books and documents in my custody.

Officer IC Records
Cdn. Sec. 2 Ech. HQ. 21 A Gp.

The following documents are { attached. Please acknowledge receipt on attached duplicate. / required. Please forward same.

Originating Clerk's Initials

for
Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70 ECH—6
26/7 & 8/1276 (6704)

Ex. F.

CERTIFICATE UNDER P.C. 2797 10 APRIL 1942

I certify that Reg No 0-23176 . . Rank . PTE. . . . Name . Duguette C.J. . .

Regiment NORTH NOVA SCOTIA . . REGT. . Unit 3RD CDN. DIV. . . . . .

Was apprehended by the Canadian Provost Corps in . GHENT . . . (BELGIUM) . . . . . .

at 1130 . . . . Hours on the 26 . . . day of . FEB . . . 1945 as an absentee without leave and at the time of his arrest he was wearing (Military Uniform) or (~~Civilian Clothes~~).

~~Signature of Provost Marshal, Assistant Provost Marshal or other Officer or the Commanding Officer of the protion of His Majesty's Service, [illegible] officer~~ officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on arrest.

(Strike out part inapplicable)

[illegible] Cpt

R. O. Dunn

II Cdn Provost Cdy
Cdn Provost Corps.

[illegible] Whitehead "B" W D [illegible] Capt

Ex. C.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A-23191	Pte	DUQUETTE CJ	NNS Highlanders

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA15(1) AWL ..... 15 times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 31 Aug ~~41~~ JWB 41

Date of last entry in Field Conduct Sheet 19 Sep 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for Nil beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for ~~14~~ JWB days in military custody, *i.e.*, Nil days in open arrest, ~~14~~ JWB days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 20

6. The date of his attestation ~~calling up for military service~~ is 29 Jul 41

7. The service which the accused is allowed to reckon is

8. The accused is in possession of‡ CVSM & Clasp

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

		Date of Promotion.
In the substantive rank of	//////////	
In the war substantive rank of	//////////	
In the acting rank of	//////////	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

JWB

(27833) Wt.24239/2404 24,000 7/44 A.& E.W.Ltd. Gp.498 Forms/B.296(War)/1

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		No convictions by a Court Martial on M.T.M.6		

Ex. C.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 12 day of Mar 45

J. H. Dibb Capt
Admin. Offr.
1 Cdn Disciplinary Centre

Ex. D

No A23191 Name DUQUETTE CJ Sqn, Battery, or Company | Corps C I C | Date of enlistment 29 Jul 41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/156 (5412)

Date of last entry in Company Conduct Sheet N/a | No. and date of last drunk N/a | Period not reckoning towards freedom from extra fine 2 | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	18-2-43	Pte		AA15(1) AWL from 0100 hrs 18-2-43 to 1520 hrs 18-2-43	Cpl McDougall	7 days CB	19-2-43	Major Bennett	1 day pay FR&I 149(1)(a)
Camp Borden	10-4-43	Pte		AA15(1) AWL from 1800 hrs 10-4-43 to 1945 hrs 12-4-43	CQMS Tomlinson	168 hrs Det.	13-4-43	Major Benis	3 days pay FR&I 149(1)(a)
Camp Borden	3-5-43	Pte		AA15(1) AWL from 0200 hrs 3-5-43 to 1200 hrs 12-5-43	Sgt Petrie Cpl McDougall	28 days Detn	1-6-43	Col Hare	10 days pay FR&I 149(1)(a) Cost of app $16.80
Camp Borden	29-8-43	Pte		AA15(1) AWL from 2200 hrs 29-8-43 to 1210 hrs 31-8-43	Sgt Petrie Cpl McDougall	7 days CB	1-9-43	Major Bennett	2 days pay FR&I 149(1)(a)

(PTO)

Ex. D Ex. D

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	19-9-43	Pte		AA15(1) A.W.L. from p 200 hrs 19-9-43 to 2155 hrs 19 Sep 43	Documentary	5 days CB	21-9-43	Major Smith	1 days pay FR&F 149(1)(a)

Certified to be a true extract from the regimental books and documents in my custody.

"R S WILLIAMS"

Officer i/c Records "X" Can Sec Ech HQ 21 A Gp.

Certified to be a true copy of M.D.M.L. in my possession

J.H. Dibb Capt

Admin. Offr.

1 Can Disciplinary Centre

Jill B

No A-23191 Name DUQUETTE C J Sqn, Battery, or Company Corps CIC Ex D Date of enlistment 29 Jul 41 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/PAS/136 (5418)

Date of last entry in Company Conduct Sheet n/a No. and date of last drunk n/a Period not reckoning towards freedom from extra fine Sheet No 1 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Chatham	31-8-41	Pte		AA 15(1) A W L from 2300 hrs 31-8-41 to 1535 hrs 2-9-41	Sgt Morrison	3 days CB	3-9-41	Maj Bingle	2 days pay FR&I 149 (1)(a)
Camp Borden	4-1-42	Pte		AA 15(1) A W L from 0630 hrs 4-1-42 to 0630 hrs 12-1-42	Sgt Swan Documentary	10 days CB 8 days Pay AA46	12-1-42	Maj C Goodday	8 days pay FR&I 149 (1)(a)
Camp Borden	16-2-42	Pte		AA 15(1) A W L from 0630 hrs 16-2-42 to 2130 hrs 21-2-42	Sgt Eagle Cpl Alexander	10 days CB 10 days pay AA46	28-2-42	Maj C Goodday	6 days pay FR&I 149(1)(a) Cost of app. $10.20
Camp Borden	15-3-42	Pte		AA 15(1) A W L from 0700 hrs 15 Mar 42 to 1345 hrs 31 Mar 42 (Close Arrest) (Cost of App)	L/Cpl Sawer Documentary	21 days Detn	4-4-42	Lt Col M P Hare	17 days pay FR&I 149 (1)(a) & Cost of App (Amt not shown)

JMB

(PTO)

Ex. D.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	26-4-42	Pte		AA15(1) AWL from 0700 hrs 26-4-42 to 0330 hrs 14 May 42 (Cost of App)	Sgt Eagle Cpl Esson Cpl Rains	28 days Detn	22-5-42	Lt Col Hare	18 days pay FR&I 149(1)(a) & Cost of App (Amt not shown)
Camp Borden	22-6-42	Pte		AA15(1) AWL from 0230 hrs 22-6-42 to 0950 hrs 8-7-42	Cpl Rains Cpl Gibson	21 days forf of pay	9-7-42	Lt Col Hare	17 days pay FR&I 149(1)(a)
Camp Borden	18-7-42	Pte		AA15(1) AWL from 0600 hrs 18-7-42 to 2330 hrs 24-7-42	Cpl Rains L/Cpl Morgan	15 days forf of pay	25-7-42	Lt Col Hare	7 days pay FR&I 149(1)(a)
Camp Borden	10-8-42	Pte		AA15(1) AWL from 0600 hrs 10-8-42 to 2200 hrs 20-8-42	L/Cpl Crocker	14 days CB 10 days forf of pay	21-8-42	Lt Col Hare	11 days pay FR&I 149(1)(a)
Camp Borden	7-9-42	Pte		AA15(1) AWL from 0600 hrs 7-9-42 to 1935 hrs 10-9-42	L/Cpl Cook Documentary	10 days forf of pay	16-9-42	Lt Col Hare	4 days pay FR&I 149(1)(a) Cost of App (Amt not shown)
Camp Borden	7-12-42	Pte		AA15(1) AWL from 0200 hrs 7-12-42 to 1200 hrs 8-12-42	Cpl McDougall	3 days CB	9-12-42	Major Bennett	2 days pay FR&I 149(1)(a)

[illegible]

SD-67.

Pte. Dugrenier, E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-56094 Pte Earnest DUGRENIER R de Mtls att 1 Cdn Disciplinary Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA sec 15 (1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and as to loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1) PRO

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for 120 days

(Sgd) ..... Judge-Advocate, if any. 7 Mar 45 Date awarded. (Sgd) P S Osler major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 33, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

(Sgd) .....

Date 8 Mar 45 (Brig) Commanding 2 Cdn Base Rst. Gp. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

D-56094 Pte Dugrenier, E 12 Mar 45 A Ward Lt-Col. Comdg, 1 Cdn Disciplinary Centre

CR #286 10 Months

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 160. 5-D-67

RECEIVED 15 APR 1945 AFHQ

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA51) 40/P&S/1868 (40/1) 4/38B

Convened by Order of Lt-Col V.W. Hugman A/Comd 2 CBRG dated 6 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.
D-56094	Pte	Earnest	DUGRENIER

R de Mtls att 1 Cdn Disciplinary Centre

PROCEEDINGS REVIEWED Jacques de Billy Capt 18 Apr 45

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER'S HQ 1 CDN CORPS CMHQ.

Held in the Fd in (country) BELGIUM on (date(s)) 7 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~as interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to~~ ~~as shorthand writer? Ans~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans Nil.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	P S Osler	RCA attd 3 Cdn INFD
Member	Capt	F J M Rocque	CIC 13 CBR Bn
Member	Lt	J V Vilandré	CIC 10 CBR Bn
Judge-Advocate			
Prosecutor	Lt	N G J P Lyonzon	CIC 10 CBR Bn
Defending Offr	Lt	N G Page	CIC 10 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans Yes.(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 3.)

A8. The accused D-56094 Pte Earnest DUGRENIER before arraignment makes(s) (two) (1) plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vol 4 P 113.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence, (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), to call witnesses as to character and make an address in mitigation of punishment.(1)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(1), or which show provocation or extenuation in respect of which in your interest the witness for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused : Do you wish to make a statement ? Ans None (4)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. RP 115. 2. RP 40(A); see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if on his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (d), RP 45, 103(A). 2. AA 54(3), RP 45, 103. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans None
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 143(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes I'm sorry for what I've done (2)
(1. RP 37(C), 46(2). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its proviso, is to be awarded so to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 94, 118, 119(A), KR Con 808, 830, 563-566, Overseas AO 309, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), (2B), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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CHARGE SHEET

The accused, D-56094 Pte Ernest DUGRENIER, Regt de Maisonneuve, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT
LEAVE
in that he
In the Field, absented himself without leave from 1800 hrs 6 Feb 45 until apprehended at at BRUSSELS, Belgium at 2145 hrs 18 Feb 45.
(Absent 12 days 3 hrs 45 minutes)

In the Field
5 Mar 45

(A C Hood) Lt col
Comd 1 Cdn
Disciplinary Centre

To be tried by Field General Court-Martial

In the Field
6 Mar 45

~~(T S N Gostling) Brig~~
A/ Comd
2 Cdn Base Rft Gp

MFB 246 P10

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined D56094 (No.)

Pte. Dugrenier - E. and in my opinion he is
(Rank) (Name)

fit to undergo trial by Court-Martial.
~~Unfit~~

Station Cdn Disc Centre

[signature] (Sgd)
(Medical Officer)

Date 7 Mar /45

Unit Cdn Disc Centre

P70

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFAB) 40/PAS/1697 (2658)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-56094	Pte		Earnest	DUGRENIER	R de Mais att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 6 Mar 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	P S Osler	RCA att 3 Cdn ARTD

MEMBERS.

Captain	to be detailed by OC 13 CBR Bn	13 CBR Bn
Lieutenant	to be detailed by OC 10 CBR Bn	10 CBR Bn
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country)

W.J. Hugman (Signed personally. RP 105 fn 2) Lt-Col (Rank.)

(W.J. Hugman)

Date 6 Mar 45

Commanding 2 Cdn Base Ft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

PLEA OF MITIGATION

1 – PTE DUGRENIER . E . R. DE MAIS.

Pte Dugrenier is single and is 25 years old. Has been in Militia Force four years ½ before the war and went active in sept. 1939 with the R. de Mais (2nd D.U.) Came in France with his unit one month appr. after D-Day.

Was wounded twice, first time went to the hospital, second time refused to be evacuated. He enlisted with his two brothers, one was killed in action and the other was wounded and Pte Dugrenier did not hear nothing about his brother since he has been wounded. His morale came very low. He had been promoted to sergent in France and one day he offered his resignation in Holland because he was discouraged and after have working very hard he was tostired to carry on. He felt he needed a rest and one night while being drunk he went A.W.L.

He was apprehended on his way back to meet trucks which were leaving Brussels to his unit. Pte Dugrenier is ready to go back to his unit ~~any~~ time. He is ready to swear that.

Pte Dugrenier deserves our sympathy and flask for the leniency of the Court.

Gérard Sagt L.

Defending Officer

PSO

7 mar 45

Exhibit A p/c

Summary of Evidence in the case of D-56094 Pte DUGRENIER E, Regt de Maisonneuve, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave.

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" Certified true copy of Extract from Pt II Order No 11 dated 20 Feb 45.

Exhibit "B" Certificate of apprehension dated 19 Feb 45.

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

(W D Hungerford) Capt
Officer detailed to take Summary of Evidence.

Dated in the Field
5 Mar 45.

PART II ORDER EXTRACT FORM

TO OC
1 Cdn Disciplinary Centre

99/20/ RDEMAIS/1 (A5C)

28 FEB 45 19

EXTRACTS FROM: UNIT LE REGIMENT DE MAISONNEUVE

Part II Order No. 11 dated 20 FEB 45

AWL from 1800 hrs 6 FEB 45 Still absent 1800 hrs 14 FEB 45 (8th day)
D56094 Pte DUGRENIER E

This is Exhibit "A"
[illegible]
Capt

Certified to be a true extract from the regimental books and documents in my custody.

[signature]
Officer IC Records
Cdn Sec GHQ 2 Ech 21 A Gp

The following documents are { attached. Please acknowledge receipt on attached duplicate. / required. Please forward same.

For your information

Originating Clerk's Initials

for
Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70 BCM—6

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42

CERTIFY THAT No D.56094 Rank Pte. Name DUGRENIER E.

Unit Regt. de Mais (2nd. Con. Inf. Div) "D" Coy was arrested at BRUSSELS (Place)

at 2145 (hour) on 18.2.45 (date) and that at the time of his arrest he was wearing (military uniform) or ([illegible]).

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on arrest.

(J. TWEDDLE) A/Capt
OC. 2 Con L of C. Pro. Coy

FIELD
19 FEB 45

Exhibit "B"
W.D. Hunan Sub
Capt

Exhibit B 990

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-56094	Pte	DUGRENIER E	Regt De Maisoneuve

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For 15(1) Awl — 3 times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 8 apr/44

Date of last entry in Field Conduct Sheet 27 Jan/45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for NO beginning on the — day of —

4. The accused has been awaiting trial on the present charges for NO days in civil custody; and for 17 days in military custody, *i.e.*, NO days in open arrest, 17 days in close arrest; of which NO days were spent in hospital.

5. The present age of the accused is 25

6. The date of his attestation ~~calling up for military service~~ is 1st Sept/39 O'seas 6 Sept/40

7. The service which the accused is allowed to reckon is.

8. The accused is in possession of‡ ~~[illegible]~~

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27633) Wt.24939/3404 24,000 7/44 A.& E.W.Ltd. Gp.498 Form B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
(Soldier's state was)				

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 15th day of March 1945

Admin. Offr.
1 Cdn Disciplinary Centre

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

Certified true copy of extract from Pt 11 Order No 11 dated 20 Feb 45 "A"

Certificate of apprehension dated 19 Feb 45 "B"

I, D-56094 Pte DUGRENIER E, acknowledge having received one copy of the Charge Sheet and one copy of the Summary of Evidence, free of charge on 5 Mar 44.

E. Dugrenier

D-56094 Pte Dugrenier E

EE 139

PTE DUGUAY E.V.

EE-139 "X"

John D. Bell Maj
President.

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this NINETEENTH day of MAY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of FOURTH CANADIAN INFANTRY BRIGADE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; XXXX

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
No: B18677 Private Charles Victor DUGUAY, 1st Bn Royal Regiment of Canada, a soldier of the Canadian Army (Active).	FIRST CHARGE A.A. Sec., 15 (1) "Absenting himself Without Leave"	Guilty	Guilty	
	SECOND CHARGE A.A. Sec., 40 "Conduct to the Prejudice of"	Guilty	Guilty	
	THIRD CHARGE A.A. Sec., 40 "Conduct to the Prejudice of". See Charge Sheet Attached.	Guilty.	Guilty Detention 90 days. Stoppages of pay. £2/9/10. John T. Bell Maj President 20 May 43.	22 May 43 Confirmed J.E. Sager

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):

(Signed) J.E. Sager (J.E. SAGER) Brigadier, Commanding 4 CDN. INF. BDE. Convening Officer (e)

(Signed) John T. Bell Major R.H.L.I. President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the twentieth day of May, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

*(~~3. The interpreter~~) J.T.B.
*(~~4. The officers under instruction~~) J.T.B.

were duly sworn.

* Omit if not applicable.

Signed this 20th day of May 1943.

John T. Bell Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

J.T.B. ~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

J.T.B. ~~Signed this day of 19~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~) J.E.S.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 22 day of May 1943

J.E. Sager
Confirming Officer.

Promulgated and extracts taken in the case of B18677 PTE DUGUAY CHARLES VICTOR.

(a) (Dated) 22 MAY 1943 (Signed) [signature] H.Col. 1 R.Regt C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

By
John J. Ball Maj
President.

CHARGE SHEET

The Accused, No. G-18677 Pte. DUGUAY, Charles Victor, 1st Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15(1)
Army Act.

Absenting himself without leave

in that he

at LITTLEHAMPTON did absent himself without leave from 2245 hrs 18 Apr 43 until apprehended by the ~~Canadian~~ Corps of A. Military Police at BIRMINGHAM at 1855 hrs 9 May 43 (total absence - 20 days, 20 hrs and 10 minutes), and the cost of return to his Unit being two pounds nine shillings and ten pence.

SECOND CHARGE
Sec 40
Army Act.

Conduct to the Prejudice of Good Order and Military Discipline

in that he

at BIRMINGHAM on the 9th day of May 1943 was improperly in possession of a document purporting to be a genuine leave pass, well knowing that it was not genuine.

THIRD CHARGE
Sec 40
Army Act.

Conduct to the prejudice of good order and Military Discipline

in that he

at BIRMINGHAM on the 9th day of May 1943 was improperly in possession of four blank leave passes stamped with the Orderly Room Stamp of 1 Bn The Royal Regiment of Canada.

A.A. Duncanson
(A.A. Duncanson) Major,
A/Officer Commanding,
1 R. REGT. C., CDN. ARMY.

In the Field
16 May 1943.

To be tried by Field General Court Martial.

19 May 43. J.E. Sage
(J.E. Sage) Brig.
Comd 4 Cdn Inf Bde

John D. Bell Major
President.

MEDICAL OFFICER'S REPORT

I certify that I have examined this morning
No. G.18677 Pte. Duguay C.B.
1 Bn. Royal Regiment of and that he
Of Canada. is in a Good state of health,
and Physically fit to undergo Trial by Court martial.

(J.R.Nixon) Major
Medical Officer
1 Bn. Royal Regiment of Canada.

Station In the Field

Date 30 May 43.

M. F. B. 246
28M—6-41 (792)
H.Q. 1772-39 460

John J. Bell Major
President

MEDICAL OFFICER'S REPORT

I certify that I have examined this morning
No. G.16677 Pte. Duguay C.B.
1 Bn. Royal Regiment of and that he
of Canada. is in a Good state of health,
and Physically fit to undergo Trial by Court martial.

J.R.Nixon Major

(J.R.Nixon) Major
Medical Officer
1 Bn. The Royal Regiment of Canada.

Station In the Field

Date 20 May 43

M. F. B. 246
MM—6-43 (792)
H.Q. 1171-99-440

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for ~~a~~ FIELD General ~~and District~~ Court-Martial

Proceedings of a FIELD GENERAL Court-Martial held ~~at~~ in Nr. Field on the 20th day of MAY 1943 by order of BRIGADIER J.E. SAGER Commanding 4 Cdn. Inf. Bde dated the 19 day of MAY 1943

President.
MAJOR J. T. BELL 1 Bn R.H.L.I.

Members.
Capt. J.W.C. HUNTER 1 Bn R.V.R. ATTD R REGT C
LIEUT B.W. RICH 1 Bn R REGT C

~~Judge Advocate.~~

Trial of *B 18677 PTE. Charles Victor Duguay 1 Bn R REGT C.

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

~~The Court satisfy themselves that is not available, by reason owing to~~

~~waiting member takes his place as a member of the Court~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Capt J.D. Fairbank 1 Bn R Regt C

~~Counsel~~ defending officer† Capt C. MacLaughlin 1 Bn R REGT C

At 9.00 o'clock the Trial commences‡

The order convening the Court is read, and is marked "X" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No. Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
16M—6-40 (5715)
H.Q. 1772-39-224

B

The President, and members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty. *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Guilty *Answer.*

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

The accused having pleaded Guilty to All the charges the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

f.2b. ~~*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]~~

The accused B 18677 Pte Charles Victor Duguay 1 Bn R. Regt C.

is found guilty of ALL Charges.

*The summary (~~or abstract~~) f.2b. of evidence is read, marked J. J1 J2 J3 J4, and signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Yes Sir.

Answer. The accused in mitigation of punishment says:—

f.2b. [~~or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.~~]

"Sir when I transferred to this outfit from the First Division after Dieppe I was here about 2 weeks when I had a telegram that my Dad had died. ~~Shortly~~ f.2b. ~~after that my sister died and~~ Shortly after that I had a sister and a brother who got married. My Dad had a farm over home. He was a returned man and when my brother got married, my brother left my mother alone on the farm. Since my father's death all my assigned

Instruction. *If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

pay to my mother has had to go to rent
on the farm. shortly after christmas
I wanted to get married myself and
I realised that if I did my mother
would not be able to pay the rents
for the farm.

The accused produced a letter pertaining to the court which was duly read confirming the above statement by the accused.

John D. Bell Major
President.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No Sir.

Answer.

Evidence as to character.

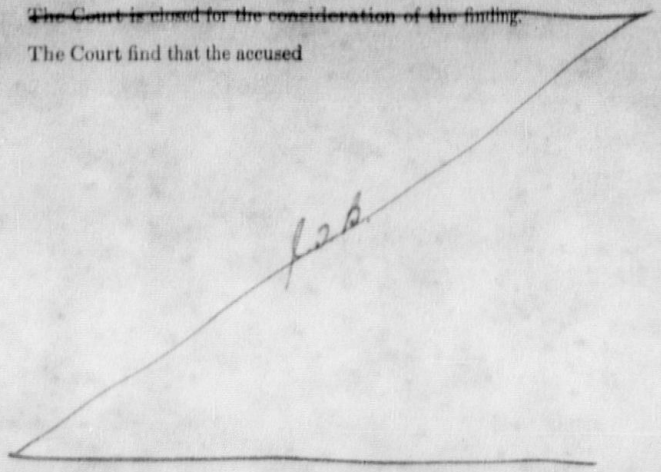
E

~~Finding~~*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

The Court find that the accused



Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

~~The Court being reopened, the accused is again brought before it.~~

Evidence of character, &c.

Capt J.D. Fairhead 1st Bn R. Regt. C. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes I produce substitutes for MFB 29a and MFM 6

The above statement [~~with the schedule of convictions and of crimes in which trial has been dispensed with~~] is read, marked K/L signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes Sir.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes I have.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes Sir.

*Question.—If, by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

~~Cross-examined by the accused.~~

The accused declines to cross examine.

Question to the accused.

Do you wish to address the Court? *Answer.* Yes Sir ~~I brought~~ any Defending Officer has come.

The Court is closed for the consideration of the sentence.

F

~~Sentence~~

~~The Court sentence the accused~~ Sentence.

Statement by the Defending Officer:

"Sir I would just like to draw attention to the fact that the accused has been eleven days under close arrest. Secondly the conduct sheet will be seen to be almost a clean sheet. There are 2 charges since he has been overseas and there are no charges of a serious nature. Finally I would point out to the Court that the accused own statement while in no way excusing the offences makes it possible I think for the Court to consider a light sentence so that this man whose record has not been bad will not be put in such debt that he will not be able to get out of it in a short time."

John D. Bell Major
President.

Exhibit [illegible] "J"

Expense Voucher Re—: J. Fauteuil capt. Ref: K.R. & O. (Can) 539

John J. Hall
President

Reg. No. G-18677 Rank Pte Name Duguay, C.V. Unit R. Regt. of Canada

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars ½ Portion	Amount		
14 May 43	Escorts return fare from LONDON To Pulborough		3	10
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Pulborough		3	10
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		7	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:50
40/P & S/483

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. G-18677 Rank Pte Name Huguay, C.V. Unit R.R. of Can

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Birmingham

Date	Particulars	Amount		
13 May 43	Escorts return fare from LONDON To Birmingham		17	0
	Prisoners single fare to LONDON From Birmingham		8	6
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		16	8
	Total £	2	2	2

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:55
40/P & S/483

exhibit B. [redacted] HD
H. Fairhead capt.

"J2"
John J. Bell Maj
President

Certificate in accordance with the Army Act Section 163 (1) (ii)

I certify that No. G. 18677 ..... Rank. Pte ..... Name ... DUGAY .....

Unit 1st Bn. Royal Regt. Canada ..... was arrested at. BIRMINGHAM .....

..... at. 1855 ..... hrs. on. 9 MAY 1943 .....

Station. B-HAM ..... Signature of Provost Marshal, A.P.M. or other officer into whose custody the a/n person was taken on arrest. [signature]

Date. 10 May 1943 ...

O.C. Birmingham Detachment,
C.M.P.

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 OF 10 APR 43.

I CERTIFY that No. C-18677 . Rank . Pte. . Name . Duguay, C.W. . . . .

Unit "A". Coy.. Royal Regt. of Canada was arrested at Birmingham . .(Place)

at . 1855 . .(hour) on 9-May-43 . .(date) and that at the time of his arrest he was wearing (Military Uniform) or (~~Civilian Clothes~~).

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

. . . . . Capt.

(W. Fern) D. A. P. M.,
London Area

Statement of EVIDENCE in the case of John J. Bellhaj President.

NO. C. 10-677. PRIVATE. C. V. DUGUAY.

1st BATTN. THE ROYAL REGIMENT OF CANADA

"A" COMPANY

LITTLEHAMPTON

SUSSEX.

Exhibit D

Sir

At BIRMINGHAM on MAY. 9th 1943 about 1855 hrs. I was on duty at SNOWHILL STATION where I saw the above named soldier. I asked him if he was on leave and he replied, "Yes I am" and handed me the attached leave pass. I examined it and informed him I suspected it of being a forgery. He replied "Its all in order," but after further questioning he admitted his pass was forged and that he was absent fourteen days. When asked for his M.B.I. he said, "My part I has been in Company office for some months but I have my part two" When questioned as to how he obtained a stamped leave pass, he replied, "I have a pal in the office."

I arrested and conducted him to the Central LOCK-UP STEELHOUSE LANE where on being searched, four (4) stamped leave passes, also attached were found; his case was searched and an M.B.I. part III was found belonging to B.67508 PRTE. FOSTER. H.E. also one ante Gas wallett, boot brush, holdall, and envelope containing four (4) stamped leave passes and two (2) Canadian National Registration

certificates also addressed to FOSTER.
When questioned about this he said, I came away with FOSTER who gave me his hit to look after; he is in LONDON now"
I informed him he would be charged with the seven (7) named offences, administered the usual caution, and obtained his particulars for report. He was detained.

BIRMINGHAM. A.H. Miles L/cpl.
MAY. 9. 1943. C. M. POLICE.

Sir
I have read over and corroborate the above statement.
BIRMINGHAM. Chas McKelvie L/cpl.
MAY. 9. 1943. C. M. POLICE.

"J"

John D. Bellhouse
President.

SUMMARY OF EVIDENCE in the case of No.B-18677 Pte DUGUAY, Charles Victor, 1st Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION: Captain A.K. Reid,(Royal Canadian Regiment) #3 Con Inf Reinf Unit (sworn) states:-

I present:

Certificates of cost of return, purporting to be signed by an Officer of No.6 Canadian Provost Coy(Exhibit 'A')

Certificate of apprehension, purporting to be signed by Lieut B. Winter of the Corps of Military Police, BIRMINGHAM (Exhibit 'B')

both of which relate to the accused whom I recognize.

The accused declines to cross-examine.

A.K. Reid

(A.K. Reid) Captain
1 Bn The Royal Regiment of Canada (#3 CIRU)
Canadian Army

SECOND WITNESS FOR THE PROSECUTION : B-66954 CSM FLYNN A., 1 Bn The Royal Regiment of Canada, (sworn) states:-

On the morning of 19 Apr 43 L/Cpl Jackson reported to me that Pte Duguay, Charles Victor, was absent from his quarters from 2245 hrs on the 18 Apr 43. I present as Exhibit 'C' the Absentee Report turned in to me and signed by L/Cpl Jackson. To the best of my knowledge B-18677 Pte Duguay, Charles Victor, has remained absent from 2245 hrs on the 18 Apr 43 until apprehended by the Corps of Military Police, BIRMINGHAM, at 1855 hrs on the 8 May 43.

The accused declines to cross-examine.

A. Flynn CSM

(B-66954 CSM Flynn, A.)
1 Bn The Royal Regiment of Canada
Canadian Army.

THIRD WITNESS FOR THE PROSECUTION: L/Cpl Miles, Corps of Military Police, BIRMINGHAM.

A statement signed by L/Cpl Miles has been read to the accused and is attached to this Summary as Exhibit 'D'.

Having regard to the loss of time and expense involved the attendence of this witness cannot, in my opinion, be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

The accused does not wish to call any witness in his defence at this point.

CERTIFIED THAT R.P.4e complied with.
In the Field,
17 May 43.

D. Fairhead Capt

(D.D. Fairhead) Capt & Adjt.,
1 Bn The Royal Regiment of Canada
Canadian Army
Officer detailed to take the Summary of Evidence.

If a calling out of the whole Army Reserve is ordered, every soldier on pass must return immediately to his unit without waiting for instructions.

"A" 14

John F. Bell Maj
President

No. "A" Coy. 1st Bn. R. REGT. C.

Army Form Bldg. (In pads of 100)

PASS

No. 618677. (Rank) Pte (Name) Duguay C.V.

has permission to be absent from his †quarters-duty, from A.D.

2359 hrs. 6. may 43. to 2359 hrs. 15. may 43.

for the purpose of proceeding to* Burmington

(Station) in the field

6 may 43.

3 3 Wright

(Date) 6 may 43.

O.C. "A" Coy. 1st Bn. R. REGT. C.

† Delete whichever is not practicable.
* Destination not required unless absence is to be [illegible], unless notification is desirable owing to local conditions or to necessary to make provision of [illegible] not thereof or reduced fare.

CROWN COPYRIGHT RESERVED

ABSENTEE REPORT. John F. Bell Maj (Squadron, Battery, Troop, Company) [illegible] B 290 [illegible] of 7.)

Army No.	Rank and Name	When absent	Hour of Return	[illegible]	Remarks
618677	Pte Duguay	22 45 hrs 18 Apr/43		Exhibit C [illegible] capt	[illegible] capt

Date 18/Apr/43

[illegible] Orderly Sergeant.

[illegible] Name Duguay, C. V. Sqn., Battery, or Company "A" Corps 15th Bn. R. Regt. P. Date of enlistment 26/6/40 G.C. Badges Service or Proficiency Pay John F. Kyle Major Pres.

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Proceeded Overseas 11 Dec 40					
Aldershot N.S.	27/1/41	Pte.		Leaving his post while on Camp Patrol	Col. Murphy, L.C. Dufour	Forfeits 3 days Pay. 14 days C.B.	27.1.41	Lt. Col. J. Jeffrey	
Laurentide Camp	19/7/41	Pte.		A.W.L. from 0730/19-7-41 till 1345/19-7-41	Sgt Butler Documentary	5 days C.B.	21.7.41	Major A.E. Watson	Forfeits 1 days Pay
Laurentide Camp	31/10/41	Pte.		AA 15(1) A.W.L. 1330/30-10/41 to 1145/31-10-41	Sgt Peters	7 days C.B.	1.11.41	Col. Watson	1 days Pay
Field	1.6.42	Pte.		AA 15(1) A.W.L. from 2230 hrs 1.6.42 till 2359 hrs 1.6.42	Col. Vineau, L.C. Johnson	7 days C.B. and days ordinary pay	1.6.42	Lt. Col. W.C. Lawson	
Field	1.3.43	Pte.		AA Sec 15(1) A.W.L. from 0600 hrs 1/3/43 till apprehended London 2135 hrs. 8/3/43 (8 days 15 hrs 35 mins) cost of apprehension $ -/10/6	Documentary	21 days F.P. Stoppages of $ -/10/6	20/3/43	Lt. Col. L.L. Nicholls	for 9 days pay. F.R. 1.49 (1)(a)

No. G.18677 Name Duguay, C.V. Sqn., Battery, or Company "A" Corps 1st Bn. R. Regt. C. Date of enlistment 26/6/40

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature of Company, etc., Service of Proficiency Pay John "S. [illegible]" Pr[illegible]

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of order dispensing with trial	Character	Remarks
Aldershot N.L.	25/1/41	Pte		Proceeded Overseas 11 Dec 40	Cpl. Murphy	Forfeits 3 days	27.1.41	Lt. Ordd. J. Jeffrey	
				Leaving his post while on Camp Patrol	L/C Dayohn	Pay 14 days C.B.		Major A.D. Waterson	Pay 14 days
					Sgt Butler	3 days C.B.	21.7.41		
					Documentary	3 days C.B.	1.11.41	L. Wathewson	1 days Pay
Laurentide Camp	19/7/41	Pte		A.W.L. from 0730/19-7-41 till 1345/19-7-41	Sgt Peters	7 days C.B.	1.6.42	Lt. Col. W.C. Lawson	
Laurentide Camp	31/10/41	Pte		A.A. 15(1) A.W.L. 1330/30-10/41 to 1145/31-10-41	Cpl Vaineau	7 days C.B. and days ordny pay			
Field	1-6-42	Pte		A.A. 15(1) A.W.L. from 2230 hrs 1.6.42 till 2359 hrs 1.6.42	L/C Johnson	21 days F.C. Stoppages of £-/10/6	20/2/43	Lt. Col. F.L. Nicholls	Fo. 7 days pay.
Field	1-3-43	Pte		A.A. Sec 15(1) A.W.L. from 0900 hrs 1/3/43 till apprehended London 2135 hrs 9/3/43 (8 days 13 hrs 35 mins) cost of apprehension £-/10/6	Documentary				

(P.T.O.)

No. G.18677 Name Duguay C.V. Sqn., Battery, or Company "A" Corps 13th Bn. R. Regt. C. Date of enlistment 26/6/40 G.C. Badges Service or Proficiency Pay John "F" Bell Major Pres. M.P.M. 6 13 V.P. 171 Rev. 7-41 (1173-30) H.Q. 1773-39-1652

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Proceeded Overseas 11 Dec 40					
Aldershot N.S.	28/1/41	Pte.		Leaving his post while on Camp Patrol	Cpl. Murphy Lt. Dujohn Sgt Butler	Forfeits 3 days Reg. 14 days C.B.	27.1.41	Lt. Col. J. Jeffrey	
Laurentide Camp	19/7/41	Pte.		A.W.L. from 0730/19-7-41 till 1345/19-7-41	Documentary	5 days C.B.	21.7.41	Major O.D. Watterson	Forfeits 1 days Pay
Laurentide Camp	31/10/41	Pte.		AA 15(1) A.W.L. 1330/30-10-41 to 1145/31-10-41	Sgt Peters	7 days C.B.	1.11.41	Col. Watterson	1 days Pay
Field	1.6.42	Pte.		AA 15(1) A.W.L. from 2230 hrs 1.6.42 till 2359 hrs 1.6.42	Cpl Vinneau Lt. Johnson	7 days C.B. and days ordy pay	1.6.42	Lt. Col. W.C. Lawson	
Field	1.3.43	Pte.		AA Ser 15(1) A.W.L. from 0600 hrs 1/3/43 till apprehended London 2135 hrs 9/3/43 (8 days 15 hrs 35 mins) cost of apprehension $ -/10/6	Documentary	21 days F.P. Stoppages of $ -/10/6	20/3/43	Lt. Col. F.L. Nicholls	Fr. 9 days pay. F.R. & I. 149 (1)(a)

(P.T.O.)

Name	Date of offence	Rank	Cause of detention	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified true copy.					
				J.D. Fairhead					
				(J.D. Fairhead) Capt. & Adjt.					
				1 Bn. R. R.C.F. C., CDN ARMY.					

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

John J. Bellehumeur K
President

No. B-18677 Pte DUGUAY C.V., 1st Bn The Royal Regiment of Canada,

Age: 21 Married or Single Single No. of Dependents one(mother)

Date of Attestation: 26/6/40

No of days spent in close arrest(to date of trial) 11.

Civil — Military 11 Hospital — Total 11

DATES OF PROMOTIONS, APPOINTMENTSAND CONFIRMATIONS OF RANK, IF ANY:

A CERTIFIED COPY OF MFM.6 MUST ACCOMPANY THIS FORM.

J.F. Fairhead
(J.F. Fairhead) Captain
Adjutant, 1 R. REGT.C., CDN ARMY.

Dated at: In the Field

This 10 day of May 1943.

(to be dated and signed as of date of trial)

4G-88

Pte. Duguay. E.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G 23171 Pte Ephrem DUGUAY 2 VRD (CCOD)

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st (A 15(1))	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for NYT beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for Sixty (60) days.

(Sgd) Judge-Advocate, if any. Date awarded 22 Nov 44 (Sgd) President (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

yes

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be [not] committed to prison or detention barracks until further orders.(1) yes

(1. AA 57A. Delete if not used.)

Date 25 Nov 44 (Sgd) K. Page Brigadier

Commanding F. Gp. CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
G-23171-Pte Duguay, E. 2 VRD 1 CCOD	27-11-44.	Asst Adjt Capt.

Part II D.O. 169 6/1 Dec 44

O.i/c 2 VRD, 1 CCOD

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 8 DEC 1944 JUDGE ADVOCATE GENERAL'S OFFICE CMHQ

RECORDED AT CMHQ IN AD 160 46-88

FIELD GENERAL COURT-MARTIAL (CFAM6 (In lieu of AFA3) 40/P & R/1606 (2004))

Convened by Order of HQ CANADIAN ARMY TROOPS Comd 2nd Cdn. CORPS dated 21 NOV 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G-23171	Pte	Ephrem	Duguay	2 VRD CCOD

PROCEEDINGS REVIEWED
Lt-Col Aimies Lieut
25 Nov 44
REVIEWING OFFICER, JAG

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 22 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any;~~ and Offrs under instr, ~~if any;~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Instn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(1), accused is (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 561(c). Delete, if not applicable.)

A5. President to accused: ~~Do~~ you object to as interpreter? Ans

~~The Interpreter is sworn.~~(1) Do you object to [illegible] as shorthand writer? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any;~~ and Offrs under instr, ~~if any;~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E. M. Miller EDRC	HQ CRU
Member	Capt	D. P. Nutting	2 CAVC
Member	Lieut	W. H. Gleed	1 CS H FRENS
~~Judge-Advocate~~			
Prosecutor	Lieut	M. E. Nash	2 VRD, 1 CCOD
Defending Offr	Lieut	C Power	1 CARM

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is cleared and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para. If submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. .....
Do you intend to call witnesses on your behalf?
Ans. .....
Are they witnesses as to character only? Ans. .....
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes: addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(6).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. Only that I have made a statement for me
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. D and Ex. C respectively.(3)
(1. *MFR 353 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Only what I've said
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(4).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its punishes, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 136, 182, RP 46-50, 69, 116, 119(A), KR Can 308, 330, Sch 3-566, Overseas AO 307, 1323, MML p 60, 737-738. As to sentences recognd for civil offences by the law of England see AA 41(5), MML p 13E. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, G.23171 Private Ephrem DUGUAY, No. 2 V.R.D., 1 Cdn C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, is charged with:

When on Active Service

FIRST CHARGE
Army Act
Sec 15 (1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, absented himself without leave from 2359 hours, 21 Oct 44, till 0130 hours, 14 Nov 44. (Total time absent: 23 days, 1 hour, 31 minutes).

A.W. Sanders

(A.W. Sanders) Lt. Col.
O.C. Depot Battalion
H.Q. 1 Cdn COD, RCOC

18 Nov 44
Peper Harow,
Surrey

To be Tried by Field General Court Martial.

J.E. Sager

(J.E. SAGER) Brigadier
Cond "F" Gp, CRU

Bordon, Hants.
21 Nov 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/P&S/1697 (2663)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-23171	Pte		Ephrem	Duguay	2 VRD CCCD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 21 Nov 44 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	E. [illegible] Miller, E.D.	[illegible] CRU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt.	~~W.~~ P. B. Nutting	5 CANC RCS
Lieut.	W. H. Glover	1 Sub Wksp RCEME
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England	J. E. Sager	Brigadier
(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)

Date 21 Nov 44 Commanding (J. E. SAGER) Brigadier "F" Sp, CRU
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE OF FITNESS TO UNDERGO TRIAL BY COURT MARTIAL

I certify that I have this morning examined No. G 23171

Rank Pte. Name Duguay E. of No. 2 V.R.D., 1 Cdn COD.

and in my opinion he is Fit ~~Unfit~~ to undergo trial by Court Martial.

(Cross out one N/A and initial)

Station. In the Field

Date. 22 Nov 44.

(Medical Officer) RCAMC
No. 2 V.R.D., 1 Cdn C.O.D.

PLEA OF MITIGATION IN THE CASE OF PRIVATE E. DUGUAY

If it will please the court, I would like to offer a plea of mitigation. First, I would like to make a confession, I would like to confess that when I first accepted my appointment as defending officer, I did so because of the fact that private Duguay being French and having asked for a french-speaking officer, I felt that I was obligated to assist him. But since I have heard his story and looked into his record, I am pleased that I accepted this post as I feel that here is a man who needs all the assistance that I can give him.

Private Duguay, arrived overseas three years ago. He married here and has one child. Last February, he was posted for duty in Italy, and was wounded in May, seriously wounded--the loss of an eye. He spent two months in hospital and since then has suffered continously with terrific headaches. He attended sick parades on account of these headaches, and was told that it was nervous. Private Duguay record previous to receiving this wound shows that he was willing and tried to be a good soldier, but the shock of this wound and the loss of the eye to a young man has left him more or less discouraged and bewildered. He feels that he is of no longer of any use as a soldier and is now employed at Z.V.R.D. on guard duties. This employment, after being in the thick of things overseas has not assisted him any. He feels that he has offered his service to his country, lost his eye in this offer and now he should be free to return to civilian life.

In my opinion, this soldier should be more pitied then censored and every help should be given him to try and rehabilitate himself to a more active and useful life.

Summary of Evidence in the case of G-23171 Pte. Duguay, E., Royal Canadian Ordnance Corps, on strength of No.2 V.R.D., 1 Cdn C.O.D., R.C.O.C., a soldier in the Canadian Army Overseas.

By the direction of the Commanding Officer, the Summary of Evidence to be taken on Oath.

FIRST WITNESS
For the Prosecution

No. L-12381 Pte. (A/Cpl) McWilliams, G.D., No.2 V.R.D., 1 Canadian Central Ordnance Depot, a soldier in the Canadian Army Overseas, having been duly sworn, states as follows:-

At No.2 V.R.D., 1 Cdn C.O.D. on 14 Nov 44, I was on duty as Guard Commander of the Unit Guard Increment. At 0130 hrs of that date, the accused whom I now recognise, surrendered to me at the Unit Guard Room. He was sober and properly dressed in Military uniform. I placed him under close arrest.

The accused declines to cross-examine the witness.

G D McWilliams

G.D. McWilliams) A/Cpl. L-12381

SECOND WITNESS
For the Prosecution

C-38600 Pte. Lloyd, A.E., No.2 V.R.D. 1 Canadian Central Ordnance Depot, a soldier in the Canadian Army Overseas, having been duly sworn, states as follows:-

I am Orderly Room Clerk of No.2 V.R.D., 1 Cdn C.O.D. of which the accused whom I now recognise, is a member. I present in evidence Part 11 Orders No. 152 dated 25 Oct 44 containing the entry concerning the absence of Pte. Duguay, E.

The accused declines to cross-examine the witness.

A E Lloyd

(A.E. Lloyd) Pte. C-38600

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on Oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

After the above caution the accused declined to make a statement, and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of one page, and was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

17 Nov 44

M E Rose Lieut

.....
Officer detailed to take the Summary of Evidence.

EXHIBIT "A"

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

This Order No. 152
d/25 Oct 44

Sheet No. 4

5. COMMAND (Cont'd)

K 57665 (2)	Pte O'Brien J T MT Coy	Proceeded on Command to High Wycombe, Oxford & Great Malvern wef 1300 hrs 19 Oct 44 Returned from on Command wef 2300 hrs 20 Oct 44
L 65467 (3)	L/Cpl Petzel M J MT Coy	Proceeded on Command to Oxford wef 1000 hrs 13 Oct 44 Returned from on Command wef 2000 hrs 13 Oct 44
A 64403 (4)	L/Cpl Pickford W E 5 VRD	Proceeded on Command to 1 Cdn Sel & Appraisal Centre wef 23 Oct 44 (Auth: AF 1997 (A02B) d/10 Oct 44)
D 94111 (5)	Pte Riopel J L MT Coy	Proceeded on Command to Weedon & Derby wef 0800 hrs 16 Oct 44 Returned from on Command wef 0930 hrs 20 Oct 44
A 9471 (6)	Pte Saylor D H 2 VRD	Proceeded on Command to Donnington & Birmingham wef 1135 hrs 27 Sep 44 Returned from on Command wef 1400 hrs 28 Sep 44

6. COURSES

L 2731 L 65466 (1)	Pte Fisher H C Pte Schrlock W MT Coy	Proceeded on CRU (QM's Refresher) Course wef 23 Oct 44
L 9050 (2)	A/CQMS Graham R R MT Coy	Returned from CRU (QM Refresher) Course wef 21 Oct 44
L 105898 (3)	Pte Schachter M B HQ	Proceeded on CIEM Course 138 Ser 23 (Regtl Clerks) wef 22 Oct 44

7. LEAVE OF ABSENCE

C 15692 D 73105 (1)	Pte Bourgon L 24 Oct 44 to 1 Nov 44 Pte Crowder A J 23 Oct 44 to 31 Oct 44 MT Coy	Granted 7 days FL & 48 hrs pass (total leave & entitlement 9 days) with money allce in lieu of rations under FRAI (O/S)Art 789(3)&(4) wef dates shown
H 100114 (2)	Pte Crossman N MT Coy	Granted 7 days FL & 48 hrs pass (total leave & entitlement 9 days) from 21 Oct 44 to 29 Oct 44 with money allce in lieu of rations under FRAI (O/S)Art 789(3)&(4)
C 94698 B 94540 (3)	L/Cpl Laprade J P Cpl Wilson F MT Coy	Granted 7 days FL & 48 hrs pass (total leave & entitlement 9 days) from 23 Oct 44 to 31 Oct 44 with money allce in lieu of rations under FRAI (O/S)Art 789(3)&(4)

8. ABSENT WITHOUT LEAVE

G 23171 (1)	Pte Duguay E 2 VRD	Absent without leave wef 2359 hrs 21 Oct 44 Still absent without leave 2359 hrs 22 Oct 44 (1st day)
B 73599 (2)	Pte Simons V A 5 VRD	Absent without leave wef 1200 hrs 20 Oct 44 Still absent without leave 1200 hrs 21 Oct 44 (1st day)

(OVER)

CERTIFIED TRUE COPY

Lieut.

2. STRENGTH INCREASE (Cont'd)

D 16051 (3)	Sgt	Wark J S M	(Veh Inor (O))	SOS to Y3 List 1 COMEMU wef 6 Oct 44 on being transferred from 1 CMC to 4 Cdn Conv Depot

3. TRANSFERS (AMEND)

B 142138 (1)	Pte	Campbell N M 5 VRD	Part II DO 107 para 3(4) d/7 Aug 44 insofar as it refers to this soldier is hereby am'd to read for "29 Jul 44" read "3 Aug 44" (Obs 3623 d/20 Sep 44)
B 148054 (2)	Pte	Detar W B CS	Part II DO 111 para 3(3) d/15 Aug 44 insofar as it refers to this soldier is hereby am'd to read for "10 Aug 44" read "11 Aug 44" (Obs 3617 d/19 Sep 44)
D 62877 (3)	Pte	Garceau N BR Coy	Part II DO 110 para 3(4) d/11 Aug 44 insofar as it refers to this soldier is hereby am'd to read for "31 Jul 44" read "1 Aug 44" (Obs No 3671 d/4 Oct 44)
M 106555 (4)	L/Cpl	McIntyre M J HQ	Part II DO 133 para 3(5) d/18 Sep 44 insofar as it refers to this soldier is hereby am'd to read for "L/Cpl" read "Pte"
A 4361 (5)	Pte	Sherman G L 5 VRD	Part II DO 107 para 3(4) d/7 Aug 44 insofar as it refers to this soldier is hereby am'd to read for "29 Jul 44" read "3 Aug 44" (Obs 3622 d/20 Sep 44)
G 23407 (6)	Pte	Wilson K J CS	Part II DO 117 para 3(25) d/24 Aug 44 insofar as it refers to this soldier is hereby am'd to read for "23 Aug 44" read "24 Aug 44" (Obs 3786 d/5 Oct 44)

4. ATTACHMENTS

G 50410 (1)	Gnr	Chiasson G 3 VRD	Att fap (except disc) to 3 VRD from 3 CGPC wef 20 Oct 44
L 1654 (2)	Pte	Coward E HQ	Cease att fap (except duty) from 1 CGRU wef 23 Oct 44 (Auth: 408/CRU HQ/1 (PTA) 452/Coward E/1 d/19 Oct 44)
M 3850 (3)	Spr	Hoff C F 4 VRD	Cease att fap from 1 CERU wef 18 Oct 44 Att fap to 1 VRD from 1 CERU wef 19 Oct 44
K 69214 (4)	Cfn	Lohs R 1 VRD	Cease att fap from 1 COMEMU wef 18 Oct 44
A 28611 (5)	Pte	Russell A A 3 VRD	Cease att fap (except disc) from 1 CGPC wef 19 Oct 44 on adm to 1 Cdn Spec Hosp

5. COMMAND

H 99078 (1)	L/Cpl	Marvin W E MT Coy	Proceeded on Command to Derby wef 0800 hrs 18 Oct 44 Returned from on Command wef 2100 hrs 21 Oct 44

(OVER)

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

This Order No. 152
d/25 Oct 44

Sheet No. 2

"B" OTHER RANKS

1. STRENGTH INCREASE

L 9216 (1)	Pte Pomeroy A C (Dvr Mech "C") CS	TOS from 1 COMERU wef 21 Sep 44 & posted to Veh Incr (E) (Auth: CMHQ/ Circ Letter 83 d/17 Jan 44)
(Am end) B 142138 (2)	Pte Campbell N M 5 VRD	Part II DO 107 para 1(4) d/7 Aug 44 insofar as it refers to this soldier is hereby am'd to read for "29 Jul 44" read "3 Aug 44" (Obs 3623 d/20 Sep 44)
(Amend) B 148054 (3)	Pte Detar W B CS	Part II DO 111 para 1(5) d/15 Aug 44 insofar as it refers to this soldier is hereby am'd to read for "10 Aug 44" read "11 Aug 44" (Obs 3617 d/19 Sep 44)
(Amend) D 62877 (4)	Pte Garceau N (Shoemaker "C") BR Coy	Part II DO 110 para 1(3) d/11 Aug 44 insofar as it refers to this soldier is hereby am'd to read for "31 Jul 44" read "1 Aug 44" (Obs 3871 d/4 Oct 44)
(Amend) K 18046 K 52961 (5)	Pte Langhorn A K Pte Reid A B 4 VRD	Part II DO 126 para 1(23) d/17 Oct 44 insofar as it refers to this soldier is hereby am'd to read for "30 Aug 44" read "31 Aug 44" (Obs 3992 d/17 Oct 44)
(Amend) C 40773 (6)	Pte MacInnes G 3 VRD	Part II DO 68 para 1(22) d/1 Jun 44 insofar as it refers to this soldier is hereby am'd to read for "30 May 44" read "31 May 44" (Obs 3806 d/3 Oct 44)
(Amend) K 57404 (7)	Pte McLaughlin W G 4 VRD	Part II DO 127 para 1(6) d/8 Sep 44 insofar as it refers to this soldier is hereby am'd to read for "30 Aug 44" read "31 Aug 44" (Obs O R 3993 d/17 Oct 44)
(Amend) C 4122 (8)	Pte Palmer P MT Coy	Part II DO 68 para 1(23) d/1 Jun 44 insofar as it refers to this soldier is hereby am'd to read for "30 May 44" read "31 May 44" (Obs 3805 d/3 Oct 44)
(Am end) A 4361 (9)	Pte Sherman G L 5 VRD	Part II DO 107 para 1(12) d/7 Aug 44 insofar as it refers to this soldier is hereby am'd to read for "29 Jul 44" read "3 Aug 44" (Obs 3622 d/20 Sep 44)
(Amend) G 23407 (10)	Pte Wilson H J CS	Part II DO 117 para 1(38) d/24 Aug 44 insofar as it refers to this soldier is hereby am'd to read for "23 Aug 44" read "24 Aug 44" (Obs 3788 d/5 Oct 44)

2. STRENGTH DECREASE

G 17381 (1)	Pte Leblanc J E (Veh Coy) CS	SOS to 1 NETD wef 11 Oct 44 (Auth: Adm Instr 22 d/7 Sep 44)
M 28038 (2)	Pte Scatcherd H G (MT Coy) (Clerk "C") MT Coy	SOS to Y3 List 1 COMERU wef 21 Oct 44 on adm to 22 Cdn Gen Hosp

(OVER)

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

Issued by Brigadier R J Henderson, Commandant, 1 Cdn C O D

Last Order No. 151
d/23 Oct 44

This Order No. 152
d/25 Oct 44

"A" OFFICERS

1. STRENGTH INCREASE (AMEND)

Major (1)	D E Mounteer 5 VRD	Part II DO 37 para 1(2) d/17 Apr 44 insofar as it refers to this officer effective date is hereby am'd to read for "11 Apr 44" read "4 Apr 44" (Auth: 15/Air/NA/1/3 Q/M/2 (c) d/12 Apr 44 (Off 703 d/19 Oct 44))

2. STRENGTH DECREASE

Major (1)	E J L Morgan (Veh Coy (O)) HQ		SOS to 1 COMERU wef 21 Oct 44 (Auth: CMHQ/MS 3 - MS 3997 d/20 Oct 44)
Lt Col Capt Lieut Lieut Lieut (2)	G A F Townesend R D Winter C F Britnell A A Chisholm R F Ryan	HQ HQ 3 VRD 1 VRD 5 VRD	SOS to 1 COMERU wef 23 Oct 44 (Auth: CRU/(Org) A 8717 d/21 Oct 44)
(Amend) Lt Col (3)	W McKinlay HQ		Part II DO 108 para 1(1) d/8 Aug 44 insofar as it refers to this officer effective date is hereby am'd to read for "6 Aug 44" read "3 Aug 44" (Ohs off 699 d/19 Oct 44)

3. ATTACHMENTS

Lieut (1)	J Cunningham 5 VRD		Cease att fap from 3 CACRU wef 21 Oct 44
Lieut (2)	E H Hodgins 5 VRD		Cease att fap from 3 CACRU wef 23 Oct 44
Lt Col Capt Lieut Lieut Lieut (3)	G A F Townesend R D Winter C F Britnell A A Chisholm R F Ryan	HQ HQ 3 VRD 1 VRD 5 VRD	Att fap to S/Units shown from 1 COMERU wef 24 Oct 44 Cease att fap from 1 COMERU wef 25 Oct 44 (Auth: CRU (Org) A 8717 d/21 Oct 44)

4. COMMAND

Capt (1)	J A Everest MT Coy	Proceeded on Command to High Wycombe and Oxford wef 1000 hrs 13 Oct 44 Returned from on Command wef 0200 hrs 14 Oct 44
Capt (2)	J A Everest MT Coy	Proceeded on Command to High Wycombe and Great Malvern wef 1300 hrs 14 Oct 44 Returned from on Command wef 2300 hrs 20 Oct 44

(OVER)

8. ABSENT WITHOUT LEAVE (Cont'd)

B 73599 (3)	Pte Simons V A 5 VRD	Returned from Absent Without Leave wef 1300 hrs 23 Oct 44
(Amend) C 17491 (4)	Pte Harquail J H HQ	Part II DO 148 para 6(1) d/17 Oct 44 insofar as it refers to this soldier is hereby cancelled

9. HOSPITALIZATION

K 83514 (1)	Cpl Jones E L HQ	Disch from 2 CMC wef 23 Oct 44
D 166132 (2)	Pte Pauze A E 2 VRD	Adm to 2 CMC wef 22 Oct 44

10. PUNISHMENTS

B 142877 (1)	Pte Atkins T B 5 VRD	On 23 Oct 44 awarded a forf of 3 days pay FR&I 149(2) & placed under stoppage of pay in the am't of £0-1-0 FR&I 158(2) for an offence under Sec 40 AA
H 65072 (2)	Pte Danchuk S 1 VRD	On 16 Oct 44 to forf 1 days pay FR&I 149(1)(a) for an offence under Sec 15(1)AA AWL from 0800 hrs 15 Oct 44 to 0630 hrs 16 Oct 44 (Absent 22 hrs 30 mins)
A 105399 (3)	Pte Doan L L 5 VRD	On 23 Oct 44 awarded a forf of 7 days pay FR&I 149(2) & placed under stoppage of pay in the am't of £0-2-0 FR&I 158(2) for an offence under Sec 40 AA
H 65147 (4)	Pte Fisher W 3 VRD	On 23 Oct 44 awarded a forf of 28 days pay FR&I 149(2) for an offence under Sec 15(2)AA AWL from 0745 hrs 4 Oct 44 to 1600 hrs 8 Oct 44 (Absent 4 days 10 hrs 15 mins) Forfs 5 days pay FR&I 149(1)(a) (Total forf 33 days pay)
C 120328 (5)	Pte Humphreys O P 5 VRD	On 23 Oct 44 awarded a forf of 7 days pay FR&I 149(2) & placed under stoppage of pay in the am't of £0-2-0 FR&I 158(2) for an offence under Sec 40 AA
B 119936 (6)	Pte Kerr M T 5 VRD	On 23 Oct 44 awarded a forf of 3 days pay FR&I 149(2) & placed under stoppage of pay in the am't of £0-2-0 FR&I 158(2) for an offence under Sec 40 AA
B 131027 (7)	Pte Kingdon C C (6 CIRU) 5 VRD	On 23 Oct 44 awarded a forf of 3 days pay FR&I 149(2) & placed under stoppage of pay in the am't of £0-2-0 FR&I 158(2) for an offence under Sec 40 AA
E 49766 (8)	Pte Lefevre R 5 VRD	On 23 Oct 44 awarded a forf of 3 days pay FR&I 149(2) & placed under stoppage of pay in the am't of £0-1-0 FR&I 158(2) for an offence under Sec 40 AA

(OVER)

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

This Order No. 152
d/25 Oct 44

Sheet No. 6

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10. PUNISHMENTS (Cont'd)

B 73599 (9)	Pte Simons V A 5 VRD	On 23 Oct 44 awarded a forf of 7 days pay FR&I 149(2) for an offence under Sec 15(1)AA AWL from 1200 hrs 20 Oct 44 to 1300 hrs 23 Oct 44 (Absent 3 days 1 hr) Forfs 4 days pay FR&I 149(1)(a) (Total forf 11 days pay)
(Amend) M 37018 (10)	Pte Hergenhein L C HQ	Part II DO 28 para 8(8) d/3 Apr 44 insofar as it refers to this soldier is hereby am'd by adding "(13 days pay concurrent with award of 20 Mar 44 vide 1 CGRU Pt II DO 84 d/8 Apr 44)(Net forf of 8 days pay)(Pay Obs No 10691 d/26 Aug 44)
(Amend) B 58855 (11)	Pte Preston G E MT Coy	Part II DO 95 para 11(3) d/17 Jul 44 insofar as it refers to this soldier is hereby am'd to read for (1)"Forfs 16 days pay FR&I 149(1)(c)(i)"read "Forfs 15 days pay FR&I 149(1)(c)(i)(2 days concurrent with award of 6 Jul 44 vide Pt II DO 90 d/7 Jul 44) for (2) "Forfs 120 days pay FR&I 149(1)(b)" read "Forfs 120 days pay FR&I 149(1)(b)(1 day concurrent with award of 6 Jul 44 vide Pt II DO 90 d/7 Jul 44) (Net total forf 176 days pay)(Pay Obs 11569 d/12 Sep 44)
(Amend) B 16744 (12)	Gnr Weinhardt M L HQ (1 CARU)	Part II DO 121 para 8(5) d/30 Aug 44 insofar as it refers to this soldier is hereby am'd to read for "Forfs 5 days pay FR&I 149(1)(c)(i)" read "Forfs 6 days pay FR&I 149(1)(c)(i) (Total forf 78 days pay) (Pay Obs No 12519 d/4 Oct 44)

11. TRADESMENS QUALIFICATIONS (AMEND)

B 4481 (1)	Sgt Morris H R (RCEME) 4 VRD	Part II DO 137 para 11(5) d/26 Sep 44 insofar as it refers to this soldier is hereby am'd to read for "Fitter MV" read "Fitter AFV"

12. TRADESMENS RATES OF PAY

K 24067 (1)	Pte Jaggers E F 4 VRD	Ceases to draw T/Pay as Arty Sig Grp"C" wef 18 Sep 44 (Extract 1 CARU Pt II DO 252 d/23 Oct 44)
A 37311 (2)	Pte Wiley R L BR Coy	Ceases to draw T/Pay as Shoemaker Grp "B" wef 21 Oct 44

13. CHANGE OF NEXT OF KIN

A 9608 (1)	Pte Baker W W (1CASCRU) 4 VRD	Change of N-of-K from: Mrs Kittie Thompson (Sister) to: Miss Emily Louise Baker (Daughter) 748 King Street, London, Ontario, Canada

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

Sheet No. 7 — This Order No. 152 d/25 Oct 44

14. PERMISSION TO MARRY

F 78508 (1)	Cfn Conway M M (RCOWE) 1 VRD	Granted permission to marry Miss Janet Brown on or after (but not before) 20 Dec 44 (Auth: CMHQ 1000:110a d/23 Oct 44)

15. MARRIAGES, BIRTHS & DEATHS

C 4608 (1)	Pte Donoghue J J HQ	Son, Michael Edward, born on 6 Oct 44 at Darton Yorks, England (Mrs Catherine Donoghue (Wife))
A 29201 (2)	Sgt Van Rooyen J F MT Coy (RCEME)	Daughter, Marion Therese, born at Hindhead, Surrey, England on 17 Oct 44 (Mrs Mary VanRooyen (Wife))
(Amend) G 41238 (3)	L/Sgt Beatteay W H 3 VRD	Part II DO 151 para 20(1) d/23 Oct 44 insofar as it refers to this NCO is hereby am'd by adding "Mrs Gwendoline Alice Beatteay (Wife)"

16. CHANGE OF NAME (AMEND)

M 36990 (1)	Pte Ketter J F 3 VRD	Part II DO 150 para 15(1) d/20 Oct 44 insofar as it refers to this soldier is hereby am'd to read for "L 35140 Pte Lehocky G" read "L 35140 Pte Lehocky George"

17. GOOD CONDUCT BADGES

B 57471 (1)	Pte MacDonald D M MT Coy	Awarded one good conduct badge wef 13 Oct 44 (Auth: CA(C/S)HQ 306/40)

18. POSTINGS INTER UNIT

M 20980 (1)	Pte York J W 2 VRD	Posted from Veh Coy to Gd Incr wef 23 Oct 44

19. ATTACHMENTS INTER UNIT

B 61049 (1)	Sgt Burt S V (RCEME) HQ	Att to 5 VRD wef 23 Oct 44
B 82500 (2)	A/RQMS Harrison H G CS	Att to 5 VRD wef 23 Oct 44
L 9216 (3)	Pte Pomeroy A C CS	Att to 4 VRD wef 27 Sep 44

.....
(T M Taylor) Lieut
for Commandant, 1 Cdn Central Ord Depot

DJBL/

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
G-23171	Pte.	Duguay, E.	No.2 V.H.D., 1 Cdn C.O.D.

1. The following is a fair and true summary of the entries in the regimental ~~and squadron (battery or company)~~ conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For Army Act Sec 15(1)	three times	three times
For Army Act Sec 40	one time	one times
For ~~xxx~~	~~xxxx~~	~~xxxx~~
For ~~xxx~~	~~xxxx~~	~~xxxx~~
For ~~xxx~~	~~xxxx~~	~~xxxx~~

~~Number of instances of gallantry or distinguished conduct~~

or

~~There are no entries in X's conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or*

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 95 of the Army Act are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence for~~ ~~imposed on the above~~

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and ~~three~~ Eight days in military custody, making a total of ~~three~~ EIGHT days, of which NIL days were spent in hospital. 8 8 of 17 Nov 44 22

record of service

5. The present age of the accused according to his ~~attestation paper~~ record of service is 23 yrs 2 mos,

6. The date of his ~~attestation~~ specified in his ~~attestation paper~~ is 3 June 41

7. ~~The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~

8. ~~The accused is entitled to deferred pay or gratuity in respect of~~

9. ~~The accused is entitled to reckon~~ service for the purpose of determining his pensionary

10. ~~The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or~~ entitled to (*state any military decoration or reward*) CVSM & CLASP 4/15 Jan 44

11. ~~(If the accused is a warrant officer.) The accused has not been a warrant officer or held the substantive rank of~~

12. ~~(In the case of an officer.) The accused holds the rank of~~ dated ~~and is on his regimental (corps, or department) list of~~ dated

W.A.3765/4369 20M. 5/44. P. Ltd. 731.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. G-23171 *Rank* Pte *Name* Duguay, E of 2 VRD, 1 CGOD Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22nd day of November 1946

Lieut.
Regimental Officer,
No.2 V.R.D., 1 Cdn C.G.D.

13. **The accused has served as a non-commissioned officer continuously, without reduction, to the present date.**

	Date of Promotion.
In the rank of	years.
In the rank of	years.
In the rank of	years.

NIL

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from the accused, if are available and the paragraph corrected accordingly.*)

Pte.
No. G-23171 Name Duguay, E. | Sqn, Battery, or Company | Corps | Date of enlistment 3 June 44 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (5418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | L.C.Mortimer Lt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Temporary Sheet					
Field	8 Sep 44	Pte.		A.A. 40 WOAS Cond. etc. failed to arise at reveille, still in bed at 0825 hrs 8 Sep 44	Pte. Belair R.J.	3 days C.B.	8 Sep 44	L.C.Mortimer Lt.	
Field	9-9-44	Pte.		First Charge AA 15)1) WOAS, AWL from 0730 hrs 9 Sep 44 until 1800 hrs 13 Sep 44 (4 days 10½Hrs) Second Charge AA 15(1) WOAS AWL from 2230 hrs 18 Sep 44 until 1645 hrs 22 Sep 44(3 days 18 hrs and 15 mins)	Dos'y (Lt. Mortimer & Cpl. McCubbin A/Cpl. Donavon J.F.	28 days pay FR&I 149(2) 14 days C B	23 Sep 44	A/LT.COL. MacPherson	Forf 9 days FR&I 149(1)(a)

over

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Oct 44	Pte.		A.A. Sec 15(1) AWL from 0600 hrs 1/10/44 till 1000 hrs 12/10/44 Total time absent 11 days 4 hrs.	Sgt. Wallace R.V.	12 days pay FR&I 149(1)(a) 28 days pay FR&I 149(2)	16 Oct 44	Major R.C. Kelly	Total forf of 40 days pay

Certified true copy of original in my possession

.....

(M.E. Nash) Lieut., Officer having custody of Regimental Books
No. 2 V.R.D., 1 Cdn Central Ordnance Depot

....14....NOV 44

Certified that I have received the following documents:-

Summary of Evidence
Copy of charge sheet
List of witnesses for the prosecution
List of witnesses for the defence
Exhibit "A"
List of exhibits.

E D Duguay
.....
C-23171 Pte. Duguay, E.

20 F. Pte Duguay, M.

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here.

5-4-1

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 4th day of February, 1943

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Div.

, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*(I am unable to appoint:—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

*(3. Three Officers having more than one year's service.)

for the following reasons, namely:—)

PROCEEDINGS REVIEWED

Gen Graham Capt
Reviewing Officer (FRG) Gen Bn
[illegible]

President.

Rank.	Name.	Regiment.
Major	T. Defaye	Sask LI (MG)

Members.

Rank.	Name.	Regiment.
Capt.	M.A.G. Stroud	4 Cdn Recce Bn
Lieut.	W.A. Down	4 Cdn Recce Bn
(WAITING) Lieut.	S.R. Wells	Sask LI (MG)

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed Col Vearbos Maj.-Gen.
G.O.C. 1 Cdn Div.

Commanding

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-88108 Pte. Duguay, H. 1 Cdn Div Pet Coy., R.C.A.S.C.	1st Charge A.A. Sec. 40 See charge sheet attached.	Not Guilty	Guilty. £20-0-0 Stoppages of pay.	I confirm the finding of the Court but mitigate the sentence to Stoppages of £10-0-0. G.L. Pearkes M.G.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :— No.

(Signed) G.L. Pearkes Maj.-Gen. G.O.C. Commanding 1 Cdn Div. (Signed) Lee Taye Major. President.
Convening Officer (c)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Ninth day of February, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(~~3. The interpreter~~)
*(~~4. The officers under instruction~~)
were duly sworn.

* Omit if not applicable.

Signed this Ninth day of February 1942.

Lee Taye Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison until further orders.~~)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 16 day of Feb. 1942

G.L. Pearkes M.G.
Confirming Officer.

Promulgated and extracts taken in the case of B88108 Pte. Duguay H.

(a) (Dated) 25 Feb 42 (Signed) [illegible] Capt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, B/86108 Pte. Duguay, H., 1 Cdn Div Petrol Coy, R.C.A.S.C., a soldier of the Canadian Army (Overseas), is charged with, while on active service:

Charge.
A.A. Sec 40.

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he, on the Billingshurst - Petworth Road (M.R. 462434 sheet 124), on 12 Dec 41 drove a Cdn. W.D. vehicle No. CL-195890 in a negligent manner, thereby causing damage to the extent of £43.18.11 to said vehicle and damage to Cdn. W.D. vehicle No. CZ-4205943 to the extent of £40.9.9.

L.W. Diehl, Major,
O.C., 1 Cdn Div Pet Coy
R.C.A.S.C.

(1)
per F.G.C.M.

To be tried by Field General Court Martial.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD IN THE FIELD ON THE NINTH DAY OF FEBRUARY, 1942.

Trial of No. B 88108 Pte. Duguay, H., 1 Cdn. Div. Pet. Coy. R.C.A.S.C.

(2)

Prosecuting Officer: Capt. M.E. Mears, 1 Cdn. Div. Sup. Col. R.C.A.S.C.

Defending Officer : Lieut. N.H. Ballingall, 1 Cdn. Div. Pet. Coy. R.C.A.S.C.

Provost Recn.

The Order convening the Court is read in the presence of the Accused.

The Accused is asked the following question: "Do you object to being tried by the President or any Members of the Court whose names you have just heard read over?"

Answer: "No, sir."

The President and Members are duly sworn.

The Accused answers to his name and number and is duly arraigned on the charges.

Question by the Court to the Accused: "Do you wish to apply for an adjournment on the grounds that you have had insufficient time to prepare your defence?"

Answer: "No, sir."

The Prosecuting Officer makes the following opening address:- "I have several points in connection with the charge which I will prove to the Court. I will prove first that there was an accident; second that the damages suffered by vehicle CL196890 amounted to £43-18-11; third that the damages suffered by vehicle CZA205943 amounted to £40-9-9; fourth that the vehicle CL 196890 was in the charge of and being operated by B 88108 Pte. Duguay, H., 1 Cdn. Div. Pet. Coy., R.C.A.S.C.; fifth that the accident was caused by the negligent manner in which Pte. Duguay was operating his vehicle."

The Prosecuting Officer proceeds to call witnesses.

1st Witness: Mr. R.W. Barnes, 19 Chester Ave., Worthing, Sussex, having been duly sworn, states:-

I was proceeding in a westerly direction on the Billingshurst to Petworth Road at approximately 25 to 30 m.p.h. As I was coming around a bend to the right in the road, I noticed an Army lorry overtaking from the rear. It overtook me after I was almost nearly around and just as he got nicely in front of me he struck another army lorry coming from the other direction. When the first Army lorry cut in in front of me, I pulled in to the curb. The first lorry turned over after hitting the second one. I estimate the speed of the first lorry to have been 50 m.p.h.

The witness is examined by the Prosecuting Officer.

Q.1: Did this accident occur on 12/12/41?
A.1: Yes.

Q.2: Do you recognize the driver of the overtaking vehicle in Court?
A.2: Yes, the accused.

Q.3: How long have you driven vehicles?
A.3: 25 years.

Q.4:"What do you judge the speed of the overtaking lorry to have been?"
A.4:"About 20-25 more m.p.h. than mine."

The witness is crossexamined by the Defending Officer.

Q.1:"When Pte. Duguay passed you, were you going uphill?"
A.1:"Uphill."

Q.2:"What is the weight of your lorry?"
A.2:"5 tons."

Q.3:"How do you judge the speed of Duguay?"
A.3:"He passed me going up the hill."

Q.4:"Did you see the 8-cwt. skid?"
A.4:"Yes. At the same time as I saw the lorry passing me."

Q.5:"Did you see the application of the brakes on the 8-cwt.?"
A.5:"No, but it apparently must have applied them."

Q.6:"Was the pavement slippery that day?"
A.6:"The road surface that day was good."

The witness is re-examined by the Prosecuting Officer.

Q.1: "Did the 8-cwt. skid on the right side of the road?"
A.1: "No, on the left of the road."

The witness is questioned by the Court.

Q.1: "Was the grade a gradual one?"
A.1: "Yes."

Q.2: "Is the upgrade a curve and if so, how far?"
A.2: "Yes, very steep and some distance."

Q.3: "What was the width of the road?"
A.3: "I estimate 22 feet."

2nd Witness: Mr. W.G. Orchard, 27 wigmore Road, Broadwater, Worthing, Sussex, having been duly sworn, states:

On the 12/12/41, I was proceeding from Wisborough to Petworth. I was following Driver Barnes at about 60 feet behind him, going down a right hand curve. As I was looking into the mirror I saw an Army overtaking me on the bend. I saw a truck coming from the other hill. I thought the first lorry was going to pull in, but apparently he did not have the time. The result was that he hit the other truck and overturned immediately.

The witness is examined by the Prosecuting Officer.

Q.1: "Did you see the driver of this lorry that passed you and crashed into the other lorry?"
A.1: "Yes."

Q.2: "Do you recognize him in the Court?"
A.2: "Yes, the accused."

Q.3: "How long have you driven lorries?"
A.3: "I have been 17 years with the same firm, of which the last 15 has been as a driver."

Q.4: "At what speed do you estimate that you were travelling?"
A.4: "I estimate 25 m.p.h."

Q.5: "The other lorry passed you when you were going that speed?
A.5: "Yes".

The witness is cross-examined by the Defending Officer.

Q.1: "You were in the second civilian lorry?"
A.1: "Yes."

Q.2: "How far behind were you?"
A.2: "About 60 feet."

Q.3: "Duguay overtook you as you were going down the hill?"
A.3: "Yes."

Q.4: "Do you remember seeing the actual accident?"
A.4: "Yes, on the impact the tool box bounced off."

Q.5: "Did you see the skid of the 8-cwt.?"
A.6: "I do not remember."

Q.6: "Where did the impact take place?"
A.6: "On the side of the road belonging to the 8-cwt."

The witness is questioned by the Court.

Q.1: "What do you estimate to have been the speed of the 30cwt.?
A.1: "I estimate 45-50 m.p.h."

3rd Witness: A 3017 Pte. Jones, H.E., Royal Canadian Regiment, having been duly sworn, states:

On 12/12/41, I was detailed to drive the Padre, Capt. Wilkes in 8 cwt. CZ 4205943 from the coast to London. It was about 1030 or 1100 hrs. I was proceeding from Petworth to Billingshurst. The roads were in bad shape with rain. And the visibility on the said road is limited. As I came around the road, I saw the civilian vehicle on my right. I had gone another ten or fifteen feet when the 30 cwt. loomed out of nowhere in front of me. I applied the brakes (the brakes had been set up on 11/12/41). It was impossible to avoid the collision. When I applied the brakes, I skidded slightly to the right and I cut the 8-cwt. sharp to the left direction. That is all that I can remember.

The witness is examined by the Prosecuting Officer.

Q.1: "When you started to skid, did you keep the brakes on?"
A.1: "I do not remember."

Q.2: "Was the skid lengthways or crossways?"
A.2: "It was slightly to the right and then off to the left."

Q.3: "Was your vehicle ever over on the right of the white line?
A.3: "Just for a second when I applied the brakes."

Q.4: "Was it over there at the time of the impact?"
A.4: "I do not think so. I was well in the left shoulder of the road."

The witness is cross-examined by the Defending Officer.

Q.1: "When you saw the oncoming 30 cwt., did you not immediately apply your own brakes, and then it skidded?"
A.1: "Yes."

Q.2: "How long was the time from your first seeing applying the brakes until the impact?"
A.2: "It was a matter of seconds."

Q.3: "As soon as you applied your brakes, you skidded to the left, and then you cut to the left?"

22 Hrs

W. S. Oakland - 27 Wagon Rd. Bradstreet Worthing.

12th Thurs Wisborough Green



Worsp while at any time over on the Rt hand side of the line - Roads are dust.

12th Dec

A.3: "Yes, I went slightly to the right and I then cut the 8-cwt. to the left."The last I remember was a crash."

Q.4: "What was the condition of the road?"
A.4: "Wet."

Q.5: "Had the road been dry, could the accident have been avoided?"
A.5: "Yes."

The witness is questioned by the Court.

Q.1: "What was the speed at the time of the accident?"
A.1: "30-35 m.p.h."

Q.2: "Were you going down-hill?"
A.2: "Yes, on a slight down-hill grade."

Q.3: "At the time you saw the 30-cwt., where was the civilian lorry?"
A.3: "About 25 yards from my truck."

Q.4: "Had you instantly stopped, could the 30-cwt. have "snaked" in?"
A.4: "That depends on the speed of both vehicles."

4th Witness: Capt. J. H. Cornell, O. i/c W.S., 1 Cdn. Div. Pet. Coy., R.C.A.S.C., having been duly sworn, presented an estimate of the repairs and the cost of parts necessary to repair vehicle CL 195890, amounting to £43-18-11.

The Defending Officer did not wish to cross-examine.

5th Witness: Lieut. R.F.Richardson, 2i/c No. 3 Group, 1 Cdn. Div. Ord. W.S. R.C.O.C., having been duly sworn, presented an estimate of the repairs and the cost of parts necessary to repair vehicle CZ 4205943, amounting to £40-9-9.

The Defending Officer did not wish to cross-examine.

At this point, due to the close proximity of the ground, the Court adjourned to look at the scene of the accident.

Defence

The Accused was given the following three alternatives:

(1) to make a statement under oath.
(2) to make a statement under not under oath.
(3) to make no statement.

The Accused elected the first alternative.

1st Witness: B 88108 Pte. Duguay, H., 1 Cdn. Div. Pet. Coy., R.C.A.S.C., having been duly sworn, is examined by the Defending Officer.

Q.1: "When you attempted to overtake the rear civilian lorry could you see the first lorry in the front of it?"
A.1: "I was abreast of the second lorry when I saw the first lorry."

Q.2: "Did you get a little excited?"
A.2: "I did and then I attempted to pass the first lorry."

Q.3: "Why did you try to pass the first lorry?"
A.3: "It was impossible for me to get in between the first and second civilian lorries.

Q.4: "Did the fact that you were excited and driving a little faster speed impel your attempt to pass the first lorry?"
A.4: "Yes, I was going too fast to cut in behind the two lorries."

Q.5: "You were following L/Cpl. Evans from Shipley?"
A.5: "Yes."

Q.6: "How far were you travelling behind Evans prior to your making the turn in the road?"
A.6: "Approximately 25-30 yards."

The witness is crossexamined by the Prosecuting Officer.

Q.1: "How long have you driven lorries?"
A.1: "X 18 months."

Q.2: "Are you familiar with the rules of the road?"
A.2: "No, I am not."

Q.3: "Is it a common habit to pass another vehicle on a bend?
A.3: "It is not."

The witness is re-examined by the Defending Officer.

Q.1: "How long have you been with 1 Cdn.Div. Pet. Coy.?"
A.1: "Since Dec. 1939."

Q.2: "Have you ever been involved in an accident before?"
A.2: "No."

Q.3: "What speed were you travelling as you overtook the second lorry just prior to going down the hill?"
A.3: "30-35 m.p.h."

The witness is questioned by the Court.

Q.1: "Did the truck driven by Evans pass the other two lorries?
A.1: "Yes."

Q.2: "Where".
A.2: "Just before the bend."

Q.3: "Did you know where you were going?"
A.3: "Yes."

2nd Witness: [illegible] L/Cpl. Evans, #[illegible] 1 Cdn. Div. Pet. Coy., R.C.A.S.C., having been duly sworn, is examined by the Defending Officer.

Q.1: "Duguay was following your lorry from Shipley to Petworth at the time of the accident?"
A.1: "Yes."

Q.2: "You had passed the two civilian lorries just before going into the curve?"
A.2: "Yes."

Q.3: "Had you seen Duguay's lorry in the mirror prior to the accident?"
A.3: "I had to the first turn."

Q.4: "At what speed were you travelling?"
A.4: "25-30 m.p.h.from Shipley."

Q.5: "At the time just prior to going down the hill?"
A.5: "Approximately 28-30 m.p.h."

Q.6: "Duguay was in sight when looking into the mirror just prior to going down the hill?"
A.6: "Yes."

The

The witness is questioned by the Court.

Q.1: "Where did you pass the two civilian lorries?"
A.1: "Before I started to go down the hill."

Q.2: "Did you see Duguay's lorry after you passed the civilian lorries?"
A.2: "No."

Q.3: "Had the same situation arisen could you have pulled in between them?"
A.3: "Yes, I could have done so."

Q.4: "Do you remember passing the 8-cwt.?"
A.4: "Yes, I passed it."

3rd Witness: B 86103 Sgt. A.E.Lawrence, 1 Cdn. Div.Pet.Coy., R.C.A.S.C., having been duly sworn, is examined by the Defending Officer.

Q.1: "Duguay is a Driver Mechanic is he not?"
A.1: "Yes."

Q.2: "In your association with Duguay, have you known him to be involved in an accident?"
A.2: "No."

Q.3: "Have you known him to drive other than carefully?"
A.3: "Yes, but I have not had occasion to check him."

Q.4: "What is your opinion of him as a soldier?"
A.4: "He has been a good man."

The Defending Officer makes the following address:
"Duguay, in passing lorry no. 2, did not know that lorry no.1 was in front of it, and much to his surprise, discovered that lorry no. 1 was there as well. He was going down a hill and had speeded up because he was going down a hill. I would stretch a point to say that he had been going perhaps 40. The fact that he was going that rate of speed and that he was on a bend, excited him, and in his excitement, he tried to overtake lorry no. 1. The road was also very wet and in bad condition at the time. I feel that the fact that the 8-cwt. skidded into Duguay's lorry was a great contributing factor to his accident. Pte. Jones has admitted that had the road been dry, he could have pulled up in time to avoid the impact. The Court will see that a 30-cwt. does not reach 50 m.p.h. from 30 m.p.h. in just coming around a bend. Duguay has had two years' service and has been a good man with no accidents during that time.

The Prosecuting Officer makes the following address:
"I have proven the accident occurred between the two lorries. I have proven that the accident was the direct result of the driving of C1 195890 at the time of the accident occurring. Blame cannot be attached to the other vehicle. Capt. Cornell, and Lieut. Richardson have furnished the cost of the damages. L/Cpl. Evans said that his vehicle was doing 30 m.p.h., but no evidence has been submitted to show that Duguay was not doing 50 m.p.h. The two civilian witnesses bear this out that he was actually going at an excessive rate of speed. There should have been no necessity for a skid or application of the brakes had he not been out of proper position. Due to the nature of the road if not more care than ever should have been exercised. I have proved that Duguay speeded up in excess of that of the two civilians' lorries. Evans has said that he could have gotten in between. Duguay has said that he could not have. The reason is that Duguay was obviously speeding."

The Court adjourned to consider its finding.

The Prosecuting Officer, Capt. M.E.Mears, 1 Cdn. Div. Sup. Col., R.C.A.S.C., having been duly sworn, states:-
"I produce herewith a certified true copy of the M.F.M. 6 (Conduct Sheet) of Pte. Duguay, H., B 88108, 1 Cdn. Div. Pet. Coy., R.C.A.S.C."

The Defending Officer did not have anything further to say regarding mitigation of sentence.

9 Feb 42

This is to certify that B/88108 Pte DUGUAY, H. has been medically examined, and has been found free from vermin and infectuous diseases and is fit to undergo trial by F.G.C.M.

G. C. McGarry
(G.C.McGarry) Capt.
Medical Officer
1 Cdn Div Petrol Coy
R.C.A.S.C.

(3)
Proceed F.G.C.M.

CH [signature]
President F.G.C.M.

9 Feb 42

B/88108 Pte. Duguay H.

This is to certify that B/88108 Pte. Duguay H. Spent NIL days under close arrest pending F.G.C.M.

[signature] Capt
C.M. Longbotham (Capt.)
Administrative Officer,
1 Cdn. Div. Pet. Coy.,
R. C. A. S. C.

(5) [illegible] 13 Dec 41

President F.C.C.M.

Q.
Cdn Div Pet Coy.,
R.C.A.S.C.

ur and Parts necessary to repair CL195890

Parts	£ s. d
1 Gear, Steering assembly	4.10. 0
1 Drag Link	19. 0
1 Knuckle, steeringarm	8. 0
1 Fender, right front	2. 0. 0
1 Running board, right	6. 6
1 Spring, front	2.10. 0
1 Shackle and bushing assy, front spring rear end	4. 0
2 Universal joint assembly, frontdrive shaft	2. 0. 0
1 Drive shaft, front	1.19. 0
1 Pan, oil assembly	1.15. 0
1 Case, transfer	4.10. 0
1 Mirror, rear-view	7. 6
Total	£21. 8.11.

Labour

Straighten frame
Straighten front bumper
Replace right front fender and running-board
Repair right side of cab and a lign door
Straighten right rear-view mirror bracket and install rear-view mirror
Straighten super structure
Remove and reinstall right petrol tank and repair
Repair right tool box
Repair left front spring and install
Install new right front spring
Make repairs to front axle assy. and install also align front wheels.
Replace transfer case
Replace front drive-shaft and universal-joint assy's.
Replace steering-gear assy.
Replace engine oil-pan
Straighten right running-board brackets and install on frame
Make repairs to headlights

Total Labour Hours 150 hrs. £22.10. 0

Cost of parts.....£ 21. 8.11
Labour.....£ 22.10. 0

Total Cost.....£ 43.18.11

J H Cornell
(J.H.Cornell) Capt.
Officer i/c Workshops,
1 Cdn. Div. Pet. Coy.
R.C.A.S.C.

DAMAGE TO W.D. VEHICLE

Description and No.(if any).CZ4205943; Chevrolet. 8 cwt....
Particulars of damage:

Royal Canadian Regt.

Estimated cost of repairs: Labour.....£,9. 0. 0

Materials.....£31. 9. 9

Total.....~~£40. 9. 9~~ 111

(6) [illegible]

President. F.G.C.M.

Date: 22 DEC 41

B.Richardson

B.Richardson, Lieut.
No.3 Group, 1 Cdn. Div. Ord. W/S

7

No. 88108 Name Duguay, H. Sqn., Battery, or Company 1st Div. Petrol Company Corps R.C.A.S.C. Date of enlistment 14 Nov 39 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 133)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. Character

Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
			CERTIFIED TRUE COPY					
Ifield 19 Sep 40	Pte		Sec.15(1)-0800 hrs. 19 Sep 40 to 1030 hrs. 20 Sep 40. T.A.- 1 day 2½ hrs.	Sgt Girling	5 days F.P.	21 Sep 40	J.F.R.	Forf. 5 days pay. Total forf 7 days pay
Ifield 4 Aug 40	Pte		Sec.15(1)-0600 hrs 4 Aug 40 to 2230 hrs 4 Aug 40. T.A.-16½ hrs	Sgt Girling	Admonished	5 Oct 40	J.R.W. T.B.	Forfs 1 days pay
Reigate 29 Mar 41	Pte		Sec 15(3)-Out of bounds, in that he was absent from Coy. area for 3 hrs. without pass.	L/Cpl Cockrane L/Cpl Sibley	5 days C.B.	1 Apr 41	R.D. Foster	
Reigate 22 Aug 41	Pte.		Sec.40-Conduct etc., dirty mess tin on Sec. O.C.'s inspection.	Sgt. Job J.M.	Admonished	23 Aug 41	Lt. R.N Talbot	

Passed T.F.G.C.H.

(8) Pte. President F.G.C.M.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B/66106	Pte.	Duguay, H.	

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 671, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, provision being given for the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	Sec 15 (1)	times	2	times.
For	Sec 15 (3)	times	1	times.
For	Sec 40	times	1	times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence for~~

beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and Nil days in military custody, making a total of Nil days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 23

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 14 Nov 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N.A.

8. The accused is entitled to deferred pay or gratuity in respect of N.A. service.

9. The accused is entitled to reckon N.A. service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~or is in possession of or entitled to (state any military decoration or award)~~.

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N.A.

12. (*In the case of an officer.*) The accused holds in the army the rank of N.A. dated and in his regiment (*or* corps *or* department) the rank of dated

(7/8/40) W1.8024/8/2 75,000 12/40 A.& E.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B/66108 Rank Pte. Name Duguay, H. of Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		N. A.		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5 day of Feb. 42

[signature] Major
O.C. 1 Cdn Div Petrol Coy
R.C.A.S.C.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of , years,

In the rank of Pte. , years

In the rank of , years,

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

Summary of evidence in the case of
B/38108 Pte. Dugway, W., 1 Cdn Div
Petrol Coy R.C.A.S.C.

By direction of the Commanding Officer, Capt. L.W. Diehl, the summary of evidence is taken on oath.

1st Witness for the prosecution	Capt. R.C. Wilkes, Padre, Royal Canadian Regiment.
2nd Witness for the prosecution	A/3017 Pte. Jones, H.E., Royal Canadian Regiment.
3rd Witness for the prosecution	R.W. Barnes, 19 Chester Ave., Worthing, Sussex.
4th Witness for the Prosecution	W.G. Orchard, 27 Wigmore Rd., Broadwater, Worthing, Sussex.

Copies of the written statements of the above witnesses' evidence purporting to be signed by them have been read to the accused and are included in the summary of evidence.

Having regard to the loss of time involved the attendance of these witnesses cannot, in my opinion be readily procured for this summary.

Sgnd: W.H. Mitchell, 2/Lieut.

The accused demands the attendance of these witnesses for cross-examination at the Court-Martial.

CERTIFIED TRUE COPY [signature] Capt

Statement of Capt. R.C. Wilkes, Royal Canadian Regiment.

I am the R.C. Chaplain attached R.C.R. 1st Bde. and on Dec 12 at about 0930 a.m., I left Selsey in a Chev. 8 cwt driven by Pte. Jones enroute to London. About an hours ride after, while we were travelling about 30 - 35 m.p.h., we came to a bend in the road and all I remember is seeing an Army 30 cwt coming right in front of us on our side of the road passing a civilian truck, Jones applied the brakes and truck started to skid. That is all I remember.

Sgnd: R.C. Wilkes, Capt.
Chaplain, R.C.R.

Statement of A/3017 Pte. Jones, H.E., H.Q. Coy, R.C.R.

I am employed as a driver to Chev. 8 cwt OZ-5009943 and on Dec 12, 1941, I was requisitioned by the padre, Capt. Wilkes to drive him to London. We left Selsey about 1015 a.m. and were proceeding from Petworth towards Billingshuret when I drove around the end of a road. I saw a civilian vehicle coming towards me then a 30 cwt attempted to pass at a high rate of speed. He was right over on the left side of the road. I jammed my brakes and started to skid then I released the brakes and drove for the left ditch when the crash occurred. That is all I remember.

Sgnd: A/3017 Pte. Jones, H.E.
Royal Canadian Regiment

Statement of R.W. Barnes, 19 Chester Ave., Worthing, Sussex.

I was proceeding west on the Billingshurst - Petworth Road at approximately 25 to 30 m.p.h. On a right bend an Army Lorry (CL-195290) overtook my lorry and as he was a few feet in front of me he struck another Army Lorry OZ-4009943 coming in the opposite direction. I swung over on the curb and the first army lorry cut in front of me and turned over after hitting the second lorry. The first lorry was travelling at approximately 50 m.p.h.

Sgnd: R. Barnes

Statement of W.G. Orchard, 27 Wigmore Rd., Broadwater, Worthing, Sussex.

I was following E.V.B.6 at about 50 feet interval. An army lorry overtook me and passed ahead to overtake E.V.B.6, when he was opposite him, a smaller army lorry coming in the opposite direction collided and the first lorry cut in front of E.V.B.6 and turned over. The smaller lorry bounced off the first Army lorry and ended up in the ditch. Two men were thrown out of the smaller lorry. The first army lorry was travelling at approximately 50 m.p.h.

Sgnd: W.G. Orchard

Certified that the above are true copies of the said witnesses statements.

Sgnd: W.H. Mitchell, Lieut.

CERTIFIED TRUE COPY [signature]
Capt

5th witness for the prosecution

Capt. J.H. Cornell, O. i/c W/S 1 Cdn Div Pet Coy R.C.A.S.C., having been duly sworn states:-

I submit herewith the estimate for parts and labour (see Appendix A) which is correct. The parts listed are necessary to replace parts damaged and broken by the accident. The labour is also necessary to repair and replace parts mentioned above.

6th witness for the prosecution

Lieut. B. Richardson, No. 3 Group 1 Cdn Div Ord Workshops.

A copy of the written statement of the above witnesses' evidence purporting to be signed by him has been read to the accused and is included in the summary of evidence. (Appendix B.)

Having regard to the loss of time involved the attendance of the witness cannot, in my opinion be readily procured for this summary.

Signd: W.W. Mitchell, 2/Lieut.

The accused does not demand the attendance of the witness for cross-examination.

CERTIFIED TRUE COPY Geo Loughlan Capt

B/86108 Pte. Duguay, H.

The accused having been duly cautioned in accordance with Rule of Procedure 4 (2) elects to give evidence on oath.

I was returning from 1st Div Pet Coy Workshops to our pump at Petworth for the purpose of refuelling. I was driving a 30 cwt lorry number C.L. 195890 following L/Cpl. Evans in a 15 cwt lorry on the road from Billingshurst to Petworth. As we were nearing Hawkhurst we saw two civilian lorries ahead of us. L/Cpl Evans proceeded to pass both of them and I following him, passed the second one on a level stretch of road just before approaching a bend in the road. After passing the second lorry, I took up a position between the leading lorry and the second. After having gone round the bend, I proceeded to pass the first civilian lorry at approximately 30 m.p.h. As I had already passed this lorry at approximately 30 m.p.h. I saw an 8 cwt lorry coming towards me. I immediately cut over onto the left side of the road. I noticed the 8 cwt lorry immediately applied his brakes and the road being slippery caused his lorry to skid toward me. My vehicle at the time was half way over on my side of the road and then I was struck on the right front by this vehicle, which caused my lorry to turn over.

I disagree with the statements of W.O. Orchard and R.W. Barnes that I was travelling at approximately 50 m.p.h. as it would be impossible to negotiate a 30 cwt lorry around a bend, such as were taking, at a speed of greater than 30 m.p.h.

Signd: Pte. Duguay, H.

Certified that Rule of Procedure 4 (3) (b) (c) (f) and (g) have been complied with.

Taken down by me in the presence and hearing of the accused this 17th day of Dec 1941 at Hawkhurst Court, Sussex.

Signd: W.H. Mitchell, S/Lieut.

CERTIFIED TRUE COPY Capt

APPENDIX "A"

Damage to other vehicle:
Description and No. (if any)..C.L. 195830 Chevrolet, 30 cwt.....
Particulars of damage:

Steering gear assembly; drag-link; steering arm; right front fender; right front running board; front spring; shackle & bushing; assembly; two universal joints; drive shaft; oil pan; transfer case; rear view mirror.

Estimated cost of repairs on the basis of ordinary commercial charges:-

Labour	150 hrs. @ 0-3-0	.....221.10.0
Materials		.....221.12.11
	Total	243.12.11

Date: 22 Dec 41

Signed: H.Q. Williams, Lieut
for Capt. J.F. Cornell,
O. i/c Workshops
1 Cdn Div Pet Coy RCASC

CERTIFIED TRUE COPY

[signature]
Adm. Officer Capt
1 Cdn Div Pet Coy
R.C.A.S.C

APPENDIX "B"

Damage to W.D. vehicle:

Description and No.(if any)..CZ-4000943: Chevrolet..4 cwt.....
Particulars of damage:

Estimated cost of repairs: Labour..... £ 9.0.0.
Materials £31.9.9
Overheads
Total £40.9.9

Date: 22 Dec 41

Signd: B.Richardson, Lieut,
No. 3 Group, 1 Cdn Div
Ord. Workshop

CERTIFIED TRUE COPY

Adm. Officer Capt
1-Cdn Div Pet Coy
R.C.A.S.C

CC-127 (case # 3)

PTE DUGUAY J B.

See 48 for 1st case

" 153 (Dufours Case) for particulars of 2nd Conviction 23 Sept. /40.
(proceedings in 1st case on Duguay are missing and not recorded

Certified True Copy of
Original Proceedings
2 June 45
E K Duguay
JAG-Rev.
JAG Br. CMHQ

Correspondence to be PINNED here.

E-4082 Pte. Jean Baptiste DUGUAY
R.22e R. 6 C.I.R.U.
CC-127

Army Form A.3.

FORM FOR ASSEMBLY AND PROCEEDINGS OF FIELD GENERAL COURT MARTIAL ON ACTIVE SERVICE.

P R O C E E D I N G S

A.
Order convening the Court.

On Active Service, this 25th day of MARCH, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "A" GROUP CANADIAN REINFORCEMENT UNITS, C.A.(O)., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial;

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

"PROCEEDINGS REVIEWED"
"W.H. Waugh" Capt.
for Reviewing Officer (JAG) C.M.H.Q.
5 May 43.

PRESIDENT.

Rank	Name	Regiment
MAJOR	A.E.T. PAQUET (F.P.C.L.I.)	1 C.I.R.U.

MEMBERS.

Rank	Name	Regiment
Captain	G. M. Dorion (R. de Chaud)	6 C.I.R.U.
Lieutenant	L. A. Hudon (R. de Mais)	6 C.I.R.U.
Waiting Member Lieutenant	R. J. Gourdeau (R.22eR.)	6 C.I.R.U.

Signed "J.R.Stewart Lough"
Brigadier,
Commanding "A" Group Cdn Rft Units, C.A.(O).
Convening Officer.

S C H E D U L E

Number, Rank(a), Name and Unit of Accused (b)	Offence charged	* Plea	Finding, and if Convicted, Sentence(c)	How dealt with by Confirming Officer (d)
E-4082 Pte. Jean Baptiste DUGUAY R.22eR. 6 C.I.R.U.	First Charge A.A.Sec.10(4)	Not Guilty	Guilty	I do not confirm the finding of the Court on the first charge. I confirm the finding on the second and third charges and the sentence of the Court.
	Second Charge A.A.Sec.41	Not Guilty	Guilty	
	Third Charge A.A.Sec.8(1)	Not Guilty	Guilty	
	SEE CHARGE SHEET ATTACHED.	a. To suffer penal servitude for the term of five years.		
		b. To be discharged with ignominy from His Majesty's service. "A.E.T.Paquet" Maj. President. 26 Mar 1943. Algonquin Camp, Witley, Surrey.		"P.J.Montague" (P.J.Montague) Major-General Senior Officer, Canadian Military Headquarters. 7 APR 1943

* Question to be asked of accused, if he pleads not guilty (R. of P.39(A)):-
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (to be recorded on separate sheet if necessary):-

(Signed) "J.R.Stewart Lough" Brigadier, Commanding ....."A" Gp.Cdn Rft Units..... Convening Officer(e) C.A.(O).

(Signed) "A.E.T. Paquet" Major P.P.C.L.I. - 1 C.I.R.U. President.

(a) Appointment acting rank or acting appointment, if any to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

CHARGE SHEET

The accused, No H-4082, Private Jean Baptiste DUNUAY, of the Royal 22e Regiment, on the strength of 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

First Charge
Section 10 (4)
Army Act.

Breaking out of barracks,

in that he,

at Red Camp, Chobham, Surrey, on the 17th day of March, 1943, did break out of barracks to proceed to Sunningdale after Tattoo.

Second Charge
Section 41
Army Act.

Committing a civil offence, that is to say, assaulting a civilian.

in that he,

at Sunningdale, Surrey, on the 17th day of March, 1943, did assault a civilian.

Third Charge
Section 8 (1)
Army Act.

Striking his superior officer being in the execution of his office,

in that he,

at Sunningdale, Surrey, on the 17th day of March, 1943, when ordered by his superior officer, Lieut G. Gagnon, Royal 22e Regiment, 6 CIRU, to stop assaulting a civilian, did strike him in the face with his fist.

"W.E. Warren" Col.
(W.E. MORGAN), Commander
6 Can Inf Reinf Unit.

Algonquin Camp,
Witley, Surrey,
22nd day of March, 1943.

To be tried by Field General Court Martial.

"J.H. Stewart Lough"
(J.H. Stewart Lough) Brigadier,
Commanding,
"A" Group Can Rft Units,
C.A.(O).

25 Mar 43. Convening Officer

"A.N.T. TACHET" MAJOR PRESIDENT.

A.3.

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No E-4080 Pte. .....BUGUAY J.B., No. 6 C.I.R.U..... and that, in my opinion, he is fit to undergo trial by Court-Martial.

"A.E.T. PAQUET" MAJOR" PPCLI
PRESIDENT.

"??????????" Capt.

Proceedings of a Field General Court-Martial held at Algonquin Camp on the 26th day of March 1943 by order of Brigadier J.R. Stewart Lough, Commanding "A" Group, Cdn Reinf. Units, dated the 25th March 1943.

President:

Major A.E.T.Paquet, P.P.C.L.I. 1, C.I.R.U.

Members:

Capt. G.M.Dorion, R. de Chaud. 6, C.I.R.U.
Lieut. L.A.Hudon, R. de Mais. 6, C.I.R.U.

Waiting Member:

Lieut, R.J.Gourdeau, R. 22ie R. 6, C.I.R.U.

The Court satisfy themselves as provided by R.P. 22 and 23.

The accused is brought before the Court.

Prosecutor: Lieut. C.E.LEvesque, R. 22ie R. 6, C.I.R.U.

Defending Officer: Lieut, R.J.Gourdeau, R.22ie R. 6, C.I.R.U.

At 1000 hrs, the trial commences.

The Order convening the Court is read and marked. (a) signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q.1- Do you object to be tried by me as President, or by any of the officers whose names you have heard read over.

A.1- No.

"A.E.T.Paquet" Major President
P.P.C.L.I.

ACTP

The President and Members are duly sworn.

The Charge Sheet is signed by the President and marked (B2) and annexed to the Proceedings.

The accused is arraigned upon each charge appearing on the above mentioned Charge Sheet.

Q.2- Are you guilty or not guilty of the first charge against you which you have heard read?

A.2- Not guilty.

Q.3- Are you guilty or not guilty of the second charge against you which you have heard read?

A.3- Not guilty.

Q.4- Are you guilty or not guilty of the third charge against you which you have heard read?

A.4. Not guilty.

Acp

Proceedings on plea of not guilty.

Q.5- Do you wish to apply for an adjournment on the ground that any of the rules relating to procedures before trial have not been complied with, and that you have been prejudice thereby or on the ground that you have not had sufficient opportunity of preparing your defence.

A.5- No.

Prosecutor proceedd to call witnesses.

1st Witness for the Prosecution. Lieut C. Gagnon, R. 22e R. 6, C.I.R.U. being duly sworn is examined by the Prosecutor.

Q.6- Lieut Gagnon, can you identify the accused?

A.6 - Yes, Pte Duguay, R. 22e R.

Q.7- Can you give the Court your evidence of a civilian assault which occurred at Sunningdale Surrey on the 17th of March 1943?

A.7- On March 17th 1943, at approximately 2245 hrs in company with Lieut Boulanger I was walking on the streets of Sunningdale Village. When coming near to the Station, I noticed two Canadian soldiers who seemed to be argumenting with a civilian. I did not stop I just went on my way, a few minutes later I saw a civilian walking very fast behind me and I recognized him as the one which was with the two Canadian soldiers. Suddenly, he started running and crossed the street to the other sidewalk, then I noticed two Canadian soldiers coming behind me in pursuit of the civilian. These two soldiers passed by me on the sidewalk, as they passed by me I recognized one of them as being Pte Leblanc, A. Thinking that there might be trouble, I called Leblanc's name he trued his head, looked in my direction and just went on. Suddenly they started to run and closed up on the civilian, closing up on to him they forced him into an alley leading to a backyard. Seeing that there was trouble I crossed the street and shouted to them: What are you doing there?" They did not answer. I noticed one of them throwing the civilian on the ground so I gave the order to let that man alone. Then one of them came out of the shadow,and hit me in the face. As he came out of the shadow, I distinctly saw his face. I then fell on the ground, causing my head to hit the pavement. During that time Pte Leblanc who had been standing on the side, ran away with Pte Duguay.

Q.8- Was Duguay a man of your Company at that time?

A.8- He was in "A" Coy and I am also in "A" Coy.

Q.9- So you had seen him before?

A.9- Yes I had seen him a couple times before.

Q.10- Was his face familiar to you?

A.10- Yes fairly.

Q.11- Was it a moonlit night?

A.11- Yes it was bright.

Q.12- How far away was he when you did recognize Duguay?

A.12- When he came within reach of me.

"A.R.T.Paquet" Major Pres.
P.L.C.I.U.

Cross-Examined by the Defending Officer.

Q.13- Lieut Gagnon, will you tell the Court exactly when you came in contact with Pte Duguay for the first time?

A.13- I cannot remember the exact date, I only remember him as I remember other soldiers coming into contact with them daily.

Q.14- Lieut Gagnon, that night could you have recognized the accused by his name?

A.14- No.

Q.15- Give the Court one instance previous when you saw Pte Duguay and identified him by his name?

A.15- I knew Duguay as one of my own men belonging to the same company as mine but could not identify him by his name.

Q.16- Tell the Court how you could identify Duguay either by identification mark, looks or otherwise on the night of the 17th of March, 1943, if you did not know his name.

A.16- I did see his face clearly that night and identified him the next morning in the Guard room as the man who had struck me the night before.

Q.17- Lieut Gagnon, without going into your personal affairs, tell the Court where you were coming from that night at that time.

A.17- At 2200hrs, Stunningdale Hotel closed. We decided to go back to Camp by taxi. The taxi came but had one trip more to do before picking us up, so we started to walk with hope of meeting him on his way back. It must have been then approximately 2245 hrs when I saw Duguay the first time.

Q.18- Tell the Court exactly how long you stayed in front of the Hotel before the taxi came. And how long did you stay in front of the Hotel after the taxi had gone?

A.18- The taxi came at approximately 2315 hrs possible a little sooner. We stayed there fifteen minutes at the latest afterwards.

Q.19- Did you have a watch?

A.19- No.

Q.20- Did Lieut Boulanger who was with you had a watch?

A.20- I could not say.

Q.21- Did you look at the time at any particular watches or clocks that might have been around?

A.21- I looked at the time only at my exit from the Hotel.

Q.22- The time given referred to in your statement are approximate and were given only according to your good judgment?

A.22- Yes.

Q.23- When you walked away from the Hotel, how far this incident that you refer to in the first place, that is to say the conversation between two soldiers and a civilian. How far from the Hotel did it take place?

A.23- Approximately 100 to 125 feet from the Hotel.

"A.E.T.P." Pres.

Q.24- Could you tell the Court if this discussion was taking place whilst you were standing in front of the Hotel or when you walked away only.

A.24- It's passing by the Station that I overheard this discussion.

Q.25- Taking notation of the statement you gave to this Court will you tell the Court approximatively what time it was when the discussion which we are referring to was taking place.

A.25- Approximatly 2240 hrs or 2245 hrs.

Q.26- After being struck yourself did you go to the Civilian Assistance.

A.26- I was a little dazed and could not come to his assistance.

Q.27- What did the civilian do afterwards?

A.27- The civilian got up and Lieut. Boulanger said a few words to him. During that time the owner of the house near which the incident happened took me in the house to give me First Aid. I don't know what happened to the civilian as I came out of the house, he had gone.

Q.28- How were you dressed that night?

A.28- I was wearing Battle Dress whithout side arms.

Q.29- How was Lieut. Boulanger dressed?

A.29- Same as myself without side arms.

Q.30- When you came to the civilian assistance what distinguishing mark did you gave the soldiers to prove that you were an officer?

A.30- Only my stars on my shoulders straps and my open collar with neck tie.

The fact that Rule 83 (b) has been complied with.
The prosecuting officer declines to reexamine the witness
The Court adjourns at 1150 hrs.

The Court reopens at 1345 hrs.

2nd Witness for the Prosecution. Lieut. H.L. Boulanger R. de Chaud. 6 C.I.H.C. being duly sworn is examined by the Prosecutor.

Q.31- State your rank, name and Unit?

A.31- I am Lieut. H. L. Boulanger R. de Chaud. 6 C.I.H.C.

Q.32- Can you identify the accused present?

A.32- Yes, Pte Dugnay.

Q.33- Tell the Court the circumstances at your knowledge you came in connection with the accused regarding an assault on a civilian and the alleged accusation of striking an officer?

A.33- On the night of the 17th of March 1943, I was with Lieut. Dugnon in Sunningdale, Surrey. We had spent the evening in Sunningdale Hotel, which is near the Station, at 2200 hrs at the closing time of the Hotel we decided to come back to Camp by taxi. I phoned myself for the taxi and he told me he could not come befre 2210 hrs. We waited till 2210 hrs for the taxi. When he came we let him go with an other load. After the taxi had gone Lieut Dugnon and myself made our way towards the direction of Camberley. After having walked for a period of about 5 minutes, I saw Pte Leblanc and

Pte Duguay pass beside us marching very fast. I called Duguay by his name, but he did not seem to hear me, I also recognise Leblanc who was walking with him but failing to remember his name I did not call him. A few minutes later I saw Pte Duguay and Pte Leblanc crossing the road, and vanishing in the shadow of a house which was near there. I then heard a shamble of a fight. I told Lieut. Gagnon we had better go and stop that fight before they got in trouble. Lieut. Gagnon then crossed alone. I for my part stayed on my side of the road thinking that it would not be necessary for me to go. Just as Lieut Gagnon reached the scene of the fight, I remaining on the other side of the road I saw the two men doubling down in the direction of the Station, and also saw somebody falling down. I went further and soon recognised Lieut. Gagnon on the pavement, I immediately helped him to get up, because he was quite dazed, He had a wound in the right side back of the head and a slight injury on the left of the nose and his nose was also bleeding. After I had helped Lieut. Gagnon to get up, an officer of the Home Guard whom was residing in the house near there called him in his house to give him First Aid. Having left Lieut Gagnon going in the house with this Home Guard officer, I then saw a civilian with his clothes all twisted and who seemed to have been in fight with somebody. I asked the civilian what had happened, he told me he had been assaulted by two French Canadian soldiers. The civilian went away and I went in the house to see how was Lieut. Gagnon.

Q.34- Has Duguay ever been under your command?

A.34- I had him three weeks under my Command in Bognor Regis during the Spartan scheme. We were on the Greek Force Duguay was in my platoon and I knew him very well and his face is familiar to me.

Q.35- Was it a moonlit night?

A.35- I did not pay any notice if there was a moon or not, but it was a bright night.

Q.36- How far away from Pte Duguay where you, when you identified him?

A.36- Some two yards away.

Cross examined by the Defending Officer.

Q.37- Lieut. Boulanger what time was it when you left the Hotel?

A.37- When we come out of the Hotel it was approximatly 2215 hrs. The taxi arrived shortly afterwards.

Q.38- What means of identification did you have to identify Pte Duguay?

A.38- I identified Pte Duguay by his face, I know him.

Q.39- What time was it then?

A.39- To the best of my knowledge, it was between 2230 and 2235 hrs.

Q.40- When you talked to the civilian did you enquire for his name?

A.40- No.

Q.41- Beside having his clothes all twisted did you see any marks on him?

A.41- No.

"A.E.F." Pres.

Q.42- When you talked to the civilian did he made any other complaints than the one you stated in your declaration?

A.42- No, he was talking to somebody who had a foreign accent.

Q.43- Lieut. Boulanger give me the exact wording that the civilian used when he complained of the assault to you?

A.43- I can't give the exact words but my previous statement to that effect stands. I asked him if he knew why he had been assaulted, the answer was in the negative.

Q.44- When did you see the accused after that?

A.44- I went accompanied by the Provost through the Camp to put Duguay under arrest, we found him and placed him in the Guard Room.

R.P. 86(b) has been complied with.
The prosecuting officer declines to reexamine the witness.

Prosecution is closed.

A.E.P.

Q.45- Do you apply to give evidence yourself as a witness?

A.45- No.

Q.46- Do you intend to call any other witness in your defence?

A.46- Yes.

Q.47- Is he a witness as to character only?

A.47- No.

1st Witness for the Defence.

E-5013 Pte Cyr L. R. 22e R. 6 C.I.R.U. have been duly sworn is examined by the Defence Officer.

Q.48- Pte Cyr can you identify the accused, tell me what you know about him in regards to the night of the 17th oa March 1943?

A.48- On the night of 17th March 1943, four of us left Camp and proceeded to the Y.M.C.A. in Sunningdale, Surrey. Afterwards we went to a pub for a glass of beer between 1900 hrs and 1930 hrs. From there we went to a dance and we left dance at approximatly 2150 hrs, to go back to the Camp. I was walking behind Pte Duguay and Pte Leblanc up to the Station Road, then when we got there to the Station Road, we passed ahead of them going on our way to the Camp. When I got to the Hut I just had time to pick up my guitard and take it out of the box when Pte Duguay and Pte Leblanc came in.

Q.49- How many time where you in Sunningdale during the period of time we were stationed in Chobham?

A.49- Just that once.

Q.50- How long did it take you to go to Sunningdale from the Camp?

A.50- Approximatly twenty five minutes.

Q.51- How long did it take you to come back to Camp?

A.51- A little longer from twenty five minutes to thirty minutes, because we started from a further point.

Q.52- On the way back to Camp when you passed Duguay and Leblanc did you look back to see if they were following you?

A.52- No, because I was talking, laughing and joking with the one walking with me.

Q.53- Did you have a watch that night or on what have you based your knowledge of the time?

A.53- There was a clock at the dance.

Q.54- Did you look up the time when you arrive back at your billet or did you base the fact that it was 2225 hrs judging from the time it took you to walk back?

A.54- I judged it from the time I had to walk back, it is just a guess.

Q.55- When at the dance did you see the accuse talk to some civilian?

A.55- No.

Q.56- From the time you left the dance to walk back to Camp, when Duguay and Leblanc where walking ahead of you, did you see him talking to any civilian?

A.56- No.

"A.E.T.P."

Cross examined by the Prosecution.

Q.57- You say you came back to the Camp at 2225 hrs.

A.57- Yes.

Q.58- How long did you play the Guitard?

A.58- About ten minutes?

Q.59- Did you go to bed after that?

A.59- No.

Q.60- What did you do afterwards?

A.60- I spoke with the boys in the Hut.

Q.61- How long?

A.61- To tell you the truth I went to bed at about 2300 hrs,

Q.62- When did Pte Duguay, come in?

A.62- Pte Duguay and Leblanc came in just as I was taking my guitard out of the box to start playing.

Q.63- Can you tell the time?

A.63- Yes.

Q.64/ How many drinks did you have at the dance?

A.64- We did not drink as there was none.

Re-examined by the Defence.

Q.65- Immediately when Pte Duguay and Leblanc came in, did you speak to them?

A.65- Yes.

Question by the Court.

Q.66- Did you look at the time on the clock before coming out of the dance Hall?

A.66- Yes, it was 2150 hrs.

Q.67- Did you stop anywhere from the dance Hall back to the Camp?

A.67- No.

2nd Witness for the Defence — E-5571 Pte Stewart M. R. 22e R. & C.I.R.U. Have been duly sworn is examined by the Defence Officer

Q.68- Pte Stewart, identified the accused, and tell the Court all what you know about the night of the 17th of March 1945?

A.68- I recognize Pte Duguay has being the accused sitting there. On the night of the 17th of March 1945, I went to the dance Hall in Sunningdale, Surrey, with Pte Duguay, Leblanc and Cyr. When I left the dance Hall it was 2150 hrs.

"ADP"

They walked in front of us almost as far as the Station, Then Pte Cyr and I walked past them as we were in a hurry for the Tattoo. Then we arrived to our billet and Pte Duguay and Leblanc arrived after us.

Q.69- When at the dance Hall did you see Pte Duguay talk to some civilian?

A.69- I went with him to the dance Hall but did not see him speak to any civilian.

Q.70- When you past on your way back to Camp Pte Duguay and Leblanc, did they stop?

A.70- No, when we past them they followed us.

Q.71- How do you know they followed you?

A.71- Well, when I arrived at the billet they arrived after us.

Q.72- What time did you arrive at the billet?

A.72- I asked if the Tattoo had been made and some chap answered it must not be very late as it has not been done yet. I deducted from that, that it must have been 2215 hrs or 2230 hrs.

Q.73- How long did it take you to walk back from Sunningdale to Camp?

A.73- It's very hard to say but I would say about twenty minutes.

Q.74- Did you stop any where on your way back from the dance to Camp?

A.74- No, no place.

Q.75- Exactly how long after you were in the hut did Pte Duguay and Leblanc come in?

A.75- About 5 or 10 minutes.

Q.76- On your way back did you talk to Pte Duguay and Leblanc?

A.76- No, I was talking with Cyr, and Pte Duguay and Leblanc were talking together.

Q.77- Did you hear them talk?

A.77- No.

Q.78- If you have not heard them talk, how do you know they were following you?

A.78- It was a bright night, and I watch them in front of me.

Q.79- This last question's answere, is when you were walking behind them, when you were walking in front of them did you notice Pte Duguay and Leblanc walking behind you?

A.79- No. I just kept going talking to my chum.

Q.80- From the time you came to the hut, did the accuse leave the hut at any time?

A.80- Pte Leblanc and Duguay were both there up to the time I went to bed at approximatly 2300 hrs.

"ARTP"

Cross examine by the Prosecution.

Q.81- Did you go to bed when arrived at the hut?

A.81- No, not just as I came in.

Q.82- Did Pte Duguay or Leblanc talk to you the next morning?

A.82- Leblanc did.

Q.83- Did he ask you to remember everything that had happened the night before?

A.83- I cannot remember.

Q.84- What did tell you then?

A.84- Oh, well I can't remember.

Q.85- Are Pte Duguay and Leblanc your friends?

A.85- Yes, they are my pals.

3rd Witness for the Defence — E-9174 Pte Belliveau D. R.22e R. & C.I.R.W. having been duly sworn is examine by the Defence.

Q.86- Pte Belliveau, can you tell the Court at what time you came back from Sunningdale, Surrey, on the night of the 17th of March 1943?

A.86- Approximately at 2215 hrs or 2220 hrs.

Q.87- Look at the accused here and tell the Court here approximatly to the best of your knowledge what time did the accuse arrive in the Barrack Room upon that night, as I understand he went to Sunningdale with you?

A.87- He came in approximatly five minutes after me.

Q.88- Did the accuse leave the barrack room at any time afterwards?

A.88- I couldn't tell you, Sir.

Q.89- Pte Belliveau at what time did you go to bed?

A.89- At 2245 hrs.

Q.90- Until that time did you see the accused in the barrack room?

A.90- I didn't see him at all after that until next morning.

Q.91- Where was your bed in that hut?

A.91- Almost in the center of the barrack room,

Q.92- Where was the accused bed?

A.92- Two beds away from me.

Q.93- Pte Belliveau, do you mean to say that you did not see him?

A.93- I don't keep track of the people in the barrack room.

Q.94- What did you do in the hut between 2220 and 2245 hrs?

A.94- I played cards.

Q.95- How did you notice that Pte Duguay came in the hut?

A.95- Pte Duguay and Cyr played around together, Cyr playing the guitard and Duguay tap dancing for a while.

"ATTP"

Q.96- Who did you play cards with?

A.96- Pte Leblanc and some other chaps.

Cross examine by the prosecution.

Q.97- In all what you say about the time approximate?

A.97- Yes.

Q.98- Is an error of 15 or 20 minutes possible?

A.98- No.

4th Witness for the Defence. D-66239 Pte Allain J.M. R.22e R. & C.I.R.U. having been duly sworn is examine by the defence.

Q.99- On the night of the 17th of March 1943, did you go out of Camp?

A.99- No sir.

Q.100- At 2215 hrs where were you?

A.100- In my hut.

Q.101- Where do you sleep in the hut?

A.101- End on the left coming in.

Q.102- Look at the accuse, do you know him, what is his name?

A.102- Yes, I know him, Pte Duguay.

Q.103- Was he sleeping in your hut on the 17th of March 1943.

A.103- Yes.

Q.104- Where is his bed?

A.104- End from the left he sleeps on my right.

Q.105- Tell the Court to the best of your knowledge at what time did Pte Duguay and Leblanc came in on the night of the 17th of March 1943?

A.105- At the best of my knowledge 2215 hrs or 2220 hrs.

Q.106- Did Duguay went to bed as soon as he came in?

A.106- I do not know as I went to bed myself.

Q.107- Did you notice Pte Leblanc and Duguay going out?

A.107- No sir,

Q.108- The next morning was Duguay sleeping in his bed?

A.108- I didn't notice him in bed, both Duguay and Leblanc where in the hut.

Cross examine by the Prosecution.

Q.109- Are the times you mention approximate?

A.109- Yes.

Q.110- Could there be an error of 15 or 20 minutes?

A.110- I did not have the time and the time I mention is approximate. R.P. 52b has been complied with."EXP Pres." "EXP"

Q.111- Is it possible that Pte Duguay and Leblanc went out again?

A.111- That Sir, I could not tell.

Q.112- Did Pte Duguay and Leblanc afterwards asked you to remember a specially that night?

A.112- No, Sir.

R.P. 83(b) have been complied with. "AETP"

The defending officer makes a closing address marked appendix "A" signed by the President and attached to the proceeding.

The prosecuting officer makes a closing address marked appendix "B" signed by the President and attached to the proceedings.

A.E.T.P.

The court is closed for the consideration of the finding.

The Court find that the accused E-4082 Pte Jean Baptiste DUGUAY, R. 22e R. 6 C.I.R.U. is guilty of all the charges.

The Court being re-opened the accused is again brought before it.

Lieut C. E. Levesque R. 22e R. 6 C.I.R.U. is duly sworn. "A.E.F.P." Pres.

Q.113- Have you any evidence to produce as to the character and particulars of service of the accused?

A.113- Yes, I produce this statement.

Q.114- Is the accused the person names in the statement which you have heard read?

A.114- Yes.

Q.115- Have you compared the contents of the above statements with the Regimental Books?

A.115- Yes.

Q.116- Are they true extracts from the Regimental Books and is the statement & entries in the Conduct Sheets a fare and true Summary of those entries?

A.116- Yes.

The accused declines to cross-examine this witness.

R.P. 83 b have been complied with "AEFP"

Q.117- Do you wish to address the Court?

A.117- NO.

A.E.F.P. Pres.

SUMMARY OF EVIDENCE

In the case of No Y-4082, Private Jean Baptiste DUGUAY, of the Royal 22e Regiment, on the strength of 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence was taken under oath.

First Witness for the Prosecution. Lieut. C. Gagnon, Royal 22e Regiment, 6 CIRU, having been duly sworn, states:

I am Lieut C. Gagnon, of the Royal 22e Regiment, 6 CIRU. On 17 Mar 43, I was in Sunningdale with Lieut Boulanger when, at about 2245 hrs, as we were going by the station, I saw two soldiers arguing violently with a civilian. I did not think anything of it at the time and continued on my way. A few seconds later the civilian caught up with us and passed us walking very fast and even running at times. Behind him were two soldiers. As these soldiers went by I recognised one of them as Pte Leblanc. I called his name, but, looking back, he kept on going. Suddenly the civilian started to run with the two soldiers in pursuit. They caught up with him and pushed him into an alleyway. I could see this quite plainly in the moonlight. I crossed the street in their direction to see just what they were up to. I asked what they were doing, but got no answer. Just then Duguay threw the civilian on the ground. I ordered him to stop. He suddenly lunged towards me and hit me with his fist on the nose, knocking me backwards and causing me to split my head on the pavement. While I was down Duguay and Leblanc took to their heels and ran away. While all this was going on Leblanc just stood to one side and did nothing to interfere.

Q.1. How was I dressed when this happened?
A.1 You were wearing battle dress.
Q.2 Was I far from you when you identified me?
A.2 You were just about to hit me and were quite close.

The accused declines to further cross-examine this witness.

"C. Gagnon" Lieut.

Second Witness for the Prosecution. Lieut R. L. Boulanger, Regiment de la Chaudiere, 6 CIRU, having been duly sworn, states:

I am Lieut R.L. Boulanger, of Le Regiment de la Chaudiere, 6 CIRU. On 17 Mar 43 at about 2230 hrs I was in Sunningdale with Lieut C. Gagnon. As we were walking down the street in the direction of the camp, I saw two soldiers going by which I recognised as Ptes Duguay and Leblanc. I called out Duguay's name but he didn't seem to take any notice. Suddenly they ran and went into an alleyway. No sooner had they entered the alleyway that I heard coming from there noises which seemed to indicate that a fight was in progress. Lieut Gagnon crossed the street to try and stop it. Suddenly in the moonlight I saw a man fall and two others take to their heels. Realizing that the man who had fallen was Lieut Gagnon I rushed to his assistance. He was down on the ground and his nose was bleeding profusely. Just then a man arose from out of the shadow where he had been lying. He was a civilian and I tried to question him as to what had happened. He did not seem eager to answer my questions and he walked away. I am positive, having seen them go there and having recognised them as they went by me, that the two men who ran away after knocking down Lieut Gagnon, were Ptes Duguay and Leblanc, although I was too far away at the time to actually see which one of them did strike Lieut Gagnon.

"A.E.F."

SUMMARY OF EVIDENCE

In the case of No E-4802, Private Jean Baptiste DUBUAY, of the Royal 22e Regiment, on the strength of 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

Q.1 Where were you when you recognised me?
A.1 I was walking down the street and you passed beside me.
Q.2 How far away were you when the fight started?
A.2 On the other side of the road, about 35 or 40 feet away.
Q.3 Did you identify the two men who ran away.
A.3 I was too far away to identify you but I knew it was you.

The accused declines to further cross-examine this witness.

"R. L. Boulanger" Lieut.

The accused, having been duly cautioned in French in accordance with MP 4 (R) and RO 1424, reserves his defence.

I certify that this Summary of Evidence, consisting of two pages was taken down by me in the presence and hearing of the accused at Algonquin Camp, Witley, Surrey, on the 20th day of March, 1945, and that Rules of Procedure 4 (C), (D), (E) and (F) have been duly complied with.

"Charles ?. Levesque" Lieut.
(Officer taking Summary)

Algonquin Camp,
Witley, Surrey,
20th day of March, 1945.

CRL/JLR

A.E.T.R.

"A.E.T.Paquet Major P.P.C.L.I."
Pres.

App. "A".

CLOSING ADDRESS

B-4803 Pte J. B. Duguay, R 22e R No 6 CTRU.

1. Before I start I wish to point out that all here lays on the first charge, if the prosecution fails to prove the first charge the whole matter should be dropped and a no case verdict should be given.

2. The prosecution has failed in every point to prove the first charge.

(a) Three witnesses have stated under oath that the accused was in his quarters from 2215 hours until at least 2230.

(b) The witnesses for prosecution have only seen what they described as being Duguay in the moonlight for a split second, it might well have been anyone at all wearing a uniform. The times stated in their evidence does not at all correspond with this one given by all witnesses of prosecution.

(c) The whole matter of time was approximate.

(d) The prosecution fails to prove the second charge because they did not even bring the most important witness the civilian.

3. Due to all these little points not clarified it becomes clear that the identification was badly done and I ask the court that a non lieu verdict should be passed.

"R. J. Gourdeau" Lieut.
Defending Officer.

AETP

"A.E.T.Parmet Major"
P.P.C.L.I. - Pres.

Regina - Duguay J.F.

Final Address - Summing Up Evidence -

From the evidence given by Lieut. Dagnon and Lieut. Boulanger it is clear and beyond the shadow of a doubt that Pte. Duguay was in Summingdale after 2200 hrs on March 17th 43. Nobody could deny he was in his hut between 2200 and 2225 hrs. But nobody can prove he did not go down town after 2230 hrs., and as it take about 20 minutes at the utmost to reach the station, it is clear he could easily be there at 2245 when he assaulted a civilian and Lieut Dagnon. Facts never lie, witnesses may, and specially his, do not seem very reliable.

Still from the evidence of the two officers a/m Duguay assaulted a civilian (Unfortunately, on account of his not being identified he could not be brought into Court)

Then Duguay struck Lieut Dagnon in the face, and ran away fearing to be recognized. Lieut Dagnon still has the marks of the assault.

Duguay and Leblanc were plainly identified by Lieut. Boulanger and Lieut Dagnon before, during and after the assaults. I do not believe the Court needs more evidence. Moreover, the accused's witnesses admit there might be an error of 15 minutes in the time they stated, and they cannot assure Duguay and LeBlanc went to bed after 2230 hrs.

"Charles ? Levesque, Lt."
R 22 R.

Prosecution.

"A.E.T.Paquet Majr. P.P.C.L.I."
President.

A.4.

1. I acknowledge that I have been served with a copy of the Summary of Evidence taken at Algonquin Camp, Witley, Surrey, prior to my trial by Court-Martial. I further acknowledge that I have been served with a true copy of the charges upon which I am being brought to trial by Court-Martial.

2. I desire the services of an officer to represent me at my trial by Court-Martial. I request the services of

Lt. P. Magnan

if he is available.

"J.P. Duguay"

Algonquin Camp,
Witley, Surrey,
22nd day of March 1943.

"A.E.T.Paquet Majr. Pres"
P.P.C.L.I.

Last Sheet Destroyed 11 Mar 40 - Compiled from MFM 4 - Original incomplete

E.P. page 1

No E-4082 Name Duguay, J.B. | Sqn, Battery, or Company | Corps R.22eR | Date of enlistment 11 Sep 39 | GC Badges N/A | Service or Proficiency Pay N/A | MFM 6 (AFB 122) 40/PAS/136 (3488)

Date of last entry in Company Conduct Sheet: 8 Feb 40 | No and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No 1 | Signature OC Company, etc: C.E. Levesque, Lieut. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	22 Apr 40	Pte		AA 40 Conduct to prejudice of good order & military discipline (Improper use of public property)	PSM Basiouk Cpl Fortin	168 hrs detn	23 Apr 40	Capt Trudeau	
Field	31 Aug 40	Pte		AA 9-1 Disobeying in such a manner as to show wilful defiance of authority a lawful command given personally by his superior officer in the execution of his office.	Documentary	28 days detn	13 Sep40	FGCM	Forf 14 days pay for time in arrest
Field	16 Sep 40	Pte		AA 9-1 Disobeying in such manner as to show wilful defiance of au- thority a lawful command given personally by his superior officer in the execution of his office.	Sgt Beaudet L/C Poitras	60 days detn	23 Sep 40	FGCM	Released from detn 11 Nov 40.29days rem

Certified true copy....."? ? ??????" Lieut.

Officer having custody of original documents. "A.S.T.P." Pres.

(PTO)

E.1. page 2.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13 Apr 41	Pte		AA 18-1 AWL 2 days DO 18, 28 Apr 41		7 days CB	16 Apr 41		Forf 2 days pay
Field	18 May 41	Pte		AA 40 Neglect to prejudice of good order & military discipline (Disobeying an order)	Sgt Miville CSM Archambault.	14 days FP 14 days pay	19 May 41	Lt-Col Poirier	
Field	20 Jun 41	Pte		AA 40 Neglect to prejudice of good order & military discipline (Disobeying an order)	Cpl Quintal Cpl Savaria	21 days FP 21 days pay	21 Jun 41	Major Bernatchez	
Field	20 Aug 41	Pte		AA 40 Neglect to prejudice of good order & military discipline (Found outside camp without cap, respirator or pass)	L/C Marton	10 days CB	23 Aug 41	Major	
Field		Pte		Carrying firearms Released from HM Prison 6 Mar 42 - 61 days remitted		6 months HL	4 Nov 41	Magistrates Court	Forf 47 days pay for time in arrest
Field	8 Sep 42	Pte		AA 18-1 AWL from 1800 hrs 8 Sep 42 to 1330 hrs 11 Sep 42 (2 days 19 hrs 30 min.	Cpl Riopel	7 days FP 7 days pay "A.E.F. PRES"	15 Sep 42	Lt-Col Mathewson	Forf 3 days pay for AWL &

Certified true copy....."Signature"....Lieut. Officer having custody of original documents.

No E-4802 Name Duguay, J.B. | Sqn, Battery, or Company | Corps R 22e R | Date of enlistment 11 Sep 39 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/156 (3488)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc C.E. Levesque, Lieut. | Charactor

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		Civil offence		6 months IML	1 May 42	Civil Court	Forf 3 days pay for time in arrest.
				Released from HM Prison 5 Sep 42 - 57 days remitted.					
Field	2 Oct 42	Pte		AA 40 Neglect of prejudice of good order & military discipline (Neglecting to obey an order)	Sgt Derasp	4 days CB	3 Oct 42	Major Strand	
Field	11 Oct 42	Pte		AA 15-1 AWL from 2200 hrs 11 Oct 42 to 0600 hrs 12 Oct 42 (8 hrs)	L/C Forest	7 days CB	14 Oct 42	Major Berringer	Forf 1 days pay for AWL
Field	28 Nov 42	Pte		AA 8-2 Using insubordinate to his superior officer	PSM Pratt Cpl Rousseau	14 days CB	1 Dec 42	Lt-Col Lawson	
				Certified true copy consisting of two sheets.					
				"??????????" Lieut.			"A.E.T.P." Pres.		
				Officer having custody of original documents.					

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
						"A.E.T.P. Pres"			
						"A.E.T. Paquet Major President" P.P.C.L.I.			

E.1.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
E-4082	Private	Duguay, J.B.	Royal 22e Regiment, 6 CIRU

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, R.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For Army Act 40	1	times	5	times.
For Army Act 8 (2)	1	times	1	times.
For Army Act 15 (1)	2	times	3	times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct, Nil

or

~~There are no entries in the conduct sheets of the accused.~~ "???"

2. ~~The accused has not been previously convicted, or~~ "???"

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

"???" 3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ xbxbxbxbxbxbxbxbxbxbxbxbxbxbx beginning on the xbxbxb day of bxbxbxbxbxbxbxbxbxbxbxbxbx

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 4 days in military custody, making a total of 4 days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ / attestation paper is 24

6. The date of his ~~commission~~ / attestation specified in his ~~record of service~~ / attestation paper is 11 Sep 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 years 64 days

8. The accused is entitled to deferred pay or gratuity in respect of 3 years 64 days service.

9. The accused is entitled to reckon 3 years 64 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~(or is in possession of or entitled to (state any military decoration or award)).~~

"???" 11. ~~(If the accused is a warrant officer.)~~ The accused before he was made a warrant officer last held the regimental rank of xbxbxbxbxbxbxbxbxbx

12. ~~(In the case of an officer.)~~ The accused holds in the army the rank of xbxbxbxbxbxbxbxbxbx dated xbxbx, and in his regiment (or corps or department) the rank of xbxbxbxbxbxbxbxbx dated bxbxbxbxbxbxbxbxbxbx

[illegible]

"A.E.T.PAQUET MAJOR PRES"
F.P.C.L.I.

"A.E.T.P."PRES.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. E-4082 Rank Private Name Dumay, J.B. of R 22e R. 6 CIRU Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FOCM	13 Sep 40 Field	AA 9-1 Disobeying in such a manner as to show wilful defiance of authority a lawful command given personally by his superior officer in the execution of his office.	28 days detention	
FOCM	23 Sep 40 Field	AA 9-1 Disobeying in such a manner as to show wilful defiance of authority a lawful command given personally by his superior officer in the execution of his office.	60 days detention	29 days
Magistrates' Court	4 Nov 41	Carrying firearms	6 months imprisonment with hard labour	61 days
Civil Court	1 May 42	Civil offence	6 months imprisonment with hard labour.	57 days

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26th day of March, 1943.

"[illegible]" Lieut.

Officer having custody of original documents.

E.1.

18. The accused has served as a non-commissioned officer continuously without reduction, to the present date.

Date of Promotion.

In the rank of [illegible] years [illegible]

In the rank of [illegible] years [illegible]

In the rank of [illegible] years [illegible]

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

Evidence and Charge Sheets (if necessary) to be PINNED here.

3.

I certify that the above Court assembled on the 26th day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

B. Certificate of President as to proceedings.

I also certify that:-

1. The members of the Court

2. The witnesses

were duly sworn.

Signed this 26th day of March 1943.

"A.E.T.Paquet Major" P.P.C.L.I.
President of the Court Martial.

C. Certificate in case of death sentences.

"A.E.T.P."

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

Signed this 7th day of April 1943.

"P. J. Montague"
Confirming Officer.
(P.J.Montague) Major-General
Senior Officer
Canadian Military Headquarters
7 APR 1943

Promulgated and extracts taken in the case of E.4082, Pte. J.B.Dugway, (R.22e R.) Daily Order Part II #61 dated 13 Apr. 43.

(Dated)...12 Apr 43.....(Signed) "L.G.A.Barette" Lieut.
Asst. Adj.

Evidence and Charge Sheets (if necessary) to be Pinned here.

B.
Certificate of President as to proceedings.

I certify that the above Court assembled on the 26th day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:-

1. The members of the Court

2. The witnesses

were duly sworn.

Signed this 26th day of March 1943.

"A.E.T.Paquet Major" P.P.C.L.I.
President of the Court Martial.

C.
Certificate in case of death sentences.

"A.E.T.P"

D.
Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

Signed this 7th day of April 1943.

"P. J. Montague"
Confirming Officer.
(P.J.Montague) Major-General
Senior Officer
Canadian Military Headquarters
7 APR 1943

Promulgated and extracts taken in the case of H.4082, Pte. J.H.Duguay, (H.22e R.) Daily Order Part II #61 dated 13 Apr. 43.

(Dated)...12 Apr 43.....(Signed) "L.O.E.Barette" Lieut.
Asst. Adj.

COUNTER NUMBER 560428

HOUR 1405

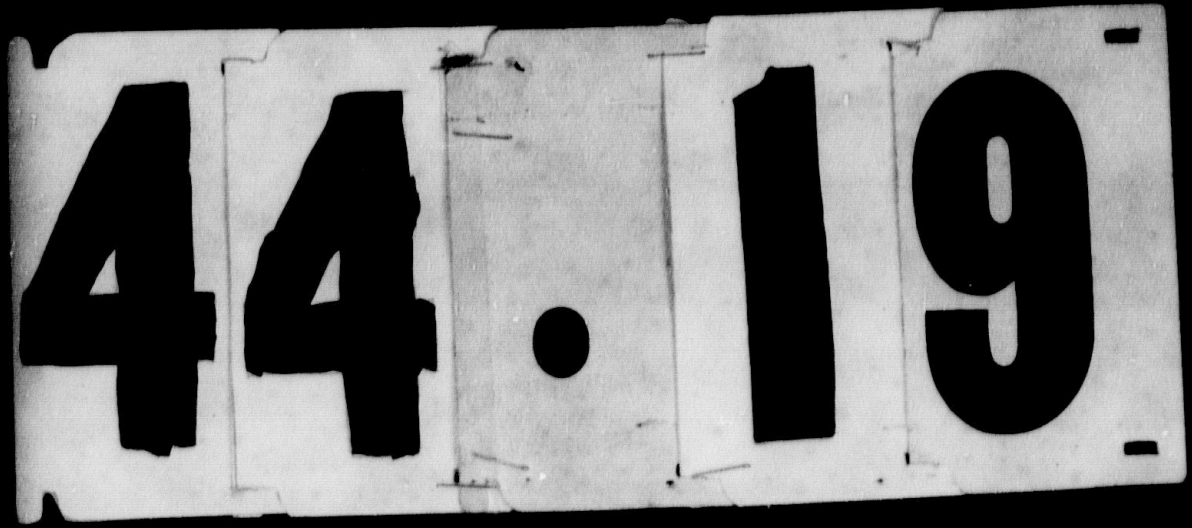
OPERATOR'S INITIALS MPD

RELIEVING OPERATOR _____

END

FIRST

SIDE


44.19

152. P

Re. Uruguay L

O. H. M. S.

M. F. B. 270

CHARGE SHEET

IN THE CASE OF D-56964, Pte. Duguay, L., Le Regiment de Maisonneuve, C.A.(O)., the accused, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE:-WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER, in that he, at Goodwood Park, on Sept. 1st-42, disobeyed a lawful command given by his superior officer when he did not report report to the Coy to which he was detailed.

SECOND CHARGE:WHEN ON ACTIVE SERVICE, ~~REFUSING TO OBEY~~ DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER, in that he, at Goodwood Park, on September 4th, 1942, refused to obey a lawful command given by his superior officer when he refused to report to the Coy to which he was detailed.

THIRD CHARGE:-WHEN ON ACTIVE SERVICE? ABSENT WITHOUT LEAVE? in that he, at Goodwood Park, was absent without leave from 1700 hours on Sept. 1-42 until 1400 hrs, on Sept. 4th, 1942, a total of 2 days and 21 hours.

[redacted]
Commanding Officer,
Le Regiment de Maisonneuve,
C.A.(O)

Request of the accused for a Defending Officer endorsed overleaf. P.T.O.

TO BE TRIED BY F.G.C.M.

Brigadier
Comd. 5 Cdn. Inf. Bde.

6

REQUEST OF THE ACCUSED FOR A
DEFENDING OFFICER

I hereby request the Commanding Officer to appoint

Capt. C. W. Granda

to act as my Defending Officer at my forthcoming trial by Field General Court Martial.

If this Officer's services are not available to me, I hereby request the Commanding Officer to appoint

Capt. M. Bluteau

in his place on my behalf.

Signed:- L. Duguay
L. Duguay.

Appendix A. - 3

MEDICAL OFFICER'S REPORT

[illegible] 17 Sep 42

I certify that No. D56964 [illegible]

of [illegible] is in a good state of health,

and fit to undergo Trial by Court martial.

[illegible] Capt.

Medical Officer

Station In The Field

Date 17-9-42

M. F. B. 246

25M—6-41 (792)
H.Q. 1772-39 480

Record of the Proceedings of an F.G.C.M. held on D 56964 Pte Duguay L, R de Mais, in the field, 17 Sept. 42.

17 Sept 42

2. Actual Court; President Major F.M. Mitchell R.H.C.
Members Capt. W.B. McQueen Calg Highrs
Lieut. M. Prevost R de Mais

2(a) The accused did not object to the President or Members of the Court.

Prosecutor Capt. deLorme R de Mais (att)
Defending Offr. Capt. C.W. Granda do

3. The accused is arraigned and pleads NOT GUILTY to the following charges ;

1st Charge A.A. Sec 9(2)
2nd " A.A. Sec 9 (2)
3rd Charge A.A. Sec 15(1)

4. The accused is asked the question at the foot of page 2 of A.F.A. 3 and his answer is "NO", as recorded.

5. EVIDENCE FOR THE PROSECUTION;

FIELD GENERAL COURT MARTIAL

Fulmen 17 Sep 42

Of D.56984, Pte. Duguay, L.

of LE REGIMENT DE MAISONNEUVE CA(O)

CHARGES

1st. Charge Disobeying a lawful command given by his superior officer.
- Accused pleads not guilty.-

2nd. Charge Refusing to obey a lawful command given by his superior officer
- Accused pleads not guilty.-

3rd. Charge A.W.L. from 1700 hrs. 1 Sep 42 to 1400 hrs 4 Sep 42.
- Accused pleads not guilty.-

Fulmen 17 Sep 42

EXAMINATION OF FIRST WITNESS

LIEUT. P. MANTHA , R. de Mais. CA(O)

Q. Will you explain what happened on the afternoon of the 1 Sep 42.
A. On 1 Sep 42, I was in the R. de Mais. at #2 CDIRU, working on a Court of Inquiry when Pte. Dugay walked in and asked if I was going back soon in the Fd. Unit. On giving him an affirmative answer he asked if I would bring him with me in my vehicle as he explained that he had just come out of detention and he had sone equipment which he wanted to fetch at 5 Cdn Inf Bde. I informed him I would gladly do it provided he would get himself a pass and permission from his superior officer, Major Brosseau, who came in the Orderly Room at this very moment. The pass was granted, but I informed Duguay that he would have to come back by train the very same night as we could not send transport to bring him back. Duguay answered that he had enough money in his pocket to do so. We left shortly after and I stopped at Bde. where Duguay got off.

Fulmen

Q. Were you under the impression that Duguay had a pass?
A. Yes.

Cross examination

Fulmen

Q. Will you recognize Major Brosseau's signature if you see it on the pass?
A. Yes, it is Major Brosseau's signature indeed.

SECOND WITNESS

Examination of Capt. Bourcier.

Q. Do you recall conversation you had with Capt. Slater on 1 Sep 42 about Duguay?
A. On 1 Sep 42, at about 1600 hrs. Capt. Slater of 5 Cdn Inf Bde. called me on the phone and said that Pte. Duguay was at Bde. and apparently had no pass. I told Capt. Slater to hold Pte. Duguay and I phoned Major Brosseau at #2 CDIRU who informed that Pte. Duguay had a late pass for the day. I informed Capt. Slater of what Major Brosseau but again Capt. Slater denied the fact and I told us Duguay as he belong ed to the Fd. Unit.

Exhibit 9
17 Sept 42

Q. When Capt. Slater called you, he said Duguay had no pass.
A. Yes.
Q. Which instructions did you give about Duguay?
A. I told Sgt. Provost to tell Duguay that he had been detailed to C coy.
Q. Are you sure that Sgt. Provost gave orders to Duguay to eport to C Coy?
A. Yes.
Q. Pte. Duguay was paraded to you in order to know where he had spent those two days.
A. Yes, Sir. Duguay said to me that he prefferred to be sent to the Guard Room instead of going to C.Coy.
Q. Do you know if Duguay had reasons to act so?
A. He had no reasons at all.
Q. Then he was not satisfied with the posting.
A. Right.
Q. What did you do?
A. I put Duguay under close arrest.

Cross examination

Q. What time did Duguay report to you?
A. I was told it was about 1400 hrs on 1 Sep 42.
Q. Did Sgt. Provost tell Duguay to report to C. Coy at once.?
A. Yes.
Q. What time was he supposed to fall on parade normally?
A. 0830 hrs.
Q. Duguay was not at this camp before?
A. No.
Q. How many men do you put in a tent?
A. Normally, a tent accomodates 10 men, but they are now occupied by 6, 7 or 8 men.

Re-examination

Q. Do you remember at about what time Capt. Slater called you?
A. Sometime in the afternoon.
Q. Then Pte. Duguay may have reported slightly about 1730 hrs or 1800 hrs.
A. Yes.

THIRD WITNESS

D.56972, Sgt. Provost, R.

Examination

Q. What happened on 1 Sep 42 when Pte. Duguay reported to you from Bde.
A. On 1 Sep 42, sometime in the afternoon, Duguay reported to me after he had seen the Adjt. stating he was reporting from 2 CDIRU. and that he had been transferred from 5 Cdn Inf Bde to 2 CDIRU. I phoned Bde. and was told by Bde. Orderly Room Sgt. that Pte. Duguay was transferred from 5 Cdn Inf Bde. to R. de Mais. Fd. Unit. I explained the case to Pte. Duguay and ordered to report to C. Coy for duty. Pte. Duguay asked me to ask the Adjt. if he could be instead to H.Q. Coy as a driver or a D.R. The Adjt. told me to send Pte. Duguay to C Coy and I gave the same order to Pte. Duguay. He then left me.
Q. You told Pte. Duguay to report to C. Coy.
A. Yes.

Q. What did he do?
A. He went away.
Q. Did he ask where C Coy was?
A. No.
Q. Then you took for granted that he knew where C Coy was?
A. Yes.
Q. To which Coy did you direct Pte. Duguay to report?
A. C Coy.
Q. Did you try to find Duguay afterwards.?
A. Yes, I phoned to all coys. and he was found in the camp. Then Duguay reported to Orderly Room. I paraded Duguay to the Adjt. and he said to the later:" Don't prepare my forms for posting to C coy, but prepare them for posting to the Guard Room or my former coy".
Q. Were you personnally present when Pte. Duguay used those words?
A. Yes.

Cross examination

Q. Did you spend any time chatting with Pte. Duguay before you gave him instructions?
A. Yes.
Q. Did you give him a difinite order?
A. Not exactly. I said to him: " You will go to C Coy".

FOURTH WITNESS

D.56436, Pte. Paquin, F.

Examination

Q. What do you do in the regiment?
A. I'm clerk in C Coy.
Q. Do you know Pte. Duguay?
A. I did not know before this time.
Q. If Pte. Duguay had reported to you, would you remember that?
A. Yes.
Q. Did Pte. Duguay report to you on 1 Sep 42?
A. No.

Cross examination

Q. Is it a rule in you coy. for one to report to you when one joins your coy?
A. Yes.
Q. Is it known by all ?
A. I don't think so.

Re-examination

Q. How long have you been clerk in C Coy?
A. 2 years.
Q. When a man reports to your coy. what do you do?
A. I mark his name and regtl. no. in the records.

Questions by the Court

Q. Were you advised by your Regtl Orderly Room that Pte. Duguay was coming in your Coy?
A. No.
Q. How did you know that Duguay was supposed to go in you Coy?
A. I did not know it on the first, I only knew it on the Second.

Exhib. 13
17 Sept 42.

FIFTH WITNESS

D.57301, Pte. Ritarose, L.

Examination

Q. You belonged to A coy on the 1 Sep 42.?
A. Yes.
Q. On that night, did Pte. Duguay sleep with you?
A. Yes.
Q. You were transferred to C Coy the day after?
A. Yes.
Q. Did Pte. Duguay sleep with you in C. Coy?
A. Yes.
Q. Do you know any reasons why Duguay slept with you?
A. Yes. Duguay told me he was supposed to sleep in the guard room and he had no blankets. Then I offered him to sleep with me.
Q. Did Pte. Duguay sleep with you the following nights?
A. He slept in my tent every night until he was sent to detention.

Cross examination

Q. Did Pte. Duguay have any blankets on the 1 Sep 42?
A. No.
Q. What makes you think that Pte. Duguay was going to sleep in the guard room that night?
A. It is because I met him in the camp and I asked him in which coy. he was sleeping and he answered me: " I'm going to sleep in the guard room."
Q. Have you seen Pte. Duguay in C Coy lines during the day from 1 Sep 42 to the day he was put under close arrest?
A. Yes.

Re-examination

Q. You were posted to C Coy?
A. Yes.
Q. Did Pte. Duguay take part in the Platoon work ?
A. I don't know.

Questions by the Court

Q. Have you seen Pte. Duguay on parade with C Coy at any time?
A. No., but I've seen him every morning going to the M.O. for his finger.

SIXTH WITNESS

D.56003, C.S.M. Berube, A.

Examination

Q. For which coy. are you C.S.M. ?
A. C Coy.
Q. Do you remember if Pte. Duguay ever reported to you?
A. No.
Q. When somebody wants to b e paraded to the M.O. what does he usually do?
A. He must report first to C.O.C.
Q. Do you remember if your C.O.C. ever told you that Duguay had asked to be paraded before the M.O.
A. No.
Q. Are all men of you coy. paraded to the M.O. by the C.O.C.?
A. Yes.

Q. Do you remember any increase of strength in yourcoy on 2 Sep 42?
A. No, no increase at all.

Cross examination

Q. Is your coy trained as a whole?
A. No.

Questions by the Court.

Q. How do you know that a man is coming to your coy?
A. By the Orderly Room.
Q. In the case of Pte. Duguay, did you know that he was coming to your coy?
A. No.
Q. To the best of your knowledge, where was Pte. Duguay sleeping between the 1 and the 4 Sep 42.
A. On one morning my clerk told me that Duguay had slept in one of our tents.
Q. Did Pte. Duguay turn out on your parades?
A. No.
Q. Is it possible for a man to live 2 or 4 days in your lines without your knowledge?
A. Yes.
Q. Have you a sick report with the name of Pte. Duguay on?
A. I can't say.
Q. Do you know Duguay?
A. Yes.
Q. Have you seen Duguay in the camp between the 1 and 4 Sep 42.
A. Yes.

MOTION BY THE DEFENDING OFFICER

Capt. C. J. Grenda, R. de Mais.

I should like to make a motionthat the case be dismissed because there are no prima facie proofs.

PROSECUTOR

Capt. deLorme, R. de Hull

I refer to the statement of the Adjt. who has reported the very words of Pte. Duguay saying that he preferred to be posted to the guard room instead of being posted to C Coy.

THE MOTION IS UPHELD ON CHARGES TWO AND THREE.

PRESIDENT

Pte. Duguay, do you wish to make a statement on oath or a simple statement or do you wish to call witnesses or do you wish your defending officer to speak for you? Answer - My defending officer will speak for me.

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ADDRESS BY PROSECUTING OFFICER

In any case, when a man reports to a Unit, He has to report to the coy. he is detailed to. But Pte. Duguay who knew nothing about the positions of the coys. did not ask any questions. Pte. Duguay instead of reporting to C Coy went to A Coy and the morning after whent to C Coy. He did not appear on any parades at all. He spent 2 or 3 days in C Coy lines and did not report at all to that coy.

ADDRESS BY DEFENDING OFFICER

We have the evidence from Sgt. Provost that Duguay did not receive the order to report to a coy, but to go to a coy., and he slept in the lines of C Coy.

The court is closed for the finding.

The court is re-opened and the NOT GUILTY findings read to the accused

The Prosecutor files AFB 296 and certified true copy of NPM 6.

No statement was made in mitigation of punishment.

No character witnesses were called.

The court closed for the consideration of the sentench.

CERTIFIED THAT THE FOREGOING PAGES NUMBERED 1 to 6 IS A TRUE RECORD OF THIS TRIAL.

17 day of Dec. 42

signed ..... President.

Exhibit 19
17 Sept 42.

ABSTRACT OF EVIDENCE.

in the case of D-56964, Pte. Duguay, L. Le Regiment de Maisonneuve, C.A.(O), the accused, a soldier of the Canadian Army, Overseas;

FOR THE PROSECUTION:-

FIRST WITNESS:- Lieutenant P. A. Mantha, Le Regiment de Maisonneuve, C.A.(O), having been duly sworn in, states:-

On September 1st. 1942, I was in R. de Mais. Orderly Room in #2 C.D.I.R.U. working on a Court of Inquiry, when Pte. Duguay walked in and asked if I was going back soon to the Field Unit. On giving him an affirmative answer he asked if I would bring him with me in my vehicle as he explained that he had just come out of detention and he had some equipment which he wanted to fetch at 5 Cdn. Inf. Bde. I informed him I would gladly do it provided he would get himself a pass and permission from his superior officer Major Brosseau who came in the Orderly Room at this very moment. The pass was granted but I informed Duguay he would have to come back by train the very same night as we could not send transport to bring him back. Duguay answered he had enough money in his pocket to do so. We left shortly after and I stopped at Bde where Duguay got off.

Exhibit 21
17 Sept 42.

FOR THE PROSECUTION:-

Second Witness:- Capt. F. D. Bourcier, Adjutant, Le Regiment de Maisonneuve, C.A.(O), having been duly sworn in, states:-

On September 1st, 1942, at about 1600 hours, Captain Slater of 5 Cdn. Inf. Bde. called me on the telephone and said that Pte. Duguay was at Bde and apparently had no pass; I told Captain Slater to hold Pte. Duguay and I telephoned Major Brosseau in #2 C.D.I.R.U. who informed me that Pte Duguay had a late pass for the day. I informed Captain Slater of what Major Brosseau had said but again Captain Slater denied the fact and I told Captain Slater to send us Duguay as he belonged to the Field Unit.

An hour later, Pte. Duguay under escort reported to me, and I ordered him to report to Sgt. Provost, Orderly Room Sgt. who would post him to some Coy.

On Sept. 4th, 1942 at about 1400 hours, Pte. Duguay was paraded to me again in the Orderly Room when I told him of all the trouble he had caused about his pass, and he said he had not produced it because he had not been asked for it.

I then ordered Sgt. Provost to post Duguay to "C" Coy and I informed Pte. Duguay of this; Pte. Duguay then said:-"Do not trouble yourself with making the posting to "C" Coy, send me to detention instead." or words to that effect. As Duguay was refusing my order I put him under close arrest and sent him to detention.

Duguay 23
17 Sept 42

FOR THE PROSECUTION:-
WITNESS:- D-56972, Sgt. Provost, R., Orderly Room Sgt., Le Regiment de Maisonneuve, C.A.(O)., having been duly sworn in, states:-

On September 1st, 1942, sometime in the afternoon, reported to me after he had seen the Adjutant, stating he was reporting from #2 C.D.I.R.U. and that he had been transfered from 5 Cdn. Inf. Bde to #2 C.D.I.R.U. I phoned Bde and was told by Bde. Orderly Room Sgt. that Pte. Duguay was transfered from 5 Cdn. Inf. Bde. to Regiment de Maisonneuve Field Unit. I explained the case to Pte. Duguay and ordered him to report to "C" Coy for duty. Pte Duguay asked me to ask the Adjutant if he could be sent instead to H.Q. Coy as a driver or a D.R. The adjutant told me to send Pte. Duguay to "C" Coy and I gave the same order to Pte. Duguay. He then left me.

On Sept. 4th, 1942, C.S.M.Berube informed me that Pte. Duguay was not in "C" Coy and I sent runners in the camp to find him. Pte Duguay was finally located in the camp and I paraded him to the Adjutant who said to Pte. Duguay:- "You report to "C" Coy for duty" or words to that effect. Pte. Duguay answered:-"Don't trouble yourself to post me to "C" Coy, prepare my posting to detention" or words to that effect.

Captain Bourcier then placed Duguay under close arrest.

Duguay 25
17 Sept 42.

FOR THE PROSECUTION:-
Fourth Witness:- Major L. Brosseau, Commanding Officer, Regiment de Maisonneuve Reinforcement Coy, #2 C.D.I.R.U., having been duly sworn in, states:-

On September 1st, 1942, I was in the Coy Orderly Room when Lieut. Mantha called here. Pte. Duguay asked me if I would grant him a late pass to go and get his equipment at 5 Cdn. Inf. Bde. where he was attached before coming here from detention. Pte. Duguay said he would go as far as Bde. with Lieut. Mantha and that he would come back the same night by train. The pass was granted and signed under these conditions. I have not seen Pte. Duguay since.

FOR THE PROSECUTION:-
Fifth Witness:- D-57377, Sgt. Landry, C., of "C" Coy. Le Regiment de Maisonneuve, C.A.(O)., having been duly sworn in, states:-

During the week of Aug. 30th, 1942 to Sept. 5th 1942, I was Coy. Orderly Sgt. in "C" Coy. At no time in this period did Pte. Duguay report to me for duty.

FOR THE PROSECUTION:-
Sixth Witness:- D-56436, Pte. Paquin, F., Clerk in "C" Coy, Orderly Room, Le Regiment de Maisonneuve, C.A.(O). having been duly sworn in, states:-

Since August 30th, 1942, Pte. Duguay has never reported to me for duty in my capacity of Orderly Room Clerk.

Duguay 27
17 Sept '42

FOR THE PROSECUTION:-
Seventh Witness:- D-97006, Pte. Lafrance, G., of "A" Coy, Le Regiment de Maisonneuve, C.A.(O), having been duly sworn in, states:-

On the night of Sept. 1st, 1942, Pte. Duguay slept in my tent. He was sleeping next to Pte. Ritarose.

FOR THE PROSECUTION:-
Eighth Witness:- D-97301, Pte. Ritarose, L. of "C" Coy, Le Regiment de Maisonneuve, C.A.(O)., having been duly sworn in, states:-

On Sept. 1st, 1942, I belonged to "A" Coy. On t hat night, Pte. Duguay slept next to me in my tent. The next morning I was posted to "C" Coy, and on that night Pte. Duguay slept next to me in my tent in "C" Coy.

THE ABOVE SUMMARY OF EVIDENCE HAS BEEN TAKEN DOWN AND WRITTEN AT GOODWOOD PARK CAMP, near Chichester, Sussex, on the 14th and 15th days of September 1942, by order of my Commanding Officer and complying with the provisions of D.R.O. #772.

P. A. Martha, Lieut.
Le Regiment de Maisonneuve, C.A.(O).

No. D 56964 Name Duguay L. Pte Sqn., Battery, or Company "C" Corps Regt. de Maisonneuve Date of enlistment 27-12-39 G.C. Badges nil Service or Proficiency Pay nil

M.F.M. 5 (A.F.B. 172) (22255—7-41 (1218-20)) M.G. 1775-49-1612

Date of last entry in Company Conduct Sheet nil No. and date of last drunk nil Period not reckoning towards freedom from extra fine nil Sheet No. 3 Signature O.C. Company, etc. Character Fair

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Valcartier Ho	4-8-42	Pte		W.O.A.S. conduct to the prejudice of good order and military discipline in that he, at Valcartier Ho. on 4-8-42 used insubordinate language to a superior officer, to wit Sgt. [illegible]	P-40151 Sgt. Dupuis D. 31090 L/Cpl. Dudley	21 Days Detention	10 Aug-42	J. M. Houghton Lt. Major 5 Can. Inf. Bde.	
" "	4-8-42	Pte		W.O.A.S. disobeying in such a manner as to show wilful defiance of authority, a lawful command given personally to his superior officer in the execution of his office in that he, at Valcartier Ho, on Aug-4-42, when personally ordered by Sgt. Dupuis, R. 22e. Regt 2 Can Div, to lay out his kit inspect to do so A.A. Sec 9(1)	Sgt. Dupuis L/Cpl. Dudley				

Released from Canadian Detention Barracks, on 29 Aug-42. sentence having ceased.

P.T.O.

Army Form B.122

No. D 56964 Name Duguay- L. Pte Sqn., Batty., or Company "C" Corps Regt. de Maisonneuve Date of enlistment 27-12-39 Sheet No. 1

Date of last entry in Company Conduct Sheet nil No. and date of last drunk nil G.C. Badges nil Long Service and G.C. Pay nil Signature O.C. Company, etc. —

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Montreal	22-3-41	Pte		A.W.L. from 30-1-41 until 5.0.5. 22-2-41		Stoppage of Pay $2	2 Days, Part II Nil 57		
Valcartier	14-8-41	Pte		W.O.A.S. Neglect to obey standing order, in that on Aldershot Rde 2nd Line reliefs 2-8-41 and 4-8-41 not previously sworn, delayed [illegible] C.A.R.O. 472 (57) A.A. Sec 11	Sgt. Gilkins Cpl. Pinsonneault	14-8-41 Confined 3 Days C.B.	19-8-41	Lt. Col. T. Rousseau	
Bedford	3-10-41	Pte		To wrongfully & with fraudulent intent sell or dispose of 24 lbs more or less W.D. Wire, property of His Majesty, entrusted to him for the purpose of [illegible] A.A. Sec 41-(1)(b)		7 Days C.B.	5-11-41	Lt. Col. T. Rousseau	

P.T.O.

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Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
					Certify	true copy			
						[illegible]	Capt. adjt		

-2-

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Wt. 15001/1883 1,000,000 H.P.Ltd. 51-7048 Forms B122/4

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Upper Burden	26-11-41	Pte		Neglecting to obey a standing order in that he did drive a W.D. M.C. in excess of 35 m.p.h. A.A. Sec 11	L/Cpl. Nelson " " Bond	5 days C.B. & forfeited 5 days pay	1-12-41	Major D.F. Paulus B.M.	
In the Field	3-10-41	Pte		W.O.A.S. Neglect to forget order of good order and military discipline in that he, on road near Lodington at 0430 hrs. 3 oct. 41 drove W.D. vehicle 4319284 without due care and attention causing it to collide with a log thereby occasioning damage to W.D. vehicle to the extent of £7.10.6 A.A. Sec 40	No witnesses Documentary Evidence Road Accident Report	Stoppages of Pay £1.10.0	20-6-42	C. R. Payne S.C. & C.I.B.	

Appendix 'B' 79

Substitute for A.F.B. 296
or M.F.B. 355.

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF
The ACCUSED

No. D-56964, Name. Pte. Duguay, L. Unit: Regt de Maisonneuve

Age. 27 Married or Single: Married Number of Dependents. 2.

DATE OF ATTESTATION:- December 29th, 1939

NUMBER OF DAYS SPENT IN CLOSE ARREST (to date of trial):

CIVIL nil MILITARY 13 Hospital Nil TOTAL:- 13

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK.

NIL

A certified True Copy of M.F.M. 6 must accompany this form.

W.D. Bourdier, Capt. & Adjutant
Officer i/c Records.
R de Mais. C.A.(O).

Dated at:- Aldershot
This 11th day of September 1942.
(to be dated and signed as of date of trial.

152-P

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Sixteenth day of September, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 5th Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*(and that it is not practicable to delay the trial for reference to a superior qualified officer.)~~ GW

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

~~*I am unable to appoint:—~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~ GW

~~*(3. Three Officers having more than one year's service.)~~

~~(or the following reasons, namely:—)~~

In my opinion, military exigencies, namely, the dispersion of units, and difficulties of communication and other difficulties render it inexpedient to observe the provisions of those rules inconsistent with Appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

PROCEEDINGS REVIEWED

Gen Brahan Capt

26 Oct

President.

Rank.	Name.	Regiment.
Major	F.M.Mitchell	R.H.C.

Members.

Rank.	Name.	Regiment.
Capt.	W.B.McQueen	Calg.Highrs.
Lieut.	M. Prevost	R de Mais.
Lieut.	WAITING MEMBER V./Harshaw K.	HQ 5 Cdn Inf Bde.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed GWhitehead

(G.V.Whitehead) Brigadier

Commanding 5 Cdn Inf Bde.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-56964 Private DUGUAY L., R. de Mais., a soldier of the Canadian Army, Overseas.	FIRST CHARGE A.A. Sec. 9 (2) (See charge sheet attached)	Not Guilty	Guilty.	
	SECOND CHARGE A.A. Sec. 9 (2) (See charge sheet attached)	Not Guilty	Not Guilty	
	THIRD CHARGE A.A. Sec. 15 (1) (See charge sheet attached)	Not Guilty	Not Guilty	
			6 months - ~~180 days~~ Detention	I confirm GWW
			[signature] 17 Sep 42	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):— No Sir

(Signed) [signature] (H. V. Whitehead) Brigadier
Commanding 5 Cdn Inf Bde,
Convening Officer (e)

(Signed) [signature] Maj
The Black Watch (R.H.R.) of Canada.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

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[signature] 17 Sep 42

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 17th day of Sep. 42, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. The interpreter)
~~*(4. The officers under instruction)~~ N/A [signature]
were duly sworn.

* Omit if not applicable.

Signed this 17th day of Sep 1942

[signature] Maj.
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 10~~

N/A [signature]
President of the Court Martial.

* See footnote (b) on page 762 M.M.L. 1929.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison and further sentence.)~~ GWW

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 19 day of Sept 1942.

[signature] Brig
COMD 5 CDN INF BDE
Confirming Officer.

Promulgated and extracts taken in the case of D56964 Pte Duguay L.

(a) (Dated) 21 Sep 42 (Signed) [signature] Bisaillon Major

Promulgated and extracts taken in the case of D56964 Pte Duguay L

(Dated) 22 Sep 42 (Signed) [signature] Capt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

5L-88

Pte. Duguay, L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : G2926 Pte Duguay N

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Charge	NOT GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)~~ being in the UK "JEL CM" (1)

Time in confinement awaiting present trial—a total of 34 days, of which nil days were spent in hospital.(2)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To suffer penal servitude for the term of three years.

(Sgd) _____ 28 Apr 45 (Sgd) "J E L Castonguay" Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the findings and sentence for confirmation

"Jas A Roberts"
Date 4 May 45 (Sgd) [J A Roberts] Brig Commanding 8 Cdn Inf Bde

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 63A, 64. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be cast committed to prison or detention barracks until further order.~~ (1) "HDGC"
(1. AA 57A. Delete if not used.)

24 May 45 (Sgd) "H D G Crerar"
Date (H D G Crerar) General
GOC in C First Cdn Army
Commanding
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
G2926 Pte Duguay	2 Jun 45	"W S Norton" Capt & Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

SL-88

FIELD GENERAL COURT-MARTIAL

CFAMR (To Reg (AFAS) 45/F 55 B/1608 (A&D)) 4/3BB

Convened by Order of Brigadier J A Roberts Comnd 8 Cdn Inf Bde dated 23 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G2926	Pte	Nicholas	DUGUAY	N SHORE R

CERTIFIED TRUE COPY
Maj Paymaster

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) GERMANY on (date(s)) 28 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 30/96

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM, in MML pp 741 to 751. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 195, for oaths and instrs as how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President tells accused : Do you object to~~ as interpreter ? Ans

~~The Interpreter is sworn.~~ (1) ~~Do you object to~~ as shorthand writer ? Ans /ELC
~~The shorthand writer is sworn.~~ (1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)
(1. RP 100. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	J E L CASTONGUAY	MCR att R DE CHAUD
Member	Capt	R GORDON	Calg Highrs
Member	Capt	J A LAVOIE	R DE CHAUD
Judge-Advocate			
Prosecutor	Capt	A C McD NEILL	E SCOT R
Defending Offr	Lt	W H ROGERS	N SHORE R

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defnding Offr a lawyer ? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (3) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment makes(s) (no) ~~(~~ plea
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposit., the evidence, if any, and finding are recorded per Notes. For forms of record see references in fn to RP cited. Insert in A8 rank and name of the accused making the plea.)

14 Jun 45 Jab

A9. The accused is ~~were~~ arraigned ~~severally~~ on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 30, 112. See para 1 of instrs p 1. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF 196 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witness from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) in accn of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans N/O (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The ~~Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed~~ on the ..... charge(s), and allowed on the ..... charge(s), ~~and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans N/O Do you intend to call witnesses on your behalf ?
Ans N/O Are they witnesses as to character only ? Ans J F C
(1. *RP* 111. 2. *RP* 40(*A*), *see* 90(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 102(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) ~~He announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)
(1. *AA* 54(3) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans N/O
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFR* 225 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(1) and Conduct Sheet(2), and in mitigation of punishment ?(3) Ans N/O
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on each anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 331, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 66, 722-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1b), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"JEL C"

CHARGE SHEET

The accused, G2926 Pte Nicholas DUBUAY, "B" Coy, North Shore (New Brunswick) Regiment, a soldier of the Canadian Army Overseas is charged with:

1ST CHARGE
AA SEC 12(1)(a)

WHILE ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE

in that he

in the field at 1745 hrs 24 Mar 45 after having been warned for action against the enemy and during Operation "PLUNDER" with intent to avoid such action, absented himself without leave from 1745 hrs 24 MAR 45 until surrendering to a member of No 7 Pro Coy, Cdn Pro Corps at 2100 hrs 27 MAR 45. (Absent 3 days 3 hrs 15 mins)

In the Field
14 APR 1945

"J N Gordon"
(J N Gordon) Lt Col
Comd North Shore (NB) Regiment

To be tried by Field General Court Martial.

23 Apr 45

"Jas A Roberts"
(J A Roberts) Brig
Comd 8 Cdn Inf Bde

"JELC"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G2926	Pte		Nicholas	DUGUAY	N SHORE R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, "JAR" being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 23 Apr 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General "JAR" Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed "JAR" or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "JAR"

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ "JAR"

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	J E L CASTONGUAY	RCR ATT R DE CHAUD
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	R GORDON	CALG HIGHRS
Capt	J A LAVOIE	R DE CHAUD
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in GERMANY, "Jas A Roberts" Brigadier

(Country.) (Signed personally. RP 105 fn 2.) (Rank.)

Date 23 Apr 45 Commanding 8 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/P A 5/1697 (6148) *(See overleaf for oaths and notes for use on trial.)*

"JEL C"

MEDICAL OFFICER'S CERTIFICATE (KR(Can) Para 557)

I certify that I have this day examined G2926 Pte DUGUAY N

NORTH SHORE (NEW BRUNSWICK) REGT and in my opinion he is fit~~, unfit~~ to undergo trial by Court Martial.

Station In the Field

Date 28 APR 1945

"J McCabe"

(J McCabe, ~~Capt~~) RCAMC

MO North Shore (NB) Regiment

Unit

Case of G2926 Pte Nicholas Duguay, "B" Coy, North Shore Regt.

FIRST WITNESS: Having been duly sworn states: I am Lieut N H Whiston, 4 pl B Coy North Shore Regt. Witness recognizes the accused.

At about 1130 hrs 24 March 45 I assembled my platoon for a briefing on the crossing of the Rhine and the attack which was to be made after the crossing. Pte Douguay was present when I briefed my platoon. I personally saw him there, I told them that starting from 1200 hrs on that the Pl would be CB'd to the area, pending our move, I did not give anytime as to when the CB would be lifted. About 1600 hrs a number of the boys including Pte Dougay and L/Cpl Scott, were present with me during a discussion, at about 1745 hrs. the platoon was formed up ready to move off. We were moving from the Coy area to embuss for the Rhine crossing, it was reported to me that one man was absent from my platoon. I investigated and found Pte Douguay was missing. I made a personal check of the platoon and found this to be correct. I made a search of the Pl area and that of Coy HQ but could not find the accused. I shouted several times but received no reply, I did not see Pte Duguay during the move, the crossing of the Rhine or the attacks that followed.

Cross Examination by defence

The Coy area was confined enough that he could have heard anyone shouting.

RP 83 (b) complied with.

2ND WITNESS: Having been duly sworn states: I am F52759 L/Cpl Scott I.I, B Coy N Shore Regt. The witness identifies the accused.

At about 1145 hrs 24 March 45 we were briefed by Lt Whiston of the crossing of the Rhine, and confirming all personal of 4 platoon to the Coy Area, at which Pte Duguay was present, and at 1745 hrs we were formed up and Pte Duguay was absent at this time I was Pte Duguay's section commander, Lt Whiston and myself searched the pl area, also Coy HQ also shouted but Pte Duguay did not answer. We then moved off. I did not see Pte Duguay at any time during the Rhine crossing, the move or the attack that followed.

No cross examination by defence.

Certificate from No 7 Coy Can Provost Corps Exhibit "A"

RP 83 (b) complied with

No closing address by prosecution

CLOSING ADDRESS OF DEFENCE

I would like the court's attention drawn to the fact that the accused surrendered himself and that a change of heart had taken place, and he realized that he had done wrong, and by surrendering himself cut down the AWL considerably.

19.

Exhibit "A" "G C McDonell" Capt

CERTIFICATE TO BE MADE IN ACCORDANCE WITH ARMY ACT SECTION 70(1)(i)

I certify that No. 92926 Rank Pte Name DUQUAY N

of "B" COY NORTH SHORE (NBT) Bde Unit surrendered to D97911 Cpl DUQUAY N. CDO PROVOST CORPS 7 Prov Coy (place) at 2100 hrs on 27th March 45 (date). He was dressed in uniform/~~civilian clothes~~.

Date Signature of Provost Marshal, ~~Assistant Provost Marshal~~, or other officer into whose custody the ~~accused~~ person was taken on arrest.

Signature & Rank "I E Wilson" Lieut

Unit or appointment O i/c Nijmegen Det
No.7 Provost Coy

NOTES

1. This certificate must be signed personally by one of the officers concerned.
2. In no circumstances may it be signed by any person under the rank of Warrant Officer or by anyone not holding commissioned rank.
3. In no circumstances should the place of apprehension be described as 'In the Field'. The actual place of apprehension should be stated, or if difficulty is experienced in describing this place, the map reference should be given.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
G2926	Pte	DUGUAY N	NORTH SHORE (NB) REGIMENT

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. ~~The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-~~

For .....N/A..... N/A..... times

For .... times

For .... times

For .... times

2. ~~Previous convictions of the Accused by a court martial or a civil court are set out in the Schedule overleaf.~~

3.* ~~The accused at the present time is under sentence for .....~~

~~beginning on the ..... day of .....~~

4. The accused has been awaiting trial on the present charges for 10... days in civil custody; and for ..34. days in military custody, making a total of ..34..... days of which .0..... days were spent in hosp.

5. The present age of the accused is 20 yrs.....

6. The date of his attestation is 2 Mar 44.....

7. The service which the accused is allowed to reckon is .....1 yr.....

~~8. The accused is in possession of~~ #

~~9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date -~~

Date of Promotion

In the substantive rank of ...N/A..... .....

In the war substantive rank of ....

In the acting rank of ....

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

* Strike out if not applicable

State the military decorations (if any) held by accused.

Army Form B.296 (War)

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended

N/A

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 28 day of APR 45

"M D Morten" Capt & Adjt
for (J B GORDON) LT COL
COMD NORTH SHORE (NB) REGIMENT

Ex "B" "JEL C"

No. G2926 Name DUGUAY N | Sqn, Battery, or Company | Corps CIC | Date of enlistment 9-2-44 | GC Badges | Service or Proficiency Pay N/A | 3/17 MFM 6 (APB 122) 40TAS/126 (5413)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
"SHEET NO I DESTROYED - 29 AUG 44 DATE OF LAST ENTRY NIL NO OF CASES OF DRUNKENNESS NIL."									
CERTIFIED TRUE COPY "D M Morten" Capt & Adjt 14 APR 45									

(PTO)

5J-60

Pte Duguay R. J.

Missing

5 H-45

Gm. Duquay. H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E-0184 Gnr DUGUAY, Walter - 1 CGRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 52 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of One Hundred and Twenty (120) Days.

(Sgd) ..... 10 NOV/45 ..... [illegible] Lieut. Col.
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 57, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders (1)
(1. AA 57A. Delete if not used.)

Date 20 Nov 45 (Sgd) ..... Brigadier,
Commanding "C" Group,
Can. Reinforcement Units
Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
E-0184 Gnr DUGUAY W.	23 NOV 45	J. R. Matheson Lt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED AT CMHQ IN AB [illegible] SW-425-4-8-D

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA8) 40/F & S Forms (6/44) 4/388

Convened by Order of Brig E.C. Plow, CBE DSO Comd "C" Gp, CRU dated 14 Nov 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-0184	Gnr	Walter	DUGUAY	1 CGRU

7 Dec 45 L.J. Brodie
REVIEWING OFFICER JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 10 NOV 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, J.A., if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1315 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that counsel elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Can 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ..... as interpreter? Ans ~~.....~~
~~The Interpreter to swear.~~(1) ~~Do you object to~~ ..... as shorthand writer? Ans ~~.....~~
~~The shorthand writer to swear.~~(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans N.O., S.J.F.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 76, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D. L. REDMAN	HQ CRU
Member	CAPT	J.H.K. BOOTH	1 CG RU
Member	LIEUT	G.R. C. HUBB	1 CG RU
~~Judge Advocate~~			
Prosecutor	LIEUT	Z. MILLER	1 CG RU
Defending Offr	LIEUT	A. SKINNER	1 CG RU

Questions by President: Is the Prosecutor a lawyer? Ans N/C Is the Defending Offr a lawyer? Ans N/C (2)
(1. RP 26, 27, 109, 111. Lists of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment makes(s) (no) (a) plea (3)
(1. If a special plea is made for separate trial on some or more charges (RP 62(1), 108), or as to the jurisdiction of the Court (RP 34, 35(A)), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For further set record see references in fns to RoP cited. Insert in AB note and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 30, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 for record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans. N/A.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence shd read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA 54(3) (d), RP 43, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO - 2 IW
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~(copies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. AFB 255 or AFB 256. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Says he has (NOTE 1 IW)(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove as addl anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A., if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 108, 119(A), KR Con 308, 330, 563-566, Overseas HO 309, 2325, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3), 98(1), KR Con 564. 2. RP 50. As to release from arrest on Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, E0184 Gnr Walter DUGUAY, R.C.A., on the strength of No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE

SECTION 15 (1)

ARMY ACT

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, absented himself without leave from 2359 hrs 30 Jan 45 until apprehended at 1430 hrs 9 Apr 45.

Absent: 68 days, 14 hrs, 31 mins.

Comd No 1 Canadian General
Reinforcement Unit
Canadian Army Overseas

Field

12 Nov 45

To be tried by Field General Court Martial

Brigadier
Commanding "C" Group, Cdn Reinforcement Units
(Convening Officer)

14 Nov 45
Bordon, Hants

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-0184	Gnr		Walter	DUGUAY	1 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~ named above as the accused, being subject to military law, has ~~[illegible]~~) committed the offence(~~s~~ set forth in the Charge Sheet(~~s~~) attached and on (*date*) this date endorsed by me, (~~[illegible]~~) "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; (a~~[illegible]~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~[illegible]~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Must be named. RP 106.	Unit.
Lt-Colonel	D.L. Redman, VD	HQ CRU

MEMBERS.

Rank.	Named or detailed. RP 106.	Unit.
Captain	To be detailed by CO	1 CGRU
Lieutenant	To be detailed by CO	1 CGRU

~~[illegible]~~

Rank.	Named or detailed, if any. RP 106.	Unit.

~~[illegible]~~

Rank.	Must be named, if any. RP 106.	Unit.

On Active Service in the Fd

in England (Country.) — [signature] (Signed personally. RP 105 fn 2.) — Brigadier (Rank.)

Dat 14 Nov 45 — Commanding "C" Group, Cdn Rft Units, Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA 95 (In lieu of AFA 2) 40/P & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S REPORT

I certify that No. E 0184 Duguay W. J.
of [illegible] is in a fair state of health,
and fit to undergo Trial by Court martial.

J. H. Lambert
Medical Officer

Station Field

Date 15/11/43

M. F. B. 246

PLEA of MITIGATION

E 60184 Pte DUGUAY W. J.

E-3

In March 1940 Duguay [illegible] in the 1st Anti Tank Regiment. In June of the same year he came overseas. He married an English girl in March 42 and they now have 3 children, the youngest of which was born 5 Nov. 45.

Duguay has been transfered from one unit to another many times and has had to do a variety of uninteresting duties. Consequently he never became very enthusiastic towards his army obligations.

In January of this year family troubles caused Duguay to go A.W.L. while at 24 Spec. Emp. Coy., Bordon he made application for his wife's trip to Canada. On telling her what he had done she explained that a 3rd child was expected and she did not want to make such a long trip with 2 young children when in her condition. They quarrelled and instead of returning to his unit as he had intended he remained to try to straighten out their problem. He was unsuccessful and delayed his return still further. He found work for short periods near his family and continued this form of support until apprehended.

I wish to emphasize the fact that Duguay joined the Can. army early in the war (Jan 40), he has been misused in many units, he suffers from pneumatism which would not be improved by being in detention, he has a wife and 3 young children to support and put up a home for in Canada, he was already $90 in debt to the army at the beginning of the year, and finally he has spent 50 days in detention awaiting trial. I ask that the court take the above circumstances into consideration when awarding sentence.

SUMMARY OF EVIDENCE

in the case of

E0184 Gnr Walter DUGUAY, R.C.A., on the strength of No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas.

"I produce the following documents, pursuant to Overseas Routine Order 5352, which have been read over and shown to the Accused, and which are attached hereto as Exhibits:"

(1) Certified True Extract from the original MFM 4 concerning E0184 Gnr Duguay W. which states that E0184 Gnr Duguay W. was absent without leave from 2359 hrs 30 Jan 45; authority for said entry being Part II Order No. 31.
(Marked Exhibit "A")

(2) Certified True Extract from No. 24/Special Employment Company 9th Canadian Part II Orders No. 31 dated 21 May 45 which declares in Section "B", para 1, sub-para (b) that E0184 Gnr Duguay W.J. was taken on strength from desertion at 1430 hrs 9 Apr 45.
(Marked Exhibit "B")

J.F.Hodgins Capt
(J.F.Hodgins) Capt
Officer detailed to take the Summary of Evidence.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The Accused reserves his defence.

The Accused does not call any witnesses.

"I certify that the above Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the Accused, and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with."

J.F.Hodgins Capt
(J.F.Hodgins) Capt
Officer detailed to take the Summary of Evidence.

Field,

7 Nov 45.

E+A

CASE OF E0184 Gnr Walter DUGUAY

(i) LIST OF WITNESS FOR PROSECUTION

Nil

(ii) LIST OF WITNESSES FOR DEFENCE

Nil

(iii) LIST OF EXHIBITS FOR PROSECUTION

(a) Certified True Extract from the original MFH 4 concerning E0184 Gnr Duguay W. showing E0184 Gnr Duguay W. to be absent without leave from 2359 hrs 30 Jan 45. (Marked Exhibit "A")

(b) Certified True Extract from No. 24 Canadian Special Employment Company Part II Order No. 31 dated 21 May 45 concerning the apprehension of E0184 Gnr Duguay W.J. (Marked Exhibit "B")

(iv) LIST OF EXHIBITS FOR DEFENCE

Nil

(v) RECEIPT BY ACCUSED FOR COPY OF CHARGE SHEET AND SUMMARY OF EVIDENCE

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken in the Field, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

W. J. Duguay
.....
(E0184 Gnr Duguay W.)

(vi) APPLICATION BY ACCUSED FOR DEFENDING OFFICER

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of.....
if he is available.

W. J. Duguay
.....
(E0184 Gnr Duguay W.)

Signed in the Field,

this 12 day of Nov 45.

Exhibit A

Certified True Extract
from original MFM 4 re
E0184 Gnr Duguay W.

-"-

UNIT	RECORD OF ALL CASUALTIES, etc.	PLACE OF CASUALTY	DATE OF CASUALTY	ARMY RANK	AUTHORITY
24 Spec E.Coy	AWL from 2359 hrs 30 Jan 45	UK	30 Jan 45	Gnr	31 / 45

I certify the above to be a true extract from the original MFM 4 held in my possession concerning E0184 Gnr Walter DUGUAY.

27 Oct 45

J.F. Hodgins Capt

(J.F.Hodgins) Capt
Officer having custody
of original document.

Exhibit B

Last Order	NO. 24 CANADIAN SPECIAL EMPLOYMENT COMPANY	This Order
No. 30	PART 11 ORDERS BY	No. 31
18 May 45	MAJOR, D.H. KEELER, COMMANDING	21 May 45

HOLDING STRENGTH

"B"

1. STRENGTH INCREASE

(b) TOS on app from des wef 1430 hrs 9 Apr 45.

E-0184 Gnr Duguay, W.J.

Certified True Copy of No. 24 Special Employment Company
Part 11 Order No 31 dated 21 May 45.

(A.W. Rahn) Capt
Officer having custody of
Regimental documents.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
E0184	Gnr	DUGUAY W.	No 1 Cdn Gen R ft Unit

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA 15 (1)	7	times.
For AA 19	1	times.
For AA 11	1	times.
For ?	1	times.

Date of first entry in Field Conduct Sheet 11 Aug 41

Date of last entry in Field Conduct Sheet 3 Oct 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

[redacted]

4. The accused has been awaiting trial on the present charges for 0 days in civil custody; and for 52 days in military custody, *i.e.*, 0 days in open arrest, 52 days in close arrest; of which ..... days were spent in hospital.

5. The present age of the accused is 33 yrs

6. The date of his attestation is 6 Mar 40

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of‡ CVSM & Clasp

‡State the military decorations (if any) held by accused.

[redacted]

EX B

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(P[illegible]) [illegible] A.&E.W.Ltd. Gp.[illegible]

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	13 Feb 42	AA Sec 15 (1) AWL	90 days detn stoppages of £0-9-4	remission of 28 days
Civil Court name & place not given on documents	3Dec42	Civil Offence, (not described)	Bound over for one (1) year	
FGCM	3 Oct 44	AA 15 (1) AWL	120 days detention	41 days remission
~~[illegible]~~	~~[illegible]~~			

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 16 day of November, 1945

J F Hodgins Capt
Legal Officer
1 C of R

N.E0184 Name DUGUAY W. Sqn, Battery, or Company Corps RCA Date of enlistment 6 Mar 40 GC Badge Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/P&S/135 (7808)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Gnr		AA Sec 15 (1) AWL		10 days FP 2 d.p.FR&I	11Aug41		13 D.F.
Field		Gnr		AA Sec 15 (1) AWL		14§(2) 1 d.p.	18Nov41		
Field		Gnr	1	AA Sec 19 Drunkenness			18Nov41		
Field	2Jan 42	Gnr		AA Sec 15 (1) AWL from 2 Jan 42 to 26 Jan 42 Remission 28 days		90 days detn Stoppage of Pay £0-9-4	13Feb42	FGCM	132 days pay
Field		Gnr		Civil offence		bound over for 1 yr	3Dec42	Civil Court	87 days pay
Field		Gnr		---?---		5 days CB	25Feb43		4 d.p.
Field		Gnr		[redacted] AA Sec 15 (1) AWL		14 days f.p.	21Jun43		21 d.p.
Field		Gnr		AA Sec 15 (1) AWL		3 d.p.	28Dec43		
Field	30Jan 44	Gnr		AA Sec 15 (1) AWL from 30 Jan 44		27 days F.P.	30Jan44		21 d.p.

(PTO)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G-51139 Spr Hubert DUGUAY 9 CBR Bn

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. 1(a)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 35 days, of which 10 days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Nine days detention

(Sgd) ..... 9/Mar/45 (Sgd) ..... President.

Judge-Advocate, if any. Date awarded. (See AA 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the ~~sentence~~ be duly ~~administered~~ to provide for detention during ~~his~~ ~~natural~~ ~~life~~. (1)

(1. AA 57A. Delete if not used.)

Date 9 Mar 45 (Sgd) C G N MacKenzie Brig

Commanding 2 CBRG

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G51139 Spr Hubert DUGUAY, 9CBRBn.	MAR 12 1945	CAPT. D. ADJT. 9 BN. 2 C.B.R. INF.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 160. 3D-109

19 APR 1945 JAG G.M.H.S.

CFA66 (In lieu of AFA31) 40/P At B/1696 (6/44)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier G.S.N. Gostling, ED Comd 2 CBRG dated 8 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or substantive rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.
G-51139	Spr 9 CBR Bn	Hubert	DUGUAY

PROCEEDINGS REVIEWED 30 Apr 45 K.Y. Dick Capt

REVIEWING OFFICER, JAG/BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 9 Mar 45

PROCEEDINGS REVIEWED 12 Apr 45 D.J.A. Capt Can. Sec. G.H.Q. 2 Echn. 21 Army Gp

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ..... as interpreter? Ans .....

~~The Interpreter is sworn.(1) Do you object to~~ ..... as shorthand writer? Ans .....

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NLO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 58(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G G MacKENZIE M B E	FGH Z-9 List 3 Cdn NETD
Member	LIEUT	Y J GUELLETTE	10 CBR BN.
Member	LIEUT	G F VIAU	10 CBR BN.
Judge-Advocate			
Prosecutor	LIEUT	A.T. MANN	11 CBR BN.
Defending Offr	LIEUT	G.R. PROULX	9 CBR BN.

Questions by President: Is the Prosecutor a lawyer? Ans NLO Is the Defending Offr a lawyer? Ans NLO (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment where RP 89 (B) and fn 2 were not followed. See SI p 3.)

A8. The accused G-51139 Spr Hubert DUGUAY before arraignment makes(s) (no) ~~a~~ plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13(C), RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is ~~are~~) and ~~considers~~ the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B + C.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG WD 4 P 129

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(4) (*D*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114*, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. ..... Do you intend to call witnesses on your behalf ?

Ans. ..... Are they witnesses as to character only ? Ans. .....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42. 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43. 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(*3*) (*d*). *RP* 45, 120(*A*). 2. *AA* 54(*3*), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. NO

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 27(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. C and Ex. D respectively.(3)

(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes. See E 3. (2)

(1. *RP* 27(*C*), 46(*2*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 27(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 309, 2323, *MML p* 60, 737-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 136. *When accused already under sentence of imprisonment or detention see AA* 44(1B), (6B)(*c*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, G.51139 Spr. Hubert Duguay, on strength 61 Coy., 9 CER Bn., 2 CBRG, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
A A SEC. 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 1230 hrs 27 Jan 45 until he surrendered to F.10083 RQMS Muise, S.L. at approximately 1100 hrs 1 Feb 45.

(Absent 4 days 22 hrs 30 mins)

(H.W. Rick) Lt.-Col.,
Commanding,
9 Bn, 2 C.B.R.Bn.

In the Field.
9 Feb 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(G.S.N. Goetling), Brigadier,
Commander,
2 Canadian Base Reinforcement Group.

In the Field
~~9 Feb 45~~
1 MAR 45

5D-109

Spr. Duguay, W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G-51139 Spr Hubert DUGUAY 9 CBR Bn

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15(a) 140	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) ..... (2)~~
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 35 days, of which 10 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Five days detention

(Sgd) ..... Judge-Advocate, if any. Date awarded: 9/Mar/45 (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Standing back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison for the determination hereof until the said sentence (1)~~
(1. AA 57A. Delete if not used.)

Date 9 Mar 45 (Sgd) (C J N Gilliland) Brig
Commanding 2 CBRG
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G51139 Spr Hubert DUGUAY, (8) 9CBR Bn.	MAR 12 1945	CAPT & ADJT 9 BN 2 C.B.R. BDE

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED AT CMHQ IN AD 100 5D-109

18 APR 1945 C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFA56 (In lieu of AFA3) 40-P & S/1696 (HQ) 4/38B

Convened by Order of Brigadier G.S.N. Gostling, ED Comd 2 CBRG dated 8 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-51139	Spr	Hubert	DUGUAY	9 CBR Bn

PROCEEDINGS REVIEWED
30 Apr 45
K.G. Dick Capt
REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS REVIEWED Date 12 APR 45 Cdn Sec GHQ 2 Echn 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 9

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is cleared.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans ~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 118, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G G MacKENZIE M B E	PGH X-9 List 3 Cdn NETO
Member	LIEUT	YJ DUELLETTE	10 C.B.R. BN.
Member	LIEUT	G F VIAU	10 C.B.R. BN.
Judge-Advocate			
Prosecutor	LIEUT	AT MANN	11 C.B.R. BN.
Defending Offr	LIEUT	GR PROULX	9 C.B.R. BN.

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See D1 p 3.)

A8. The accused G-51139 Spr Hubert DUGUAY before arraignment make(s) (no) (~~a~~) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B + C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG WAR DIARY P129

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not)~~ to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) to~~ ..... charge(s). ~~Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 2 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1. 86(C). Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42. 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (5), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Age as to Character and Particulars of Service(1), and certified true copy (extract) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(*1. AFB 255 or AFB 294. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes. See E 3.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or say anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its purposes, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-56, 96, 118, 119(A)(i), KR Con 308, 330, 343-344. Overseas NO 309, 22222, MML p 86, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 136. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 50. As to release from arrest for Confirming Offr see KR Con 547. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, G.51139 Spr. Hubert Duguay, on strength 61 Coy., 9 CBR Bn., 2 CBRG, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
A A SEC 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 1250 hrs 27 Jan 45 until he surrendered to F.10083 RQMS Muise, S.L. at approximately 1100 hrs 1 Feb 45.

(Absent 4 days 22 hrs 30 mins)

(H.W. Rick) Lt.-Col.,
Commanding,
9 Bn, 2 C.B.R.Bn.

In the Field.
9 Feb 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(G.S.N. Gostling), Brigadier,
Commander,
2 Canadian Base Reinforcement Group.

In the Field
~~9 Feb 45~~
9 MAR 45

FIELD GENERAL COURT-MARTIAL

CFA90 (In lieu of AFA8)
40/FA8/1697 (1668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C-51139	Spr		Hubert	DUGUAY	9 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 8 Mar 45 endorsed by me ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	G.G. MacKENZIE, MBE	PGH X-9 List 3 Cdn METT
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Lieutenant	To be detailed by O C 10 CBR Bn	10 CBR Bn
Lieutenant	To be detailed by O C 10 CBR Bn	10 CBR Bn
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally. RP 105 fn 2.)
(G.SH. Gostling)

Brigadier (Rank.)

Date 8 Mar 45

Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)

I certify that I have this day examined G51129 (No.)

SPR. (Rank) DUGUAY H. (Name) and in my opinion he is

fit ~~unfit~~ to undergo trial by Court-Martial.

Station 9CBRB Ln

Date. 9. 3. 45

J.H. Martin Capt (Sgd)
Medical Officer
Unit 9CBR B Ln.

Ex 3.

Plea on —

Mitigation of punishment

I wish the court to take in consideration, his passed record and also, his services in the theater of war. Before he went A.W.L. he was pasted from one Coy to the Bn. H.Q. and at the time Bn. H.Q. was on the move to a new area, He was sent back and fort from Coy to Btn. And he finally found himself in Bn. H.Q. as a shoe maker, then, living in huts with no stoves in he has been three days with no blankets, in spite of the fact that he tried to get them from the Mt. store, and that on this he went A.W.L. As you can see it did not take him very long to find out he was in the wrong so on the fourth day he gave himself up.

R.P. 83B Complied With.

[illegible]

SUMMARY OF EVIDENCE

in the case of

G.51139 Spr. Duguay, H., of 61 Coy., 9 CBR Bn.
2 CBR Bn. Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS — B.145452 Pte. Marriott, C. of 9 CBR Bn, 2 CBR Gp sowrn, states,

I am regimental shoemaker for 9 CBR Bn and work under the RQMS. The accused G.51139 Spr. Duguay, H. was on duty in my boot repair shop at the RQM stores, The accused was absent from his duties at the Regt'l Boot repair shop from 1230 hrs 27 Jan 45. I searched the barracks and he could not be found. I then reported his absence to F.10083 RQMS Muise, S.L. The accused did not appear on succeeding days until surrendering himself to RQMS Muise.

C. Marriott

(C. Marriott) Pte. B.145452

The accused declines to cross-examine the witness.

SECOND WITNESS — (Documentary) The certificate of surrender under AA 103, produced as documentary evidence, was read over to the accused, marked Exhibt "A" signed by me and is attached hereto.

B.P. Innes

(B.P. Innes) Lieut.
Officer detailed to take Summary of Evidence.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence consisiting of one page was taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

B.P. Innes

(B.P. Innes) Lieut.
Officer detailed to take Summary of Evidence.

In the Field.
8 Feb 45

This is Exhibit A
referred to in the
Summary of
Evidence in the
case of G 51139 Spr.
Dugaisy, H. taken
before me this 9th day
of February, 1945

B. Nurse Lt
Officer detailed to
take the Summary of
Evidence

EXHIBIT "A"

CERTIFICATE UNDER ARMY ACT. SECTION 163 (1) (i)

Certified that No. C.51139 Rank Spr. Name Duguay, H.
of the 61 Coy. 9 CBR Bn. 2 CBR Bde. Regt., surrendered to No. F.10033
Rank RCMS Name Muise, S.L. of the 61 Coy. 9 CBR Bn.
at Ghent at 1100 hrs., on the 1
day of Feb 45 as an absentee without leave.

He was wearing Military Uniform at the time of his surrender
arrest.

Place Field
Date 7 Feb 45

(H.W. Rick) Lt.-Col.,
Commanding,
9 Bn, 2 C.B.R. Bn.

E & C

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
G.51139	Spr..	Duguay, H	9 CBR Bn

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, provision being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For	Original MFM 6 not available times	– times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. ~~Between 1 Nov 40 and 31 Dec 40 the accused of the present time to duty~~ ~~was absent~~ for 1 month 30 days.

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 35 days in military custody, making a total of 35 days, of which 10 days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 20 yrs 10 mons

6. The date of his ~~[illegible]~~ attestation ~~[illegible]~~ ified in his ~~[illegible]~~ attestation paper is 23 Jul 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is Duration

8. The accused is entitled to deferred pay or gratuity in respect of Duration service.

9. The accused is entitled to reckon 3 yrs 6½ mons service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of (dated and in his regiment (*or* corps *or* department) the rank of dated

(*1940) W1.3460/1720 20,000 12/42 A.& E.W.Ltd. Gp.698
(1941) W1.33004/1499 15,000 5.44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 6.51139 Rank Spr Name Duguay, H of 2 CBR Bn Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		Original MFM 6 not available		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 9th day of MAR 45

CAPT. & ADJT.,
2 BN. 2 C.B.R. OP.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of , years, .

In the rank of , years, .

In the rank of , years, .

(INSTRUCTION.—*If any matter in any of the above four paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

No. G.51139 Name Duguay, H.

Date of last entry in Company Conduct Sheet

Sqn, Battery, or Company

No. and date of last drunk

Corps R.C.E.

Period not reckoning towards freedom from extra fine

Date of enlistment

Sheet No

GC Badges

Signature OC Company, etc

Service or Proficiency Pay

Character

3/17 MFM 6 (AFB 122) 40/F&S/130 (5418)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TOS 9 CBR Bn 19 Jan 45					
				Certified true copy from books and documents in my possession.					
				[signature] 9 Feb 45					
				(C.L. Nelson) Captain, Adjutant, 9 Bn, 2 C.B.R. Bn.					

(PTO)

FEB 10 1945

Date _____

1. I hereby acknowledge receipt of one copy of charge Sheet and one copy of the Summary of Evidence relative to the

To Dugway. Street Lt. 2 FIELD COY.

(a) I request that _____ if available, be appointed as my

(b) I request that an officer be appointed to act as my defending officer at my trial by Court Martial.

_____

I hereby certify that Lt R E Brown was appointed to defend
J 51137 Sgt Dugway H. at his forthcoming trial
by Court Martial and that the said Lt R E Brown
was notified that he was defending officer on FEB 10 1945

_____ Capt.

LIST OF EXHIBITS

in the case of

C.51139 Spr. Duguay, H. 61 Coy., 9 CBR Bn 2 CBR Gp.

(A) Certificate of Surrender under AA Section 163.

LIST OF WITNESSES

in the case of

G.51139 Spr. Duguay, H. 61 Coy., 9 CBR Bn 2 CBR Gp.

FOR PROSECUTION

1. B.145542 Pte. Marriott, C. 69 CBR Bn 2 CBR Gp.
2. Documentary, Certificate of Surrender.

FOR DEFENCE

Nil.

ZZZ-68

Gnr. Duguay W.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : E 0184 Gnr Walter John ~~A. Duncan~~ DUGUAY 5CCPC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for _____ beginning on (date) _____.(1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo Detention for One hundred and Twenty (120) days

(Sgd) _____ Judge Advocate, if any. 3 Oct 44 Date awarded. (Sgd) John Mayor President. (RP 45 (2).)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I direct that ~~the accused be not committed to prison or detention barracks until further orders.~~ (1) (1. As to SFA. Delete if not so.)

Date 5 Oct 44 (Sgd) J.E. Sager Brigadier
Commanding F" Gp. CRU
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
E 0184 Gnr Duguay W.J.	9 Oct 44	Capt 5631 F6

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

HQ 1 CDN CORPS 16 OCT 1944 MAIL ROOM

RECORDED AT CMHQ IN AB 160. 222-68.

FIELD GENERAL COURT-MARTIAL

CPA96 (To item of AFA3) 40/P & R/1698 (40/10) 4/38B

By Order of Brigadier J.E. Sager Comd "F" Gp, CRU dated 2 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-0184	Gnr		Walter John	Duguay	5 COPC

PROCEEDINGS REVIEWED
JAC R. Lawrence Lt
17 Oct 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 3 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn AOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(F), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to _____ as interpreter ?~~ Ans _____
~~The interpreter is sworn.(1)~~ Do you object to Capt J. Scully as shorthand writer ? Ans No
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No (2)

(1. RP 110. 2. If no objection, waiting member recrs. RP 60(3). If objection, see procedure AA 51, RP 35, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	E.W. Mills E.D. K.C.	D.A.Q.C.R.U.
Member	Capt	H.B. Leighfoot	1 C.B.W. R.C.E.
Member	Lieut	M.F. Bobbs	22 A/Tk Bty
~~Judge Advocate~~			
Prosecutor	Lieut	R.A. Lindsay	22 A/Tk Bty
Defending Offr	Lieut	C.F. Marchand	5 Can Fin Pioneer Coy

Questions by President : Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused _____ before arraignment makes(s) (no) ~~(an)~~ plea _____ (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(D), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(in closed sess)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*B*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. I do not.(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are used as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 895. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(3) (*c*), *RP* 45, 125(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. I intend to call witnesses.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (*g*) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex ..... respectively.(3)

(1. *MFB* 235 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court, on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. I do not wish to make any.(2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6), *RP* 125(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its purview, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 40. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 309, 1323, *MML p* 66, 737-759. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

No 1 Charge
15 (1)
A A

The accused No E-0184 Gunner Walter John Duguay, of No 5 Canadian General Pioneer Company, a soldier of the Canadian Army (Overseas) while on Active Service is charged with:

Absenting himself without leave,

in that he

in the Field was absent from 0730 hours 4 September 1944 until 2115 hours 24 September 1944.
TOTAL time absent: 20 days 13 hours 45 minutes.

A

To be Tried by Field General Court Martial.

J.E. Page

(J.E. SAGER) Brigadier
Comd "P" Gp, CRU

Bordon, Hants.
2 Oct 44

(D.H. Keeler) Capt,
Commanding,
No 5 Cdn Gen Pioneer Coy.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fnt, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-0184	Gnr		Walter John	Duguay	5 CGPC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused being subject to military law, has [illegible] committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 2 Oct 44 endorsed by me, [illegible]. " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; [illegible]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E, M, Miller, E.D.	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt	from and to be detailed by OC	1 CBW RCEME
A Lieut	from and to be detailed by OC	22 Cdn Spec Emp Coy

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 2 Oct 44

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(J. E. SAGER) Brigadier

Commanding "F" Gp, CRU

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAAS (To Dict of AFAS) 40-F & S (1947) (4603))

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
RR (Can) para 557 3 Oct 44

I certify that I have this morning examined No E0184 Rank. Gnr

Name DUGUAY W J of #5 C G P C (Unit) and in my opinion he is

fit to undergo trial by Court Martial.

(cross out one
N/A and initial)

Sgd. O Pascal Capt. (Rank)
Unit
Medical Offr, RCAMC

Station (to be filled in)

Date (of Court Martial)

F.G.C.M. IN THE CASE OF

E 0184 Gnr DUGUAY, W.J., 5 CGPC

3 Nov 44

STATEMENT BY THE ACCUSED IN MITIGATION NOTE E-1

Sir,

I was married with permission in this country two years ago, my wife and two children are now living in East Croydon.

I have had quite a bit of training in the artillery and I would like to go back to the artillery. I feel that as I am trained and I think that I am able to serve as an artillery I would like to go back to the artillery and soldier there. I would like to go to the theatre of operations.

PLEA IN MITIGATION IS WRITTEN OUT AND ATTACHED.

Statement in Mitigation of Punishment in the Case of Pte Duguay W. J. (E0184)

Lt G.P. Marchand, attached to 5 Canadian General Pioneer Coy and presently Defending Officer for the accused, states:-

I know the accused, Pte Duguay, to be an agreeable, well-liked soldier in this Company and one who is not troublesome. I consider him to be a steady and very good worker. But unfortunately he seems unable to resist the temptation of absenting himself without leave after having been in camp for a period of time.

I know that in the present circumstance, the illness of his wife and poor health of his two children was worrying him very much and seem to be the reason behind his last offense.

This soldier is A1 Category and has expressed his desire to be sent to the Field of Operation, feeling that he would be of more service to his Country there than by undergoing detention if the Court awards such punishment. He also feels that he can mend his ways and is anxious to have the opportunity to redeem himself.

On behalf of the accused, and for the sake of his wife and children, may I ask that the Court sees fit to show leniency in its award of punishment.

G.P. Marchand Lieut
Defending Officer

SUMMARY OF EVIDENCE

IN THE FIELD 26 SEP 44

IN THE CASE OF

E.0184 Gnr. Duguay, W.J., of No.5 Canadian General Pioneer Company, a soldier in the Canadian Army,(Overseas).

The accused was present at the summary of evidence, when the evidence of the witnesses was taken under oath and in writing.

R.P. (F) The Commanding Officer directs that the evidence be taken under Oath.

FIRST WITNESS:

D.57259 Sgt. Roy, F. No.5 Cdn. Gen. Pioneer Coy., having been duly sworn states:

I am D.57259 Sgt. Roy, F., on strength of No.5 Cdn. Gen. Pioneer Coy., of which the accused is a member;
On the morning of 4 SEP 44 at 0730 hours I called the roll of #3 Section and E.0184 Gnr. Duguay, W.J. was absent. I then made my report to the C.S.M.'s office as to the absence of E.0184 Gnr. Duguay, W.J.

F. Roy ....Sgt.
D.57259 Roy, F.

The accused had the evidence read back to him and declines to to cross-examine the witness.

SECOND WITNESS:

A.102 006 Cpl. Beaudette, A.E., No.5 Cdn. Gen. Pioneer Coy., having been duly sworn states;

I am A.102006 Cpl. Beaudette, A.E. on strength of No.5 Cdn. General Pioneer Coy., of which the accused is a member;
On 4 SEP 44 at 0730 hours E.0184 Gnr. Duguay, W.J. was reported absent. Each day thereafter I made a check to ascertain whether he was still absent. He was still absent until 0115 hours 24 SEP 44 at which time he reported to the R.M.P.

A.E. Beaudette ....Cpl.
A.102006 Beaudette, A.E.

The accused had the evidence read back to him and declines to cross-examine the witness.

THIRD WITNESS:

H.24115 Cpl. Bruce, G.W., No.5 Cdn. Gen. Pionneer Coy., having been duly sworn states;

I am H.24115 Cpl. Bruce, G.W., on strength of No.5 Cdn. Gen. Pioneer Coy., of which the accused is a member;
On 24 SEP 44 at 2115 hours, while in charge of the Regimental Guard room, E.0184 Gnr. Duguay, W.J. reported to me from absence without leave. I placed Pte Duguay, W.J., under "Close Arrest".

G.W. Bruce ....Cpl.
H.24115 Bruce, G.W.

The accused had the evidence read back to him and declines to cross-examine the witness.

Lieut. R.C. Ingram, No.5 Cdn. Gen. Pioneer Coy.,

FOURTH WITNESS:

Lieut. R.G. Ingram, No.5 Cdn. Gen. Pioneer Coy.,
having been duly sworn states;

I am Lieut. R.G. Ingram, No.5 Cdn. Gen. Pioneer Coy..I hereby submit the following documents as evidnce;

(1) Tattoo report dated 4 SEP 44. Marked exhibit "A"

(2) Tattoo report dated 24 SEP 44. " " "B"

(3) Part II Order No.38 dated 11 Sep44 showing No. E.0184 Gnr. Duguay, W.J. Absent 8 days Marked exhibit "C"

(4) Part II Order No.42 dated 25 SEP 44 amending Part II Order No.38 showing No.E0184 Gnr. Duguay, W.J. absent 8 days. Marked exhibit "D".

(5) Part II order No.42 dated 25 SEP 44 showing E.0184 Gnr. Duguay, W.J., returned from A.W.L. 2115 hours 24 SEP 44.

R.G. Ingram.....Lieut.
R.G. Ingram.

The evidence was read back to the accused and he declined to cross-examine the witness.

The accused having been duly cautioned "Do you wish to make any statement or to give evidence upon Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you may give will be taken down in writing and may be given as evidence."

In accordance with R.F. 4(e) the accused reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of two pages was taken down by myself, in the presence of the accused, at Arncott Depot, Oxford, Oxon., on the 26 SEP 44 and that the R.F. 4 (c),(D),(E), (F) and (G) have been duly complied with.

J.P. McGuinn.....Lieut.
Officer detailed to take
Summary of Evidence.

LIST OF WITNESSES FOR THE PROSECUTION

D-57259 Sgt Roy, F. No 5 Cdn Gen Pioneer Coy.

A-102006 Cpl Bezudette, A .E. No 5 Cdn Gen Pioneer Coy.

H-24115 Cpl Bruce, G.W. No 5 Cdn Gen Pioneer Coy.

Lieut R.G. Ingram No 5 Cdn Gen Pioneer Coy.

LIST OF WITNESSES FOR THE DEFENCE

N-I-L

LIST OF EXHIBITS.

(A) Tatto Report dated 4 Sep 44.

(B) Tatto Report dated 24 Sep 44.

(C) Part 11 Order No 38.(8 days absent)

(D) & (E) Part 11 Order no 42 returned,amendedD.O. No 38.

STATEMENT OF THE ACCUSED

I certify that I have received free of charge, a copy of the Summary of Evidence, charge sheet, list of witnesses, list of exhibits.

I desire the following Officer to defend me at my trial. Lieut G P Marchand 5 C G P C.

W J Duguay

E.0184 Gnr. Duguay, W.J.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E-0184	Gnr	Dugusy, W.J.	5 Cdn Gen Pioneer Coy

1. The following is a fair and true summary of the entries in the ~~Company Conduct sheets~~ Regimental ~~Squadron~~ Battery Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.W.L.	4 times	A.W.L.	8 times
For	Out of Bounds	1 times	Out of Bounds	1 times
For		times	Drunkenness	1 times
For		times		times

~~[illegible]~~

or

~~[illegible]~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~[illegible]~~

or.

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~[illegible]~~

or,

~~[illegible]~~

day of

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and 0 days in military custody, making a total of 0 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 32 years 3 months.

6. ~~[illegible]~~

7. The service which the accused is allowed to reckon towards discharge is 4yrs 6 months

8. The accused is entitled to reckon 4yrs 6mon. service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~[illegible]~~ military decoration, or ~~[illegible]~~ military reward (or is in possession of or entitled to). State any ~~[illegible]~~ military decoration or reward. C.V.S.M. & Clasp

10. (If the accused is a warrant officer.) ~~[illegible]~~ Air Force ~~[illegible]~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force dated ....., and in his regiment (or unit corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number E-0184 Rank Gnr

Name Duguay, W.J. of No 5 Cdn Gen Pioneer Coy. Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	Field 13 Feb 42	A.W.L.	90 days Detention	28 days
Sussex Assizes	Sussex Assizes 3 Dec 42	House Breaking	Bound over for 12 Months	

Catherine Capt. 06.56 G.P. Coy.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~27th~~ 3 Oct day of ~~September~~ 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

No E-0184 Name Duguay, W.J. | Sqn, Battery, or Company | Corps | Date of enlistment 6 Mar 40 GC | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/12M (3438)

Date of last entry in Company Conduct Sheet: 8 Aug 40 | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Badges | Signature OC Company, etc | Character Bad

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Previous sheet destroyed on completion of six months service, 6 Sep 40									
Field 10 Oct 40		Gnr		A.A.15-2 Not on parade	?	5 days C.B.	?	?	
Field 2 Aug 41		Gnr		A.A.40 2 offences. (1) Did not return to guard room when given leave for supper. (2). Given permission to get blankets and did not return to complete tour of duty. 2nd. Charge: A.A.15-1 A.W.L. from ?to? absent 2 days 18 hrs 2 mins.	BSM Zeri / Bdr Atk'nson	10 days F.P.	11 Aug 41	Lt Col. T.W. Medland	Forfeits 3 days pay, F.R.&.I 149-1-a
Field 16 Nov 41		Gnr	/	A.A.19 Drunkeness.	No.1. Provost	2 days pay	18 Nov 41	Maj J.A. Campbell	

(PTO)

No E-0184 Name Duguay, W.J. | Sqn, Battery, or Company | Corps | Date of enlistment 6 Mar 40 GC | Service or Proficiency Pay | MFM 6 (AFB 122) (3438)

Date of last entry in Company Conduct Sheet: 8 Aug 40 | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Badges | Signature OC Company, etc | Character Bad

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field 2	Jan 42	Gnr		A.A.15-1. A.W.L. from 1400 hrs 2 Jan 42 to 1115 hours 26 Jan 42. Absent 23 days 21 hours 45 mins.	Lieut. Bryce	90 days detn.	13 Feb 42	F.O.C.M.	Forfeits 24 days pay, F.R.A.I. 149-1-a. Forfeits 18 days pay. F.R.&.I.149 1-c-1. Stoppage of pay 10-8-4, F.R.&.I.178-8
Field 7	Sep 42	Gnr		Civilian Offence: House breaking Civilian custody from 7 Sep 42 to 3 Dec 42.	Documentary	Bound over for 12 months	3 Dec 42	Sussex Assizes	Forfeits 87 days pay, FR&I 178-8 149-1-c-1
Field 7	Feb 43	Gnr		A.A.15-1 A.W.L. from ? to ? absent 16 hours 59 minutes.	Sgt Adams / Bdr Beattie	5 days C.B. 3 days pay	9 Feb 43	Lt Col. T. Wills,	Forf 1 days pay F.R.&.I. 149-1-a

(PTO)

No E-0184 Name Duguay, W.J. | Sqn, Battery, or Company | Corps | Date of enlistment 6 Mar 40 GC | Service or Proficiency Pay | MFM 6 (AFB 122) (3438)

Date of last entry in Company Conduct Sheet: 8 Aug 40 | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3 | Badges | Signature OC Company, etc | Character Bad

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field 13 Jun 43		Gnr		A.A.15-1 A.W.L. from 2359 hours 13 Jun 43 to 1900 hours 20 Jun 43 Absent 6 days 19 hours 1 min.	Cpl Gard Documentary	14 days F.P.	21 Jun 43	Maj H.W. Powell	Forf 7 days pay FR&I 149-1-a
Field 18 Jul 43		Gnr		A.A.15-1 A.W.L. from 2300 hrs 18 Jul 43 to 2310 hrs 28 Jul 43. Absent 10 days 10 mins.	L/Cpl Fendrick Documentary	27 days dent	29 Jul 43	Maj H.W. Powell	Forf 11 days pay FR&I 149-1-a
Field 24 Dec 43		Gnr		A.A.15-1 A.W.L. from 2359 hrs 24 Dec 43 to 1025 hours 25 Dec 43 (Absent 10 hours 26 min)	Cpl Lardner	2 days loss of pay	28 Dec 43	T.H.Reid Capt	1 day auto forf FR&I 149-1-a
Field 30 Jan 44		Gnr		A.A.15-1 A.W.L. from 2359, 30 Jan 44 to 1700 hrs 13 Feb 44 (Absent 13 days 17 hrs 1 min.)	Sgt Steen	27 days F.P.	14 Feb 44	T.H. Reid Capt	14 days 149-1-a 27 days 149-1-b

(PTO)

No E-0184 Name Duguay, W.J. | Sqn, Battery, or Company | Corps | Date of enlistment 6 Mar 40 GC | Service or Proficiency Pay | MFM 6 (AFB 122) (3438)

Date of last entry in Company Conduct Sheet: 8 AUG 40 | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 4 | Badges | Signature OC Company, etc | Character Bad

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field 12	Apr 44	Gnr		WOAS A.W.L. 4 days 17 hrs 45 min G.S.W. from 1900 hrs 12 Apr 44 to 1145 hrs 17 Apr 44 W.O.A.S. out of bounds sec 11 A.A.	Documentary Williamson	15 Days pay FR&I 149(2)	17 Apr 44	Maj W. Morelck	5 days pay FR&I 149-1-a
Field 4 Jun 44		Gnr		W.O.A.S.A.W.L. 9 days. 15 hrs from C.S.W.		27 days F.P.	12 Jul 44	Maj W. Worblck	Forf 10 days
Field 2 Jul 44		Gnr		0730 hrs 4 Jul 44 to 2230 hrs 12 Jul 44. Sec 15(1) A.A.	Williamson	Forf 27 days pay FR&I 149(1)(b)		Worlck	pay FR&I 149-1-a

Certified true copy of original M.F.M.6 held in my custody

Officer having custody of Regt'l Books

(PTO)

27F Ste Duquay, W J.

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this 10th day of February, 1942. Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery, 1st Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint:—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reasons, namely:—]

* Omit if not applicable.

PROCEEDINGS REVIEWED.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	R.P. Drummond	2 Cdn Fd Regt

Members.

Rank.	Name.	Regiment.
Capt	~~J.G. Mooney~~	1 Cdn A.Tk Regt
Lieut.	D.G. McLeod	1 Cdn Fd Regt

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (A.E.D.Tremain) Brigadier
Commanding RCA., 1 Cdn Div.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E.o184, Gnr. Duguay, W.J. 1 Cdn A.Tk Regt	A.A. Sec. 12(1)(9)	Not guilty	Not guilty of Desertion Guilty of absence without leave Authorized forfeiture of 14 days pay. F & A 1 127 (a) Stoppage - 9.4 120 days detention	I confirm the finding of the Court but reduce the sentence to 90 days detention. [illegible] Brigadier

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :— "No".

(Signed) [illegible] Brigadier (Signed) [illegible] Major
Commanding A.C.N.I Cdn Bde. Convening Officer (e) S.A.Bty 2 Fd Regt R.C.A. President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Thirteenth day of February 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this Thirteenth day of February 1942,

[illegible] Major R.C.A.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 702 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further~~ orders.)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 14th day of February 1942

[illegible] Brigadier
Confirming Officer

Promulgated and extracts taken in the case of

(a) (Dated) 16 Feb. 42. (Signed) [illegible] Lieut. Col. Deputy Judge Advocate, B.C.A., C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused,

E.0184 Gnr. Duguay, W.J.

57th. Battery, 1st. Canadian Anti-Tank Regiment, R.C.A.
a soldier of the Canadian Army Overseas is charged with:-

CHARGE
A. A.
Sec.12(1(a)

When on active service deserting His Majesty's Service

in that he

at SALVINGTON HILL, absented himself without leave from 1330 hours on 2nd. January 1942 until 1115 hours 26th. January 1942. (Time absent - 23 days, 21 hours, 45 minutes) thereby incurring costs of escort and transporation amounting to £0-9-4.

6 Feb 1942

(H.M. Hague) Lt.-Col.
C.O. 1st. Cdn. Anti-Tank Regiment, R.C.A.

Major RCA
President

Form "A" Page 1.

PROCEEDINGS OF A FIELD GENERAL
COURT MARTIAL HELD IN THE FIELD
ON THE 13 DAY OF February 1942

Trial of E0184 Gnr. Dugway W.J.

Prosecutor. Lieut N. J. Robinson 1 Cdn. A. Tk Regt.

Defending Officer. Lieut R. V. Gray 1 Cdn. A. Tk Regt.

Officers under Instruction. ——

1. The order convening the Court is read in the presence of the accused.

2. The accused is asked the following questions:-

Do you object to be tried by the President or any Member of the Court, whose names you have heard read over.

Answer - No. Sir

3. The President, Members, ~~Judge Advocate~~, ~~Officers~~ ~~[illegible]~~, Shorthand Writer, ~~and Interpreter~~ are duly sworn.

4. ~~(a) The accused having pleaded guilty to the charge(s) [illegible] is complied with.~~

5. The accused is asked the question at the foot of page 2 of A.F.A. 3. and his answer is recorded beneath the question.

6. The Prosecutor makes ~~[illegible]~~ (the following) opening address.

R.R. Drummond Maj Jr
President

Form "A"

Prosecutor Lieut R.J. Robinson states:
May it please the President of the Court that the case against the prisoner consists of two witnesses."

1st Witness Lieut W.S.A. ~~Butler~~ Bryce being duly sworn is cross-examined as follows.

Q: Do you know the prisoner?
A: Yes
Q: Did you see him on January 2nd?
A: At noon on January 2nd I was in Sgt Saugster's room when Duguay came into the room and asked Saugster for a pass which was refused as all passes were filled up.
Q: Did Pte Duguay state any reason for the pass?
A: No
Q: When did you next see Pte Duguay?
A: At R.H.Q detention room February 1st.
Q: You did not see him during all that time?
A: No.

(The Prosecutor declined to further question the witness)

The Defending Officer cross-examines the witness as follows:

Q:- Mr Bryce when was Pte Duguay the week before Christmas and Christmas week?
A:- He was on a gun position on the coast.
Q: How would you describe the tour of duty on the coast
A:- The duty was two hours on and four hours off
Q:- Was any time allowed off?
A:- No
Q:- What was the condition of the accused's health while he was on duty?
A:- He reported sick with rheumatism. I sent another man to release him.
Q:- How many passes per week are there and how distributed?
A:- Three passes per day per troop distributed by the troop sergeant

Q:- How are they normally distributed?
A:- Usually one was given to the House orderly and two more to other men
Q:- Would you say a precedent was made for House orderly passes?
A:- No except the Troop Sergeant usually gave them if the work was well done
Q:- As Pte Duguay was orderly on the 2nd January why did he not receive a pass?
A:- Sgt Saugster had already given three passes.
Q:- Was there any mention of the House not being in a satisfactory condition?
A:- No.

(The defending officer declines to further question the witness)

2nd Witness E0063 Sgt Saugster W.R. being duly sworn was cross-examined by the prosecutor as follows:-

Q:- Do you know the prisoner?
A:- I do.
Q:- Are you in the same troop?
A:- Yes Sir
Q:- Was he on parade on January 2nd?
A:- No Sir.
Q:- Did you call the role yourself?
A:- No Sir
Q:- When he was reported absent to you did you check?
A:- Yes Sir
Q:- When did you next see the accused?
A:- At R.H.Q. guard room on January 29th
Q:- Was he present at any parades from the 2nd January to the 29th January?
A:- No Sir

(The prosecutor declines to further question the witness)

Cross-examined by the defending officer as follows:-

Q:- How many twelve hour passes are normally issued daily
A:- Four per day at the most

Q.- How are these passes normally distributed?

A. They are requested by the gunners themselves normally first asked, first served.

Q.- Will you explain the Louse orderly pass system?

A. It is a system of my own devised to make sure that the Louse was cleaned and if so they were to be given a pass.

Q. Had any Louse orderly been refused a pass recently?

A. No Louse orderly has ever had that privilege before as it has only been announced on parade two days previously.

Q.- Why did Gnr Duguay not receive a pass?

A. On Friday I had already issued my quota of passes. Gnr Duguay had had on two days previously.

(The Defence Counsel declines to further cross-examine the witness)

Witness R.C.A.

President

Form B. Page 5

D E F E N C E.

The accused is informed of his rights in accordance with R.P. 40 (A) and Note 2 on page 61 of Manual of Military Law, 1929 Edition.

The accused is asked the following questions:-

Q.1. Do you wish to give evidence on a witness?

A.1. Yes Sir

Q.2. Do you intend to call any other witnesses on your behalf?

A.2. No Sir

Q.3. Are they witnesses as to character only?

A.3. No Sir

[illegible] Major R.C.A.
President

E0184 Gnr Duguay W.J. being duly sworn in states.

I was down to the coast for two weeks over Xmas-time. During these two weeks I was feeling sick and suffering with rheumatism. I then reported it but kept on doing my duty. On the following Saturday we returned to Barracks. I then went back to the troop and I started to drink again. On New Years night I went on guard not feeling very well. Next day I was house ordely and after finishing my work I went to Sgt Saunders and having seen told the housework was very good, asked him for a pass. He said he was sorry but all passes had already been given out. I then went to a pub and started drinking. When I left the pub I went to Croydon and met some friends there I started drinking then was doing pretty steadily after that.

Questions by the Defence Counsel.

Q:- Where else did you go beside Croydon?
A:- Shirley, Wickham and Katram. Then I started to figure the time I was away and I thought I had better be getting back as quick as I could so I gave myself up to the first policeman I met.
Q:- Why?
A:- At first time I did not know if the battery had moved and I wanted to get back as soon as possible.

(The Defence Counsel declines to further question the witness)

The Prosecutor cross-examined the accused as follows:-

Q:- Were you drunk all the time you were away?

A:- Pretty nearly all the time.

Q:- When was the first time you were able to think clearly on your absence

A:- The day I gave myself up.

Q:- Did you have enough money to keep you going for the time you were away

A:- No. I got some from my friends

(The prosecution declines to further question the witness)

Questioned by the Court.

Q:- What clothes did you wear during your absence?

A:- Battle-dress.

Summing up by the prosecution:

Mr President the evidence that has gone before I think is quite clear. However, I would like to point out Para 23 Page 23 of M.M.L. You are in possession of the ~~conduct~~ Charge Sheet showing the time of absence. I fail to see why being on the guard on duty for ~~the~~ two weeks has any thing to do with the case of desertion. At the time the accused was there were also present sixty-three other men. As regards his being sick on the guard many men at various times have been replaced due to illness. Our Surgeon was sick and unable to think while A.W.O.L. this I think would be hardly possible having passed his 21st day he was classed as a deserter.

Major R.C.A.

President

Form C.

AFTER FINDING.

Lieut N. J. Robinson is sworn and states:-

I produce a certified true copy of A.F.R. 122 relating to the accused. (The said copy is marked , signed by the President, and attached to the Proceedings).

Question to the Accused:

Do you wish to address the Court, or to call evidence as to character?

Answer: Yes, My Defending officer does.

The (Accused) (Defending Officer) makes the following plea in mitigation of sentence:-

[illegible] Lieut. Maj. R.C.A.
President.

Mr President

These focal point of this case seems to be centred on intention to desert. Although I realize that the Court has knowledge to a large degree of Military Law, may I be permitted to read from M M L, Page 19 Sec 18.

I realize that this is an experienced court and perhaps it is hardly necessary to labour the point, but may I submit that one of the fundamental principles of British Justice lies in the fact that every man is innocent until proven guilty, and that every accused is entitled to any reasonable doubt. If such doubt should exist

in the mind of any member of this court, I submit it is the duty of this court to acquit.

From sworn statements given by E0063 Sgt Sangster, ~~a precedent had been established that~~ ~~if a gnr had cleaned the house~~ satisfactorily, he got an afternoons pass. Gnr Duguay, although houseorderly, did not get his pass, and from evidence given by Mr Bryce in S of C, the reason given was that the quota of passes had been expended and not that the house had not been satisfactorily cleaned.

Sworn statements have pointed out that Gnr Duguay had been

on Coastal Defence for two weeks prior, over Christmas and was on guard New Years night.

Both the accused and Mr Bryce state that during the tour of duty at the coast, which was arduous and ~~intaxed~~ forbade any time off whatsoever, he had not been in the best of health.

Then Mr President, when refused what he thought was a right, he became mentally depressed, and to use the vernacular "fed up".

This I submit as a motive for going A.W.L.

The Charge sheet shows an absence of twenty three days, twenty one hours and forty five minutes.

If there had been any intention to desert H.M. ~~forces~~ service, it is highly improbable that he would have returned to his former haunts where ~~he~~ the Battery had been previously located. This in itself shows that he was not attempting to hide.

If there had been any intent to desert from H.M. service it is very unlikely that he would have remained in uniform. The accused was wearing uniform when he gave himself into custody

From Gnr Duguays sworn statement he drank considerably while absent from the Battery ~~When his~~ Mr Bingers [illegible] the influence of liquor [illegible] think for himself

Why his besotted mind cleared sufficiently for him to think clearly, and his

mental depression had lifted, which he must have been suffering, he realized that he had been away a considerable length of time long enough to be classed as a desertion, by virtue of twenty one days expiring the time element only.

Immediately realizing this he gave himself up, not to M.P. but to civilian police, which was the first he met. His sworn statement says that he gave himself up to the first policeman he met, because he wanted to get back to the battery as soon as possible.

Mr President

Without labouring again over the evidence, I submit that this case before the court, appears to be such where the principles

of British Justice should be brought into play, because I submit that Gnr Duguay was never a deserter and never had any intention of deserting.

Recommend Major R.C.A.
President

Summary of Evidence in the case of:-

E.0184 Gnr. Duguay, W.J.

of the 57th. Battery, 1st. Canadian Anti-Tank Regiment, Royal Canadian Artillery.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st. Witness for the Prosecution

Lieut. W.J.A. Bryce, having been duly sworn states:-

On Friday, 2nd. January 1942, at approximately 1200 hours, I was in Sgt. Sangster's room when Gnr. Duguay requested a twelve hour pass from Sgt. Sangster. Sgt. Sangster refused to give him a pass because the troop quota of passes had been expended. At 1330 hours, 2nd. January 1942 on Troop Parade, Gnr. Duguay was absent. I reported his absence to 57th. Battery Headquarters.

W.J.A. Bryce Lieut.
(W.J.A. Bryce) Lieut. RCA

The accused declined to question this witness.

2nd. Witness for the Prosecution

E.0063 Sgt. Sangster, W.R., having been duly sworn states:-

On Friday, 2nd. January 1942, Gnr. Duguay was missing from the parade at 1330 hours. I reported his absence to Lieut. Bryce. Gnr. Duguay did not report to or attend any parades and was not seen by me until 29th. January 1942 on which date he was in the Regimental Guard Room.

W R Sangster
E.0063 Sgt. Sangster, W.R.

The accused declined to question this witness.

3rd. Witness for the Prosecution

Lieut. M.E. Byers, O.C. No. 6 Provost Coy. Cdn Provost Corps. Certified statement of expenses incurred in returning the accused to his unit is attached as Exhibit (1).

Owing to the exigencies of the services, in my opinion the attendance of this witness can not be procured.

G.F. Browne Capt R.C.A.
(G.F. Browne) Captain RCA

The accused does not demand the attendance of this witness for cross-examination.

Certified that the accused has been warned in accordance with Rules of Procedure 4 (e).

Statement of the Accused

I have no statement to make except that I am guilty of being absent without leave.

W S Dugway
E.0184 Gnr. Dugway, W.S

Certified that Rules of Procedure 4 (c) (d)(e) and (f) have been complied with.

Taken down by me in the presence and hearing of the accused this 29th. day of January 1942 at FRYERN, SUSSEX.

G.F. Browne Capt R.C.A.
(G.F. Browne) Captain RCA
Acting O.C. 57 Battery, 1st. Cdn. A.Tk. Regt. R.C.A.

President

No. E0184 Name Duguay, W.J. Sqn., Battery, or Company 57 Corps Cdn Date of enlistment 6.3.40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 360M—8-39 (1705) H.Q. 1771-45-18

Date of last entry in Company Conduct Sheet 8.8.40 No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 3 Signature O.C. Company, etc. G.T. White Capt. Character Good

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Caterham	2 Aug 41	Gnr		1. WOAS conduct to the prejudice etc. in that he at Caterham-on-Hill when allowed to leave the guardroom for supper failed to return for a period of three hrs. and missed a tour of duty which was performed by another soldier. And in that he, when given permission to get his blankets failed to return to the guard room for the remainder of his tour of duty	BSM Zari Bdr. Atkinson, C.				

(see over)

Sec 40

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				3. WOAS AWOL from 2030 hrs 2 Aug 41 to 1545 hrs 5 Aug 41 and missed a military duty that had to be performed by another soldier. Sec 15(2) A.A.	Bdr. Atkinson, C.W.	10 Days F.I. No. 1 to forfeit ten days pay	11Aug41	Lt.-col J.M.Medland C.C.1A.Tk.Regt.	Forfeits 3 days pay. F.R.&I 149 1(a) G.T.White, Capt.
Croydon	16 Nov 41	Gnr	1	Sec 19 A.A. Drunkeness	No. Provost	Forfeits 3 days pay F.R.&I 149(1(e(a) 7 days C.B.	18.1141.	Major J.C.A. Campbell	J.C.A.C.

Certified true copy.

Ct Stewart Lieut [illegible] Adjutant
1st Ann Tank Regiment, R.C.A.C.A.S.F.
13 Feb. 42

[illegible] Major RCA
President

Description of Court by which tried, or stories of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this fifth day of February, 1942.

Chas. Dunn
Lieut. Tank Regiment, A.C.A., C.A.S.F.
Capt.

Chas. Dunn
Lieut. Tank Regiment, A.C.A., C.A.S.F.
Capt.

Commanding Regn RCA
President

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

E0184 Gnr Duguay, W.J. of the 57th Bty 1 Cdn Anti-Tank Regt., RCA

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For A.A. Sec 40 Missing a tour of duty	1	times	1	times
For A.A. Sec 40 Failing to return to Guard Room to complete a tour of duty	1	times	1	times
For Drunkenness	1	times	1	times
For A.W.L.	1	times	1	times

Number of instances of gallantry or distinguished conduct

or

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time,

or,

~~The accused at the present time is under sentence for~~ ~~XXXXXXXXXX~~ ~~beginning on the XXXXXXXXX day of~~

4. The accused has been in confinement, awaiting trial on the present charges ~~for XXXXXXXXXXXXXXXX days in Civil Custody,~~

and 12 days in Military Custody.

Total 12 days.

Of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 25 yrs 9 mos.

6. The date of his ~~commission~~ attestation specified in his record of service ~~attestation paper~~ is 6 Mar 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is one year, 10 months

8. The accused is entitled to deferred pay or gratuity in respect of 1 10/12 years' service.

9. The accused is entitled to reckon 1 10/12 years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, ~~or entitled to~~, no military decoration or military reward [~~or is in possession of or entitled to~~.

]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of NA

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of NA dated

13. ~~The accused has served as a non-commissioned officer continuously without reduction, to the present date,~~

Date of Promotion.

In the rank of Gunner , years, 1 10/12 years

In the rank of , years,

In the rank of , years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(Continued overleaf.

List Of Witnesses

Prosecution - Lieut. J. Bryce - 97 Bty 1 Cdn A.Tk Regt., R.C.A.

B0063 Sgt. Sangster, W.R. - 97 Bty 1 Cdn A.Tk Regt., RCA.

Lieut. M.E. Byers - O.C. No. 6 Prov Coy. Cdn Provost Corps.

Defence - NIL

List Of Original Exhibits

(1) Statement of expenses incurred in returning the soldier to his unit.

(2) A.F. 0.167

I CERTIFY that the man whose personal description is given below surrendered himself to* S.C. 1072 ~~Bolting~~ Boddy RW at Wellesley Rd, Croydon at (hour) 11.15 am on the 26th day of January 1942 as being No. E0184 (Rank and Name) Pte. Walter DUGUAY a deserter (or absentee without leave) from 57th A.T. Battery, RCA and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word " to " to be inserted the name and rank of the police officer concerned.

Age 25 Height 5 Feet 7 Inches

Complexion Fair Hair Dark Eyes Hazel

Marks Nil

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	6/3/40 Quebec, P.Q.
Probable Date of Desertion or beginning of absence, and from what place	20/1/42. Worthing

Rwood SAS

Signature of Officer of Police in charge of ..... Station.

26/1/42 Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of No. .....

who surrendered to the Police at ..... on .....

Payable to .....

Commanding Rwgs RCA President

Lieut
O. i/c Detention Room
No. 6 Provost Company,

CERTIFIED that this statement of expenses is correct.

..... Superintendent or Officer in charge of Police Station at .....

..... Date of Signature.

Exhibit (1)

Ref: M.H.& O.(Can.)539

Regt. No. E-0134

Rank Gunner,

Name Duguay W.J.

Regt. 1st. Anti-Tank Regt.

Unit; R.C.A.

The following expenses were incurred in apprehending and returning the M/W soldier to his unit from London.

DATE	PARTICULARS (Portion)	AMOUNT		
27 Jan.42	Escort return fare from London to Worthing	0.	4.	8.
	Prisoners single fare to London from			
	Prisoners Single fare from London to Worthing	0.	4.	8.
	Escorts expense for bed, meals, bus fares and meals for the Prisoner.	Nil.	.....	.....
	TOTAL ---------- £	0.	9.	4.

I certify that the above statement of expenses is correct and that the amounts are fair and just.

M. C. Bye Lt.
O.C. No 6 Prov. Coy.
Canadian Provost Corps.

Received payment

4 Feb 42

Request - Defence Counsel for the accused
R61864 Gnr Duguay, W. 27 Bty 1 Cdn A.Tk Regt., RCA

I request that in the event of my being tried by Court Martial the Convening Officer will assign an officer to represent me at the trial.

WJ Duguay

(W. Duguay), Gnr.
27 Bty 1 Cdn A.Tk Regt., RCA

MEDICAL OFFICER'S CERTIFICATE

R.P. (CAR) FORM 337

I certify that I have this morning examined

No. E-0184 Gnr. Dugway W.J.

of 1 Cdn Ant Tank Regt. fund in my opinion he

is fit to undergo Trial by Court Martial.

Station Full

D. C. H. MacDonald
Medical Officer
Capt R.C.A.M.C.

Date 13 February 41

Commd Maj R.C.A.
President

1 RCA/5-4-2
10 Feb 42.

1 Cdn A.Tk Regt.

F.C.C.M. - F.0184, Cpr. Duguay, W.J.

1. Sgt. Sangster, W.R. should have produced as an exhibit, A.F.O.1617 and identified accused as being the person mentioned therein.

2. To avoid necessity of returning proceedings please arrange to have enclosed notice served on the accused, which will serve the purpose.

Copy served on accused.
H.W. Davis Lt.

H.W. Davis Lieut
for (W.W. Davis)
Lieut.,
S.L.R.A. 1 Cdn Div.

ARMY FORM B 116.

1st Canadian Anti-Tank Regiment, RCA REGIMENT.

STATION In the Field Date 6 February 1942

Application for a Field General *Court-Martial.*

SIR,

I have the honour to submit one charge against No. H21864 Gunner Duguay, W.J.

of the 5th Bty under my command, and request you will obtain the sanction of G.O.C. 1 Cdn Div that a Fd Gen Court-Martial may be assembled for his trial at "Bryarn" Storrington

The Case was investigated by (*a*) Capt. G.F. Browne

A Court of Inquiry was held on (*b*) N.A. (date) at (Station).

President		Ranks, Names and Corps.
Members		

The accused is now at Storrington His General Character is (*c*) Fair

I enclose the following documents (*d*) :—

1. One Charge Sheet (in duplicate) (*e*).
2. Summary of Evidence, original (*f*) and ~~duplicate~~ copy, copies.
3. Original Exhibits (*g*).
4. List of witnesses for the prosecution and defence (with their present stations or addresses) (*g*).
5. List of Exhibits (*h*).
6. Correspondence (*g*).
7. Statement as to character (A.F.B. 296) and regimental and company, etc., conduct sheets of accused (*g*).
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (*h*). [R.P. 14 (B)].

I have the honour to be,
Sir,
Your obedient Servant,

Signature of Commanding Officer (H.B. Hague), Lt.-Col.
C.O. 1 Cdn A.Tk Regt., RCA.

To C.R.A.
1 Cdn Div.

MEDICAL OFFICER'S CERTIFICATE

I CERTIFY that No H21864 Gnr Duguay, W.J. 1 Cdn A.Tk Regt 5th Bty
(a)* to undergo trial by Court-Martial.

Signature of the Medical Officer [illegible]

* Insert "fit" or "unfit."

(*a*) Here insert name of :—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence [R.P. 19 (B) (66)].
(*b*) To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges; otherwise to be struck out [R.P. 19 (B) (66)].
(*c*) To be filled in by the Commanding Officer.
(*d*) Any items not applicable to be struck out.
(*e*) One copy to be sent to the President; one copy to be filed with the application for trial.
(*f*) Original summary of evidence to be sent to the President.
(*g*) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.
(*h*) 5 and 8 to be sent to the President.

If the accused has elected to be tried under A.A. 46 (3) the fact should be recorded at the top of this form.

111,960 W. 2,960,000/5/41 $60,000 4/30 A.& E.W.,Ltd. Gp.999
118,620 W.L.a/Gp.741 120,000 1/42 " Forms/B116/28

1 RCA/5-4-2
10 Feb 42

TO:-Major R.P. Drummond, 2 Cdn Fd Regt.
Capt. R.E. ~~Turner~~, 1 Cdn A.Tk Regt. SGM MOONEY
Lieut. D.G. McLeod, 1 Cdn Fd Regt.
Lieut. L.F. VanGorder, 2 Cdn Fd Regt.
Lieut. N.J. Robinson, 1 Cdn A.Tk Regt.
Lieut. R.R.B. Murray, 1 Cdn Med Regt.
Lieut. R.V. Gray, 1 Cdn A. Tk Regt.
Lieut. C.S. McK. Ferris, 1 Cdn Med Regt.

2nd FIELD DIST. R.C.A. 11 FEB 42 CANADIAN ARMY, OVERSEAS

Field General Courts-Martial
E.0184, Gnr. Duguay, W.J. - 1 Cdn A.Tk Regt.
D.9035, Gnr. Wilcox, W. - 1 Cdn Med Regt.

1. A Field General Courts-Martial has been convened by the C.R.A. 1 Cdn Div to try charges against m/n accused.

2. The Court is composed as follows:-

PRESIDENT

Major	R.P. Drummond	2 Cdn Fd Regt.

MEMBERS

Capt.	R.E. Turner	1 Cdn A.Tk Regt.
Lieut.	D.G. McLeod	1 Cdn Fd Regt.

WAITING

Lieut.	L.F. VanGorder	2 Cdn Fd Regt.

PROSECUTING OFFICERS

In the case of Gnr. Duguay

Lieut.	N.J. Robinson	1 Cdn A.Tk Regt.

In the case of Gnr. Wilcox

Lieut.	R.R.B. Murray	1 Cdn Med Regt.

DEFENDING OFFICERS

In the case of Gnr. Duguay

Lieut.	R.V. Gray	1 Cdn A.Tk Regt.

In the case of Gnr. Wilcox

Lieut.	C.K.McK. Ferris	1 Cdn Med Regt.

3. The Court assembles at H.Q. 1 Cdn A.Tk Regt or at such other place as may be provided by that unit at 1000 hrs on the 13th day of February, 1942. It is requested that you get in touch with the President immediately.

4. Prosecuting Officers in each case are responsible for the attendance of witnesses.

HW Davis

(H.W. Davis)
Lieut.,
S.L.R.A. 1 Cdn Div.

ZZZ-137

Pte Duquette J M.

CERTIFIED TRUE COPY

222-137

FIELD GENERAL COURT-MARTIAL

CFA66 (To face of AFA1) 40/P.N.G./1(1000) (4000) 4/38B

Convened by Order of Brig A.W. Beament Comd Cdn Sec GHQ 1 Ech 21 A Gp dated 17 Sep 44

ACCUSED.

(As to the trial of two or more charged jointly: see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-142559	Pte	John Marcel	DUQUETTE	Pus MR att 7 CGH

PROCEEDINGS OF TRIAL.

Held in the Fd in *(country)* FRANCE on *(date(s))* 19 Sep 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

11/17

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Finn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the COYP.~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

~~The accused states he understands English and does not require interpreter.~~

A6. The Convening Order and Charge Sheet(s) are read to the accused. The President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No sir.(1)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R.M. Miller ED KC	RCOC)	
Member	Major	M.L. Troy ED	Alq Regt)	att Cdn Sec GHQ 1 Ech 21 A Gp
Member	Capt	F.A. Baillargeon	Gen List)	
~~Judge Advocate~~				
Prosecutor	Lt-col	J.W.G. Thompson	~~RCASC att 1 Ech~~ HQ 2 Cdn Div	
Defending Offr	Capt	W.G.D. Ringerford	RCASC att 1 Ech.	

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 2b, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See 2d p 3.)

A8. The accused ---------- before arraignment make(s) (no) ~~no~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references as fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on ~~the~~ charge(s) in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 3. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. Proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-142559 Pte John Marcel Duquette Pus MR att 7 CGH

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 18(2)	Guilty	Guilty	
2nd	AA 40 (Alt)	Withdrawn by Prosecutor (RP 35C)		
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~to~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for two years and to be discharged with ignominy from H.M. Service.

(Sgd) Judge Advocate, if any. 19 Sep 44 Date awarded. (Sgd) "E.M. Miller" Major President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation must be entered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed -

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 19 Sep 44 (Sgd) "A.W. Beament" (A.W. Beament) Brig Commanding Cdn Sec GHQ 1 Ech 21 A Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D-142559 Pte Duquette, JM.	22 Sep 44	"C.M. Bethune" Major Registrar No. 7 CGH.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

I certify that there are no illegalities or irregularities in the proceedings. I justify with the finding confirmation of these proceedings.

W. Stewart Capt for Lt-Col Norris Col. DJAG Cdn Sec GHQ 1 Ech 21 A Gp

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleac to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(*1. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans. No [5]
(*1. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) ~~his (their) plea(s)~~ on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.[1]
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.[1]
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....[1]
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.[1]
(*1. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(*1. Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(*1. RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(*1. AA* 54(2) (*d*), *RP* 43, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]
Ans. [2]
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces ~~Statement(s) as to Character and~~ Particulars of Service[1], and certified true copy ~~copies~~ of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.[3]
(*1. MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the ~~Statement(s)~~ and Conduct Sheet(s), and in mitigation of punishment?[1] Ans. [2]
(*1. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and then J.A. if any.~~[2]
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its provisos, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 128, 182, *RP* 46-50, 69, 118, 179(*K*), *KR Can* 308, 330, 363-366. *Overseas MO* 309, 2123, *MML p* 80, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 44(2), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 364. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 367. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No D 142588 Pte Marcel DUQUETTE, Fus MR att No 7 Cdn Gen Hosp, a soldier of the Cdn Army Overseas, is charged with:

FIRST CHARGE
Army Act
Sec 18(2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he

In the Field on 13 Jul 44 by discharging his rifle wilfully injured himself by shooting himself through the left foot with intent thereby to render himself unfit for service.

SECOND CHARGE
(Alternative)
Army Act
Sec 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field on 13 Jul 44 while with his regt in the line so negligently handled his rifle as to shoot himself through the left foot thereby rendering himself unfit for service.

"V O Mader" Col.
OC No 7 Cdn Gen Hospital

In the Field
14 Sep 44

To be tried by Field General Court Martial

A D Beament
(A D Beament) Brigadier
GIC
Cdn Sec GHQ 1 Echn 21 A Gp

In the Field
17 Sep 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on dctive service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-142559	Pte		John Marcel	DUQUETTE	Pus MR att No 7 CGH

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 Sep 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.M. Miller EDEC	ROOC)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	L.M. Troy	Alq Regt) att Cdn Sec GHQ 1 Kch 21 A Gp
Capt	F.A. Baillargeon	Gen List)

~~WAITING MEMBER.~~

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in France

"A.W. Beament" Brigadier

(Country.) (Signed personally. RP 105 fn 2.) (Rank.)

(A.W. Beament)

Date 17 Sep 44

Commanding Cdn Sec GHQ 1 Kch 21 A Gp.

Approved: "B.W. Howard" Capt

Convening Officer.

ADJA

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

Cdn Sec GHQ 1 Kch 21 A Gp.

4/30A [illegible]

(See overleaf for oaths and notes for use on trial.)

17. Sep 44

CERTIFICATE OF MEDICAL FITNESS

19 Sep 44

D-142559, Pte Duquette, J.M. has been examined by me this date and is fit to stand trial by Court Martial.

"C.G. Hulland" Major

RCAMC.

E.1.

D-142559 Pte John Marcel DUQUETTE Sworn States:

Born in Montreal 14 Mar 1924. In school to Gr 4, left at 17. Worked at 3 odd h jobs for short period until I volunteered 10 Sep ~~44~~ 43 after one call up letter. 2 mos basic trg at Sherbrooke and 2 mos adv trg at Farnham. Arr UK May 44 - sent as reinforcement to Fde M and to France with Unit 8 Jul 44.
I did not sleep for two or three days. I didn't eat. I was thinking of my brother in the R de Chaud over here in the Army in France. The shelling scared me and I shot myself. I will try going back but I can't tell how it w ll be.

Cross Exam by Court

Q. How many classes did you go thru in school?
A. Four.
Q. Did you attend regularly?
A. No sir, I helped my mother run a boarding house. My father is a labourer.
Q. Did your father serve in the last war?
A. No sir.

Read over.RP 83R.

"E.M. Miller" Major
Pres.

D-142559 Pte Duquette, M, Fus M.R.

Plea in Mitigation by Defending offr.

"It is quite clear from the history of this mans case that he is a psychopathic personality.
His unstable record in Civilian life was carried forward in the Army. It was most unfortunate he was ever selected for the Infantry. His only potential in the Army would be in the Pioneer Corps. I rest the case with the Court insofar as any psychopathic recommendation is concerned. I suggest the proper method of approaching the problem would be by further psychiatric examination.

"W.D. Hungerford" Capt

19.9.44.

SUMMARY OF EVIDENCE

Summary of evidence in the case of Pte Marcel DUQUETTE, Fusiliers de Monte Royale att No 7 Cdnadian General Hospital, charged with, when on active service wilfully injuring himself with intent thereby to render himself unfit for service (AA Sec 18(2), alternative, when on active service neglect to the prejudice of good order and military discipline (AA Sec 40)

By direction of the Commanding Officer the evidence is taken on oath.

First Witness — A 86086 L/Cpl Massell CB, No 8 Cdn Pro Coy, Cdn Pro Corps, sworn states :-

I am A 86086 L/Cpl Massell CB, No 8 Cdn Pro Coy, Cdn Pro Corps. On the 12 Sep 44 I interviewed the accused, whom I recognize as D142589 Pte Duquette M, att No 7 Cdn Gen Hosp. There was no one else present. I identified myself to him telling him I was a member of the Pro Corps and that I was investigating his injury. He was cautioned in the following words :- "You are not obliged to say anything unless you wish to do so, but anything you do say will be taken down in writing and may be used in evidence." He fully understood this warning. After being cautioned he volunteered to make a statement which I reduced to writing. This statement was read over to him by myself and he in turn read it himself then signed it. I produce the statement referred to by me and I recognise the signature of the accused as that on the statement. There were no threats, promises of reward or inducements held out to the accused to obtain this statement. He was not under arrest at this time.

"C B Massell"
Witness

The accused declines to cross-examine this witness.

The statement referred to in the evidence of the above witness is attached hereto as Exhibit "A".

Second Witness — Capt HE Armour, RCAMC, No 7 Cdn Gen Hosp, sworn states :-

I am Capt HE Armour, medical officer in charge of ward 6 of No 7 Cdn Gen Hosp. Pte Duquette was admitted to my ward on the 25 Jul 44 suffering from a wound of the left foot which perforated the middle phalanx of the second toe. Clinically there was no fracture of any importance, the wound traversing the toe in the medial side in a vertical direction. Healing has been good and he is now fit for full duty without change of category due to the wound. In my opinion the wound could have been caused by a small arms projectile fired from a weapon held by the man himself. There is nothing to show at what distance from the wound the weapon was fired.

"H Howard Armour" Capt RCAMC
Witness

The accused declines to cross-examine this witness.

Third Witness — Capt A M Johnson, RCAMC, No 10 Cdn Gen Hosp.

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily procurable and a written statement of his evidence signed by him, has been read to the accused and is attached hereto as Exhibit "B".

"Maxwell Augustine"
Officer Taking Summary

I do not require the attendance of Cap AM Johnson for the purpose of cross-examination.

"J W S Thompson Lt Col."
"John Harvey"
Accused

The accused is cautioned as follows :-

Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement at this time.

The accused does not call any witnesses.

I certify that the foregoing summary of evidence consisting of two pages was taken down before me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

"J W S Thompson Lt Col"
Officer detailed to take the summary of evidence.

In the Field
15 Sep 44

Ex A

STATEMENT OF D-142559 Pte. DUQUETTE M., Fusiliers Mont Royal, 2 Canadian Division, taken at No. 7 Canadian General Hospital, 12 Sept. 44.

I have been cautioned that I do not have to say anything unless I wish to do so, but anything I do say will be taken down in writing and may be given in evidence.

To show I understand the above warning I sign my name here.

(SGD) Marcel DUQUETTE

STATES:

I am Marcel DUQUETTE, age 20 years. I came to England in May 44 as a reinforcement and was sent to the F.M.R. I came to France with my regt. and our first action was at Carpiquet. On the 13 July, we were in action on the right of Carpiquet. We had dug in for the night and three of us were in a trench together. Our section L/Cpl came around and asked for someone to go on guard as the Major had told him to expect a counter attack. I took the first shift and went on duty around 10 o'clock. I was sitting out with my rifle across my knees. It was loaded and cocked. The shelling started and I got very nervous I started to shake and had no control of myself at all. My rifle was pointed at my left foot and in a fit of panic I pulled the trigger. I cannot help it that I am so nervous. For a few minutes I did not know where I was or what I was doing. Then when I realized I had wounded myself in the foot, I called for the other two fellows I was bunking with and they took me to the stretcher bearers.

I have read over the above statement and it is true.

(Sgd) Marcel DUQUETTE

Taken by A-56056 L/Cpl C.B. Mazzell, Canadian Provost Corps
12 Sept. 44

This is Exhibit "A" referred to in the summary of evidence in the case of D142559 Pte Duquettex, M, taken before me this 15th day of September 44.

"J.W.G. Thompson" Lt-col
Officer taking summary.

HOSPITAL OR SICK LIST RECORD

D-142559 Pte DUQUETTE, Marcel. F.M.R. Age: 20

Enl. 10 Sep 43 O/S May 44 B.L.A. 7 Jul 44 Evac 13.7.44

This interview was unsatisfactory because of language difficulty and deliberate wrong statements - no co-operation. His mother "died of shock" when his brother came O/S and his father had a "breakdown" when he came. He had countless neurotic features as a child and reached Grade 10 at school after 7 years (always a different number of repeated questioning) claims he was slow learning but can read and write French. Work history was spotty - several different jobs but always quit them because they were too cold or too hard or his mother was sick.

He was call[illegible] up in the army - has been always homesick - cries of loneliness at nights, is afraid of shooting a rifle and unable to keep up in route marches. He was in France 6 days before evacuation and spent all h[illegible]s time in slit trenches and was unable to sleep. Would refuse to leave slit trench to get food, etc. - shook continually. The injury occurred when he was ordered up on guard duty. He is demoralized - has no volition and no morale.

Summary

A Fr. Cdn - poor family history - life long history of inadequacy and dependency. He has nver had volition for service and proved his complete uselessness in action. He is hopeless for any combatant role but might be able to do unskilled work at base. His intellect is difficult to assess because of lack of co-operation but I don't believe he is defective.

Read

Advise recat. M8S5 (1) Mental retardation
(2) Psychopathic Personality Inadequate

(Sgd.) A.M. Johnson (Capt)

This is a certified true copy of Exhibit "B" referred to in the summary of evidence in the case of Pte Duquette JM, taken before me this 15th day of Sep 44.

J W G Thompson
Officer Taking Summary

Certified True Copy of original Hospital Medical Record returned to Prosecutor.

"E.M. Miller" Pres.

18 Sep 44.

I, Pte Marcel Duquette desire to have an officer assigned to represent me at my trial by Court Martial, I desire the services of Capt W.G.D. Hungerford, if he is available.

"Marcel Duquette"
(Signature of Accused)

15 Sep 44
In the Field.

No. D142558 Name Duquette H Sqn., Battery, or Company | Corps. CIC | Date of enlistment 10 Sep 43 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.R. 172) 40/P & S/136 (2637)

Date of last entry in Company Conduct Sheet NA | No. and date of last drunk NA | Period not reckoning towards freedom from extra fine NA | Sheet No. One | Signature O.C. Company, etc. Signed Lt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified to be a true extract from the regimental books and documents in my custody.

"Allan Smith" Maj
D.A.A.G. (Records)
CMn Sec GHQ 2 Ech 21 A Gp

Ex "C"

Ex C 9mm.

(P.T.O.)

Correspondence to be PINNED here.

27 R

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 12th day of October, 1942.

Whereas it appears to me, the undersigned, an officer in Command of FIRST CANADIAN CORPS ARTILLERY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial~~ for ~~reference to a superior qualified officer.~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[~~I am unable to appoint:—~~

*(~~1. Three Officers to form the Court.~~)

*(~~2. A Field Officer as President.~~)

~~for the following reasons, namely:—~~]

PROCEEDINGS REVIEWED

R J Carson Major
14th Cdn Fd Coy RCE
President of the Court Martial

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	R.J.Carson	14 Cdn A Fd Coy RCE

Members.

Rank.	Name.	Regiment.
Lieutenant	~~R.N.MacFarlane~~ A.H. Macdonald	13 Cdn A Fd Coy RCE
Lieutenant	F.S.Eaton	1 Cdn Corps Fd Pk Coy RCE

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature]
(G.A. McCarter) Brigadier,
Commanding C.C.R.C.A. - 1 Cdn Corps.
Convening Officer.

27R.

cpl. DUKE, n RP

O. H. M. S.

19

Gm
N039

M. F. B. 270

Correspondence to be PINNED here.

Tuke
27 R

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 12th day of October, 1942.

Whereas it appears to me, the undersigned, an officer in Command of FIRST CANADIAN CORPS ARTILLERY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial~~ for ~~reference to a superior qualified officer.~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[~~I am unable to appoint:—~~

*(~~1. Three Officers to form the Court.~~)

*(~~2. A Field Officer as President.~~)

for the following ~~reasons, namely:—~~]

* Omit if not applicable.

PROCEEDINGS REVIEWED

[illegible]

R J Carson Major
14th Cdn A Fd Coy RCE
President of the Court Martial

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	R.J.Carson	14 Cdn A Fd Coy RCE

Members.

Rank.	Name.	Regiment.
Lieutenant	~~R.N.MacFarlane~~ A.H. Nicolson	13 Cdn A Fd Coy RCE
Lieutenant	F.S.Eaton	1 Cdn Corps Fd Pk Coy RCE

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature]
(G.A.McCarter) Brigadier,
Commanding C.C.R.C.A. - 1 Cdn Corps.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
M-5005 Cpl. N.R.P. Duke 1 Bn R.C.E.	A.A. Sec. 15 (1)	Guilty	Reduced to the rank of Sapper. To undergo 90 Days Detention. Stoppage of Pay of £3/14/1 (to cover cost of apprehension) 13 Oct 42. R.J. Carson Major President	Findings and sentence confirmed. (G.A. McCarter) Brigadier, C.C.R.C.A. 1 Canadian Corps 14 Oct 42.

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— Not applicable

(Signed) (G.A. McCarter) Brigadier, C.C.R.C. Commanding 1 Can Corps. (Signed) R.J. Carson Major 14th Cdn A Fd Coy RCE President.
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheet (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 13th. day of October 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

* Omit if not applicable.

were duly sworn.

RJC

Signed this 13th day of October 1942.

R.J. Carson Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I ~~certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

RJC

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 14th day of October 19 42.

Confirming Officer.
(G.A. McCarter) Brigadier,
C.C.R.C.A. - 1 Can Corps.

Promulgated and extracts taken in the case of M 5005 Cpl. N.R.P.

(*a*) (Dated) 17 Oct 42 (Signed) Commanding Officer 1st Battalion, R.C.E., C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

This is to certify that the undermentioned is fit to under go trial by Court-Martial. M5005 Cpl Lake N.R.P. 1/1 Bn. R.C.E.

Date 13 Oct 1942

1st. BATTALION
13 OCT 1942
Royal Canadian Engineers
Br. Orderly Room

R. J. Carson Maja
President

B.C. Miller Capt R.C.E.M.C.
M.O. 1 Bn R.C.E.

CHARGE SHEET

"B"

The accused No. M-5005 Cpl. Duke N.R.P. 1st Battalion R.C.E., a soldier of the Canadian Army Overseas, is charged with, when on active service:-

First Charge
Section 15(1)
A.A.

Absenting himself without leave

in that he
in the Field at 1800 hrs. 3rd. September 1942 did absent himself from 1st Battalion R.C.E. until apprehended by the Civil Power at Middlesborough, Yorkshire, at 1000 hrs. on 29th. September 1942 (A total absence of 25 days 16 hrs) dressed in plain clothes, thereby incurring costs of apprehension to the amount of three pounds fourteen shillings and one penny (£3-14-1)

(A.J.Kerry) Lt-Col. RCE
Commanding Officer
1st Battalion R.C.E. CA

To be tried by Field General Court Martial.

(G.A.~~McCarter~~) Brigadier,
C.E.R.C.A. - 1 Cdn Corps.

12 Oct 42.

R.J. Carson Major
14th Cdn A. Fd. Coy RCE
President of the Court Martial

Proceedings of a Field General Court-Martial held in the Field this 13th day of October 1942 for the trial of:-

M-5005 Cpl. Duke, N.R.P. - 1 Bn. R.C.E.

The Order convening the Court, The Charge Sheet, the Medical Certificate and Summary of Evidence are laid before the Court.

Prosecutor - Capt. W.A. McDill, R.C.E.
1 Bn. R.C.E.

Defending Officer - Lieut F. L. McDonald, R.C.E.
1 Bn. R.C.E.

RJC

The Court as detailed satisfy themselves as provided by R.P. 22, 23 and 106.

The accused is brought before the Court.

At 1000 hrs the trial commences.

The Order convening the Court is read, marked "A", signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Question to the Accused

Q.1 Do you object to being tried by me as President or by any of the officers whose names you have heard read over?

A.1 No Sir.

The President and Members are duly sworn:

President - Major R. J. Carson, R.C.E.
14th Cdn Army Fd Coy., R.C.E.

Members - Lieut A. H. Nicholson, R.C.E.
13th Cdn Army Fd Coy., R.C.E.

- Lieut F. S. Eaton, R.C.E.
1 Cdn Corps Fd Pk Coy., R.C.E.

Q.2 Do you object to E-2037 Cpl. Patterson, H.L. as recorder? ~~sworn~~

A.2 No Sir.

RJC ~~sworn~~.

The Charge Sheet is signed by the President, marked "B", and attached to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge sheet.

Q.3 Are you guilty or not guilty of the charge against you which you have heard read?

A.3 Guilty Sir.

Rule of Procedure 35B is complied herewith.

The Summary of Evidence is read, marked "C", signed by the President and attached to the proceedings.

The Prosecutor, having been duly sworn, presents three exhibits which are namely, statement of absence of M-5005 Cpl. Duke, N.R.P. from 24 Sep 42, statement of apprehension of M-5005 Cpl. Duke, N.R.P. by the Civil Powers and expense vouchers covering costs of apprehension. These are read, marked "D", "E" and "F" respectively, signed by the President and attached to the proceedings.

R.J.C.

The Accused is found guilty of the charge.

Question to the Accused.

Q.4 Do you wish to make a statement or give evidence on oath?

A.4 No Sir.

Question to the Defending Officer

Q.5 Do you wish to address the Court in mitigation of sentence?

A.5 Yes Sir. (The Defending Officer hands in a written statement, which is read, marked "G", signed by the President and attached to the proceedings.)

The Prosecuting Officer presents AFB 296, Statement as to Character and Particulars of Service of the Accused.

Question by the President to the Prosecutor

Q.6 Is the accused the person named in the statement which you have heard read?

A.6 Yes Sir.

Q.7 Have you compared the contents of the above statement with the regimental books?

A.7 Yes Sir.

Q.8 Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

A.8 Yes Sir.

The Court is closed for consideration of the sentence.

The Court sentence the accused, M-5005 Cpl Duke, N.R.P. 1 Bn RCE to: 1. Reduced to the rank of Sapper
2. 90 Days Detention
3. Stoppage of Pay of $ 3/4/- (to cover cost of apprehension)

Signed this 13th day of October 1942.

R.J. Caron Major President.

"C"

Summary of Evidence in the case of M-5005 Cpl. Duke N.R.P.
Taken down on oath by Capt. W.A.McDill RCE on the instructions of Lieut-Col. A.J.Kerry RCE Commanding 1st Battalion R.C.E.

1st Witness

Lieut. D.F.Morton having been duly sworn states:

I am Asst/Adjt. 1st Battalion R.C.E. I have custody of the Regimental Books. I present herewith A.F.B. 115, marked exhibit A, being a certified true copy of the entry on Cpl. Duke N.R.P. in Army Book 161 of 1st Battalion R.C.E. This shows that Cpl. Duke N.R.P., M-5005, did absent himself without leave from 1800 hrs. 3 Sep 42 and was still so absent on the 24th. day of September 1942.

I also present herewith a certificate in accordance with Section 163 (1)M of the Army Act, marked exhibit B, which shows that M-5005 Cpl. Duke N.R.P. was arrested at Middlesborough at 1000 hrs on the 29th Day of September 1942 in plain clothes, signed by the proper authority in charge of the Police Station at Middlesborough.

I also present herewith two (2) statements signed by N.W.Cowling Lieut. No.6 Provost Coy, showing total cost of apprehension as ~~xf~~ £3-14-1, Marked exhibit C.

D.F.Morton Lieut RCE

D.F.Morton Lieut. RCE

The accused declines to cross-examine the witness.

The accused, having been duly warned under the provisions of RP4E, declines to make any statement reserving his defence.

Taken down by me this 7th day of October 1942 in the presence of the accused.

W.A.McDill

(W.A.McDill) Capt. RCE
Adjutant
1st Battalion R.C.E. CA

R.J.Carson Major
14th Cdn A. Fd. Coy. RCE
President of the Court Martial.

I request that Lieut. F.L.McDonald RCE be appointed to defend me at my trial.

H. R. P. Duke.

'D' Army Form B 115.

EXHIBIT D.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled ~~at~~ in the field on the 24 day of September 19 42, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. M.5005 Cpl. Duke, N.R.P. "C" Coy. 1 Bn RCE

DECLARATION.

The Court declare that M.5005 Cpl. Duke, N.R.P. illegally absented himself without leave at Bucks Green on 25 Sep 1942, that he is still so absent and that on 25 Sep 42 he was deficient, and that he is still deficient of the following articles to the value of £9.10.1½

Shirts, Angola		£0.18. 4	Carried forward		£7. 5. 8½
Badges, cap		.03½	Cape, AG		11. 9
Brushes, clothes		1. 1	Braces, Web. R		1. 8
" , shaving		1. 4	Haversack, Web		8. 6
" , polishing		.9	Respirator comp		1.11. 0
Drawers, woollen, prs	2	10. 6	Ointment AG		1. 6
Vest, woollen, prs	2	10. 2			£9.10. ½
Forks, M.S.		.5			
Holdalls		.9			
Knives, clasp		5. 2½			
Razors, set, safety		1.10½			
Socks, worsted, prs	3	5. 0			
Towels, hand		.11½			
Shorts, gymn, prs	2	3.10			
Vest, gymn, prs	2	3. 0			
Wallets, AG		1. 5½			
Battle dress, complete		2.15. 7			
Boots, ankle		1.11. 6			
Caps, F.S.		3. 8			
		£7. 5. 8½			

Names of President and Members President (Sgd) W.A.McDill Capt. RCE
Adjutant. 1 Bn RCE

Member (Sgd) W.F.Morison RSM RCE
1 Bn RCE CA

R.J. Carson Major
Offg. Cdr. A.F.D. Coy RCE
President of the Court Martial

(sgd) (A.J.Kerry) Lt.Col. RCE
Signature of Commanding Officer
Cmdg. 1 Bn RCE CA

CERTIFIED TRUE COPY. D.F. Morton Lieut RCE
(D.F.Morton) Lieut. RCE Asst/Adjt

Signature of Officer having custody of the Original Record. 1 Bn RCE CA

(12281) W1.24218/1427 75,000 10/39 A.& E.W.Ltd. Gp.A59 Forms/B115/54
(13443) W1.25725/760 225,000 1/40 " "

THIS IS TO CERTIFY THAT:-

M.5005 Cpl. Duke, N.R.F., had his kit inspected after he had been apprehended and brought back to his unit.

The following items were found to be deficient and were issued to the a/m Cpl. on his signing and M.F.M. 513.

Badges, Cap	1		3½
Cap Comforter	1		1½
Caps, F.S.	1	1	6
Ear Plugs, prs.	1	3	6
Gloves, Woolen, prs.	1		2½
Knives, Clasp	1	2	7½
Shorts, P.T., prs.	1	5	2½
		1	11

G. Jorgensen.

(G. Jorgensen) C.S.M.S.,
C Coy. 1 Bn. R.C.E. C.A.

"E" EXHIBIT B
AFO 1619

CERTIFICATE
in accordance with Section 163(1)(m) of the Army Act.

I CERTIFY that the person whose description is given below was arrested at Middlesbrough at 10-00 hours on the 29th day of September 1942.

Regimental particulars of Soldier referred to above :-
No. 5005 Cpl, Nevill Ross Patrick Duke, 1st Batt. Royal Canadian Engineers, stationed at Bucksgreen, Horesham, Sussex.

Description:

Age	...	32 years.
Height	...	5ft 10".
Complexion	...	fresh
Hair	...	brown.
Eyes	...	brown,
Marks.	...	Large cut scar on left side of neck, under ear.

Signature of Officer of Police in charge of Police Station where above named person was taken on arrest.

George W. Farnham
Station Sergeant in charge
Police Station,
MIDDLESBROUGH.

In plain clothes when arrested, by P.C. 48 Barrass.

R. J. Carver Major
14th Coln A Fd Coy RCE
President of the Court Martial

EXHIBIT C.

"F"

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. M-5005 Rank Cpt. Name Duke, R.P. Unit 1 Btn. - RCE

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
2 Oct 42	Escorts return fare from LONDON To Three Bridges (1/5 portion)		2	9
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Three Bridges		2	4
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		5	1

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

H. W. Cowling

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London

J. Carson Capt
14th Cdn A Fd Coy
RCE
President of the Court Martial

C.M.H.Q. 1000-55
40/P & S/483

EXHIBIT. C.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. M-5005 Rank Cpl. Name Duke, R.P. Unit 1 Btw. RCE

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Middlesbrough

Date	Particulars	Amount		
2 Oct. 42.	Escorts return fare from LONDON To Middlesbrough	1	16	8
	Prisoners single fare to LONDON From Middlesbrough		18	4.
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~ Meals, Bus fares		14	0
	Total £	3	9	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

H. W. Cowling Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

R J Carson Major
14th Can Pd Coy
RCE
President of the Court Martial

C.M.H.Q. 1000-55
40/F & S/483

"G"

STATEMENT OF MITIGATION

in the case of

M. 5005 CPL DUKE, N.R.P

The accused M.5005 Cpl Duke, N.R.P pleads guilty to the charge as stated, namely being absent without leave for 26 days, being apprehended as charged, and admits the cost of apprehension as stated, £3-14-1.

May the following be considered as a plea for mitigation in the punishment of Cpl Duke.

1. That the inference of the wording of the charge, namely "in ~~civilian~~ Plain clothes be not misunderstood, the accused states that when apprehended he, having left his battledress blouse and slacks to be pressed was wearing or carrying on his person the following:

Soft Felt Hat
Grey Sweater (Auxiliary Service Issue)
Grey flannel civilian trousers
Army Issue: Underwear
Socks
Shirt
Boots
Discs, Identity
Paybook, N.R.M.L.

2. Cpl Duke is of high mental calibre and in no way pleads ignorance to the gravity of the offence. In explanation of the circumstances he states that, due to a holiday feeling after a 48 hrs pass, he did absent himself by failing to return to his unit on the expiration of said pass. Being at the time in receipt of 16 pounds he did not find it difficult to fill in the time while continuing his absence. Being, twelve days later, in receipt of a further 11 pounds, is stated by the accused to be the cause of his unwise continued absence.

3. Cpl Duke is 34 years of age, attended Malvern Military College for three years, obtaining "Certificate 'A' Infantry", dated Nov 1924. He served with the 28th London Regt as transport Sgt in England and Egypt from 1924 to 1926 whereupon he returned to Canada.

On 3 Sep 39 he joined 15th Field Coy R.C.E. and became L/Sgt the same year. At his own request reverted to Spr in May 1940 to come overseas with 1 Bn N.C.O.'s.
Became Cpl in Jul 40 and L/Sgt in Jan 41.

Cpl Duke is well above average mentality and is held in esteem by officers and men for his ability to handle men and get results as well as his academic faculties.

He has been recommended more than once as officer material but has, as shown on his conduct sheet, a reputation for irresponsibility.

4. I, F.L.McDonald, was Cpl Cpl Duke's Section officer from 29 June 42 until 1 Aug 42 when we were constructing a 1000-man hutted camp at Buck's Green. During this period Cpl Duke was responsible for far more than normal Cpl duties, and was in charge of working parties of 100 infantry and about 20 Sprs. I hereby unreservedly recommend Cpl Duke's work in managing the above mentioned parties during the stated period. Also from 5 Aug to 27 Aug 42, Cpl Duke and Cpl Rippon accompanied me on attachment to the 10th C.W. Group R.E. during their period of ranging and tactical exercises at Kirkby Stephen, Westmoreland. There were also attached two Canadian Officers with two N.C.Os each.

the

STATEMENT OF MITIGATION

in the case of
M.5005 CPL DUKE N.R.P

At the end of the attachement I was personally commended by:
1. Adjutant 10th C.W. Group
2. O.C. 61 C.W. Coy (Rocket)
3. O.C. 64 C.W. Coy (Mortar)
on the conduct of, and interest shown by, both Cpl Duke and Cpl Ripon not only generally but in contrast to the other attached N.C.Os, three of whom were Sgts.

May this plea for mitigation be considered, please.

F.L. McDonald
Lieut R.C.E.
(F.L. McDonald)
Works Officer
1 Bn R.C.E., C.A.(O)

ARMY FORM B 206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
N0005	Cpl.	Duke N.R.P.	1 Battalion R.C.E.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A. W. L.	0 times	2 times.
For Conduct to the prejudice	2 times	2 times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, Nil

~~These are the entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or*

~~Previous convictions† of the accused~~ by a court martial or a civil court, ~~summary awards under section 47 of the Army Act, and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time. ~~or The accused at the present time is under sentence to~~ _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for ½ days in civil custody, and 13½ days in military custody, making a total of 14 days, of which No days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ ~~attestation paper~~ is 34 yrs 6½ Months.

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ ~~attestation paper~~ is 4 Sep 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N.A.

8. The accused is entitled to deferred pay or gratuity in respect of N.A. service.

9. The accused is entitled to reckon N.A. service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (~~or is in possession of or entitled to (state any military decoration or award)~~).

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of _____~~

~~12. (In the case of an officer.) The accused holds in the army the rank of _____ dated _____ and in his regiment (or corps or department) the rank of _____ dated _____~~

(7181/40) W.L.P.(S.&S.) 75,000 12/40 A.A.F.W.2157 Gp.679

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. M5005 Rank Cpl. Name Duke N.R.P. of 1 Bn R.C.E. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13 day of October 1942

D.F. Mason Lieut R.C.E.

Asst./Adjutant

1st. Battalion, R.C.E. C.A.

13. The accused has served as a non-commissioned officer ~~continuously, without reduction~~, to the present da[illegible]

			Date of Promotion.
In the rank of	Cpl.	11 Sep 39	
	L/Sgt.	16 Dec 39	
In the rank of	Sgt.	8 Mar 40	
	L/Sgt.	9 Mar 40	
In the rank of	Spr.	5 May 40 (own request)	years,
	L/Cpl.	1 Jun 40	
In the rank of	Cpl	16 Aug 40	years
	L/Sgt	18 Feb 41	
	Cpl	26 Jun 42	years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

5D-9.

Mr. Duke, W. J.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-111103 Pte William Sydney DUKE 1 C Scot R - 11 CBR Bn

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AIA 40	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) (~~1~~)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 25 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under (2).)

Sentence Awarded by the Court:

To undergo 5 days detention

(Sgd) Judge-Advocate, if any. 6 Mar 45 Date awarded. (Sgd) President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(1). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 62. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 372 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be duly committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) [illegible], Major, A/C.R., Acting, Brigade
Date 6 Mar 45 Commanding 2 Con Base Rft Gp (V W HUGHES) Lt-Col
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
B-111103 Pte DUKE William Sydney 1 Scot R - 11 CBR Bn.	Extracts taken - Finding and Sentence promulgated 8 hours.	D. Stewart Capt. 9/Adjt 11 CBR Bn.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 160.5D.7

FIELD GENERAL COURT-MARTIAL

CFA88 (In lieu of AFA81) 40/P & R/1608 (E)(44) 4/38B

Convened by Order of Brigadier G.S.N. Gostling, ED Comd 2 CBRG dated 3 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.
B-111103	Pte	William Sydney	DUKE

PROCEEDINGS REVIEWED 18 Apr 45

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH G.

Held in the Fd in (country) BELGIUM on (date(s)) 6 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see Form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate and preceding para number herein. See back of Convening Order, CF A95. For oaths and instrs as how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily~~ by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused:~~ Do you object to as interpreter? Ans

~~The Interpreter is sworn.~~(1) Do you object to as shorthand writer? Ans

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G.G. MacKENZIE, MBE ✓	FGH Y-G List) Cdn REGT
Member	LIEUT	Y.J. OUELLETTE	10 CBR BN
Member	LIEUT	A.T. GAVIN	10 C.B.R.B.N.
Judge-Advocate			
Prosecutor	LIEUT	A.T. MANN	11 C.B.R. BN
Defending Offr	LIEUT	R.A. McCANCE	11 C.B.R. BN

Questions by President: Is the Prosecutor a lawyer? Ans Nil. Is the Defending Offr a lawyer? Ans Nil. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Off not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dil p 2.)

A8. The accused B-111103 Pte William Sydney DUKE before arraignment make(s) (no) ~~no~~ plea (1)

(1. If a special plea is made for separate trial see one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 name and number of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 37, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B - E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. Nil (5)
(1. RP 27(B). 2. RP 27(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement (*) The Court decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 17(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 17(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

(3) The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para. If submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3), (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Nil
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or MFB 296. 2. MFW 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Nil (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 130, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-346, Overseas RO 309, 2223, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), bill(1), KR Can 304. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 347. As to assembly and dispersal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B-111103 Pte William Sydney DUKE, 1 C Scot R, 59 Coy, 11 CBR Bn, a soldier of the Cdn Army Overseas, is charged with:

FIRST CHARGE
AA Sec 40

WHEN ON ACTIVE SERVICE - CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Cafe Millecollonnes, GHENT, at approx 2200 hrs 8 Feb 45 was concerned in a disturbance in the said cafe by demanding cognac after closing time and by stating, "Did you hear what he said" or words to that effect after a companion, namely B-112160 Pte MASON G A, said, "If you dont give me cognac in two minutes I will break all your glasses and lights" or words to that effect.

(R G Young) Lt-col
Comd, 11 CBR Bn

In the Field
9 FEB 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G S N Gostling) Brig
Comd
2 Cdn Base Rft Gp

In the Field
3 MAR 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-111103	Pte		William Sydney	DUKE	1 C Scot R 11 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) 3 Mar 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G.G. MacKENZIE, MBE	FGH X-9 List 3 Cdn NSTD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Lieutenant	W.J. OUELETTE CIC	10 CBR Bn
Lieutenant	to be detailed by OC 10 CBR Bn	10 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally. RP 105 fn 2.)
(G.F.N. Gostling)

Brigadier (Rank.)

Date 3 Mar 45

Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 98 (In lieu of AFA 3) 40/P & S/1697 (6143)

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined B.111103
(No.)

PTE. DUKE W.S. and in my opinion he is
(Rank) (Name)

fit to undergo trial by Court-Martial.

Station 11 CBR BN

Date 6 MARCH.45.

Medical Officer (Signed)

(Unit)

Plea & Mitigation –

Mr. President & members of the Court the accused in pleading guilty throws himself on the mercy of the Court & I would like to bring to your attention a few facts to which I feel you should consider carefully in pronouncing sentence.

It appears that Pte Duke was mainly a victim of circumstances on the evening of 8 Feb 45. Earlier in the evening he met Pte Mason & they decided to have a few drinks together. The accused had never been out with Mason before & did not realize how wild he became when drinking. When they arrived at the Café Millberlonnes Pte Mason forced his way into the café & the accused a little befuddled from drinking followed him into the premises. According to the evidence the accused took little or no part in the disturbance that followed, remaining practically in the role of an onlooker.

I would also like to bring to your attention his record of service in the army. He joined the army 13 Apr 42, came overseas on 19 Dec 42 in the artillery. He switched from the artillery to the infantry in April 44 & came to France six days after D day & joined the Canadian Scottish regiment on 7 July 44. He was in continuous action until October when he was taken prisoner by the Germans. He remained a prisoner for 5 days when he was liberated. He went to the hospital with sinus trouble on 5 Nov 44 & was discharged from hospital on 24 Nov 44. He came to C.B.R.C & remained there until 21 Jan 45

5

when he again went to hospital with diphtheria. He was finally discharged from hospital on 7 Feb 45 - ~~[illegible]~~

This man assures me that he is very anxious to return to his unit. ~~[illegible]~~ I'm sure this fact, together with his fine record of service in the field & also the fact that the evidence of the case shows very definitely that the accused had very little part in the disturbances at the Café on 8 Feb 45, will weigh very heavily in his favour & that the Court will see fit to give him the minimum sentence possible.

I also bring to the Court's attention the fact that all through his army career he's had a clean record & his crime sheet has only very minor charges on it with no punishment exceeding 28 days C.B.

E+A

SUMMARY OF EVIDENCE

In the case of B111103 Pte William, Sydney, DUKE (Cdn Scots Regt) 59 Coy 11 CBR BN, a soldier of the Cdn Army Overseas charged with "Creating a Disturbance"

By direction of the Commanding Officer the evidence is taken on oath.

K14027 Gnr Cottyn A.J. (RCA) 60 Coy 9 CBR BN, having been duly sworn, has acted as interpreter in this Summary of Evidence. The evidence was translated from Flemish to English.

FIRST WITNESS

Camiel Canse, 3 Frankruk Plein, Ghent, having been duly sworn, states:

"On the 8 Feb 45, at approx 2200 hrs just as I was closing the door to my cafe, two soldiers came up to the door and crowded me back. They came into the cafe and asked for cognac. I said it was closing time and also stated I did not sell cognac after closing time. The soldier whom I now know and recognize as Pte Mason then demanded a bottle of cognac and said if I refused he would kill me. I went and stood behind the counter. By the signs they were making and also the odd word of English I understood they led me to believe that, if I did not give them the cognac they would wreck my cafe. Pte Mason took a glass off the counter and smashed it on the floor. I still refused to give them any cognac. Pte Mason then opened his tunic and came out with a knife and jumped over the counter. I rushed out through the back door which leads from the bar. Just at that time the police came in through the back entrance."

Cross-examined by the accused:

Q. 1. What did I do to make a disturbance ?
A. 1. You came in and asked for cognac and stopped Pte Mason from doing me any harm. I cannot say that you did create a disturbance because in my mind you did not.

Q. 2. Did you give us anything to drink in your cafe ?
A. 2. No.

(RP 83(b) has been complied with) C Canse
.....
(Camiel Canse)

SECOND WITNESS

Leopold Canse, 3 Frankruk Plein, Ghent, having been duly sworn, states:

"On the 8 Feb 45 at approx 2200 hrs my father called me downstairs. When I came down I saw two soldiers standing at the bar. They were demanding cognac. The soldier who I now know and recognize as Pte Mason said :" If you don't give me no cognac in two minutes I'll break all your glasses and lights." I pretended I did not understand any English and the other soldier who I now know and recognize as Pte Duke came up to me and said:"Did you hear what he said?" After that Pte Mason took a glass off the counter and threw it on the floor. Then Pte Mason said: "I will kill you if you do not give me cognac."

SECOND WITNESS CONT'D

"He reached into his inside tunic pocket. I thought he was getting a pistol. Then he reached around his right side and took a knife and opened it. Then he held onto the bar at the counter, stood on the bar just above the floor and lunged over the counter with the opened knife ~~&~~ his right hand. At that time my father and I went out the door leading from the bar and locked it. The provost came shortly after."

Cross-examined by accused:

Q. 1. Did I create any disturbance ?
A. ~~R~~. No.

.....
(Leopold Canse)

(RP 83(b) has been complied with)

THIRD WITNESS

C38350 L/Cpl Andrew H.W., 2 Cdn L of C Pro Coy, Ghent Det., having been duly sworn, states:

"On the 8 Feb 45, in answer to a call received at approx 2230 hrs, I, in company with L/Cpl Wood, H.C.A., proceeded to the Millecollonnes Cafe. Two soldiers were pointed out to me in the Cafe as having been the ones creating the disturbance. They were the only two soldiers in the cafe. The soldier whom I now know and recoguize as Pte Duke was standing behind the bar. I then escorted him to the Pro. Det."

.....
(C38350 L/Cpl Andrew, H.W.)

(The accused declines to cross-examined the witness.

(RP 83(b) has been complied with)

The accused was cautioned as follows:

"Do you wish to make any statement or give evidence on oath? you are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you may give will be taken down in writing and may be given in evidence".

The accused does not wish to make any statement.

The accused does not wish to call any witness.

I CERTIFY THAT THE FOREGOING SUMMARY OF EVIDENCE, CONSISTING OF TWO (2) PAGES, WAS TAKEN DOWN BY ME IN THE PRESENCE AND HEARING OF THE ACCUSED AND THAT RP4(c) (d) (e) AND (f) HAVE BEEN COMPLIED WITH.

In The Field,
20 Feb 45

.....
(R.E. Crouch) Lt
Officer detailed to take
SUMMARY OF EVIDENCE

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B111103	Pte.	DUKE, W.E.	C.S.R.

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	~~TEMPORARY CHIEF~~ T	times	A.A. SEC. 15(1)	2 times
For	NIL	times		times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct NIL

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act, A.A. 72 Section 47 of the Army Act and dispensations with trial under A.A. 72 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and ~~11~~ 25 days in ~~military~~ custody, making a total of ~~11~~ 25 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 24 Years / attestation paper is

6. The date of his ~~enlistment~~ / attestation specified in his record of service is 13 April 42 / attestation paper

7. The service which the accused is allowed to reckon towards discharge is 2 Years 10 Months

~~8. The accused is entitled to reckon ..... service for the purpose of determining his position, viz.~~

9. The accused is in possession of or entitled to no ~~military~~ decoration, or ~~military~~ reward (or is in possession of or entitled to). State any ~~military~~ decoration or reward.

C.V.S.M. & CLASP

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of~~

11. ~~(In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit

..... dated ....., ~~and in his regiment (or corps), the rank of~~

..... dated .....

12. ~~The accused has served as a non-commissioned officer continuously, without reduction, to the present date~~:—

..... ~~Date of promotion~~

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ..... day of .....

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

No. B111103 Name DUKE, W.S. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 13-4-42 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/135 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10-11 42	Gnr		(1) AWL 14 hrs 30 Mins	Documentary	2 Days CB 2 days Ordpay	12-11-42	LT.COL. A.L.S.Nash	Forfs 1 days pay FR &I Total 3 days pay
Field	30 May 43	Gnr		WOAS AWL from 2200 hrs 30 May43 until 0900 hrs 31 May 43 (Absent 11 Hrs) AA Sec 15 (1)	Sjt WEEKS Documentary	2 days CB	31 May43	G.T. Inch Lt.Col.	Total Forf. 1 days pay

CERTIFIED TRUE COPY OF THE REGT DOCUMENTS IN MY POSSESSION

(D.L. STEWART) CAPT & ADJT

(PTO)

REQUEST FOR DEFENDING OFFICER

I wish to have Lieutenant S. Lewis Lake Superior Regt defend me at my trial.

B-111103 Pte Duke W.S.
(B111103 Pte Duke, W.S.)

LIST OF WITNESSES

PROSECUTION:

Camiel Canse, 3 Frankruk, Plein, Ghent.

Leopold Canse, " " "

C38350 L/Cpl Andrew, H.W. 2 Cdn L of C Pro Coy Det.

DEFENCE:

LIST OF EXHIBIT

N I L

24 Feb 45
(DATE)

B-111103 PTE. DUKE W.S.
(NAME OF ACCUSED)

1. I hereby acknowledge receipt of one copy of Charge sheet and one copy of the summary of evidence delivered to me

24 Feb 45
(DATE)

2. (a). I request that LIEUT. ~~S. LEWIS (LSR)~~ NOT AVAILABLE
(RANK AND NAME)
if available, be appointed. OR

(b). I request that an officer be appointed as my Defending Officer at my trial by Court Martial.

(Delete either (a) or (b))

(SIGNED) W S Duke

I hereby certify that LIEUT. R.A. McCANCE was appointed to
(RANK AND NAME)
defend B-111103 Pte. DUKE W.S. at his forthcoming
(No Rank and Name of ACCUSED)
trial by Court Martial and that the said
LIEUT. R.A. McCANCE was notified that
(RANK AND NAME OF DEFENDING OFFICER)
he was Defending Officer on 24 FEB 45.
(DATE)

Dr Stewart Capt
(ADJUTANT)

COUNTER NUMBER 5-60598

HOUR 14.30

OPERATOR'S INITIALS DA

RELIEVING OPERATOR AMB

TT-136
SGMN DUKELOW C.

JAG BRANCH - REVIEW RECORD

Accused

H. 102257. Sq. Dukelow C.
1 C&R.V.

Remarks	Date
Trial in (Country) Eng.	29 Oct
Charges 40.	
Sentence forfeiture	29 Oct.
Rec'd from CR at JAG Branch	17 Nov.
To DW for (~~pre~~)(post) rev	17 Nov.
Recommendations by DW	
(1) Pass and record.	
~~(2) Ltr on irregularities.~~	
~~(3) Quash~~ _____ charge(s).	
~~(4)~~ _____	
Ret'd to JAG Rev 1 by DW	17 Nov.
Passed to _____	
Passed to _____	
To AG 5 for _____	
Ret'd from AG 5 to JAG Rev 1	
Instrs by JAG Rev 1 on disposal	
Record & file	17 Nov
Instrs completed by _____	

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ (1) FDT.

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To forfeit all ordinary pay for a period of forty-six days.

(Sgd) ..... 29 Oct 43. (Sgd) F. D Tweedie Lt Col.

Judge-Advocate, if any. Date awarded. President (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed.

I direct that the said accused be not committed ~~prison or detention barracks~~ until further orders. (1)

(1. AA 57A. Delete if not used.)

(Sgd) ..... H.R. Symes Col

Date 1 Nov 43 Commanding 'B' Sub Area. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (AP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
H102257 Sjgmn. Dunhelow, C. 1 CASU DO 292 d/ 2 Nov 43	2	A/Commanding, [illegible] Sub Area.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

TT-132

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA31 40/P & R/1658 (2864))

Convened by Order of H. R. Symes Col. N/Comd 'B' Sub. C.R.U. dated 29 Oct 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H 102257.	Sgmn.		Charles	Dunhelow,	R.C.C.S. Kot C S R U.

R. Deauville. 17 Nov 43. Capt.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 29 Oct 43.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (✓) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3) FDT.

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ FDT.

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to ..... as interpreter ? Ans .....~~

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans ..... FDT.

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 181, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt. Col.	F. D Tweedie	160 C.R.U.
Member	Maj.	S. G Waghorn	1 CASRU.
Member	Lieut	R.C.E. Bray	1 CERU.
Judge-Advocate			
Prosecutor	Lt.	N. R. De Poe	1 CSRU.
Defending Offr	Lt.	W A Willson	1 CSRU.

Questions by President : Is the Prosecutor a lawyer ? Ans No. Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Col p 2.)

A8. The accused ..... before arraignment make(s) (no) ~~(the)~~ plea(s). FDT.

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 111. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and see separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

~~A10. The Court is closed and considers the Instrs re Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form.~~

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ■ 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privilege of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witness by Court etc see RP 75-79, 86), 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. ..... (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p. 54 para 47. 4. See para L3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D as p* 3. *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on* p 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheet of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. Nu .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~(an)~~ (no) opening address.(1) F. D. T.
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) See Notes D
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), ~~and allowed on the charge(s),~~ and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty on~~ the latter charge(s).(4) F.D.T.
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. I wish to make a statement. Do you intend to call witnesses on your behalf ? Ans. No Are they witnesses as to character only ? Ans. ..... ,
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, Ibid(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 108(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is ~~(are)~~ recorded in Part I of the Schedule.(2) The Court is re-opened. F.D.T.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and as to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2) F.D.T.
(*1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~(copies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3) F.D.T.
(*1. MFB 203 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Nu. F.D.T.
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA., if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its penalties, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 88, 118, 119(A), KR Can 308, 330, 563-566, Overseas RD 309, 2223, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, H.102257 Signalman DUKELOW, Charles, (Royal Canadian Corps of Signals) on strenght of the No. 1 Canadian Signals Reinforcement Unit, a soldier of the Canadian Army Overseas,

is charged with

FIRST CHARGE
Section 40
Army Act.

WHILST ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the field on or about 16th July 1943, was in improper possession of a Smith and Wesson .38 calibre revolver, Number 92c620, the property of the Canadian Government.

(R.C. Burgess) Major,
A/Commanding,
R C Sigs Training Wing,
No. 1 Cdn Signals Reinf Unit.

Delville Brks.,
Cove, Hants.,
23 October 1943.

TO BE TRIED FIELD GENERAL COURT MARTIAL

(H.R. Tyner) Colonel
A/Comd "B" Group,
Cdn Rft Units

28 Oct 43

H. R. Tyner A/Col
28 Oct 43

A. D. Immediate Ca
29 Oct 43

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No. H102257 Dukelow C.
rank name
_____ of CSRU and in my opinion he is Fit ~~Unfit~~ to undergo
trial by Court Martial.

Station

Date 29 Oct 43

signed .. John Fmutch Capt. .....
Medical Officer

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAR/1697 (2568)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Can Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H.102257	Sigmn		Charles	DUKELOW	1 CSRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) ..... endorsed by me, (or by an offr of my staff for me),'' To be tried by Field General Court-Martial ''.

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint an Alternative Offr to face the Court, (as the 3rd Offr or President, for the reasons I have stated) hereby.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I do appoint as Judge-Advocate thereof the Offr mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt. Col.	H.D. Tweedie	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	G.C. Wagborn, to be detailed by	1 CASCRU
Lieutenant	R.C.E. Bray. to be detailed by	1 CERU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (*Country.*) (*Signed personally. RP 106 fn 2.*) [signature] 60C (Rank.)

Date 28 Oct 43 A/Commanding "B" Group, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for seats and notes for use on trial.*)

J. D Tweedie Lt Col
29 Oct 43

Defending Officers Address | Dukelow AA40

The charge is one of improper possession of Canadian Government property

It is submitted that no evidence has been adduced to show that Dukelow's possession of the revolver was improper. It must be remembered that Dukelow bought the revolver in a bona fide purchase, and that he did not realize that it was Government property.

He states he owned an identical weapon in Canada, and it is reasonable to believe that he saw nothing wrong with owning one here. His anxiety to hide it is accounted for by the fact that he knew the numbers were filed off.

I should like to draw to the court's attention that if this were civilian property, ~~[illegible]~~ a charge would not be proper - (ref Gren Book para 35) - and since Dukelow thought this was civilian property, this should be construed in his favour.

The court has examined the pistol and seen how small the govt stamp is. If Dukelow had been ~~intending to~~ wanted to obscure the govt mark, he could have done so easily. It seems clear that he did not know that his purchase was an Army pistol. It is submitted that the court should make a finding of not guilty.

Wilkinson

D. Page 1

First Witness for Prosecution:

B 33085 Sgt. Starkey, G.H. 1 CSRU. sworn states:

On 16 July 43, at about 1630 hours I was in the ablution room of Spider 3, Deloille Barracks, when I heard a conversation. As a result of the conversation I started to look for the accused. I couldn't find him, but I had seen him previously around Sgmn. Larsen's bed. I knew Larsen & Dunkelow were very good friends. I found Larsen and had a conversation with him. Larsen & I went to Larsen's bed and Larsen pulled a revolver from under the kit bag on his bed. I took the number, I marked it down at the time I took the revolver. The number was 926620. It was a Smith & Wesson .38 revolver.

The revolver is produced & identified by the witness and marked "A" for identification.

I placed Larsen under close arrest and sent for the accused.

There were four rounds of ammunition in the revolver when I took possession of it.

No Cross exam.

The evidence was read to the witness & he states that the time was 0830 hours and not 1630 hours as written in the first line of his evidence

J.D.T.

Second Witness for Prosecution

M10913 Cpl Labelle, H.O. 1 CSRU. sworn states:

I am a R.P. at Ctr 1 CSRU. On 16 Jul 43, at about 0820 hours, I was questioning Sgm Duhelow, the accused, at Mowat Bks. when a W Cpl came to the guard room and stated that Duhelow was to be placed under close arrest, and taken under escort to Spider 3. Delville Bks. I placed him under arrest and escorted him to the Spider 3 and handed him over to Sgt. Starley. The accused made no statement to me at that time.

Cross Exam:

I was questioning the accused about something that has nothing to do with this case.

The evidence is read over to the witness.

Third witness for the Prosecution:

H195324 Sigmn Larsen, R. ~~1 CSRU~~ 4 Cdn Armd Div Sigs sworn states:

On 16 July 43 at 0745 hours Sgm Duhelow, the accused, approached me in room 2 Spider 3, Delville Barracks, and told me that Sgt Starley was looking for him. The accused had a revolver, which he put under my kit bag on my bed. I went on parade at eight

D.T.

o'clock. We were broken off from parade. Sgt. Stanley took me with him. We went to my bed and as a result of a conversation with him I took the revolver from under my kit bag and gave it to Sgt. Stanley.

Xd Cross exam.

By the Court: I can't identify the revolver. I knew it was a .38. Dunbelow told me.

The evidence is read over to the witness.

Fourth Witness for the prosecution:
Detective Constable J. Marshall sworn states:

On Friday 16 Jul 43. I visited Delselle Camp. relative to a revolver which had been stolen. I questioned Lgnn. Larsen who made a signed statement. As a result of this statement I visited the D.H. store where I was handed a revolver Smith & Wesson. No 926620 & four rounds of live ammunition. I made further enquiries from Lgnn Croft who after being cautioned made a signed statement. I made further enquiries as a result of which I ascertained that Lgn. Tinston (Stopped by Court)

Xd cross exam.
By the Court: I handed the revolver and ammunition to the Adjt.

a Major of the signals wing in Delville Bks. He is still there. I don't know his name.

The evidence is read over to the witness:

Fifth Witness for the Prosecution.
B 52023 Sigmn Croft, C.D. 1 CSRU sworn states:

About 5 Jul 43 Sigmn. Dubelow came to me & inquired if I knew where he could purchase a revolver. I stated that I did. Prior to that Sigmn ~~Pt~~ Tinston had asked me (stopped by Court). I went to Tinston and got a revolver from him, which I took and gave to Sigmn. Dubelow. Dubelow paid me £3-10-0. for the revolver. I went back to Sigmn Tinston, gave him £1-0-0, the rest of the money I pocketed as a result of an arrangement with Tinston. I recognize Sigmn Dubelow, the accused. The revolver was a Smith & Wesson calibre .38. I don't know the number.

Cross Exam:

I didn't tell Dubelow the pistol was mine and I didn't tell him it was an issue.

By the Court:

There was no ammunition with the pistol when I gave it to Dubelow.

The evidence is read over to the witness

Sixth witness for the prosecution

Capt. E. S. Perkin, 1 CSRU sworn states:

The witness is shown revolver marked 'A' for identification. This revolver is the property of the Cdn Govt. by virtue of distinguishing mark — Broad Arrow ~~and~~ encircled with a C.

Cross Exam:-

I dont know anything about the pistol more than I have said

By the Court:

I am quartermaster of 1 CSRU, and have been for 15 months.

The evidence is read over to the witness. Revolver marked 'A' for identification is offered in evidence, received and marked Ex 'A'

At 1200 hours the Court adjourned until 1330 hours, 29 Oct 43.

The Court reassembled & opened at 1330 hours at the same place with the same president, prosecutor, members and defending officer present.

First Witness for Defence.

H 102257 Signm. Chas. Dukelow, 1 CSRU sworn, states:

I am the accused. On 1 July 43 I was amongst troops who were dispatched to No 4 C.B.O.D. for the purpose of guard duty. While I was there I learned that guards who had a revolver did not need to carry rifles. I made inquiries

F.O.I.

about obtaining a revolver and the boys told me that Sigmin Croft might know where I could get one. I had a 48 hr. pass so I came down to 1 CSRU to see Croft. I asked him if he had a revolver that he could sell me. He said yes. I purchased the revolver from him for £3-10-0. I did not know it was a Canadian Govt. gun. I ~~have~~ had only been in this country two months. I had never seen an army revolver at the time I got that one. I had a revolver like that in civilian life. That was why I thought that revolver was a civilian gun. (The witness is shown Ex 'A' & referred to the govt stamp on it.) I know that is the govt mark now. I didnt know before I got up for orders. I didnt see the mark on the revolver when I bought it. I tried to hide the pistol because when I bought it it had the serial number filed off the butt and I thought I would get in trouble.

Cross Exam:

I ~~looked~~ did not look FBI for Ordnance Marks on the revolver. I was never instructed in a service revolver. I figured the fellow that had the revolver had filed the No. off. That didnt make me suspicious. I thought it might be a hot civvy gun. I have never seen a service revolver like this. I have been in the Army about a year. I never thought what the

FBI.

Govt mark means. I have seen it on my clothing and equipment, but I don't know what it means.

By the Court:

I identify Ex A as the revolver Croft sold to me by the serial no. on the butt being filed off, a filing on the back of the chamber and two little filings on the hinge of the cylinder.

The evidence is read over to the witness.

The case for the defence is closed.

Final Address by prosecutor.
Evidence shows.
Pistol taken 5 pinshaws from Croft.
Identified as property of Govt.
Accused evidence no excuse.
Case proved.

Final Address by defending officer:
Attached.

A.G.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of H102257, Signalman DUKELOW, Charles, (Royal Canadian Corps of Signals), on strength of No. 1 Canadian Signals Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the A/Commanding Officer, the summary of evidence is taken on oath.

FIRST WITNESS for the prosecution

B33085, Sgt. Starley, G.H., on strength of No. 1 Canadian Signals Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn states:

" I am B33085, Sgt. Starley, G.H. (R.C.C.S.), on strength of No.1 Canadian Signals Reinforcement Unit. On 16 Jul 43, at approximately 0830 hours, I was in the ablution room of Spider 3 when I happened to overhear part of a conversation to the effect that Sigmn. Dukelow had a revolver in his possession. Knowing that he had not been issued with one, and I being aware that two were missing from our section (D.R. Section No. 1 Coy), I started to investigate. Sigmn. Dukelow was not available but I had seen him previously around Sigmn. Larson's bed. I found Sigmn. Larson and asked him about the revolver. He immediately pulled it out from under his kit bag, stating that Sigmn. Dukelow, knowing that I was looking for him had put it under there. I took possession of the revolver and I now recognize it to be the revolver handed to me by the number on the barrel which I noted on 16 Jul 43, to be 926620, and also four (4) rounds of ammunition which were in the revolver, and I placed Sigmn. Larson under Close Arrest. Sigmn. Dukelow, whom I recognize as the accused now present, was brought back to me by the Regimental Police. Sigmn. Dukelow was then marched down to the Guard Room."

G H Starley
(B33085 Sgt. Starley, G.H.)

The accused declines to cross-examine this witness.

SECOND WITNESS for the prosecution

M10913, Cpl. Labelle, H.O., on strength of No. 1 Canadian Signals Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn, states:

" I am M10913, Cpl. Labelle, H.O. (ROCS) on strength of No. 1 Canadian Signals Reinforcement Unit, Sir. I am Cpl. of the Regimental Police. On 16 Jul 43, at approximately 0820 hrs., Sigmn. Dukelow reported to Norval Guard Room as he had been informed that he was wanted for questioning. While I was questioning him, a L/Cpl., whom I do not know delivered a message from Sgt. Starley that Sigmn. Dukelow should be placed under arrest and brought to Spider 3 under escort. I carried out this order. I marched Sigmn. Dukelow, who I now recognize, under escort to Sgt. Starley at Spider 3.

H O Labelle Cpl.
(M10913 Cpl. Labelle, H.O.)

The accused declines to cross-examine this witness.

THIRD WITNESS for the prosecution

H195324, Sigmn. Larson, R., on strength 4 Canadian Armoured Division Signals, a soldier of the Canadian Army Overseas, having been duly sworn, states:

"Sir, I am H195324, Sigmn. Larson, R., on strength No. 1 Canadian Signals Reinforcement Unit. On 16 Jul 43, I was living in Spider 3, room 2. On the morning of 16 Jul 43, around 0745 hours, Sigmn. Dukelow approached to speak to me. Sigmn. Dukelow had a revolver in his possession, and he put it under my kit bag. I went on parade at 0800 hrs. After Coy parade we were broken off and proceeded to the drying room of Spider 3. Sgt. Starley came to the room and requested I go with him. In company with Sgt. Starley we went to my bed and he asked me for the revolver. I took the revolver from under the kit bag and gave it to him. Sgt. Starley had me escorted to the Guard Room for questioning regarding the revolver. I was questioned by a civilian detective."

R. Larson
(H195324 Sigmn Larson, R.)

The accused declines to cross-examine this witness.

FOURTH WITNESS for the prosecution.

B52043, Sigmn Croft, C.D., on strength of No. 1 Canadian Signals Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn, states:

"Sir, I am B52023, Sigmn Croft, C.D.(ROCS), on strength of No. 1 Canadian Signals Reinforcement Unit. Approximately three (3) weeks ago I was approached by Sigmn. Tinston who asked me if I knew any person who wanted to purchase a revolver. I told him that I didn't know anyone who wanted a revolver. On probably three other occasions, Sigmn. Tinston asked me again if I knew of anyone who wanted a revolver. I still replied I didn't know anyone. About 5 Jul 43, Sigmn. Dukelow approached me about 0830 hours and asked me if I knew where he could purchase a revolver. I replied I did. He requested that I get it and he would purchase it from me. I went to Sigmn. Tinston and told him I had found a purchaser for a revolver. He went to his kit bag and got one and handed it to me. I took the revolver to Sigmn. Dukelow for which I received three pounds, ten shillings (£3.10.0) Prior to the sale of the revolver, Sigmn. Tinston told me that he wanted one pound (£1.0.0) for the revolver and that I could have any amount over that sum which I sold the pistol for. Directly after the sale of the revolver to Sigmn. Dukelow I proceeded directly to Sigmn. Tinston and paid over one pound (£1.0.0.). The remainder of the money received from the sale I pocketed. The condition of the sale stated above was satisfactory to Sigmn. Tinston. I recognize the accused as Sigmn. Dukelow."

C.D. Croft Sigmn.
(B52023 Sigmn. Croft, C.D.)

The accused declines to cross-examine this witness.

FIFTH WITNESS for the prosecution

Detective Constable S. Mascall of the Hampshire Joint Police Force, stationed at Farnborough, Hants., having been duly sworn, states:

" I am Detective Constable S. Mascall of the Hampshire Joint Police Force, stationed at Farnborough, Hants. On Friday, 16 Jul 43, I was making inquiries relative to a revolver which had been stolen at Delville Camp. Firstly I questioned Signn. Larson, who made a signed statement after being formally cautioned. A copy I hereby submit (Appendix "A"). With result of this statement I visited the stores where I was handed a Smith & Wesson Revolver, .380, No. 926620 and four (4) rounds of live ammunition by Sgt. Starley. I made further inquiries with result I saw Signn. Croft who, after being cautioned made a signed statement. A copy of which is herewith produced (Appendix "B"). I then continued inquiries as result of which I ascertained that Signn. Tinston had supplied Signn. Dukelow, through Signn. Croft, with the above numbered revolver."

S Mascall

(Detective Constable S. Mascall)

The accused declines to cross-examine this witness.

SIXTH WITNESS for the prosecution

Capt E.S. Perkin, on strength of No. 1 Canadian Signals Reinforcement Unit, an officer of the Canadian army Overseas, having been duly sworn, states:

" I am Capt E.S. Perkin, Quartermaster of No. 1 Canadian Signals Reinforcement Unit. I identify Smith & Wesson pistol .380 Number 926620 as the property of the Canadian Government, it having the distinguishing mark of a broad arrow encircled by a "G".

E Perkin Capt.

(E. S. Perkin) Capt.
Quartermaster

The accused declines to cross-examine this witness.

The accused was cautioned as follows:- "Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

FIRST WITNESS for the Defence.

The accused, H102257, Signn DUKELOW, Charles, on strength of No. 1 Canadian Signals Reinforcement Unit, a soldier of the Canadian army Overseas, elects to give evidence on oath, and having been duly sworn, states:

"Sir, I am H102257 Signn. Dukelow C., on strength of No. 1 Canadian Signals Reinforcement Unit. About the 1st July, 1943, I was among the troops of this unit that was despatched to No. 4 Sub-Depot, Canadian Base Ordnance Depot for the purpose of guard duty. After my arrival at 4 Sub-Depot I learned that a guard who had a revolver was not required to carry a rifle but could be armed with their revolver in place of. I made inquiries regarding possibilities of purchasing a revolver and learned through some of the boys that Signn. Croft might know where to get one.

On approximately 5 Jul 43, I approached Sigmn. Croft and inquired if he knew where I could get one. He said yes, that he could get me one for three pounds, ten shillings (£3.10.0.). I agreed to purchase said revolver from him. The deal took place and the sum mentioned (£3.10.0.) was paid over to Sigmn. Croft. After I had the revolver about two weeks, I noticed that the cylinder wouldn't turn when the trigger was pulled, so I returned to the unit to see if Sigmn. Croft knew how to repair it. I heard that Sgt. Starley and the R.P's were looking for me so I placed the revolver for safekeeping under Sigmn. Larson's kit bag as I had no bed of my own, and reported to Sgt Starley. Sgt. Starley was unable to see me at this time so I proceeded to Norvel Guard Room and was escorted back to Spider 3 where I was questioned by Sgt. Starley regarding the revolver. After questioning I was returned under escort to the Guard Room. When I purchased the revolver I was not aware that it was Government property as I was the owner of a similar revolver in Canada and was of the opinion that the one purchased here was civilian property. The four (4) rounds of ammunition was found in the "Services Club" in Heading. It was found on top of the partition in the lavatory.

.....G. Dukelow.....
(H10287) Sigmn. Dukelow, G.)

I certify that the foregoing Summary of Evidence, consisting of four (4) pages, and two (2) appendices, was taken down by me in the presence and hearing of the accused, and that R.P. 4 (c), (d), (e) and (f) have been complied with.

.....
(W.A. Peace) Lt. R.C.D.
Officer detailed to take
the summary of Evidence.

Cove, Hants.
23 Oct 43.

STATEMENT OF THE ACCUSED IN ACCORDANCE WITH R.F. 14 (B)

I, H102257, Sigmn. DUKELOW, C., desire an officer be assigned to defend me at my trial by Field General Court Martial.

I desire the services of Lt. W.A. Willson if he is available.

C. Dukelow

(H102257, Sigmn. Dukelow, C.)

LIST OF EXHIBITS

EXHIBIT "A" No. 926620 Smith and Wesson .38 Calibre revolver

LIST OF WITNESSES

Witnesses for the Prosecution

B33085, Sgt. Starley, G.H., R.C.C.S., No. 1 Canadian Signals Reinforcement Unit.

M10913, Cpl. Labelle, M.C., R.C.C.S., No. 1 Canadian Signals Reinforcement Unit.

H195324, Sigmn. Larson, R., R.C.C.S., No. 1 Canadian Signals Reinforcement Unit.

B52043, Sigmn. Croft, C.D., R.C.C.S., No. 1 Canadian Signals Reinforcement Unit.

Detective Constable S. Mascall of the Hampshire Joint Police Force, stationed at Farnborough, Hants.

Witness for the Defence

H102257, Sigmn. Dukelow, C., R.C.C.S., No. 1 Canadian Signals Reinforcement Unit.

L I S T O F A P P E N D I C E S

APPENDIX "A" - Statement made by H195324 Sigmn. Larson, R., R.C.C.S., No. 1 Coy, R.C. Signals Wing, No.1 Canadian Signals Reinforcement Unit.

APPENDIX "B" - Statement made by B52023 Sigmn. Croft, C.D., R.C.C.S., No. 1 Coy, R.C. Signals Wing, No. 1 Canadian Signals Reinforcement Unit.

APPENDIX "A"

H195324 Sigmn. LARSON, R., R.C.C.S., No. 1 Coy, R.C. Signals Wing, No. 1 Canadian Signals Reinforcement Unit, states:

"I have been cautioned and make this statement voluntary of my own free will. At about 7.40 A.M. on Friday, 16 Jul 43, I was in Room 2, Spider 3, getting ready for parade when Sigmn. Dukelow came up to my bed and told me that Sgt. Starley was looking for him and he had a revolver on him which he wanted to conceal. He then put it under my two kit bags, and I then had to leave the hut to go on parade. I knew Dukelow had bought this revolver and thought it was his lawful property. As he was on leave from Pepper Harrow and he was a friend of mine, I did not query him wanting to leave the revolver there.

R. Larson

(H195324 Sigmn. Larson, R.)

APPENDIX "B"

B52023, Sigmn. CROFT, C.D., R.C.C.S., No. 1 Coy,, R.C. Signals Wing, No.1 Canadian Signals Reinforcement Unit, States:

"About four weeks ago I was in Spider 3, Room 2, when Sigmn. Label, A. spoke to me and asked me if I knew anyone who wanted to buy a revolver as his chum had one to sell. I told him that I did not know anyone who wanted one. He enquired two or three times after that but I still did not know of anyone who wanted one. About three weeks ago Dukelow came up to Delville Camp from Pepper Harrow and he asked if I knew of anyone who had a revolver to sell. I told him that I did. I went to the fellow who had the revolver, I don't know his name, and got the revolver from him. I told him that I knew someone who wanted one and he told me that I could have all I could get over one pound (£1.0.0.) I sold the revolver to Dukelow for three pounds, ten shillings (£3.10.0.). I paid one pound (£1.0.0.) to this fellow and kept two pounds, 10 shillings (£2.10.0.) for myself. I could identify this man again. I have been cautioned and make this statement voluntary and of my own free will and have been allowed to make any corrections I wish. I got the revolver at 8.30 P.M. but I cannot remember the date.

C. D. Croft Sigmn.
(B52023 Sigmn. Croft, C.D.)

H-102257

No | Name DUKELOW, C. | Sqn, Battery, or Company | Corps RCCS | Date of enlistment 10 Sep 42 | GC Badges | Service or Proficiency Pay N/A | MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 10 Mar 43 on completion of six months service					
Field	25/5 43	Sgmn.		A.A. 40 WOAS conduct to the prej. was improperly in possession of four packets of cigarettes.	Sgt McElroy CSM Harwood Cpl Bell, H	14 days C.B.	1 Jun 43	Lt-Col E.C.Peffers	
Field	9/8 43	Sgmn.		A.A. 15 (1) WOAS, AWL from 2300 hrs 9/8/43 until 0600 hrs 16/8/43 (absent 7 hrs)	B-34587 Cpl Birnie	7 days C.B.	10 Aug 43	Lt-Col E.C.Peffers	Forfeits 1 days pay FRI 145
Field	10/8 43	Sgmn.		A.A. 15 (1) WOAS, AWL from 1830 hrs 10/8/43 until 1700 hrs 23/8/43 (12 dys 22 hrs 30 mins)	L/Cpl Stenning Cpl Birnie	21 days detention	24 Aug 43	Major Gillingham	Forfeits 13 days pay FRI 145

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	27/9 43	Sgmn.		A.A. 40 WOAS. Conduct to the prejudice of good order and military discipline, in that he failed to arise at reveille after being duly warned	Cpl Wilson A.N.T.	7 days C.B.	27/9/43	Major F.J. Ishister	

CERTIFIED TRUE COPY ....F. J. Ishister...Major
19 October 1943 (Officer having custody of original document)

Ex B. Edwards, 1/GA
27 10 43

M.F.B. 355
22M—5-41 (379-S)
H.Q. 1772-30-622
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H.102257	Sigmn.	DUKELOW, C.	No. 1 C.S.H.U.

1. The following is a fair and true summary of the entries in the ~~Regimental and Squadron, Battery~~ Service and General Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and Air Force Act of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A.Sec.40	Two (2) times	A.A.Sec.40 Two (2) times
For A.A.Sec.15(1)	Two (2) times	A.A.Sec.15(1) Two (2) times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

~~or~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act Air Force Act and dispensations with trial under A.A. 73 A.F.A.73. are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for~~ beginning on the ~~day of~~

4. The accused has been in confinement awaiting trial on the present charge for ~~14~~ nil days in civil custody, and ~~14~~ nil days in military custody, making a total of ~~14~~ nil days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 19

6. The date of his ~~enlistment~~ specified in his ~~record of service~~ attestation paper is 10 Sep 42

7. The service which the accused is allowed to reckon towards discharge is 1 year 1 month

8. The accused is entitled to reckon 12 months service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~and is not in possession of or entitled to~~. State any ~~air force~~ military decoration or reward.

~~10. If the accused is a warrant officer.~~ The accused before he was made a warrant officer had held the ~~regimental~~ Air Force rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

Permanent Force
unit

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Name ..... of ..... Unit Regiment

Air Force

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 29 day of [illegible] [illegible] Capt.

R.C.G.S. TRAINING [illegible] UNIT.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

H Y 74

Cpl. Dudley, H A

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (ii); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

NB The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (ii).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read aloud as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Use Basic Loose Sheets of Record. 3

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (ii), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the fourth & fifth charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the fourth charge(s), and allowed on the fifth charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use record alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans I will give evidence on oath. Do you intend to call witnesses on your behalf ? Ans No Are they witnesses as to character only ? Ans .....
(1. *RP 115, 116.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the fourth charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty of the charge(s) and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (c), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself on oath, call any witnesses as to your character ?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 4 and Ex B respectively.(3)
(1. *AFB 251 or AFB 296.* 2. *AFB 96.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes, in mitigation (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) TLD
(1. *When several accused tried separately see RP 94(B). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 336, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences consigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Convening Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORDED AT CMHQ IN AB 160 4Y-174

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA3) 40-P.M.S.1608 (2864)

Convened by Brigadier G.S.N. Gostling, ED Comd 2 CBHQ dated 14 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prnnt R. (b) Apptmt, A/R or A/Apptt.	Full Christian Names.	Surname.	Unit.
M-3043	Cpl	Harry Alfred	DULEY	9 CBR Bn

PROCEEDINGS REVIEWED 23 Mar 45 [illegible] Capt

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) BELGIUM on (*date(s)*) 15-16 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 23/123.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmns RAOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Noins". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0935 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Can 557. 2. AA 46(B), RP 50 (n 1. For effect see KR Can 563(a). Delete, if not applicable.)

A5. President to accused: Do you object to [illegible] as interpreter? Ans

The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 108(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(2) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	C.G. KING	RCA 9 CBR Bn
Member	Major	E.V. PINKHAM	RHC I-9 List 3 Cdn REGT
Member	Capt	D.L. McJANNET	RCASC 9 CBR Bn
Judge-Advocate			
Prosecutor	Lieut	G.C. SCOTT	Tor Scots 10 CBR Bn
Defending Offr	A/T.	A.F. McINTOSH	SHER FUS 9 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (3)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros = lawyer and Def Offr not, accused is entitled to re-arrangement when RP 89 (3) (a) and fn 2 were not followed. See Dir p 2.)

A8. The accused M-3043 Cpl Harry Alfred DULEY before arraignment make(s) (no) [illegible] plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2CBRG Vol. 2 p 122

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M-3043 Cpl Harry Alfred DULEY 9 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	NOT GUILTY	
2nd	NOT GUILTY	NOT GUILTY	
3rd	NOT GUILTY	NOT GUILTY	
4th	NOT GUILTY	GUILTY	
5th	NOT GUILTY	NOT GUILTY	
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ C.G.K beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or MF B296.)

Time in confinement awaiting present trial—a total of 34 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or MF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be reduced to the permanent rank of Private and to forfeit sixty (60) days pay.

(Sgd) [illegible] Judge-Advocate, if any. 16 Feb 45 Date awarded. (Sgd) C.G. King Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-764, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed ~~the sentence is varied to [illegible]~~

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 17 Feb 45 (Sgd) [illegible] BRIG.

Commanding COMD. 2 CDN. BASE RET. GP. Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
M-3043 Cpl Harry Alfred DULEY, 9 CBR Bn.	20 Feb 45	[illegible] CAPT. & ADJT., 9 BN. 2 C.B.R. GP.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CHARGE SHEET

The accused, M3c43 Corporal Duley, Harry Alfred, [redacted] Bn 2 CBR Gp, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
AA SEC 9 (1)

WHILE ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

in the field at 12 Bn 2 CBR Gp, on 12 Jan 45, at approximately 2300 hrs, when ordered by A-35202 RSM J. Clayton to allow himself to be searched during a search of all ORs entering 12 Bn 2 CBR Gp, refused to allow himself to be searched at that time.

SECOND CHARGE
A.A. SEC 9(1).

WHILE ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

in the field, at 12 Bn 2 CBR Gp on 12 Jan 45, at approximately 2300 hrs whenordered by B-67632 Cpl. Porter F.R. to allow himself to be searched during a search of all ORs entering 12 Bn 2 CBRG refused to allow himself to be searched at that time.

THIRD CHARGE
(ALTERNATIVE)
SEC 40 A.A.

WHILE ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, at 12 Bn 2 CBR Gp on 12 Jan 45, at approximately 2300 hrs refused to allow himself to be searched during a search of all ORs entering St. Peter's Barracks at that time.

FOURTH CHARGE
AA SEC 8 (2)

WHEN ON ACTIVE SERVICE, USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

in that he

in the field, in Belgium, at approximately 2300 hrs 12 Jan 45 when told by A-35202 RSM Clayton, J. that if he did not submit to a search he would have to be placed under close arrest - said to RSM Clayton, "Alright and you will have to place a charge against me and we will see if you can make it stick" or words to that effect.

FIFTH CHARGE
AA SEC 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, in Belgium, at approximately 2300 hrs 12 Jan 45 obstructed the Regimental Police in the performance of their duties by refusing to allow himself to be escorted to the detention cells by A-35342 L/Bdr Glosier demanding an escort of equal rank.

(H.W. Rick) Lt-Col.,
Commanding
9 Bn, 2 C.B.R.Gp.

In the Field
12 Feb 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(G.S.B. Costling), Brigadier,
Commander,
2 Canadian Base Reinforcement G Pool.

In the Field
14 Feb 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-3043	Cpl		Harry Alfred	DULEY	9 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 14 Feb 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Major	C.G. KING	RCA 9 CBR Bn
(*Rank.*)	(*Must be named. RP 106.*)	(*Unit.*)

MEMBERS.

Major	E.V. PINKHAM	RHC I-9 List 3 Cdn NETD
Capt	D.L. McJANNET	RCASC 9 CBR Bn
(*Rank.*)	(*Named or detailed. RP 106.*)	(*Unit.*)

~~WAITING MEMBER.~~

(*Rank.*)	(*Named or detailed, if any. RP 106.*)	(*Unit.*)

~~JUDGE-ADVOCATE.~~

(*Rank.*)	(*Must be named, if any. RP 106.*)	(*Unit.*)

On Active Service in the Fd

in BELGIUM
(*Country.*)

(*Signed personally. RP 105 fn 2.*)

Brigadier
(*Rank.*)

Date 14 Feb 45

(G.S.W. Gostling)
Commanding 2 CDN BASE RPT GP
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICER'S CERTIFICATE

(K.R.(Can)Para 557)
CMHQ CL 173

I certify that I have this day examined M.30483
(Number)

CPL. DULEY H.A. and in my opinion he is
(Rank) (Name)

fit to undergo trial by Court Martial
~~unfit~~

Station FIELD. M. M. Waserman Capt.
(Medical Officer)

Date 15-2-45 Unit 9 C. B. R. BN. C.A.K.

MEDICAL OFFICER'S CERTIFICATE

(KR(Can)Para 557)
CMHQ Cir. 173

I certify that I have this day examined M.3043 (Number)

CPL. (Rank) DULEY H.A. (Name) and in my opinion he is

~~fit~~ to undergo trial by Court Martial

Station FIELD.

Date 16-2-45

Jn. M. Wasserman Capt. Medical Officer

(Unit) 9 C.B.R.G.

Proceedings in the case of M3043 Cpl Dulay H.A.

Witnesses for the Prosecution

FIRST WITNESS A35202 R.S.M. Clayton J. having been duly sworn states:

"I am A35202 RSM Clayton J. and I recognize the accused. I came in the main gate at approx 2300, at St Peter's Barracks, on 12 Jan 1945. I saw three Provost on duty at the main gate and asked them their reason for being there. They said they had orders to search every one with the rank of Agt and below for weapons, as one of their number had had his taken from him. I stayed on the main gate and at approx 2300 hours the accused walked through the main gate and was stopped by the Provost and was asked to submit to search. The accused declined to be searched and said "I'm a soldier and I have my rights" The accused pushed past the Provost and I stopped him and asked him to submit to search. He replied "No I do not have to be searched" I told him that if he did not submit to search that I would have to place him under close arrest. I again asked him to be searched and he again refused, replying "If you place me under close arrest, you will have to place a charge against me, and see if you can make it stick" I entered the guardroom and placed the detention cells for an escort. The escort arrived and as he was not the equal rank of the accused, he refused to be escorted to the Cells. I turned to the Provost Corporal and told him to escort the accused to the detention Cells and one of the would take his place on the main gate.

C.G.H.

~~When he was~~ The accused while talking to me at the main gate seemed sullen, but he was not drunk. When he said about making the charge against him stick if I laid one he was emphatic about it.

Cross Examination By Defence.

Q — Did the Provost give the man a definite order?

A — No sir.

Q — Did you give him a definite order?

A — No sir.

Q — Was any attempt made to search him at the gate?

A — Not to my knowledge sir.

Q — Do you remember his exact words when he referred to your arresting him?

A Yes "If you place me under close arrest, you'll have to place a charge against me, and see if you can make it stick"

Q — Are you sure the conclusion of that remark was not "I don't see how you can make it stick"?

A — No sir — I'm sure it was not.

Q — How, in what manner did he object to being escorted by the 2/Lde?

A — "I demand an escort of equal rank."

Q — Would you please clarify "Not Drunk"

A — A man to my mind is drunk when he's staggering and does not know what he's doing.

C.G.K.

Q — Do you infer then that he had been drinking?

A — It seemed so to me.

Re Examination By Prosecution NIL.

R.P. 83 (B) has been complied with.

SECOND WITNESS D 7518 Sgt Willock K.T. having been duly sworn states:

"I am D 7518 Sgt Willock K.T and I recognise the accused. At about 2300 hours on 12 Jan 45 I was standing at the main gate of St Peters Barracks, as assistant to RSM Clayton, supervising the search of all ranks of Staff & below. Cpl Bailey entered the main gate and was stopped by a Cpl of the Provost Corps. He had refused to be searched by the Provost Corps Cpl and was then stopped by RSM Clayton. The Clayton told him he would have to submit to a search, he refused to be searched saying that he would have to be put under close arrest and a charge laid against him. The RSM then entered the guardroom and called the Detention block for an escort. When the escort arrived Cpl Bailey refused to go with him saying that the escort was not of equal rank. The RP was a Lord/Bedfordshire. The RSM then detailed the Provost cpl to accompany the accused to the Cells. The RP was not wearing any thing to distinguish him as such. The prisoner's attitude was arrogant and he appeared as a "know all" and defiant and he just wanted to be obstinate. To my mind Cpl Bailey was sober.

Cross Examination By The Defence

Q — Did you hear any of Bailey's remarks to the Provost?

A — No sir I did not.

C.S.K.

Q — Where was the accused when the RSM stopped him?
A — He was past the Provost Cpl and the guardroom door but he was not out of the archway.
Q — Where were ya standing?
A — Behind the Provost, with the RSM. to my right.
Q — Did you hear all that passed between the accused and the RSM?
A — Yes sir except when they entered the guardroom.
Q — Can give the exact manner in which he refused to accompany the L/Sgt?
A — No sir I cannot.

Re-Examination By Prosecution

Q — Did you hear the accused refuse to accompany the L/Sgt?
A — Yes but I can't recall the exact words.

Question By Court

Q — Did you hear any order given to the accused?
A — Yes he was told by the R.S.M that he would have to submit to a search.
Q — Explain the word "TOLD"
A — Well he was given an order to submit to search.
R.P. 93(3) has been complied with.

THIRD WITNESS — B 67632 Cpl Porter F.R. having been duly sworn states:

I am B 67632 Cpl Porter F.R. and I recognize the accused. At about 2200 hours on 12 Jan 45 I was in company with L/Cpl Tomlinson and was detailed to search all troops coming in 12 Bn C.S.R.C. on search was for a pistol. At about 2300 hours Cpl Bailey entered the gate, I told him I would like to search him.

P.T.K.

He said "Oh no you don't" I asked him why not and he stated that he would only be searched in the presence of an Offr. There was an Offr entering at that time and I asked him over and explained the situation to him. ~~I~~ The Offr told the accused that he'd better let me search him. The accused then stated that he wanted the Orderly Officer present. The RSM then came over. He gave the accused an order to let me search him. Cpl Dulay still refused to be searched unless the O.O. was present. The RSM told him he was under arrest and to be taken to the guardroom. There was a L/cpl detailed to escort him, but the accused refused to go with the L/cpl. The RSM then detailed me to take him. Arriving at the guardroom he still refused to be searched. The N.C.O. i/c the guardroom then phoned for the O.O. ~~As~~ Upon his arrival the accused allowed me to search him and there was no pistol on his person.

I was dressed in Coy dress: white gaiters; white cross belt and pistol and arm band. The first time I saw the accused I told him I would like to search him. The second time, in the presence of the Offr who had come in the gate, he still refused to be searched. When he refused at first, he said he wanted AN Officer present, but when an Officer arrived he then wanted the Orderly Officer. My rank was plainly visible. During the whole time, his attitude to my mind was just obstinate, but he was not defiant.

Cross Examination By Defence

Q— What were your exact words and manner when you first wanted to search the accused?

A— I gave him an order that I would like to search him.

Q— Are you sure you didn't say "Just a minute Mac I want to search you?

C.F.K.

A — I did not see.

Q — Did you actually try to escort him?

A — Yes I tried to feel his breath and he pushed me away saying "No you don't"

Q — Did ~~you the accused~~ this Offr speak to the accused & did he first go to get the Orderly Officer?

A — He actually spoke to the accused.

Q — How long after you first stopped him was it before he pushed past you and was stopped by the RSM?

A — He didn't push past me

Q — Did you hear the accused's exact words when he refused to be escorted by the L/Bdr?

A — He said a L/Cpl could not escort him to the guardroom, and that he wanted someone his own rank.

Q — Were these further words & did the RSM tell you to take him down?

A — The RSM ordered me to take him down.

Q — R P 83(a) has been complied with.

FOURTH WITNESS "M3823 L/Cpl Thorburn W.N. having been duly sworn states:

"I am M3823 L/Cpl Thorburn WN and I recognize the accused. On the night of 8 Jan 45 at about 2300 hours I saw Cpl Darby come through the gate where we were searching all entering personnel and Cpl Porter stopped me to escort him, but I do not remember what he said to Cpl Darby.

The accused when stopped said he would not be searched unless an Offr was present. Cpl Porter got an Offr and Cpl Dudley still refused to be searched. I don't recall the outcome as I was busy with other soldiers coming through the gate. We were searching all ranks up to, and including Sgts.

Cross Examination By Defence

Q— Did you hear anything that passed between Dudley, the Offr and Cpl Porter?

A— No sir

Questions By the Court

Q— How is it you did not hear what Cpl Porter said to the accused at first but did hear the accused's reply?

A— I was not close enough at first but had walked near by the time the accused replied.

Q— What was the tone of voice of the accused when he refused to be searched?

A— A fairly loud tone of voice.

Q— What was his manner?

A— Rather aggressive, he appeared to me to have had quite a bit to drink.

C4K

FIFTH WITNESS A35342 L/Bdr Glazier S.J. having been duly sworn states:

I am A35342 L/Bdr Glazier and I recognize the accused. On the 12 Jan 45 at approx 2300 hours I was on duty at St Peter's Barracks as R.P. I was sent to the Main Gate by Cpl Burch who was in charge, to escort Cpl Duley to the Detention Cells. Upon my arrival Cpl Duley refused to go with me as I was not of his rank, so the RSM sent him to the Detention Block with the Provost Cpl. I was wearing a pistol, but my web mann't whitened - I couldn't be certain as to whether I was wearing an armband or not.

Cross Examination By Defence

Q — Do you remember Cpl Duley's exact words upon your arrival?

A — Yes sir "This man is not of my rank" and nothing further was said.

Q — Did the RSM immediately detail Cpl Porter to take him?

A — Yes sir.

R.P. 83(B) has been complied with

SIXTH WITNESS M589 Sgt Logelin G.E. having been duly sworn states:

"I am M589 Sgt Logelin G.E. and I recognize the accused. On the night in question I was Guard Commander at the Main Gate of St Peter's Barracks. About 2100 hours the Provost arrived ~~and informed me that they~~ and at about 2300 hours Cpl Duley entered the Main Gate when approached by the Cpl Provost

to be searched, he refused, stating that he had certain privileges as a Cdn soldier. An Officer entered and went to the Orderly Room and obtained written authority from the OC to search all personnel who came in, from the rank of Sgt down. The accused still refused, and it was then that RSM Clayton sent for an escort. The RSM asked the accused if he would submit to search, the accused stated that he would not unless he was put on charge, a an Officer was present. The escort arrived and Cpl Darby then made the statement that the escort was not of the same rank as himself. R.S.M Clayton then ordered the Provost Cpl to escort Darby to the detention Cells. I don't know the exact words that the accused used to the RSM, nor do I know whether or not the Cpl showed the written authority to Darby. The attitude of Darby was more or less stubborn. I would say the accused was sober.

Cross Examination By The Defence

Q- Did you hear any of the conversation between Darby & Cpl Porter?

A- I can't say I did sir.

Q— Did you make the accused familiar with the written order?

A- No sir.

Q— Did the accused make any other statements about his escort, apart from the one you stated?

A- None that I heard.

C.J.K.

Questions by the Court.

Q – Where were you when the episode was in progress?

A – About 10 (ten) feet away, near the gate.

Q – Did you hear any orders given to the accused in regard to being searched?

A – No sir.

Q – How did you realize that the accused was refusing to be searched?

A – The Pronost Cpl told us, but when I went to the scene I saw the accused refuse to be searched because he stated that he wanted an Offr present.

R.P. 83(B) has been complied with.

SEVENTH WITNESS B 49376 Cpl Burch G.C. having been duly sworn states.

I am B49376 Cpl Burch G.C. and I recognize the accused. I was on duty in the cell blocks on 12 Jan 45. About 2300 hours I got a phone call from the Main Gate. As a result of the call I sent up L/Bdr Glazier, I sent him because apart from myself there was not another full cpl present. The accused was brought into the cells by ~~Cpl~~ a cpl of the Pronost Corps. The accused refused to be searched. The Pronost Cpl did not directly order duty to be searched. I think ~~duty~~ Porter's words were "Will you be searched now". ~~So~~ The accused was brought down to us to be placed under Close Arrest. When anyone, regardless of rank is brought into the Detention Cells he is searched.

C4K

The accused desired the presence of an Offr before he would submit to search, so I phoned the Orderly Officer but he was already on his way over. When the Orderly Officer arrived the accused, quite willingly submitted to being searched. The Orderly Officer then asked me to release Duley under Open arrest, otherwise I ~~should~~ would have placed him under Close arrest.

Cross Examination By The Defence

Q — Did you Officially ~~that~~ take Duley over from Porter?

A — No sir.

Q — ~~Then~~ Did you ~~have no~~ occasion to search him as a normal prisoner?

— If he had been a normal prisoner, but I did not get him Officially

Re Examination By Prosecution

— When the accused was brought into the Cells would he not come under your charge?

— Yes sir.

— Is it customary when the Provost bring in a prisoner for you to assist them in searching the prisoner?

— No sir, the Provost bring prisoners in to be turned over to us.

— Were you present when the Cpl. wanted to make the search?

— Yes sir.

6 4 4

Q — Had he your permission to search the prisoner?

A — No.

Questions By The Defence, allowed By The Court

Q — What search do you refer to?

A — When the Cpl made the search, in the Cell block, in the presence of the Orderly Officer.

R.P. 83 (a) has been complied with.

EIGHTH WITNESS Lieut R.A. Dubois having been duly sworn states:

"I am Lieut R.A. Dubois, and was Orderly Officer on the night in question, and I recognize the accused. At about 2215 hours that night, I received a phone call from the Provost Officer asking me to see that the guard assisted with the searching of personnel entering St Peters Barracks. I spoke to the Guard Commander and ~~[illegible]~~ ordered him to assist the Provost at the gate, along with the R.Ps to assist in searching all personnel of the rank of Sgt and below who entered the Barracks. The Guard Commander told me that it was already being done. Later I wrote an order to the Guard Commander because I had been informed that one man had refused to be searched, the order read that any man of the rank of Sgt or below who refused to be searched would be taken ~~in custody~~ over by the Provost.

Later I went to the Detention Cells because I had phoned the Guard Commander to find out if he was still having trouble with the accused. After learning that he was still having trouble

C.G.K.

I went to the Guard Room to see if I could straighten things out. When I arrived there the accused had already been taken to the detention cells. With the Orderly Sgt I went to the detention Cells and found the accused with the R.P's. I asked him what the trouble was and he answered that he wanted an Officer present while he was being searched. I asked him if he had any objection to being searched in my presence and he said he had none. The police searched him and found nothing. The Provost Cpl then asked me if Cpl Bailey was to stay in the detention Cells ~~under close arrest~~ and I answered that I would release the accused and have him up before his Coy Commander. Coming away from the detention Cells I asked the accused what objection he had had to being searched in the presence of the two Infantry Officers that were at the guardroom. He replied that he had no knowledge of any such Officers being present. One of the R.P.s a Provost reminded Bailey that there two Officers were present at the Guardroom, the accused still didn't remember. The Provost Cpl mentioned it again and the accused then seemed to faintly recollect it. When I was present the accused was willing to co-operate and did say he was sober.

Cross Examination By Defence

Q— Was the accused made acquainted with the written order?
A— I haven't the least idea.
Q— Was he actually "booked in" to detention when you arrived?
A— I couldn't tell you that either.

C.A.K.

Q— Did you have knowledge of other Offrs at the guardroom?

A— Yes, the infantry Offrs came over and told me that there was a man at the guardroom who had refused to be searched.

Q— Did you put the accused under open arrest?

A— No I just released him from detention.

Re-Examination By Prosecution

Q— Did you ~~tell~~ order the Cpl in the detention Cells to release the accused from close arrest and have him before his Coy Commander?

A. I simply told the Provost Cpl that I was releasing the accused and would have him before his Coy Commander.

Q— In other words you were putting him under open arrest?

A— I simply released him to come before his C.O the next day.

Q— Did you consider he would be under open arrest then?

A— It didn't occur to me.

Q— Did you assume, when you saw the accused in the Guard room that he was under close arrest?

A— Yes I did.

RP 83(6) has been complied with.

C.S.H.

Plea of Prima Facie case not proven.

I submit that on the fourth charge that a Prima Facie case is not proven as from the R.S.M's evidence the accused made a simple statement of what he beleived to be fact. and that their was no intent to be disrespectfuel or insulting.

I submit that on the fifth charge a prima facie case is not proven as from the evidence of L/Bdr Glazier and Sgt Logelin the accused simply made a statement with reference to the rank of the escort & the RSM simply ordered Cpl Porter to act as escort without waiting to see if the accused did intend to refuse to go.

[illegible] 9 1926.

C.G.H.

Answer to Submission by Defence.

Sir & Members of Court

Evidence has been given before the Court to establish a "prima facie" case against the accused on both the fourth and fifth charges.

The evidence on the fourth charge is particularly strong. The accused did use insubordinate language to R.S.M. Clayton. There are two witnesses the R.S.M. and Sgt Logelin who both testify that the accused did use the words as set forth in the charge. Both witnesses state that the manner of the accused ~~to say~~ was insolent and defiant. There is no evidence to contradict these statements therefore I submit that there has been a "prima facie" case established.

On the fifth charge, the evidence is plain. The accused did refuse to ~~accompany~~ be escorted by L/Bdr Glazier. He stated "This man is not of my rank" and refused to be escorted to the ~~gu~~ detention cells by the L/Bdr.

G. C. Scott Lt.

C. Lg K

Witnesses for the Defence

FIRST WITNESS M3043 Cpl Darby H.A. having been duly sworn states:

"I am M 3043 Cpl Darby H.A.

Q- How were you first stopped when you entered Barracks?

A— The Provost cpl stopped me by putting his arm in front of me, saying "Just a minute there, I want to search you.

Q— What was your reaction?

A— I was befuddled at that time I was the only soldier coming through the gate, I answered him by asking to be searched in the presence of an Officer. The Provost Cpl ordered me to stand against the wall to the left of the guardroom door and I did so. Then two Officers entered the gate, they did not enter the guardroom, nor go near the guardroom. The Provost cpl went over to the Officers, what he said, I don't know because an Officer looked my way and said to the RSM who had arrived then "I don't know what this is all about, Jim going over to the O.C. and find out" and they left. The R.S.M then ordered me, would I submit to a search I replied "I have already asked to be searched in the presence of an Officer, I think I am within my rights in asking that" The RSM then said "If you do not submit to a search I will place you under close arrest and have you taken to the

C.H.K.

Detention Cells. I asked the R.S.M. what the charge would be, he replied that he did not have to lay a charge now but could lay it later. I said "All right, but I cannot see how you can make one stick, all I have asked is to be searched in front of an Officer". The RSM entered the guardroom, shortly after he came out of the guardroom a L/Bdr came into the archway, he walked by us towards the guardroom. The RSM stopped him saying "Here's your man here, the L/Bdr came over alongside of me, I turned to the R.S.M. and said "This man is not of a rank equal to mine sir" The RSM detailed Cpl Porter to take me to the Detention cells, I led the way as Porter did not know where the cells were. When we arrived there Cpl Porter turned to me and said "How will you let me search you?" I answered by saying to Cpl Burch of the R.P. "Am I not under close arrest Cpl Burch?" Burch replied that he didn't know and phoned the O.O. ~~That~~ and found that he was on his way down. The O.O. arrived, asked me what the trouble was. Cpl Porter answered "He wants to be searched in the presence of an Officer" The O.O asked me if I had any objections to being searched in his presence. I replied that I had not and the Orderly Officer replied "Search him". Burch searched me. After being released by the O.O. I was asked if I remembered the Offrs at the guardroom, I answered no that I had no recollection, my reason for that is that I was not in the guardroom, the only Officers

I saw were in the archway. When the Provost Cpl asked me I did reply that I had not the faintest recollection of any Officers at the Guardroom. I heard no more about the case till 1545 hours the following day when I was warned by the C.S.M that I'd appear before the Coy C.O. and there the charge which is the alternative charge here was read out to me. I appeared before the Coy C.O and was remanded to the O.C., I appeared before the O.C. about 1600 hours 13 Jan 45 and was remanded for Court Martial. the only statement I made to forestall Court Martial was to revert at my own request which was denied me. I had been drinking on the night of 12 Jan 45 but I consider I tried to conduct myself as a soldier. At that time I thought that I was within my rights in asking for the presence of an Offr while I was being searched, for there was no order given to me at any time, except later by the O.O to submit to search.

Cross Examination By Prosecution

Q- Did Cpl Porter ask to search you in the presence of an Offr?

A- No sir.

Q- Are both he and Sgt Lyselin wrong in their testimony then?

A- They are mistaken sir

Q- Did you state to the O.O. that you hadn't the least recollection of Officers being at the guardroom?

A- I stated that to a question asked by the Provost in front of the O.O.

C.G.K.

Q— Why did you refuse to be searched?

A— For one reason, the way I was accosted by the Provost Sgt, another reason, I was the only soldier in the archway at the time and knew nothing of any order, nor was I informed. The third reason I was never ordered to be searched except by the Orderly Officer.

Q— Why did you refuse to be search, if not ordered by the R.S.M. then at his request?

A— Because the Offr had already gone to the O.C and I thought they were going to ask him to come out.

Q— Do you now admit that the officers were near you at the gate?

A— No, I have already stated that I saw the two Officers in the archway, they were not near me, they were about ten feet away from me.

Q— Far enough then that if the Offr spoke to you in a normal voice you would hear him?

A— Yes if he spoke to me.

Q— How did you know that they had gone for the O.C?

A— I heard them say that from where I was standing.

Q— Did you refuse the R.S.M. to be searched?

A— I at no time refused, I only asked to be searched in front of an Offr.

Q— Why did you not submit to search when the 2 Offrs were present?

C.H.K.

A— The two Officers & Cpl Porter who had joined them were standing in a triangle, none of the Offrs facing me and it was not my place to ask them to witness a search for me?

Q— Did Cpl Porter ask you in the hearing distance of an Offr if you would consent to a search?

A— No sir I was against the wall and there was ten feet & thereabouts between the Offrs Porter and I.

Q— Is Porter wrong there?

A— I do not say he was wrong I say he was mistaken it is over four weeks since that happened.

Q— Did you say to RSM Clayton "all right then you will have to plore a charge against me and we will see if you can make it stick"?

A— I said "All right but I can't see how it can be made to stick.

Q— Would you not consider that insolent language to a superior?

A— Not the way I said it sir.

Q— Were you ever connected in any way with Provost work?

A— Yes sir — I was in charge for two months in 1942 of the R.P. at the C.T.S. of England.

Q— Would you not know the regulations set down for the Provost Corps?

A— I only know what I was taught, and I was taught that a Provost can search you in the streets, but to conduct a search of a soldier's person a bit within that soldiers barrack lines there should be an Offr present at the search.

C.H.

Q — Have you ever been on duty at any gate as a Provost?

A — Yes

Q — Have you ever searched soldiers entering or leaving camp?

A — Yes - two one occasion and then the Adjutant was present.

Q — Is it because of that occasion that you believe an Offr should be present?

A — No sir - it is what I have been taught.

Q — Do you think you conducted yourself as a soldier on the night in question?

A — I have been taught sir that I could request to be searched in the presence of an Officer if that search took place within my barrack lines and according to that teaching I believe I was conducting myself in a soldier like manner for I did not demand, I asked.

Q — Do you not think you were obstructing the Provost in their duty by refusing to be searched?

A — To my teaching sir the Provost was not performing his duties as he should therefore how could I obstruct him in his duties. If he had ordered me in the correct manner to submit to a search I would have been searched at that time, then later I would have found out why there was no Officer there to determine whether I was wrong or right.

Q — Do you think you were conducting yourself as a soldier should when you refused the S.P.M.'s request for you to be searched

C.G.K.

I did not refuse sir, I merely asked to be searched in the presence of an Officer. If the RSM had ordered me I would have been searched there and then.

Q— Is Sgt Logelin wrong when he says that the RSM ordered you to be searched?

A— The RSM stated that at no time did he give me an order to be searched, so Sgt Logelin must be wrong.

Q— What did the RSM say to you?

A— The first time "Will you submit to a search" " second " "If you don't submit to a search I will place you under close arrest and have you taken to the Detention Cells.

Q— What was your exact reply to the latter?

A— I replied "There will have to be a charge laid then sir" and he said "I don't have to lay a charge now I can do that later" I replied "All right but I can't see how you can make it stick".

Questions By the Court

Q— Did you recognize Cpl Porter as a member of the Provost Corps?

A— Not when I first came in, after he said he wanted to search me and after I had answered him as I did, I noticed the M.P. brassard on his arm.

Q— Did you mean there has to be an Offr stand present at a search?

A— We were taught that the correct procedure of search in

C.G.K.

barrack lines, would be a search with an Offr present, and we were taught that any time we were in charge of a search and there was no officer present that we were to ask for one.

Q— ~~Have~~ Do you ~~been an~~ consider that Provost have more leeway in disciplinary matters than guards and R.Ps?

A— Not within barrack lines sir, we have our own R.Ps

R.P. 83 (B) has been complied with.

C.G.H.

Summary of Evidence by Prosecution

Sir & Members of the Court.

The accused is charged with two charges under Sec 9 (2). "Disobeying a lawful command". The court must decide on the evidence whether a lawful command was given? ~~The~~ R.S.M. Clayton states he did not give an order to submit to a search" but I suggest that a lawful command was given in that the R.S.M. ~~made a report~~ stated "If you do not submit to a search, I will have to place you under close arrest." ~~That is a~~

On the third charge, the alternative ~~charge~~ charge, the court must find the accused guilty on the evidence if as not his actions to the prejudice of good order and military discipline? ~~If any so~~ The accused ~~was~~ entered the gate refused to be searched by the provost corporal. Several witnesses have testified as to this fact. What would have happened if every soldier ~~who~~ ~~had~~ entered the gate that night had acted in the same manner? The court has ~~not~~ no alternative but to find the accused guilty on this charge.

L.G.K.

The fourth charge is the most serious of all. ~~them~~ This soldier was not only defiant but was insolent to R.S.M. Clayton. The accused is charged with saying "Alright and you will have to place a charge against me and we will see if you can make it stick" or words to that effect. R.S.M. Clayton and Sgt Lozelin both testify that the accused did say these words and in a manner that was defiant. The accused himself admitted that he said "Alright but I don't see how you can make it stick." I submit that the ~~corroboration~~ evidence of the accused is sufficient to find ~~the~~ him guilty.

On the facts brought out, in the evidence, I submit the Court should find the accused guilty of charges 1, 2 and 4 but if not on the first and second charges then of charges 3 and 4.

G C Scott Lt.

C.G.H.

Post!

Summarisation of Defence

I submit that the accused be found not guilty on the first & second charges as there is no evidence brought forward of any direct order being given and also of any actual attempt being made to search the accused previous to him being escorted to the exit block. He was not informed at any time of any systematic search that was being carried out and there is no evidence to show that he was informed of the written order sent by the duty officer. From the accused own evidence we are led to believe that he at all times believed he was within his rights. The R.S.M. definitely states that he heard no direct order given and that he did not give one himself.

The only reference in the manual (1999) deals with search warrants & this is not applicable.

I draw the courts attention however to footnote (1) under Sect 9(2) of the Army Act and all it implies.

On the third charge (alternative) I submit that what has been said with reference to the first two charges also

applies to this case. Furthermore the man did permit himself to be searched immediately a direct order was given. This according to the evidence of the R.S.M. & the orderly officer was not certif. he had been conducted to the detention barracks.

On the fourth charge I simply submit that the accused, according to his own evidence, simply made a statement of what he thought to be fact and that intent to be disrespectful or insulting is not proven.

I might also add that the accused, according to his own evidence, had been drinking (a7hr) backed by that of the R.S.M. (a7hr). No one is qualified to determine to what extent alcohol affects a mans mind and consequently Ch III Para 48 MML should be taken into consideration with respect to this charge.

[illegible] 4 CBCC

CGK

Plea in Mitigation

In 3043 Cpl Duley H.A. joined the army 5 Sep 39 and has given good service with a clean record since that time and has held the rank of cpl since [illegible] after. He has been employed in an administrative capacity and latterly as a cook having been an instructor in that capacity in England & employed in that capacity in France till he suffered an accident to his hand the end of Nov 44. He is now ready to carry on again in that capacity and is therefore a very valuable reinforcement. In view of the fact that his crime was inadvertently committed while sticking up for what he believed to be right I ask that the court exercise their full power of discretion in deciding sentence

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only) Ex A

Number.	Rank.	Name.	Regiment (or as the case may be).
M-3043	Cpl.	Duley, H.A.	12 Bn., 2 CBRD

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For A.A. Sec 15.(1) ..... One times.
For ..... times.
For ..... times.
For ..... times.

Date of first entry in Field Conduct Sheet N.A.

Date of last entry in Field Conduct Sheet 9 Jul 44

2. ~~Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.~~ C4H

*Strike out if not applicable.

*3. ~~The accused at the present time is under sentence for~~ C4H
~~beginning on the ... day of ...~~ C4H

4. The accused has been awaiting trial on the present charges for 0 C4H days in civil custody; and for ~~1~~ 34 C4H days in military custody, i.e., N/L days in open arrest, 34 days in close arrest; of which N/L days were spent in hospital.

5. The present age of the accused is 39 YRS C4H

6. The date of his ~~calling up for military service~~ attestation is 5 SEP 39 C4H

7. The service which the accused is allowed to reckon is 5 YRS 6 MTHS C4H

*Delete the military decoration(s) not held by accused.

8. The accused is in possession of † CVSM & CIASP

9. (If the accused is a warrant officer or N.C.O.). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of Cpl.	1 JUN 42 C4H
~~In the acting rank of~~	.....

X.MFM14 not in poss. of this Unit's Records Office.

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

C4H

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this Sixteenth day of February 1945

Jadibb Capt

CAPT. & ADJT.,
9 BN. 2 C.S.R. GP.
Capt.
Adjutant 12 Bn. 2 C.S.R. Group

No. M-3043 Name Duley H A | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 5 Sep 39 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/106 15413

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Ex B Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 15 Feb 43.	Last entry 24-2-42			CA Tripp Lieut RCA	
Field	9 Jul 44	Cpl	N/A	AA 15(1) WOAS: AWL from 1500 hrs 9 Jul 44 to 0700 hrs 10 Jul 44 (Total 16 hrs)	Cpl Merryweather Cpl Lenning	Reprimanded	10 Jul 44	HC Hammond	Forf 1 dys pay FR&I 149(1a

CERTIFIED TRUE COPY OF DOCUMENTS NOW IN MY POSSESSION.

Capt
AAJ, 12 Bn 2 CBRGp.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

SUMMARY OF EVIDENCE IN THE CASE OF
M-3043 Cpl Duley H A, on strength of 12 Bn, 2 CBRGp

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION: A-35202 RSM J. Clayton, 12 Bn 2 CBRGp having been duly sworn states:-

At approximately 2300 hrs 12 Jan 45, I was on the Main Gate of St Peter's Barracks 12 Bn 2 CBRGp, in company with three members of the Cdn Provost Corps. A search was being made of all persons of the rank of Sgt and below, to try and locate a weapon which had been taken from a Prov earlier on in the evening. The accused, Cpl Duley HA, whom I now recognize, entered the Main Gate into the barracks. The Prov Corporal walked up to the accused and asked him to let him make a search of his person. The accused stated that he would not let him make a search as he was a soldier and had a right to refuse the same.

The accused walked past the Prov Corporal and I stopped him. I asked him to let us make a search. He said "No". I then told him that if he did not submit to a search I would have to have him placed under close arrest. He said "Alright, and you will have to place a charge against me and we will see if you can make it stick". He also asked me if I would submit to being searched and I said "Yes, as the Prov job was tough enough without making it any tougher".

I again asked the accused if he would submit to being searched and he answered "No". I went into the Guard Room telephoned the Detention Cells to send up an escort. When the escort arrived the accused said he would not go unless he had an escort of equal rank, as the escort sent up from Detention Cells was only a L/Bdr. I turned to the Corporal of the Prov and told him to take the accused down as he was a full Corporal. The Prov Corporal escorted the accused to the Detention Cells and the Orderly Officer was sent for.

Cross-examined by the accused.

Q-1 Are you positive you saw me enter the gate that night?

A. Yes.

J. Clayton RSM

A-35202 RSM J. Clayton.

SECOND WITNESS FOR THE PROSECUTION: D-7515 Sgt Willock, K. J., PE, 12 Bn 2 CBRGp, having been duly sworn states:-

On the night of 12 Jan 45, as the assistant to RSM Clayton I was standing at the Main Gate of St Peter's Barracks, 12 Bn 2 CBRGp, assisting in the supervision of the searching of personnel of the rank of Sgt and below which was being carried out by the Cdn Pro Corps. Personnel were being searched as they entered the Main Gate of the Barracks.

Cpl Duley, the accused whom I now recognize, refused to be searched by a member of the Cdn Pro Corps at approximately 2300 hrs 12 Jan 45. It was then that RSM Clayton told the accused that he would have to submit to being searched. The accused then stated that in order to be searched he would have to be placed under close arrest and a charge laid against him. RSM Clayton entered the Guard Room and called the Detention Cells to have one

(Cont'd)

of the Regt'l Police escort the accused to the Detention Cells. The Regt'l Police arrived at the Main Gate and the accused refused to accompany him, saying that he was not of equal rank. The RP was a L/Bdr. RSM Clayton then detailed the full Cpl of the Cdn Pro Corps to escort the accused to the Detention Cells.

That is all I know of the case.

Cross-examined by the accused.

Q-1 Did you see me enter the Main Gate?
A. Yes.

Q-2 Did you hear me ask for an officer?
A. No.

Q-3 Where were you standing when the Pro Corporal asked to search me?
A. I was standing right behind the Pro Cpl.

Q-4 Did you hear what I said to the Pro Cpl?
A. No.

Q-5 Did you actually hear me refuse to be searched by the Pro Cpl?
A. I did not hear you refuse to be searched when accosted by the Pro Cpl.

Q-6 Did you accompany RSM Clayton into the Guard Room?
A. I did not.

Q-7 Did you actually hear the RSM call for a Regt'l Police escort?
A. No, I did not.

D/7515 Sgt Willock K J

THIRD WITNESS FOR THE PROSECUTION: B-49376 Cpl Burtch, G.C., 2 i/c Detention Cells, 12 Bn, 2 CBRGp, having been duly sworn states:-

I was on duty at Detention Cells on the night of 12 Jan 45.

The accused was paraded to me by a Cpl of the Cdn Prov Corps at approximately 2300 hrs 12 Jan 45.

The accused Cpl Duley, HA, whom I now recognize, refused to being searched without an officer being present. I am not certain whether I or the Prov Cpl asked to search him but I am certain that one of us did.

I telephoned the Orderly Officer at Bn HQ, and found that he was on his way.

The accused then allowed himself to be searched in the presence of the Orderly Officer. The search was made by the Prov Cpl.

The Orderly Officer then ordered that the accused be released under open arrest.

Cross-examined by the accused:

Q-1 Did you know why I was brought down to the Detention Cells?
A. Yes.

Q-2 What were the reasons?
A. I was previously informed that there was a soldier at the gate who refused to being searched.

Q-3 Who informed you of this?
A. RSM Clayton, by telephone.

G C Burtch

B-49376 Cpl Burtch, G.C.

FOURTH WITNESS FOR THE PROSECUTION: M-589 Sgt Logelin, G.E. 65 Coy, 12 Bn 2 CBRGp, having been duly sworn states:-

On the night of 12th Jan 45, I was Guard Commander at the Main Gate of St Peters Barracks, 12 Bn, 2 CBRGp.

At sometime between 2100 hrs and 2200 hrs 12 Jan 45, two Cdn Prov came into the Guard Room and notified me that they were to search all ranks from Sgt down as they entered the gate of the barracks.

At approximately 2300 hrs the accused, Cpl Duley, HA, whom I now recognize entered the Main Gate. When asked by the Cpl of the Prov to be searched, he refused, stating that as a soldier of the Cdn Army he had certain privileges and that he could not be searched unless a charge was laid. RSM Clayton then asked him to be searched and the accused refused him giving the same reasons as he did to the Prov Cpl.

An infantry officer, I don't know his name, passed by just then and the matter was put before him. The officer immediately went over to the Orderly Officer and obtained written authority to search all personnel with the rank of Sgt or under who entered the gate and signed by the Orderly Officer of the day.

The accused still refused to be searched. The RSM, RSM Clayton then ordered the Prov Cpl to escort the accused to the Detention Barracks. That is all I know of the case.

Cross-examined by the accused.

Q-1 Did you see me come in through the Main Gate that night?

A. Yes.

Q-2 Did you make me acquainted with the written order authorizing a search to be made of all ranks from Sgt down?

A. No, I handed the written order to the Prov Cpl.

Q-3 Did you not hear me ask that an officer be present while being searched?

A. Yes, I did.

Q-4 Could you state the approximate time I asked for the presence of an officer?

A. I don't exactly know but it would be approximately shortly before 2300 hrs.

Q-5 Did you not hear me state to the Prov Cpl that he could not search me unless there was an officer present?

A. No.

M-589 Sgt Logelin, G.E.

FIFTH WITNESS FOR THE PROSECUTION: B-67632, Cpl Porter, FR, 10 L of C, Ghent Detach, Cdn Provo Corps, having been duly sworn states:-

At approximately 2200 hrs 12 Jan 45, I was detailed by my own Orderly Cpl in company with L/Cpl Tomlison to search all soldiers returned to 12 Bn 2 CBRGp, for pistols.

At approximately 2300 hrs 12 Jan 45, the accused, Cpl Duley, whom I now recognize, came into the barracks. I told the accused that I wanted to search him. He stated that he would not be searched unless there was an officer present. At this time there was an officer coming in the gate.

(Cont'd)

I asked this officer over and told him that the accused refused to be searched. The officer stated to the accused, "I would let them search you if I were you". The accused then said "I want to see the Orderly Officer". At this time the RSM came along and explained the case to him. He then ordered Cpl Duley to allow himself to be searched. The accused still refused to be searched unless the Orderly Officer was present. The RSM told him that he was under arrest.

The RSM detailed a L/Cpl of the Artillery to escort the accused. The accused refused to go with the escort as he was only a L/Cpl. The RSM then detailed myself to escort the accused to the Detention Guard Room.

Arriving at the Detention Guard Room the accused still refused to being searched. He refused myself and the NCO in charge of the Detention Guard Room unless the Orderly Officer was present.

The NCO i/c of the Guard Room then telephoned the Orderly Officer. On the arrival of the Orderly Officer, the accused allowed me to search him. He had not a pistol on his person. That is all.

The accused declines to cross-examine the witness.

B-67632 Cpl Porter F R.

SIXTH WITNESS FOR THE PROSECUTION: M-3823 L/Cpl Thomlison, W N, 10 L of C Section, No 2 Cdn L of C Prov Coy, having been duly sworn states:-

On the night of 12 Jan 45, I was detailed to come to 12 Bn 2 CBRGp, to search all incoming personnel from the rank of Sgt down. I was accompanied by Corporal Porter.

At approximately 2300 hrs I saw the accused, Cpl Duley, whom I now recognize, come through the Main Gate. Cpl Porter stepped over to search the accused. The accused would not let Cpl Porter search him. The accused stated that he wanted an officer present.

Cpl Porter then stopped an officer that was coming through the Main Gate. I don't know what took place between the officer, Cpl Porter and the accused, as I was busy checking other soldiers.

I know there was some discussion over the case but as I was checking other soldiers I could not follow what was actually happening. That is all.

The accused declines to cross-examine the witness.

M-3823 L/Cpl Thomlison W N.

SEVENTH WITNESS FOR THE PROSECUTION: M-41648 Cpl Peterson, R M, RCEME 65 Coy, 12 Bn 2 CBRGp, having been duly sworn states:

On the 12 Jan 45, I was 2 i/c of the Main Gate Guard 12 Bn, 2 CBRGp.

I was in the Guard Room at the table checking soldiers on pass who were returning to barracks.

Cpl Duley, the accused whom I now recognize, came into the Guard Room. He declared that he wouldn't be searched as he was a soldier and not a prisoner.

I do not know much about what happened regarding the accused after this as I was busy checking soldier's passes as they came in, but I do know that the RSM ordered the accused to be taken to the Detention Barracks. That is all I know.

(Cont'd)

EJK

Cross-examined by the accused:-

Q-1 What time did I come into the Guard Room?
A. I can't state the exact time but it was somewhere between 2200 and 2300 hrs.

Q-2 Would it be closer to 2200 hrs than 2300 hrs in your estimation?
A. I can't say whether it was closer to 2200 or to 2300 hrs. I can't remember.

R M Peterson
M-41648 Cpl Peterson R M

EIGHTH WITNESS FOR THE PROSECUTION: A-35342 L/Bdr Glozier, S J, 56 Coy, 12 Bn 2 CBRGp, having been duly sworn states:

On the 12 Jan 45, I was on duty as Regt'l Police, at Unit Detention Cells, 12 Bn, 2 CBRGp.

Cpl Burch who was in charge, informed me to go to the Main Gate at approximately 2300 hrs 12 Jan 45, to escort a Cpl back to the Detention Cells. On arriving at the Main Gate, the accused, Cpl Duley, whom I now recognize, mentioned the fact that I was not of his rank and so RSM Clayton ordered a Prov Cpl to escort the accused down to the Unit Detention.

I was detailed to remain at the Main Gate to help search soldiers entering so I don't know anything more about the case.

Cross-examined by the accused:-

Q-1 The statement this man is not of my rank is the only statement I made concerning you, isn't it?
A. Yes.

S. J. Glozier
A-35342 L/Bdr Glozier, S J.

The accused was cautioned as follows:-

Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused declines to make a statement or to give any evidence.

The accused calls the following witnesses:-

FIRST WITNESS FOR THE DEFENCE: Lieut R A Dubois, 56 Coy, 12 Bn, 2 CBRGp, having been duly sworn states:

On the night of the 12 Jan 45, I was on duty as Bn Orderly Officer at 12 Bn HQ.

At approximately 2215 hrs I had a telephone call from the Prov Officer asking me to have the Main Gate Guard give a hand with the two Prov to search all personnel of the rank of Sgt and under for weapons. Any man found with a weapon in his possession was to be taken over by the Prov Corps. The Guard Commander answered that is already being done.

(Cont'd)

E.A.V.

At approximately 2245 hrs 12 Jan 45 two infantry officers, I don't know their names, came to me in the Adjt Office and told me that there was a man refusing to be searched.

I immediately wrote an order to the effect that any man refusing to be searched would be held and gave the written order to one of the above mentioned officers to be delivered to the Guard Commander.

About five minutes later I telephoned the Guard Commander to enquire whether he was still having trouble and he answered that he was.

I went over to the Guard Room to see if I could put the matter straight. Arriving at the Guard Room I found that the accused had been taken to the Detention. Accompanied by the Bn Orderly Sgt, I went to the Detention Cells and when I went in I saw the accused Cpl Duley, whom I now recognize, and asked him what the trouble seemed to be and he told me that he would not be searched unless an office was present. I then asked him if he had any objections to being searched in my presence and he said "No". The search was made by the Pro Cpl and nothing was found.

One of the NCOs in charge of the Detention Cells asked me if Cpl Duley was to be kept in Detention. I answered that I would release Cpl Duley and warning him that he would be up before his Coy Comdr the following morning. On our way out of the Cells Cpl Duley was accompanied by the Bn Orderly Sgt, the Pro Cpl and myself. I then asked Cpl Duley what objection he had to being searched in the presence of the two infantry officers in the Guard Room. Cpl Duley answered that he had no knowledge of the officers being present. The Pro Cpl then mentioned to Cpl Duley that he, the Pro Cpl, had told Cpl Duley that there were two officers present, Cpl Duley still did not have any recollection of it. The Pro Cpl then mentioned it again and Cpl Duley seemed to have a faint recollection of being told but he didn't seem very sure. That is all.

Cross-examined by the accused:-

Q-1 Did I conduct myself in a sober manner and did I appear as if I was convinced that I was right in asking for the presence of an officer while being searched?

A. You appeared sober and quite convinced that you were right.

R. Dubois.
Lieut R A Dubois

I certify that the foregoing Summary of Evidence consisting of six pages was taken down by me in the presence of the accused and that Rules of Procedure 4(C)(D)(E) and (F) have been complied with.

D.E. McFee Capt
(D.E. McFee)
12 Bn, 2 CBRGp

In the field, Belgium
15 Jan 45.

6-4

LIST OF WITNESSES

in the case of

M-3043 Cpl Duley, H.A., 12 Bn, 2 C.B.R.Gp.

FOR PROSECUTION

1. A-85202 RSM Clayton, J., 12 Bn, 2 C.B.R.Gp
2. D-7518 Sgt Willock, K.J., 12 Bn, 2 C.B.R.Gp
3. B-49376 Cpl Burtch, G.C., 2 i/c Detention Cells 12 Bn, 2 C.B.R.Gp
4. M-589 Sgt Logelin, G.E., 65 Coy, 12 Bn, 2 C.B.R.Gp
5. B-67632 Cpl Porter, F.R., 10 L of C Ghent Detach
6. M-8823 L/Cpl Thomlison, 10 L of C Ghent Detach
7. M-41648 Cpl Peterson, R.M., RCEME, 65 Coy, 12 Bn, 2 C.B.R.Gp
8. A-85342 L/Bdr Glozier, S.J., 56 Coy, 12 Bn, 2 C.B.R.Gp

FOR DEFENCE

NIL

Date 31-JAN-45

2 C BR G.

1. I hereby acknowledge receipt of one copy of Charge Sheet and one copy of the Summary of Evidence delivered to me.

H. A. Duley Cpl.

2. (a) I request that Maj. Cooper 12 Bn. if available, be appointed,

(b) I request that an officer be appointed as Defending Officer at my trial by Court Martial.

Harry A. Duley Cpl

I hereby certify that Lt A. J. McIntosh was appointed to defend M3043 Cpl H. A. Duley at his forthcoming trial by Court Martial and that the said Lt A. J. McIntosh was notified that he was defending officer on 1 Feb 45.

CAPT. & ADJ.
9 BN. 2 C.B.R.G.

[signature]

Note: A.D.J.A.
Is it possible to make Maj Cooper available or is he still on 1 Sch Case

6 Gr

HD 27

C.S.M. - DUMAIS S.

RECORDED AT CMHQ IN AB 160 [illegible] 4D-27

RECEIVED 15 NOV 1944 By Order C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig GSN Gostling, ED. Comd "A" GP CRU dated 3 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
P48840	CSM		Sylvio	DUMAIS	4 CITR CIC

PROCEEDINGS REVIEWED 15th Nov 44

W.T. Brennan Major

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 3 - NOV 1944

RECORD FORM A--OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3) WOJ

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1610 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) WOJ The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 537. 2. AA 46(f), RP 10 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ as interpreter ? Ans ~~The interpreter is sworn(1). Do you object to~~ as shorthand writer ? Ans ~~The shorthand writer is sworn(1).~~ WOJ

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans N/A (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	W A FREEMAN	2 CITR
Member	Capt	T.F. BARR	4 C I T R.
Member	Lieut	J.A.D. TREMBLAY	4 C I T R
Judge-Advocate			
Prosecutor	L T.	J.F. GUILLERIER	4 C I T R.
Defending Offr	CAPT.	C.E. LAFOND.	4 C I T R

Questions by President: Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not fulfilled. See D1 p 3.)

A8. The accused P48840 CSM DUMAIS, S. before arraignment makes(s) (no) (~~an~~ plea(s)) (1) WOJ

(1. If a special plea is made for separate trial on one or more charges (RP 62(5), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or on bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or in one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support our opposition, the evidence, if any, and finding are recorded per Notes. For fullness of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule. WOJ

(1. RP 30, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 11, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B" WOJ

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: P48840 CSM Sylvio DUMAIS - 4 CITR - CIC

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) nil

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 44 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: to be reduced to the rank of corporal. The court recommend the accused to mercy on the grounds that this lapse may have been due to shell shock from active service and recommend that he be medically examined

3 NOV 1944 (Sgd) W.T. Brennan Major

(Sgd) Judge Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 37(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks (nor further prison.)~~ (1. AA 57A. Delete if not used.)

(Sgd) (O S N Gostling) Brig

Date 4 November 1944 Commanding "A" Gp Cdn Rft Units CA (O)

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
P48840 C.S.M. Dumais S	4 Nov 44	ADJT'N OFF 4 C.I.T.R.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MAML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO .(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes (change) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. "A", initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT

D1. President to accused : Do you wish to apply for an adjour
relating to procedure before trial have not been complied with, and
the ground that you have not had sufficient opportunity to pre
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence,*

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes.*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Pros.*

D4. The Prosecution is closed.(1) The Defending Offr submits that
establish a prima facie case against the accused on the
is closed, and considers the submission.(2) The Court is re-opened, and the Pres
is disallowed on the charge(s), and allowed on the
charge(s), and that, accordingly, the trial will proceed on the former, but the accused
the latter charge(s).(3)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer*
per Notes. 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used.*
on all charges. use second alternative in para D6.)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not
solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, g
yourself on oath as to the facts or your character or both, in which case you will be subject to cross-exam
You may, however, make a statement without being sworn, and you will not be subject to cross-examina
But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimon
You may call witnesses in your defence and as to character, whether you give evidence or make a statement or
neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans
Do you intend to call witnesses on your behalf ?
Ans Are they witnesses as to character only ? Ans
(1. *RP* 153. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on Back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*b*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans YES.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "D" and Ex "E" respectively.(3)
(1. *MFB* 355 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES .(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(1. *When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 49, 118, 119(*A*), *KR Can* 306, 320, 563-566, *Overseas AO* 109, 2323, *MAML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MAML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(3), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. N.O.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty on ~~charge(s)~~. ~~The accused is (are) so informed, and has (have)~~ they) change(s) his (their) plea(s) on ~~charge(s)~~. Part 1 of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such pleas and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras E1 to E5 of Record Form E above.(1)
(1. *Under* B5 *such parts only of the Summary of Evidence are read as relate to the charges dealt with under* C2. *If any plea is changed to Not Guilty, trial therein proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....
Do you intend to call witnesses on your behalf? Ans .....
Are they witnesses as to character only? Ans .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans Yes.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that those documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(3) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 4. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 340, 563-566, *Overseas AO* 309, 2323, 3096, *p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. P-48640 Company Sergeant Major Sylvio DUMAIS, of the Canadian Infantry Corps, on the strength of 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SECTION 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, absented himself without leave from 1600 hours on the 6th day of October 1944 until he surrendered himself at 1000 hours on the 30th day of October 1944.

(Total absence: 22 days 16 hours)

J Gavan Power Col
(J. Gavan Power) Col
Commanding Officer
4 Cdn Inf Trng Bdgt

In the Field
1 Nov 44

To be tried by Field General Court Martial.

(GSN Gostling) Brig
Comd
"A" Gp Cdn Rft Units
CAO

3 Nov 44

w a f.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apppmt, A/rank or A/apppmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
P48840	CSM	Sylvio	DUMAIS	4 CITR CIC

CONVENING ORDER

1. Whereas complaint has been made to me, the undersigned, that the person[X] named above as the accused, being subject to military law, has ~~(since)~~ committed the offence[X] set forth in the Charge Sheet[X] attached and on (date) 3 Nov 44 endorsed by me, ~~not by an offr of my coal for sue~~, "To be tried by Field General Court-Martial";

2. And whereas I am of opinion that it is not practicable that such offence[X] should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr;~~

3. I hereby convene a Field General Court-Martial to try the said person[X], and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three offrs to form the Court, (b) a Fd Offr as President, for the reasons attached hereto.~~

~~5. I appoint as judge-advocate (except in Cdn exceptional) hereunder.~~

(Delete part in brackets when not required for compliance with RP 105(C).)
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named RP 106.)	(Unit.)
MAJOR	W A FREEMAN		2 CITR

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 4 CITR		
Lieut	to be detailed by OC 4 CITR		

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt	to be detailed by OC 4 CITR		

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 3 Nov 44

(Signed personally. RP 105 fn 2.)
Commanding "A" Gp Cdn R Units CAO. (GSW Gostling) Brig
Convening Officer. (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for words and notes for use on trial.)

W. A. Freeman
Maj

4/38A (Para 1(b) Dirs of AFAS; AG 7 A & I/1807 (AG2).)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
P48840	CSM		Sylvio	DUMAIS	4 CITR CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(since)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 3 NOV 44 endorsed by me, ~~or by an offr of my staff (or same)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Fidd General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three offrs to form the Court, (b) a Fd offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~I also appoint as Judge/Advocate those offrs mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	W A FREEMAN	2 CITR

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 4 CITR	
Lieut	to be detailed by OC 4 CITR	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	to be detailed by OC 4 CITR	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd.

in England
(Country.)

Date 3 Nov 44

(Signed personally RP 105 fn 2.) Brigadier
(Rank.)

(GSN Goetling) Brig
Commanding "A" Gp Cdn R't Units CAO.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notices that save sum. trial.)

4/38A (FAMS 170 Dec) OF AFAS1
60/F & R/1867 (4851)

W. A. Freeman
Maj

WAL.

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No: P-48840 CSM. Dunnis S.
(Rank) (Name)

of 4 CITR. and in my opinion he is fit to undergo
~~unfit~~

trial by Court Martial.

Station

Date 3 Nov 44.

Sgd [signature]
(Medical Officer)

Evidence in the case of P 48840 CSM Dumais, J.S. CIC, a soldier of the Canadian Army Overseas.

E 1

1st. Witness For the defence

E. 4578 Sjt. Trepanier, F.E. having been duly sworn states:-

Q. 1 Will you tell the court how long you have known CSM Dumais ?

A. 1 I have known CSM Dumais, J.S. since 1939.

Q. 2 Will you tell the court what you know about CSM Dumais, that is his character as a soldier, and his conduct since you have know him.

A. 2 Since I have known CSM Dumais, I always knew him as a man with a good character, faithful to his military duties, always being recognized in his unit as a good N.C.O.

I have been in action ~~in action~~ with him during the w.a.f. Sicilian Campaign and a period of the campaign in Italy.

It was in action that I recognised in him the qualities not only of a brave man, but those of good leadership.

CERTIFIED THAT RULES OF PROCEDURE 83(b) HAS BEEN COMPLIED WITH

2nd. Witness for the defence

Lieut. J.P.G. Rousseau having been duly sworn states:-

Q. 1 How long have you known CSM Dumais ?

A. 1 I have known him since December, 1939.

Q. 2 Will you tell the court what you know about CSM Dumais, that is, his character as a soldier and to his conduct since you have known him?

A. 2 I can not say very much about him while in England, as he always se rved in a different company, but while in the field of action I came in contact with him and his men.

From what I have seen, Sjt. Major Dumais has done a very good job indeed. Further more I went through his Company one day after they had sustained heavy shelling. CSM Dumais, himself, came very close to death as a shell landed about two (2) feet from his slit trench. I heard that he had been thrown in the air by the blast and after landing was buried by earth. I saw him after he had been excavated; he appeared to have been very much affected by this. However, he still carried on his duties, but it is my opinion that he was not so reliable after that owing to his nerves being frayed. He complained about having been hurt in his leg, and eventually had to be evacuated.

After I returned from Hospital, myself, I saw CSM Dumais at CBRD, and he was not the same man as I had known before; not being completely responsible for his actions while drinking, etc. I am not alone in this opinion, but all the remainder who have known him consider him shell shocked.

Q. 3 How long had he served in action ?

A. 3 He served throughout the Sicilian Campaign, and up to December, 1943 in Italy.

CERTIFIED THAT RULES OF PROCEDURE 83(b) HAS BEEN COMPLIED WITH

w.a.f.

Evidence in the case of P 48840 CSM Dumais, J.S. CIC, a soldier of the Canadian Army Overseas.

3rd. Witness for the defence

P 48840 CSM Dumais, J.S. (Himself) having been duly sworn states:

Q. 1 Will you tell the court what you remember about the time you went absent?

A. 1 I went on fourteen (14) days leave and a few days before the end of my leave I felt sick. I have been sick for about ten (10) days, and I was too sick to take the train to come down here. When I felt better and could take the train, I went to Leeds to do so. My train was at 2130 hrs. and at this time it was only early in the afternoon. I went to a pub, and had a few drinks. I lost idea of the time, and did not remember anything about my train or anything. I stayed there, in Leeds, not remembering anything about my pass or trains until I came back to normal when I immediately returned to the R.U.

Questions by the Court.

Q. 2 When you came back to normal did everything become clear to you? i.e. What you had done in Leeds, about missing your train, etc.?

A. 2 Yes, sir, everything became clear at once. I remembered my pass, my train, and going to the pub.

Q. 3 Did you notify the R.U. that you had taken ill and could not return at the expiration of your leave ?

A. 3 No Sir.

Q. 4 Why did you not do so ?

A. 4 I never thought about it.

Q. 5 Do you remember the date you went to catch the train for your return ?

A. 5 No Sir.

Q. 6 What date can you remember ?

A. 6 On Saturday 29th October at about 2130 or 2200 hrs.

Q. 7 Where were you ?

A. 7 I was walking on the street, and met a soldier whom I knew. He asked me some question. Such as was I on leave, or something like that. Everything came back to my mind then.

Q. 8 Had you been drinking ?

A. 8 I had a few drinks of beer, but felt badly; a bad headache, etc. This didn't come from drink, because my stomach is always bad when I drink, and it was alright at that time.

RULES OF PROCEDURE 83(b) HAVE BEEN COMPLIED WITH.

CERTIFIED W. A. Freeman
Major.

E 3. Statement in mitigation of punishment in the case of
PH8840 C&M S Dumais R22R.

According to the statement of the two witness I have called to testify on favour of C.S.M. Dumais and also of his conduct sheet, it is obvious that the accused always had and exemplary conduct untill the day of his absence. ~~He has~~ He has been ~~was~~ with the R.22E R since 1938 and in peace or war time he always was a first class soldier.

He was with the regement in the campain of Sicily and Italy as C.S.M., and in action did a very good job

Unfortunately on day he was wounded and spend 5 mounth in hospital suffering from blass, today his cathegory is S4, Therefore he is not qualified to fulfill any responsable duties because of his cathegory—

— It is obvious that the accused would have not absented himself had he been normal, or he was before being wounded, and Therefore his condition alone is the cause of ~~being~~ his absence, apparently the injuries he received in action cause him temporary lost of memory

C.S.M. Dumais was not performing any duty in 6 C I R V, Therfore when he absented himself his absence did not require placing an other N.C.O. or W.O. on duty in his place.

I would like to ask the court to take into consideration the accused 8 years of good service, and his illness, as it would be a great pity should his military carer be ruined for reasons over which he has no control

I personnally know C.S.M. Dumais since he is in the R. 22R., his conduct always been without reproch, and he was a good soldier.

C.R. Lafond
W.A. Freeman
Major.

Exhibit "A"

SUMMARY OF EVIDENCE

In the case of No P-48840 Company Sergeant Major Sylvio DUMAIS, of the CIC, on the strength of 6 Cdn Inf Rft Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

First Witness for the Prosecution

Lt J.M.Lavallee, CIC, on the strength of 6 CIRU, having been duly sworn, states:

"I am Asst Adjt of 6 CIRU.
I produce certified true copy of Extract from 6 CIRU DO Part II d/16 Oct 44 showing P-48840 CSM Dumais S. AWL from 1800 hrs 6 Oct 44. MARKED EXHIBIT "A".

The accused declines to cross-examine this witness.

J.M.Lavallee ...Lt
(J.M.Lavallee)

Second Witness for the Prosecution

A-34087 CSM Dunn W.H., CIC, on the strength of 6 CIRU, having been duly sworn, states:

"The accused, whom I recognize as CSM Dumais, turned in his pass to me at 1000 hrs, 30 Oct 44. He reported to me, showed me his pass and told me who he was. I produce the pass, Army Leave Pass No. O 002704. MARKED EXHIBIT "B".

The accused declines to cross-examine this witness.

William H. Dunn ...CSM
(W.H.Dunn)

The accused was then cautioned as folows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to ~~make~~ any anything or to give evidence, ~~[illegible]~~ unless you wish to do so, but whatever you may say or any evidence you may give will be taken down in writing and may be used in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(C), (D), (E) & (F) have been duly complied with.

Field
1 Nov 44

L.H. Green ...Lt
(L.H. Green)
Officer detailed to take this Summary of Evidence

WAJ.

Exhibit B
W.G.J.

Exhibit "B"
[illegible]

LAST ORDER
NO 244
15 Oct 44

6 CANADIAN INFANTRY REINFORCEMENT UNIT
DAILY ORDERS PART II
issued by
COLONEL J. GAVAN POWER, E.D., OFFICER COMMANDING

THIS ORDER
NO 245
16 Oct 44

15-B A.W.L. from hour and date shown. Still A.W.L. at hour and date shown (8th day).

P-48840 CSM. Dumais, S. (R 22e R) 1800 hrs 6 Oct 44
1800 hrs 14 Oct 44

"R. Leverdure"....
(R. Leverdure) A/Captain
for Adjutant
6 Cdn Inf Reinf Unit

Certified true copy of
Extract 6 CIRU DO Part II
d/16 Oct 44

1 Nov 44 [illegible]
.....
Officer having custody of
Regtl Books ..... CAPT.
ADJT., 6 CDN INF. REF. UNIT

Exhibit C

Army Form W4090

O 002706 ARMY

FOR FREE LEAVE TRAVEL ONLY

PASS (to be surrendered on rejoining unit)

Regiment Field

No. 48840 Rank C Sag

Name Dennis S.

has permission to be absent from his* unit from

1800 22 Sep 44 1800 6 Oct 44

Commanding

DISPATCHED 22 SEP 1944

Any identi... etc., must be obliterated

1. From London District	4. Reporting Centre	7. Ration Card Issued
2. To London	Ex Lib "B"	8. For use of C.M.P.
	5.	
	6. Nearest Hospital	
3. Through London		9. Authorized to travel over 50 miles at concession fares

*Items not applicable to be deleted and initialled by Issuing Officer.

Important.—See back. P.T.O.

Instructions to a soldier, or member (other than Officer) of the A.T.S. if he/she is taken ill or requires urgent medical or dental treatment while on leave.

1. Report in person to the nearest Military Medical or other Service Establishment, or Emergency Medical Scheme Civil Hospital. (Such an establishment is shown on the front of this leave pass.)

2. If unable, because of your illness, to report in person, you must send a message to the nearest Military Medical Unit and ask for instructions.

3. If unable to do either (1) or (2) because of distance involved (over 2 miles) you may visit, or call in, a Civilian Medical or Dental Practitioner, to whom you will show this pass. You will at once report the employment of a Civilian Practitioner to your Commanding Officer.

4. If, through sickness, you are unable to travel at the expiration of your leave and are under the care of a Civilian Doctor, you must obtain a Certificate to that effect from the Doctor and forward it at once to your Commanding Officer.

To the Civilian Practitioner.

(a) When a soldier is sick at the expiration of his leave and a Civilian Medical Practitioner is in attendance, the latter should be guided, in the action he takes, solely by the [illegible] on [illegible].

(b) If [illegible] travel he should be instructed to return to his Unit and report sick to his Medical Officer.

If unfit, he should be furnished with a Certificate to that effect to be forwarded to his Commanding Officer, and at the same time be instructed to notify the nearest Military Medical Establishment.

(c) To obtain payment for attendance on a soldier, a Civilian Medical or Dental Practitioner should satisfy himself that the above instructions have been carried out. He should submit his claim on Army Form O.1487 (the scale of fees allowed are set out on the back of the form) which may be obtained from the local National Health Insurance Committee, and when completed should be forwarded to the A.D.M.S. of the Area, in which the soldier is temporarily residing, for payment.

The Dental Practitioner will be paid only for strictly emergency treatment, and at the rates admissible under the National Health Insurance Act (Dental Benefit Regulations).

This Pass must be handed in TO THE UNIT on return from leave; it must NOT be given up to the ticket collector with the tickets.

Exhibit "D"
w a J.

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
P-48640	Cfr	Sylvio DUMAIS	6 Cdn Inf Bde Unit

1. ~~The following is a fair and true summary of the entries in the regimental and squadron, battery or company con-~~duct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct

~~or~~

There are no entries in the conduct sheets of the accused.

NOTE.—At a trial by field general court martial the summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement and not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the entries (or in the absence of entries in the conduct sheets, pre-sumption being given to the good character of the accused) and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for misconduct the entries for irregularities must be stated separately and dated.

2. The accused has not been previously convicted, ~~or~~

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act and dispensations with trial under section 73 of the Army Act, as set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time. ~~or The accused at the present time is under sentence for~~

~~imprisonment with hard labour for a period of ..... months, commencing on the ..... day of .....~~

4. The accused has been in confinement, awaiting trial on the present charges, for N/K days in civil custody, and 4 days in military custody, making a total of 4 days, of which N/K days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 30 years

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 5 Sep 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 5 years 70 days

8. ~~The accused is entitled to deferred pay or gratuity in respect of ..... service.~~

9. ~~The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.~~

10. The accused ~~is in possession of, or entitled to,~~ no military decoration or ~~military award (or~~ is in possession of ~~or entitled to~~ (*state any military decoration or reward*). GSWC & Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of Sergeant

~~12. (In the case of an officer.) The accused holds in the army the rank of ..... dated .....~~
~~and in his regiment (or corps or department) the rank of ..... dated .....~~

(51400) W 13402/144 250,000 8/41 A.E.W. Ltd. Gp.698

Exhibit C

002706 ARMY

Army Form W4098

FOR FREE LEAVE TRAVEL ONLY

PASS (to be surrendered on rejoining unit)

Regiment Field

No. P 48840 Rank CSM

Name Dumais S.

has permission to be absent from his* unit from

1800 1800

22 Sept 1940 6 Oct 44

Commanding.

Any identification, unit, etc., must be obliterated

1. From London District	4. Reporting Centre	7. Ration Card Issued
2. To London	Ex L.L.S. "B"	8. For use of C.M.P.
	5.	
	6. Nearest Hospital	
3. Through London		9. Authorized to travel over 50 miles at concession fares

*Items not applicable to be deleted and initialled by Issuing Officer.

Important.—See back.

P.T.O.

Instructions to a soldier, or member (other than Officer) of the A.T.S. if he/she is taken ill or requires urgent medical or dental treatment while on leave.

1. Report in person to the nearest Military Medical or other Service Establishment or Emergency Medical Scheme Civil Hospital. (Such an establishment is shown on the front of this leave pass.)

2. If unable, because of your illness, to report in person, you must send a message to the nearest Military Medical Unit and ask for instructions.

3. If unable to do either (1) or (2) because of distance (exceed [illegible] miles) you must visit, or call in, a Civilian Medical or Dental Practitioner, to whom you will show this pass. You will at once report the employment of a Civilian Practitioner to your Commanding Officer.

4. If, through sickness, you are unable to travel at the expiration of your leave and are under the care of a Civilian Doctor, you must obtain a Certificate to that effect from the Doctor and forward it at once to your Commanding Officer.

To the Civilian Practitioner.

(a) Where a soldier is sick at the expiration of his leave and a Civilian Medical Practitioner is in attendance, the latter should be guided, in the action he takes, solely by the condition, illness or sickness in question.

(b) If fit to travel he should be instructed to return to his Unit and report sick to his Medical Officer.

If unfit, he should be furnished with a Certificate to that effect to be forwarded to his Commanding Officer, and at the same time be instructed to notify the nearest Military Medical Establishment.

(c) To obtain payment for attendance on a soldier, a Civilian Medical or Dental Practitioner should satisfy himself that the above instructions have been carried out. He should submit his claim on Army Form O.1687 (the scale of fees allowed are set out on the back of the form) which may be obtained from the local National Health Insurance Committee, and when completed should be forwarded to the A.D.M.S. of the Area, in which the soldier is temporarily residing, for payment.

The Dental Practitioner will be paid only for strictly emergency treatment, and at the rates allowable under the National Health Insurance Act (Dental Benefit Regulations).

This Pass must be handed in TO THE UNIT on return from leave; it must NOT be given up to the ticket collector with the tickets.

Exhibit "D"
W.A.J.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
P-46640	CSM	Sylvio DUMAIS	5 Cdn Inf Bde Unit

1. ~~The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—~~

Note.—At a trial by field general court martial this summary may be compiled from the last conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

†See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the particulars of the entries given in the conduct sheets, permission being given to the court officer to refer to such entry, and to any specified detail even at subsequent or undistinguished number.

Instruction.—If the charge is for drinking, the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct

~~or~~

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, ~~or~~

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for [illegible] on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for N/C days in civil custody, and 4 days in military custody, making a total of 4 days, of which N/C days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 30 years

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 5 Sep 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 5 years 70 days

8. ~~The accused is entitled to deferred pay or gratuity in respect of service.~~

9. ~~The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

10. The accused ~~is in possession of, or entitled to,~~ no military decoration or military award ~~or~~ is in possession of ~~or entitled to~~ (*state any military decoration or reward*). CVSM & Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of Sergeant

~~12. (In the case of an officer.) The accused holds in the army the rank of [illegible] dated and in his regiment (or corps or department) the rank of dated~~

(Pads) W1-1002/144 325,000 6.41 A.A.G.P.Ltd. Gp.679

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. P-48840 Rank CSM Name Sylvio DUMAIS of 6 CIVU Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3rd day of Nov 44

Jules Pelletier Capt
Officer i/c administration
4 C.I.T.R.

11. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion
In the rank of	Corporal	2 years, 1 Oct 39
In the rank of	Sergeant	1 years, 6 Mar 42
In the rank of	Company Sergeant Major	1 years, 11 Mar 43

(Instructions.—If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

Exhibit E. W.C.J.

No. P-48840 Name Dumais E. | Sqn, Battery, or Company | Corps R. 22e. R. C.A.O. | Date of enlistment 1-9-39 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (5413)

Date of last entry in Company Conduct Sheet: Nil | No. and date of last drunk: Nil | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc "G.A.Turcot" Maj Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

On the 1-9-41 this soldier completed two years service and in accordance with Appx. to R.O. (o) 319 his previous sheet was destroyed on the 29-7-42

"G.A.Turcot" Major
(G.A.Turcot) Major
O.C. R.22e.R. - Coy.

Julien Pelletier Capt Officer i/c admin. 4 C I T R

Certified true copy...3 - NOV 1944.....Officer having custody of Regtl Books

(PTO)

LIST OF WITNESSES

In the case of No P-48940 Company Sergeant Major Sylvio Dumais, of the CIC, on the strength of 5 Cdn Inf Brt Unit, a soldier of the Canadian Army Overseas.

PROSECUTION

Lt J.M.Levallee, CIC, on strength 5 CIBU.
A-34087 CSM Dunn W.H., CIC, on strength 5 CIBU.

DEFENCE

E4578 Sgt - TREPANIER F.E. HCITR
LT. J.P.J. ROUSSEAU. HCITR.

W.C.J.

Field
1 Nov 44

LIST OF EXHIBITS

In the case of No H-48640 Company Sergeant Major Sylvio DUMAIS, of the CIC, on the strength of 6 Cdn Inf Bde Unit, a soldier of the Canadian Army Overseas.

EXHIBIT "A"- Certified true copy of 6 CINF BG Part II d/ 15 Oct 44.

EXHIBIT "B"- Army Leave Pass No. O 002706.

Field
1 Nov 44

w/a/j.

1. I acknowledge that I have been served with a copy of the Summary of Evidence taken prior to my trial by Court-Martial. I further acknowledge that I have been served with a true copy of the charge (s) upon which I am being brought to trial by C.M.

2. I desire the services of an officer to represent me at my trial by C.M. I request the services of:

.....Capt. Lafond.....

if he is available.

In the Field
1 day of Nov. 1944.

.....S. Dumais.....

W.A.J.

CERTIFICATE OF WAITING MEMBER

In the case of PTE NO C3M 3 DUMAIS. 4 C ITR.
I hereby certify that there were no objections to the Members who constituted the Court which tried the s/m soldier by Field General Court-Martial. The Waiting Member ~~PTE~~ Capt AA MICHAUD was therefore permitted to withdraw.

W. A. Freeman ..... Major
( )
President.

In the Field

1944.

LIST OF OFFICERS FOR INSTRUCTION

In the case of _____
The following Officers attended the s/m Field General Court-Martial for instruction:-

Wdf

..... Major.
( )
President.

In the Field

1944.

205 E - Ile Dumas R.

O. H. M. S.

M. F. B. 270

205 E

Correspondence to be PINNED here.

PROCEEDINGS REVIEWED.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this THIRTY-FIRST day of DECEMBER, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 2nd CANADIAN DIVISION, CANADIAN ARMY (A.F.), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

* ~~I am unable to appoint~~

* ~~Three Officers to form the Court~~

* ~~A Field Officer as President~~

* ~~Three Officers having more than one year's service.~~

~~for the following reason, namely:~~ In my opinion, military exigencies, namely the dispersion of units, difficulties of communication and other difficulties, render it inexpedient to comply with those rules inconsisted to D.R.O. 772 (Appendix "A"), in the trial of the person named in the attached schedule.

President.

Rank.	Name.	Regiment.
MAJOR	E. G. Johnson	Tor Scot R (MG)

Members.

Rank.	Name.	Regiment.
A Captain (To be appointed by OC 8 Cdn Recce Bn (14H)		8 Cdn Recce Bn (14H)
A Captain to be appointed by C.R.C.A.S.C. 2 Cdn Div		R.C.A.S.C.
A Captain to be appointed by A.D.M.S. 2 Cdn Div.	WAITING MEMBER	R.C.A.M.C.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (J. E. Roberts) Brigadier
Commanding Comd 2 Cdn Div, Cdn Army (A.F.)
Convening Officer.

V

2

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E14434, Pte Roger Dumas, 2 Cdn Div Amn Coy. RCASC	FIRST CHARGE A.A.Sec. 15(1) A.W.L. (See charge sheet attached)	Guilty	Guilty 60 days detention	Confirmed but remitted 30 days detention J.J. Roberts Brig.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded in proceedings sheet if necessary*):—

(Signed) J.J. Roberts
(J. J. Roberts) Brigadier
Commanding 2 Cdn Div
Convening Officer (c)

(Signed) E.G. Johnson Major
(E. G. Johnson), Major
President

(a) Appointment, acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

15

3

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 17th day of January 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses

* Omit if not applicable.

~~3. The interpreter~~
~~4. The officers under instruction~~

were duly sworn.

Signed this 17th day of January 1942.

E.G. Johnson Major
President of the Court Martial

C. Certificate in case of death sentences.

* See footnote (b) on page 761 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the soldier named in the margin be not committed to prison and further orders.~~)

J.J.R.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 17 day of Jan 1942

J.J. Roberts Brig.
Confirming Officer

Promulgated and extracts taken in the case of

(a) (Dated) 20 January 1942 (Signed) R. Howard Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

3

I have this Morning examined No:E-14434 Pte. DUMAS J.R.A. of 2 Cdn. Div. Amn. Coy. R.C.A.S.C., and in my opinion is fit ~~or unfit~~ to undergo trial by Court Martial.

"In The Field"
13-1-42

J.M. Merritt Capt.,
Medical Officer, Attac'd
2 Cdn Div RCASC- Overseas.

Electrical by Court Martial

Charge Sheet

The accused No E 14434 Private Roger Dumas 2 Can Div Ammn Coy RCASC a soldier of the Canadian Army Active is charged with

A.A. sec 15(1) Absenting himself without leave in that he at Wadhurst Hall Wadhurst Sussex after being duly warned for guard duty did absent himself without leave from about 1400 hrs on 13th December 1941 till 0830 hrs on ~~15~~ 16th December 1941 GSP.

In the field
22nd December 1941

[signature]

[signature]
Commanding 2 Can Div Ammn Coy
RCASC - Ca(a-f)

6

I desire Lieut A. Houde to represent me at my trial

In the field
22nd December 1941 R. Lunas

(1) Trial of 14434, Pte Roger Dumas
2 Cdn Div Am. Coy. RCASC
Held at State Hall, Heathfield, Sussex, on 13th day of January 1942

(2) Actual Court

Pres Major E. G. Johnson, Tor Scots Reg.
Mem Capt J. W. Wilson, H.Q. 2 Cdn Div.
Capt. I. R. McDougall, 8 Cdn Recce Bn

Prosecutor: Capt. E. G. Swift
2 Cdn Div Am. Coy. RCASC

Def. Off.: Lieut A. H. Honde
2 Cdn Div. Am. Coy. RCASC

(4) The accused is arraigned and pleads "Guilty" to the following charge - 1st Charge.

(5) Rule of Procedure 35(B) is complied with.

(6) The abstract of evidence has been read.

(7) The Prosecutor has filed AFB 296 and a certified copy of MFM6

(8) The accused makes the following statement under oath in mitigation of sentence: That he had enlisted on 17 Apr 1940. He had always tried to be a good soldier. Had applied for leave and had been refused more than once. For some reason not given, leave always seemed to be refused. Had no leave since January 1941. Says that if he could get a transfer he would be a good soldier.

(9) The accused had no witness as to character.

Certified a true record of this trial
13 day of January 1942

E. G. Johnson Major (President)

Electrical by Court Martial

Charge Sheet

The accused No E 14434 Private Roger Dumas 2 Can Div Ammn Coy RCASC a soldier of the Canadian Army Active is charged with

A.A. sec 13(1)

Absenting himself without leave in that he at Wadhurst Hall Wadhurst, Sussex, after being duly warned for guard duty did absent himself without leave from about 1400 hrs on 13th December 1941 till 0830 hrs on ~~15~~ 16th December 1941 GMT.

In the field
22nd December 1941

[signature]

[signature]
Commanding 2 Can Div Ammn Coy
RCASC - Ca(a-f)

(1) Trial of 14434, Pte Roger Dumas
2 Cdn Div Am. Coy. RCASC
Held at State Hall, Heathfield, Sussex, on 13th day of January 1942

(2) Actual Court

Pres Major E. G. Johnson, Tor Ecots Reg.
Mem Capt J. W. Wilson, H.Q. 2 Cdn Div.
Capt. I. R. McDougall, 8 Cdn Recce Bn

Prosecutor: Capt. E. G. Swift
2 Cdn Div Am. Coy. RCASC

Def. Off.: Lieut. A.H. Houde
2 Cdn Div Am. Coy. RCASC

(4) The accused is arraigned and pleads "Guilty" to the following charge - 1st Charge.

(5) Rule of Procedure 35(B) is complied with.

(6) The abstract of evidence has been read.

(7) The Prosecutor has filed AFB 296 and a certified copy of MFM 6

(8) The accused makes the following statement, under oath, in mitigation of sentence: That he had enlisted on 17 Apr 1940. He had always tried to be a good soldier. Had applied for leave and had been refused more than once. For some reason not given, leave always seemed to be refused. Had no leave since January 1941. Says that if he could get a transfer he would be a good soldier.

(9) The accused had no witness as to character.

Certified a true record of this trial
13 day of January 1942

E.G. Johnson Major (President)

Electo trial by Court Martial

Charge Sheet

The accused No E 144341 Private Roger Dumas 2 Can. Div. Ammn. Coy RCASC a soldier of the Canadian Army Active is charged with

A.A. sec 15(1) Absenting himself without leave in that he at Wadhurst Hall, Wadhurst, Sussex, after being duly warned for guard duty did absent himself without leave from about 1400 hrs on 13th December 1941, till 0830 hrs on 16th December 1941 GB.

In the field
22nd December 1941

[signature]

[signature] Major
Commanding 2 Can. Div. Ammn. Coy
RCASC - Ca(a-f)

6

I desire Lieut A Houde to represent me at my trial

In the field
22nd December 1941 R Lunas

(1) Trial of 14434, Pte Roger Dumas
2 Cdn Dist Amm Coy RCASC
Held at State Hall, Heathfield, Sussex, on 13th day of January 1942

(2) Actual Court

Pres: Major E. G. Johnson, Tor Scots Reg.
Mem: Capt J. W. Wilson; H.Q. 2 Cdn Dist
Capt. T. R. McDougall, 8 Cdn Recce Bn

Prosecutor: Capt. E. G. Swift
2 Cdn Dist Amm Coy RCASC

Def. Off.: Lieut A. H. Hoole
2 Cdn Dist Amm Coy RCASC

(4) The accused is arraigned and pleads "Guilty" to the following charge - 1st Charge.

(5) Rule of Procedure 35(B) is complied with.

(6) The abstract of evidence has been read.

(7) The Prosecutor has filed AFB 296 and a certified copy of MFM6

(8) The accused makes the following statement on oath, in mitigation of sentence: That he had enlisted on 17 Apr 1940. He had always tried to be a good soldier. Had applied for leave and had been refused more than once. For some reason not given, leave always seemed to be refused. Had no leave since January 1941. Says that if he could get a transfer he would be a good soldier.

(9) The accused had no witnesses as to character.

Certified a true record of this trial
13 day of January 1942

E. G. Johnson Major (President)

Abstract of Evidence in the case of No E 14434 Private Roger Dumas 2 Can Div Amm Coy RCASC – Ca(a F)

No E 14063 Sergeant Harold J Hanson 2 Can Div Amm Coy RCASC – Ca(a F) States

1st Witness for the Prosecution

I am orderly sergeant of "C" section and on December 13th, gave Cpl Jones who had been detailed to take the Wadhurst Hall guard a list of men for this guard. Private Dumas name was on this list. At 1400 hrs I went around to see that all these men had been warned and could find no trace of Private Dumas. He did not answer his name at Tatoo Roll Call nor was he present on 16 S.P. parade December 14th. On December ~~13~~th when checking quarters after 0800 hrs parade I found Dumas in his hut at 0830 hrs and placed him under close arrest.

No B 28083 Corporal James R Jones 2 Can Div Amm Coy RCASC – Ca(a F) States

2nd Witness for the Prosecution

I am corporal of No 11 sub section of "C" section and was detailed to be the Wadhurst Hall guard from 1800 hrs December 13th to 1800 hrs December 14th. Private Dumas was not in his hut when I warned the men for guard from the list given me by Sergeant Hanson. I saw him about 1230 hrs on the Wadhurst Hall Drive I warned him then for guard. At 1745 hrs when I fell the guard in, Private Dumas was not present.

No E 14392 Corporal Lucius Paradis 2 Can Div Amm Coy RCASC – Ca(a F) States

3rd Witness for the Prosecution

I am corporal of No 12 sub section of "C" section and on December 13th was section duty U.C.O. At 2300 hrs I took Tatoo Roll Call Private Dumas did not answer his name nor did he answer his name at 0830 hrs parade December 14th.

Taken down by me "in the field" the 22nd December 1941 in accordance with appendix A to DRO 770

Christine Pringle Capt
2 Can Div Amm Coy RCASC – Ca(a F)

(Substitute for A.F.B. 296)

NO. 14434 RANK Pte NAME R Dumas

UNIT 2 Cdn Div Ammn Coy RCASC.

AGE 21 DATE OF ENLISTMENT 17 Apr 40

MARRIED OR SINGLE single NO. OF DEPENDENTS none

NO. OF DAYS SPENT IN CLOSE ARREST 28 HOSPITAL 1 TOTAL 29 days

RECORD OF PROMOTIONS IF ANY none.

Dated this 13 day of Jan 1942

In The Field.

Officer i/c of Records.

(This form must be accompanied by M.F.M.6 and be brought up to date as of the day of the trial)

13

E

No. 1044134 Name DUMAS R. Sqn., Battery or Company AMN Corps 2 Div R.C.A.S.C. Date of enlistment 17 11 40 O.C. Badges Service or Proficiency Pay

MFM 6 (A.P.B. 133)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

14

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	State of award or of order dispensing with trial	By whom awarded	Remarks
Mitchfield	5.9.41	Pte		AA 15(1) A & O L 3 hrs	H.R. Jamache	14 days pay	3.10.41	Major Savard	Inf 14 days pay
Mitchfield	23.10.41	Pte		AA 15(1) A & O L 9 days 17 hrs 30 min	Cpl Neron	27 days L.P.	3.11.41	Major Savard	Inf 10 days pay
								149(1)a	Inf 1 days pay
								149(1)c(1)	Deed 27 days pay
								149(1)b	Total Inf 38 days pay

Certified true copy

Chetting Duff
Capt.

MM-37 (AFRICA)
PTE DUMAS R.

Correspondence to be PINNED here.

D109962, Pte. Dumas, R.,
1 Bn., 1 Cdn Base Rft Depot

A-88
MM-37

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this third day of September, 1943.

Whereas it appears to me, the undersigned, an officer in Command of No. 1 Canadian Base Reinforcement Depot., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~xxxx

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D109962, Pte. Dumas, R. 1 Bn., 1 CBRD.	FIRST CHARGE AA Sec 15(1)	~~Not~~ Guilty	Not Guilty	I confirm the findings and sentence of the Court. G Kidney Basher. Colonel Commandant, 1 Cdn Base Reinforcement Depot
	SECOND CHARGE A.A. Sec 15(1)	Guilty	Guilty 16 months detention	
	FOR FULL DETAILS OF CHARGE SEE CHARGE SHEET.			

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer to be recorded on separate sheet if necessary):—

(Signed) G Kidney Basher Colonel
Commandant, 1 Cdn Base Reinforcement Depot
Commanding
Convening Officer (e)

(Signed) F. D. Tweedie Lt Col
Capt & Trp Regt 1 Bn 1 C.D.R.D.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 4th day of Sep. 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~*(3. The Interpreter)~~
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 4th day of Sep 1943.

F. D. Tweedie Lt Col.
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (b) on page 702 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barracks until further orders.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barracks, or, having such authority, recommends suspension.

Signed this 5th day of Sept. 1943

To be promulgated on Parade.

G Kidney Basher.
Confirming Officer. Colonel
Commandant, 1 Cdn Base Reinforcement Depot

Promulgated on parade and extracts taken in the case of D109962 Pte DUMAS R. "C" Coy 1 Bn 1 CBRD

(a) (Dated) 6 Aug 43. (Signed) [signature] C.O. 1 Bn 1 CBRD.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

D109962, Pte. Dumas, R.,
1 Bn., 1 Cdn Base Rft Depot

A-88
MM-37

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this third day of September, 1943.

Whereas it appears to me, the undersigned, an officer in Command of No. 1 Canadian Base Reinforcement Depot, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~[illegible]~~ GB

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~[illegible]~~ GB

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

*Omit if not appointed.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialed by him.

President.

Rank.	Name.	Regiment.
Lt.-Col.	F. D. Tweedie,	C&Y R, 1 Bn., 1 CBRD.

Members.

Rank.	Name.	Regiment.
Captain	D. S. Mills,	CIC, 1 Bn., 1 CBRD.
Captain	F. W. Smith,	RCA, 3 Bn., 1 CBRD.

*Sig. G. Hedley Barker
Colonel
Commanding 1 Cdn Base Reinforcement Depot
Convening Officer.

CHARGE SHEET

The accused No. D109962, Private Dumas, Raymond, on the strength of "C" Company, No. 1 Bn., No. 1 Canadian Base Reinforcement Depot, a soldier in the Canadian Army Overseas, is charged with.

FIRST CHARGE
ARMY ACT
SEC 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field at about 0730 hrs 23 Jul 43, when undergoing field punishment, absented himself without leave from 1 Bn., 1 CBRD until 0630 hrs on 24 Jul 43.

SECOND CHARGE
ARMY ACT
SEC 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, at or about 2155 hours on 31 Jul 43 absented himself when in lawful custody from 1 Bn., 1 C.B.R.D. until apprehended at Stora at or about 1430 hours 30 Aug 43 by the Cdn Provost Corps.

(Total absence approximately 29 days 16 hours 30 minutes)

Dated this 3rd day of September, 1943.

(W. P. Bristowe)Lt.-Col.
O.C., 1 Bn., 1 C.B.R.D.

To be tried by F.G.C.M.

3 Sept 43

Colonel
Commandant, 1 Cdn Base Reinforcement Depot

MEDICAL CERTIFICATE
(K.R. CAN).568)

I CERTIFY THAT I HAVE THIS MORNING EXAMINED No D-109362 PTE. DUMAS R. OF C COY 1 BATTALION, 1 CDN BASE RFT DEPOT. AND IN MY OPIN ON HE IS FIT TO UNDERGO TRIAL BY COURT MARTIAL.

STATION IN THE FIELD

DATE 4 SEPT 43.

G.E. Duff Wilson Capt

G.E. DUFF WILSON, CAPT (RCAMC)
MEDICAL OFFICER 1 BN 1 CBRD

W. D. T.
4 Sep 43.

PAGE 1

Accused D109962 Pte DUMAS, RAYMOND No 1 Bn. 1 C.B.R.D
(Number) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in North Africa on 4 Sep 43.
(Country) (Date)

	Rank	Name	Unit
PRESIDENT:	Lt Col.	F. D. Tweedie	1 Bn 1 CBRD.
MEMBERS:	Capt.	D. S. Mills	1 Bn 1 CBRD.
	"	F. W. Smith	1 Bn 1 CBRD

JUDGE ADVOCATE: —
(If any)

OFFICERS UNDER INSTRUCTION:
Capt. W. S. Sansine 2 Bn 1 C.B.R.D.
" A. M. McLeod 2 Bn 1 CBRD
" P. E. Beauvais 2 Bn 1 C.B.R.D
" J. E. Harry 2 B 1 C.B.R.D
Lt E. C. Eddy 2 Bn 1 CBRD

PROSECUTING OFFICER: Lt. J. L. Davenport Lawyer? Ans No

DEFENDING OFFICER: Lt. W. Burke Lawyer? Ans No.

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs P 17(E), 22(A)).

The President, in closed court (R.P.22, fn 1), reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P.106)

The accused is ~~(are)~~ brought before the Court, and at 1515 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can)557 (See CMHQ Circular Letter 173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

~~President to accused:~~
~~Do you object to _____ as interpreter? Ans _____~~

~~The interpreter is duly sworn.~~

~~Do you object to _____ as shorthand writer? _____~~

~~The shorthand writer is duly sworn. (Forms of Oath on Page 'D'.~~
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (R.P.10)

President to accused:
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans No.

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (R.P.26-27 (Forms of Oath on Page 'D'))

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (A.A.46(8))

(If special plea/s is/are made for separate trial on one or more charges (Rs P 62(E), 106); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.130, R.P.57), record such pleas and evidence (if any) on separate sheet/s to be initialled by the President and attached to the proceedings.

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge Guilty altered by F.O.C. to Not Guilty.

Second Charge Guilty.

Third Charge _____

Fourth Charge _____

Fifth Charge _____

Sixth Charge _____

Seventh Charge _____

Eighth Charge _____

(For procedure on alternative charges, see R.P. 37, fn 2)

Further proceedings are recorded on Pages hereto attached.

PAGE 'A'

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. R.P.35(B) is complied with, by the President ascertaining that accused understands the nature of the charge/s (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:
Q. Do you desire to make any statement of the circumstances, in reference to the charge/s? (R.P.37(B) Ans Yes.

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon)

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (R.P.37(B)).

4. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (R.P.37(C). Ans Yes.

(Statement, if any, is recorded on separate sheet, initialled by the President and attached hereto. No cross-examination)

5. President to accused:
Q. Do you wish to give evidence yourself or call any witnesses as to character? (R.P.37(C). Ans No.

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto)

6. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (M.F.M.6), signed in the manner required by A.A.163(1)(n) and purporting to refer to the accused by his number(if any), rank, name and Corps, are produced to the Court, read, marked "A", and "B.", initialled by the President and attached to the proceedings. (R.P. 46; Overseas R.O. 3131)

7. President to accused:
Q. Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)). Ans No. (No cross-examination)
(Record address, if any, on separate sheet, initialled by the President and attached hereto)

8. The Court is now closed to consider sentence. (Record on Page 2 of A.F.A.3)
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, R.P.48). Sentence should be dated)

The sentence is not announced to the accused by the Court.

T. D. Tweedie Lt Col
(Signature of President)

PAGE 'B'

(For use when accused pleads 'Not Guilty' to all Charges)

(All printed matter not applicable to be struck out, and all alterations, erasures, and additions to be initialled by the President)

1. President to accused:
2. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (R.P.39(A). Ans _____

2. The Prosecutor's opening address(if any) (R.P.39(B) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto. (See RECORD OF EVIDENCE on Page 'D')

3. The prosecution is closed. (If submission that there is no prima facie case established, see R.P.40 fn1; R.P.70 fn 1)

4. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination (R.P.40 fn 2) or that he may, if he wishes, make an unsworn statement, upon which he can not be cross-examined. (R.P.40(D)(ii)(a)).

5. President to accused:
6. Do you apply to give evidence yourself as a witness? Ans _____
7. Do you intend to call any other witness in your defence? Ans _____
8. Is he a witness as to character only? (R.P.40(B)) Ans _____

6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses see Rs P 40, 41 and 42)

8. The Court is now closed to consider the finding (Rs P 43 and 117)

9. The Court being re-opened, the accused is again brought before it, and the findings of 'Not Guilty' (if any) are pronounced and (if findings of 'Not Guilty' on all charges) the accused is released. R.P. 117(B) -

10. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (M.F.M.6) signed in the manner required by A.A.163(1)(h) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings, (R.P.46; Overseas R.O.3131)

11. President to accused:
12. Do you wish to address the Court on the Statements of Character Service and Conduct and in mitigation of punishment? (R.P.46(D). Ans _____ No cross-examination.
(Record address, if any, on separate sheet, initialled by the President and attached hereto)

12. The Court is now closed to consider the sentence (Record on Page 2 A.F.A.3)
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, (R.P.46); sentence should be dated.

The sentence is not announced to the accused by the Court.

_____
(Signature of President)

(For use when there are pleas of 'Guilty' and 'Not Guilty'

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. R.P.35(B) is complied with, in respect to 'Guilty' pleas, by the President ascertaining that accused understands the nature of the charge(s) (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P.37(B) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:

Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby or that you have not had sufficient time for preparing your defence? (R.P.39(A). Ans No.

3. The Prosecutor's opening address (if any) (R.P.39(B) and the evidence for the Prosecution are recorded on seperate sheets, initialled by the President and attached hereto. (See Record of Evidence on Page 'D')

4. The Prosecution is closed. (If submission that no prima facie case established, see R.P. 40 fn 1; R.P. 70 fn 1)

5. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination. (R.P.40, fn 2) or that he may, if he wishes make an unsworn statement upon which he can not be cross-examined. (R.P. 40(D)(ii)(c))

6. President to accused:
Q. Do you apply to give evidence yourself as a witness? Ans _____
Q. Do you intend to call any other witness in your defence? Ans _____
Q. Is he a witness as to character only? (R.P. 40(B) Ans _____

7. The evidence for the defence (if any) is recorded on seperate sheets, initialled by the President and attached hereto.

8. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on seperate sheets, initialled by the President and attached hereto. (For order of addresses, see Rs P.40, 41 and 42)

9. The Court is now closed to consider the finding. (Rs P 43 and 117) (Record Finding on Page 2 of A.F.A.3)

10. The Court being re-opened, the accused is again brought before it and the findings of 'Not Guilty' (if any) are pronounced. (R.P.117(B))

11. The charges, to which the accused pleaded 'Guilty' are read to the accused.

12. President to accused:
Q. Do you desire to make any statement of the circumstances in reference to the charge(s) to which you have pleaded 'Guilty'? (R.P.37(B) Ans _____

(Statement (if any) not on oath is recorded on seperate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon)

13. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If not such Summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on seperate sheet, initialled by the President and attached to the proceedings) R.P.37(B).

PAGE 'C' CONTINUED

~~14. President to accused:~~
Q. Do you wish to make any statement in mitigation of punishment? (R.P.37(C) Ans _____
No cross-examination.
(Statement (if any) is recorded on separate sheet, initialled by the President and attached hereto)

15. President to accused:
Q. Do you wish to give evidence yourself or call witnesses as to character? (R.P.37(C)) Ans _____

16. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (K.F.M.6), signed in the manner required by A.A.163(i)(n) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings. (R.P.46; Overseas R.O.3131)

17. President to accused:
Q. Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of punishment? (R.P.46(D).
Ans _____ No Cross-examination.

(Record address (if any) on separate sheet, initialled by the President and attached hereto)

18. The Court is now closed to consider the sentence. (Record on Page 2 of A.F.A.3)

(Punishments, A.A.44; K.R.(Can)563-566; one sentence only awarded, R.P.48. Sentence should be dated)

The sentence is not announced to the accused by the Court.

F. D. Tweedie Lt Col.
(Signature of President)

Statement of the accused of the circumstances in reference to the charges.

between 1330 & 1400 hrs

On 23 Jul 43 I went away because I had the permission of the Cpl. of the Field Punishment Camp to go for a swim. That night I went to the American Camp to see the picture after that I came back to the camp and I found Cpl. Lacoste & Sgt Savard both asleep so I didn't want to wake them up to report myself after that I went to the Coy orderly room and I found the clerk and the C.S.M. both asleep so I waited until the morning & Cpl Lacoste had the order from Sgt Savard to take me up to the guard room & then I passed in front of the Coy Commander & he remanded me to the C.O. The C.O. remanded me for Court Martial as I thought the charge wasn't big enough to put me up for Court Martial so I ran away from the guard room until the Provost Corp caught me

2. I did not want to desert the army. I only wanted to go for a while & then come back to the camp and have a charge to put me up for Court Martial that time. I went away because I was tired and I had the idea to go in action with my friends.

The accused had pleaded guilty to the first charge. In view of the above statement however, the Court, under 37 (1) R.P. alters the record and enters a plea of "Not Guilty" to the first charge and orders that the trial on the first charge be proceeded with.

The prosecuting officer informs the Court that both material witnesses to the first charge are now in the field and are not available and that he cannot give any information as to whether or not they would be made available and if so when.

The defending officer moves that the first charge be dismissed for lack of evidence.

3. "The Court considers the motion and allows the motion and dismisses the first charge.

He joined the Army in July 41 to fight anywhere in the world and although he has been A.W.L. several times he has always come back on his own.

4 Sept 42

F D Tweedie Lt Col
President

Summary of Evidence

in the case of

No. D-109962 Private Dumas, Raymond, on the strength of "C" Company No. 1 Battalion, No. 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

First Witness for the prosecution

No. C 80027 L/Cpl. Carter, H.K. on the strength of "B" Company, No. 1 Battalion, No. 1 Canadian Base Reinforcement Depot, ~~having been duly sworn, states~~:- attached ~~for~~ to Headquarters Company for ~~[illegible]~~ Regimental Police duties, having been duly sworn states:-

"I was in charge of the Guardroom ~~[illegible]~~ on 31 July ~~[illegible]~~/43. at 2150 hrs. I checked the prisoners and found all present. When I returned to No. 1 Guard house at 2155 hrs. Pte. Dumas along with two other prisoners were missing. I immediately had the grounds searched but no trace of the prisoners could be found. I then notified the orderly Officer of the day. L/Cpl H.K. Carter

The evidence is read to the witness.

The accused declines to cross-examine the witness.

Second Witness for the prosecution

No. K 67685 L/Cpl. Moran, C.E. on the strength of Headquarters Company, No. 1 Battalion, No. 1 Canadian Base Reinforcement Depot attached for duty to Regimental police, having been duly sworn states:-

"I was in charge of the Guard room from 0800 ~~[illegible]~~ hours to 1600 hrs on the 30th of Aug./43 when at approximately 1525 hours Pte. Dumas was brought to the Guardroom under escort by ~~two~~ a member of the Canadian Provost Corp. I immediately placed him in close custody. During ~~his~~ the ~~absence~~ period from 31 July ~~[illegible]~~/43 to Aug 30/43 he ~~was not~~ had not reported in to the Guardroom. L/Cpl Moran C.E.

The evidence is read to the ~~witness~~ witness

The accused declines to cross-examine the witness

[illegible] 4 Sep 43

I, Capt. J. G. Rogerson, in the absence of I Battalion, I.C.B.R.D. submit in evidence certificate in accordance with P.C. 2797 of 10 April/42 signed by Sgt. Le Conte - A 11073, N.C.O. in charge detachment Canadian Provost Corp., regarding the accused.

(Exhibit A hereto)

I also submit Declaration of a Court of Inquiry relating to the absence of the accused.

(Exhibit B hereto)

The evidence is read to the accused.

The accused declines to make any comment.

Sgt

The accused was cautioned as follows.

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused declines to make a statement and reserves his defence, saying "I have nothing to say just now"

The accused declines to call witnesses on his behalf.

I certify that the foregoing Summary of Evidence consisting of 2 pages, was taken down by me in the presence and hearing of the accused, and that the rules of procedure, 4(c), (d), (e), (f) and (g) have been complied with.

J G Rogerson, Capt.
1 Bn, 1 C.B.R.D.
Officer detailed to take Summary of Evidence

[illegible]ate Field
[illegible] Aug. 1943

[illegible]
[illegible] Sep 43

The accused was cautioned as follows.

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused declines to make a statement and reserves his defence, saying "I have nothing to say just now"

The accused declines to call witnesses on his behalf.

I certify that the foregoing Summary of Evidence consisting of 2 pages, was taken down by me in the presence and hearing of the accused, and that the rules of procedure, 4(c), (d), (e), (f) and (g) have been complied with.

J G Rogerson, Capt.
1 Bn. 1 C.B.R.D.
Officer detailed to take Summary of Evidence.

In the Field
31 Aug. 1943.

F.D.T.
4 Sep 43

Summary of Evidence
in the case of

No: D-109962. Private Dumas, Raymond, on the strength of "C" Company, No 1 Battalion, No 1 Canadian Base Reinforcement Depot, a soldier in the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

The accused having been asked if he had any objection to Lieut J. Guay "C" Company 1 Bn. 1 C.B.R.D. acting as interpreter in these proceedings and the accused having no objections, Lieut Guay was sworn in as interpreter by Lieut. R. M. Bell "C" Company, 1 Battalion 1 C.B.R.D.

First Witness for the prosecution - E. 23597, Sgt. Savard, D.H. on the strength of "C" Company, No 1 Battalion, No 1 Canadian Base Reinforcement Depot, having been duly sworn states:-

"I am platoon sergeant of No 4 platoon. The accused whom I now recognize is in my platoon. At 0730 hrs on 23 Jul 43 my platoon was on morning company parade. I called the roll but the accused failed to answer his name. I called his name again but there was no answer. I then went into the tent lines and to his tent looking for him, but the accused could not be found. I called the roll again at 1500 hrs and at 2200 hrs and the accused was still absent. I reported the absence of the accused to the Company Orderly Room when I discovered him absent at 0730 hrs. Prior to absenting himself, the accused had been placed under field punishment and at the time the accused broke out of barracks, he was still under field punishment. That is why I ordered Corporal Lecompte to place the accused under close arrest if he saw him.

H. H. Savard Sgt.

The evidence is read to the witness
The accused declines to cross-examine the witness.

Second Witness for the prosecution - No. D57265, Cpl. Lecompte, J.M. on the strength of "C" Company No 1 Battalion No 1 Canadian Base Reinforcement Depot, having been duly sworn states:-

8 Jul 43

"At approximately 1200 hrs. 23 Jul 1943, Sgt. Savard advised me that Private Dumas, the accused whom I now recognize, was absent and that if I saw the accused I was to place him under close arrest. I was present at the tattoo roll call at 2200 hrs. and the accused was not there and was reported absent. Sgt. Savard called the roll and I heard the accused's name called but the accused failed to answer. In the morning of 24 Jul 43 at 0600 hrs. I called the roll and the accused answered his name. The accused was in his tent at reveille roll call at 0600 hrs. I then placed the accused under close arrest.

Cpl. Secompte. S. M.

The evidence is read to the witness.
The accused declines to cross examine the witness.

The accused was cautioned as follows:-
Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.
The accused declines to make a statement and reserves his defence saying: "I have nothing to say just now."
The accused declines to call witnesses on his behalf.

I certify that the foregoing Summary of evidence consisting of 2 pages was taken down by me in the presence and hearing of the accused, and that the rules of procedure 4(c), (d), (e), (f) and (g), have been complied with.

R. M. Bell, Lieut.
1 Bn. C.B.R.D.
Officer detailed to take Summary of Evidence.

In the Field.
28 July 1943.

Exhibit A.

J.G.X.

SCHEDULE "F"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 OF 10 APR 42

I CERTIFY that No. 0107962 ..... Rank Pte ... Name .. Dumas R .....

Unit 1st Bn att CORD .. was arrested at ..... STORA ..... North Africa .. (place)

at 14.30 .. (hour) on 30 Aug 43 .. (date) and that at the timem of his arrest he was wearing (military uniform) ~~# or (civilian clothes)~~ #

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer, or non-commisioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose cus tody the above named person was taken on arrest.) E L Cook Sgt.

Strike out part inapplicable.

FSJ 4 Sep 43

Exhibit "B" Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at IN THE FIELD on the 22ND day of AUG 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D-109962 PTE DUMAS R. C COY 1 BN 1 CDN BASE RFT DEPOT.

DECLARATION.

The Court declare THAT NO D-109962 PTE DUMAS R. C COY 1 BATTALION, 1 CDN BASE RFT DEPOT ILLEGALLY ABSENTED HIMSELF WITHOUT LEAVE 2155 HRS IN THE FIELD ON THE 31 JUL 43 AND THAT ON THE 21ST DAY OF AUG HE WAS DEFICIENT AND THAT HE IS STILL DEFICIENT OF THE FOLLOWING ARTICLES:

100 % VALUE	75 % VALUE
£ 13 11 7	£ 10 2 6

F 07
4 Sep 47

Names of President and Members

CAPT.	J.H. CHICOINE	PRESIDENT
LT.	F.M. DUSSAULT	MEMBER
A/CSM	J.G. ROCHON	MEMBER

Signature of Commanding Officer (W.P. BRISTOWE)
COMD 1 BN 1CBRDLT-COL

CERTIFIED TRUE COPY.

Signature of Officer having custody of the Original Record.

(12281) Wt.34318/1622 75,000 10/39 A.& E.W.Ltd. Gp.466
(13443) Wt.41725/100 225,000 1/40 " " Forms/B115/56

STATEMENT BY THE ACCUSED

I CERTIFY HAVING RECEIVED FREE OF CHARGE, A COPY OF THE SUMMARY OF EVIDENCE, LIST OF WITNESSES, LIST OF EXHIBITS AND CHARGE SHEET.

I DESIRE/ THE SERVICES OF AN OFFICER TO REPRESENT ME/ AT THE TRIAL

R. Dumas. D. 109862.

LIST OF WITNESSES

FOR THE PROSECUTION. No. C. 80027 L/Cpl. CARTER ON THE STRENGTH OF "B" COMPANY 1 Bn. 1. C.B.R.D. IN THE FIELD
No. K.67685 L/Cpl. MORAN, C.E. ON THE STRENGH OF "H.Q. COMPANY 1 Bn. 1. C.B.R.D. IN THE FIELD.

FOR THE DEFENCE.

NIL

LIST OF EXHIBITS

EXHIBIT A
CERTIFICATE IN ACCORDANCE WITH P.C. 2797 OF 10 APR 43
EXHIBIT B
RECORD OF THE DECLARATION OF COURT OF INQUIRY.

STATEMENT BY THE ACCUSED

I CERTIFY HAVING RECEIVED FREE OF CHARGE, A COPY OF THE SUMMARY OF EVIDENCE, LIST OF WITNESSES, LIST OF EXHIBITS AND CHARGE SHEET.

I DESIRE/ THE SERVICES OF AN OFFICER TO REPRESENT ME/ AT THE TRIAL

R. Dumas. D. 109862.

LIST OF WITNESSES

FOR THE PROSECUTION. NO. C. 80027 L/CPL. CARTER ON THE STRENGTH OF "B" COMPANY 1 BN. 1. C.B.R.D. IN THE FIELD
NO. K.67635 L/CPL. MORAN, C.E. ON THE STRENGTH OF "H.Q. COMPANY 1 BN. 1. C.B.R.D. IN THE FIELD.

FOR THE DEFENCE. NIL

LIST OF EXHIBITS

EXHIBIT A
CERTIFICATE IN ACCORDANCE WITH P.C. 2797 OF 10 APR 43
EXHIBIT B
RECORD OF THE DECLARATION OF COURT OF INQUIRY.

No. D109962 Name DUMAS, R | Sqn., Battery, or Company | Corps INF | Date of enlistment 24 July 41 | G.C. Badges | Service or Proficiency Pay N/A | M.F.M. 6 (A.F. B.122) 40/P & /S136 (2965)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	24 Jan 42	P.C.		AA Sec 15(1) AWL from 2359 hrs 24 Jan 42 until 1155 hrs 26 Jan 42	Cpl Charbon	1 day C.B.	27 Jan 42	Maj E Allen	2 days pay FR 11
FIELD	30 Jan 42	P.C.		AWL from 2359 hrs 30 Jan 42 till 0240 hrs 1 Feb 42	Cpl Charbon	1 day C.B.	3 Feb 42	Maj E Allen	2 day pay FR 11
FIELD	30 Jan 42	P.C.		A.W.L. from defaulters parade	Sgt Petit Sgt Lagenier	2 day C.B.	3 Feb 42	Maj E Allen	2 cents 120 FR 11
FIELD	1 Feb 42	P.C.		AWL from defaulters parade	Sgt Brosseau	2 day C.B.	3 Feb 42	Maj E Allen	—
FIELD	2 Feb 42	P.C.		(1) AWL from 2359 hrs 2 Feb 42 till 1700 4 Feb 42 (Absent 1 day 17 hrs 1 min)	Documentary				
FIELD	3 Feb 42	P.C.		(2) Sec 40 - Absent from place of parade	Sgt Clairoux Sgt Rouleau	14 days detn	2 Feb 42	Lt Col Howard	Ref 2 day pay FR 11 14 days pay dtn Ref

Pg 87
4 Sep 42

Certified to be a true Copy of the Document held in my Possession
Officer in Official Charge of Documents
Richard Cope Adjt

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	4 Feb 42	Pte		(3) AWL from defaulters parade	Sgt Jafrance				
"	10 Feb 42	"		(4) AA Sec 40 - Appeared on parade with long hair	C.A.M. Goulette				
FIELD	8 Feb 42	Pte		AA Sec 15 (1) AWL from P.T. parade (Absent 30 min.		1 day pay	11 Feb 42	Lt Col Redman	
FIELD	21 Feb 42	Pte		AA Sec 15 (1) AWL from 2359 hrs 28 Feb 42 until 0930 hrs 11 Mar 42 (Absent 10 days 9 hrs 31 min.)	Cpl Chartman	21 days dtn	12 Mar 42	Lt Howard	Forf 11 days pay Cost except 1.20
FIELD	5 Apr 42	Pte		AA Sec 40 failed to obey order given by superior officer.	Sgt Jodoin	4 days C.B.	7 Apr 42	E Allen Maj	
FIELD	3 May 42	Pte		AA Sec 15 (1) AWL (21 hrs 41 min)	Cpl Moss	1 day C.B.	6 May 42	E Allen Maj	Forf 4 days pay
FIELD	2 Aug 42	Pte		AA Sec 15 (1) AWL from 1800 hrs 2 Aug 42 until 2130 hrs 2 Aug 42 (Absent 3 hrs 30 min.)	Cpl Moreau	4 days F.P. 4 days pay	Aug 4 42	Lt Col Redman	
FIELD	18 May 42			AA Sec 15 (1) AWL from 2130 18 May 42 to 2245 hrs 28 May 42	Cpl Moffat Sgt Squires	15 days pay	29 May 42	Lt Col Howard	Forf 11 days pay

Certified to be a true copy. Capt.
[illegible]
Officer Commd Guards & Documents

No. 0-109462 Name DUMAS, R | Sqn., Battery, or Company | Corps INF | Date of enlistment 24 July 41 | G.C. Badges | Service or Proficiency Pay N/A

M.F.M. 6
(A.F. B.122)
40/P.S./B136 (2965)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 2 | Signature O.C. Company, etc.

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	15 Sep 42	Pte		AA Sec 5 (1) AWL from 2300 hrs 15 Sep 42 Cpl Bennett Ret 0600 hrs 16 Sep 42 (Absent 7 hrs		14 days CB	18 Sep 42	Lt Col Redman	1 day awl. Forf FAR 1.149 (1)
FIELD	30 Oct 42	Pte		(1) AA Sec 5 (1) AWL from 2300 hrs 30 Oct 42 Ret 1900 hrs 31 Oct 42 (Absent 20 hrs)					
	"			(2) AA Sec 5 (1) AWL from 2300 hrs 31 Oct 42 to 0600 hrs 4 Nov 42 (3 days, 6 hrs)		14 days pay 7 days CB	6 Nov 42		6 days pay FAR 1.149 (1) (2)
				(3) AA Sec 5 (1) AWL from 2300 hrs 4 Nov 42 Cpl Bowers CI Ret 0430 hrs 5 Nov 42 (7 hrs 30 mins)					
FIELD	30 Oct 42	Pte		(1) Larceny of boys bicycle		6 mths hard labour	11 Dec 42	Tried by	Trial undecent. Forf 1 day pay, 149 (1) (a)
	30 Oct 42	"		(2) Taking G/C without consent					
	2 Nov 42	"		(3) Larceny of clothes		Time Copy			Forf 7 days pay 149 (1) (b)
	2 Nov 42	"		(4) Taking G/C without consent					Total Forf 22 days pay

I certified to the Officer Commanding Offender's Charge of Document

Capt. Adjt.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	16 Nov 42	Pte.		(1) A.A. Sec 40 - Failed to get up at reveille when warned to do so (2) A.A. Sec 40 - 5 min. late on parade	Sergt Mathieu G. Cpl Aubé M.	3 days C.B.	18 Nov 42		
FIELD	21 Nov 42	Pte		A.A. Sec 40 Conduct to prejudice - Failed to report on guard	Cpl Mireault	7 day C.B.	23 Nov 42		
FIELD	25 Jan 43	Pte		(1) A.A. Sec 15 (1) AWL from 0930 hrs 25 Jan 43 until 1145 hrs 25 Jan 43 (Absent 2 hrs 15 min) (2) A.A. Sec 40 - Neglected to obey order given by a superior offr.	Sgt Morian U. Cpl Durocher A.	14 days C.B.	26 Jan 43	Maj J. Roberts	
FIELD	26 Jan 43	Pte		A.A. Sec 40 - Neglected to apply face piece during gas period	Cpl Mollais P.A. Pte Sabrous, R.	7 days C.B.	27 Jan 43	H.C. Gay	
FIELD	13 Feb 43			A.A. Sec 15 (1) AWL from 2000 hrs 13 Feb 43 til 2130 hrs 13 Feb 43 (Absent 1 hr 30 min)	Cpl Mireault R. Cpl Aubé M.	7 days C.B. 7 days Pay	16 Feb 43	Lt Col Gomeau	

Certified to be true Copy
L.J. Gaucard
1 Bn 1 Cdn Base Reinforcement Depot
Officer Room Officers of Dominion

No. D-109962 Name DUMAS, R. | Sqn., Battery, or Company | Corps INF | Date of enlistment 24 July 43 | G.C. Badges | Service or Proficiency Pay N/A | M.F.M. 6 (A.F. B.122) 40/P & /B136 (2965)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	6 Mar 43	Pte		A.A. Sec 15 (1) AWL from 2300 hrs 6 Mar 43 till 0400 hrs 7 Mar 43 (Absent 10 hrs	Supt Thifault T.	7 days C.B. 1 day pay	20 Mar 43	Lt Col T.E. Gauvreau	
FIELD	20 Jun 43	Pte		A.A. Sec 15 (1) AWL from 0600 hrs 20 Jun 43 until 2359 hrs 22 Jun 43 (Absent 2 day 17 hrs 9 min)	Supt Maquin Sgt Sagace.	3 days pay 7 days C.B.	23 June 43	Lt Col W.P. Bristow	
FIELD	26 Jun 43	Pte		A.A. Sec 15 (1) AWL from 2200 hrs 26 Jun 43 until 2359 hrs 27 June 43 (Absent 1 day 2 hrs	Sgt. Sagace	21 days pay.	2 July 43	Lt Col W.P. Bristow	Forf 2 days pay FR11 149 1 a AA-4-6-2d
FIELD	11 Jul 43	Pte		(1) A.A. Sec 15 (1) AWL from 1500 hrs 11 Jul 43 till 2200 hrs 11 Jul 43. (Absent 7 hrs (2) A.A. Sec 15 (1) AWL from 2200 hrs 12 July 43 —	Sgt Cuthbert G. Sgt. Clarion	27 days F.P.	13 July 43	Lt Col Bristow	Forf 2 days pay FR11 149 1 a

Certified a true Copy
L. J. Lizard
Officer Commanding Officers
[illegible]

D. 4 Jul 43

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				-0930 hrs 13 Jul 43 (Absent 8 hrs 30 min.)					
				Certified to be a true Copy. [illegible] Capt.					
				Offic. Lowry Official Custody of Documents.					

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	"C" COMPANY Regiment (or unit)
D.109962	PRIVATE	DUMAS, R.	1 BN. 1 C.B.R.D.

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	A. A. SEC. 15 (1) 15 times	22 times
For	A.A. SEC. 40 5 times	8 times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

or,

~~There are no entries in the Conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for beginning on the~~ day of

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and TWO days in Air Force military custody, making a total of TWO days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 20 YEARS 10 MONTHS

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper 24 JULY 1941

7. ~~The service which the accused is entitled to reckon towards discharge is~~

8. ~~The accused is entitled to reckon [illegible] service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force reward~~ military ~~or is in possession of or entitled to~~. ~~State any air force decoration or reward~~ ~~military~~. N.A.

10. ~~(If the accused is a warrant officer) The accused before he was made a warrant officer last held the regimental rank of~~

"A" 7 DP.
2 Sep 42.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

Permanent Force
unit

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number D109962 Rank PRIVATE Name DUMAS, R. of 1. BN. NO. 1. C.R.R.D. Air Force Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
CIVIL COURT	11 DEC. 1942	1. ~~ONE~~ LARCENY OF BICYCLE ~~LARCE~~ 2. TAKING CAR WITHOUT CONSENT 3. LARCENY OF CLOTHES 4. TAKING A CAR WITHOUT CONSENT.	ONE MONTH HARD LABOUR	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1 SEPTEMBER 1943 day of SEPTEMBER, 1943

W. G. Pennyon
1 Bn. K.S.R.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

Correspondence to be PINNED here.

Certified True Copy

D109962, Pte. Dumas, R.,
1 Bn., 1 Cdn Base Rft Depot.

Above copy

MM-37

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this third day of September, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of No. 1 Canadian Base Reinforcement Depot., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~it is not practicable to delay the trial for a superior officer.~~ "GHB"

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~I am unable to appoint~~ "GHB"

*Omit if not applicable.

CANADIAN ELECTION
29 MAY 1944

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lt.-Col.	F. D. Tweedie,	CAY R., 1 Bn., 1 CBRD

Members.

Rank.	Name.	Regiment.
Captain	D. S. Mills	CIC, 1 Bn., 1 CBRD
Captain	F. W. Smith,	RCA, 3 Bn., 1 CBRD.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed "G.Hedley Basher" Col.

Commanding 1 Cdn Base Reinforcement Depot.

Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D109962 Pte. Dumas, R. 1 Bn., 1 CBRD.	FIRST CHARGE AA Sec 15(1).	Not Guilty	Not Guilty	I confirm the findings and sentence of the Court. "G.Hedley Basher" Col. Commanding 1 Cdn. Base Reinforcement Depot.
	SECOND CHARGE AA Sec 15(1)	Guilty	Guilty	
			16 months detention.	
	FOR FULL DETAILS of CHARGE SEE CHARGE SHEET.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ? "
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) "G. Hedley Basher" (Signed) "F.D. Tweedie" Lt-Col.

Commanding 1 Cdn Base Reinforcement Depot — *Commanding Officer (e)*
Carlt & York Regt. 1 Bn. CBRD. — *Presidents*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

CHARGE SHEET

The accused No. D 109962, Private Dumas, Raymond, on the strength of "C" Company, No. 1 Bn., No. 1 Canadian Base Reinforcement Depot, a soldier in the Canadian Army Overseas, is charged with.

FIRST CHARGE
ARMY ACT
SEC 15 (1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field at about 0730 hrs 23 Jul 43, when undergoing field punishment, absented himself without leave from 1 Bn., 1 CBRD until 0630 hrs on 24 Jul 43.

SECOND CHARGE
ARMY ACT
SEC 15 (1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, at or about 2155 hours on 31 Jul 43 absented himself when in lawful custody from 1 Bn., 1 C.B.R.D. until apprehended at Stora at or about 1430 hours 30 Aug 43 by the Cdn Provost Corps.

(Total absence approximately 29 days 16 hours 30 minutes)

Dated this 3rd day of September, 1943.

"W P Bristowe" Lt-Col.
O.C., 1 Bn., 1 CBRD

To be tried by F.G.C.M.

3 Sep 43

" G Basher" Colonel
Commandant, 1 C.B.R.D.

"F.D.T."
4 Sep 43

MEDICAL CERTIFICATE
(K.R. Can) 558)

I certify that I have this morning examined No D-109962 Pte Dumas R of C Coy 1 Battalion, 1 Cdn Base Rft Depot, and in my opinion he is fit to undergo trial by Court Martial.

Station In the field

Date 4 Sep 43

"G.E. Duff Wilson, Capt" (RCAMC)
Medical Officer 1 Bn 1 CBRD

"F.D.T."
4 Sep 43

FORM OF PROCEDURE - F.S.C.M.

PAGE 1

Accused D109882 (Number) Pte. (Rank) DUMAS, Raymond (Christian Names) (Surname) No.1 Bn. 1 CBRD. (Unit)

Held in the Field in North Africa (Country) on 4 Sep 43 (Date)

	Rank	Name	Unit
PRESIDENT:	Lt-Col.	F.D. Tweedie	1 Bn. 1 C.B.R.D.
MEMBERS:	Capt.	D.T. Mills	1 Bn. 1 C.B.R.D.
	Capt.	F.W. Smith	3 Bn. 1 C.B.R.D.
JUDGE ADVOCATE: (If any)	------		
OFFICERS UNDER INSTRUCTION:	Capt.	W.S. Sansine	2 Bn. 1 C.B.R.D.
	Capt.	A.N. McLeod	2 Bn. 1 C.B.R.D.
	Capt.	P.E. Beauvais	2 Bn. 1 C.B.R.D.
	Capt.	J.E. Harry	2 Bn. 1 C.B.R.D.
	Lt.	E.C. Eddy	2 Bn. 1 C.B.R.D.
PROSECUTING OFFICER:	Lt. F.L. Davenport	Lawyer? Ans	No
DEFENDING OFFICER:	Lt. W. Burke	Lawyer? Ans	No

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs P 17(E), 22(A)).

The President, in closed court (R.P.22, fn 1), reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P.106)

The accused is (~~are~~) brought before the Court, and at 1515 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can)557 (See CMHQ Circular Letter 173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

~~President to accused:~~
Do you object to _____ as interpreter? Ans _____

The interpreter is duly sworn.

"F.D.T."

Do you object to _____ as shorthand writer? _____

The shorthand writer is duly sworn. (Forms of Oath on Page 'D')

The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (R.P.10)

President to accused:
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans No.

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (R.P.26-27 (Forms of Oath on Page 'D'))

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (A.A.46(8))

(If special plea/s is/are made for separate trial on one or more charges (Rs P 62(E), 108); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.130, R.P.57), record such pleas and evidence (if any) on separate sheet/s to be initialled by the President and attached to the proceedings.

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge	Guilty (Alternative to "F.D.T." Not Guilty)	Fifth Charge	
Second Charge	Guilty	Sixth Charge	
Third Charge		Seventh Charge	
Fourth Charge		Eighth Charge	

(For procedure on alternative charges, see R.P. 37, fn 2)

Further proceedings are recorded on Pages hereto attached.

PAGE 'A'

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. R.P.35(B) is complied with, by the President ascertaining that Accused understands the nature of the charge/s (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:
Q. Do you desire to make any statement of the circumstances, in reference to the charge/s? (R.P.37(B) Ans Yes

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon)

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (R.P.37(B)).

4. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (R.P.37(C). Ans Yes

(Statement, if any, is recorded on separate sheet, initialled by the President and attached hereto. No cross-examination)

5. President to accused:
Q. Do you wish to give evidence yourself or call any witnesses as to character? (R.P.37(C). Ans No

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto)

6. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (M.F.M.6), signed in the manner required by A.A.163(1)(n) and purporting to refer to the accused by his number(if any), rank, name and Corps, are produced to the Court, read, marked "A", and "B", initialled by the President and attached to the proceedings. (R.P. 46; Overseas R.O. 3131)

7. President to accused:
Q. Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)). Ans No. (No cross-examination)
(Record address, if any, on separate sheet, initialled by the President and attached hereto)

8. The Court is now closed to consider sentence. (Record on Page 2 of A.F.A.3)
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, R.P.46). Sentence should be dated)

The sentence is not announced to the accused by the Court.

"F. D. Tweedie" Lt- Col.
(Signature of President)

(For use when accused pleads 'Not Guilty' to all Charges)

(All printed matter not applicable to be struck out, and all alterations, erasures, and additions to be initialled by the President)

1. President to accused:
Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (R.P.39(A). Ans _____

2. The Prosecutor's opening address (if any) (R.P.39(B) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto. (See RECORD OF EVIDENCE on Page 'D')

3. The Prosecution is closed. (If submission that there is no prima facie case established, see R.P.40 fn1; R.P.70 fn 1)

4. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination (R.P.40 fn 2) or that he may, if he wishes, make an unsworn statement, upon which he can not be cross-examined. (R.P.40(D)(ii)(a)).

5. President to accused:
Q. Do you apply to give evidence yourself as a witness? Ans _____
Q. Do you intend to call any other witness in your defence? Ans _____
Q. Is he a witness as to character only? (R.P.40(B)) Ans _____

6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses see Rs P 40, 41 and 42)

8. The Court is now closed to consider the finding (Rs P 43 and 117)

9. The Court being re-opened, the accused is again brought before it, and the findings of 'Not Guilty' (if any) are pronounced and (if findings of 'Not Guilty' on all charges) the accused is released. R.P. 117(B)

10. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (M.F.M.6) signed in the manner required by A.A.163(1)(n) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings, (R.P.46; Overseas R.O.3131)

11. President to accused:
Q. Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of punishment? (R.P.46(D).
Ans _____ No cross-examination.
(Record address, if any, on separate sheet, initialled by the President and attached hereto)

12. The Court is now closed to consider the sentence (Record on Page 2 A.F.A.3)
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, (R.P.48); sentence should be dated.

The sentence is not announced to the accused by the Court.

_____
(Signature of President)

Page 'C'

(For use when there are pleas of 'Guilty' and 'Not Guilty'

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. R.P.35(B) to be complied with, in respect to 'Guilty' pleas, by the President ascertaining that accused understands the nature of the charge(s) (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P.37(B) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:

Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby or that you have not had sufficient time for preparing your defence? (R.P.39(A). Ans No.

3. The Prosecutor produces and [illegible] (fn 4) and the evidence for the Prosecution are recorded in separate notes, initialled by the President and attached hereto. (See Record of Evidence on Page [illegible])

4. The Prosecution is closed. (If prosecution has no prima facie case established, see R.P. 40 fn 1; R.P. 79 fn 2).

5. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination. (R.P.40, fn 2) or that he may, if he wishes, make an unsworn statement upon which he can not be cross-examined. (R.P. [illegible])

6. President to accused:
Q. Do you apply to give evidence yourself as a witness? Ans
Q. Do you intend to call any other witness on your own behalf? Ans
Q. Is he a witness as to character only? (R.P.40(B) Ans

7. The evidence for the defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

8. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (If order is to be varied, see R.P.40, 41 and 42)

"Y.D.T." 9. The Court is now closed to consider the finding. (R.P.43 and 117) (Record Finding on Page 2 of A.F. [illegible])

10. The Court being re-opened, the accused is again brought before it, and the findings of 'Not Guilty' (if any) are pronounced. (R.P.117(3))

11. The charges, to which the accused pleaded 'Guilty' are read to the accused.

12. President to accused:
Q. Do you desire to make any statement of any circumstances in reference to the charge(s) to which you have pleaded 'Guilty'? (R.P.37(B) Ans

(Statement (if any) not shown is recorded on separate sheet, initialled by the President and attached hereto. Accused is to be subject to cross-examination thereon)

13. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If not such Summary, it is necessary for determination of whether there is sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings) R.P.57(2).

PAGE 'C' CONTINUED

14. ~~President to accused:~~
Q. Do you wish to make any statement in mitigation of punishment? (R.P.37(C) Ans _____
No cross-examination.
(Statement (if any) is recorded on separate sheet, initialled by the President and attached hereto)

15. President to accused:
Q. Do you wish to give evidence yourself or call witnesses as to character? (R.P.37(C)) Ans _____

"F.D.T." 16. Statement of Character and Service (A.P.B.296) and Field Conduct Sheet (M.F.M.6), signed in the manner required by A.A.163(1)(h) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings. (R.P.46; Overseas R.C.3131)

17. President to accused:
Q. Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of punishment? (R.P.46(D). Ans _____ No Cross-examination.

(Record address (if any) on separate sheet, initialled by the President and attached hereto)

18. The Court is now closed to consider the sentence. (Record on Page 2 of A.F.A.3)

(Punishments, A.A.44; R.R.(Can.56) 565; one sentence only awarded, R.P.48. Sentence should be dated)

~~The sentence is not announced to the accused by the Court.~~

"F.D. Tweedie" Lt.-Col.
(Signature of President)

Statement of the accused of the circumstances in reference to the charges.

1. On 23 Jul 43 between 1330 and 1400 hrs I went away because I had permission of the Cpl of the Field Punishment Camp to go for a swim. That night I went to the American Camp to see the picture. After that I came back to the camp and I found Cpl Lacoute and Sgt Savard both asleep so I didn't want to wake them up to report myself. After that I went to the Coy orderly room and I found the clerk and the CSM both asleep so I waited until the morning and Cp Lacoute had the order from Sgt Savard to take me up to the guard room and then I passed in fron of the Coy Commander and he remanded me to the CO. The C.O. remanded me for Court Martial, so I thought the charge wasn't big enough to put me up for Court Martial, so I ran away from the guard room until the Provost Corps caught me. I did not want to desert the army, I only wanted to go for a while and them come back to the camp and have a charge to put me up for Court Martial that time. I went away because I was tired and had the idea to go in action with my friends.

The accused had pleaded guilty to the first charge. In view of the above statement however, the Court, under 37 (D) R.P., alters the record and enters a plea of "Not Guilty" to the first charge and orders that the trial on the first charge be proceeded with.

The prosecuting officer informs the Court that both material witnesses to the first charge are now in the field and are not available and that he cannot give any information as whether or not they could be made available and if so when.

The defending officer moves that the first charge be dimissed for lack of evidence
The Court considers the motion and allows the motion and dismisses the first charge.

He joined the army in Jul 41 to fight anywhere in the world and although he has been AWL several times he has always come back on his own.

4 Sept 43

"T.D.Tweedie" Lt-Col
President

SUMMARY OF EVIDENCE

IN THE CASE OF:
NO. D-[illegible]362 PTE DUMAS, RAYMOND, ON THE STRENGTH OF "C" COY, 1 BN, 1 C.B.R.D., A SOLDIER OF THE CANADIAN ARMY OVERSEAS.

BY DIRECTION OF THE COMMANDING OFFICER, THE SUMMARY OF EVIDENCE IS TAKEN ON OATH.

FIRST WITNESS — FOR THE PROSECUTION.

NO. C-80027 L/CPL. CARTER, H.K., ON THE STRENGTH OF "B" COY, NO. 1 BN, NO. 1 C.B.R.D., ATTACHED TO H.Q. COY FOR REGIMENTAL POLICE DUTIES, HAVING BEEN DULY SWORN, STATES:

"I WAS IN CHARGE OF THE GUARD ROOMS ON 31 JUL 43. AT 2150 HRS I CHECKED THE PRISONERS AND FOUND ALL PRESENT. WHEN I RETURNED TO NO. 1 GUARD HOUSE AT 2155 HRS, PTE DUMAS ALONG WITH TWO OTHER PRISONERS WERE MISSING. I IMMEDIATELY HAD THE GROUNDS SEARCHED BUT NO TRACE OF THE PRISONERS COULD BE FOUND. I NOTIFIED THE ORDERLY OFFICER OF THE DAY, THEN.

"L/Cpl H K Carter"

THE EVIDENCE IS READ TO THE WITNESS.

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS.

SECOND WITNESS — FOR THE PROSECUTION

NO. K-67685 L/CPL MORAN, C.E., ON THE STRENGTH OF H.Q., COY, NO. 1 BN, NO. 1 C.B.R.D., ATTACHED FOR DUTY TO REGIMENTAL POLICE, HAVING BEEN DULY SWORN, STATES:

"I WAS IN CHARGE OF THE GUARD ROOM FROM 0800 HRS TO 1600 HRS ON THE 30TH AUG. 43, WHEN AT APPROXIMATELY 1525 HRS, PTE DUMAS WAS BROUGHT TO THE GUARD ROOM UNDER ESCORT BY A MEMBER OF THE CDN PROVOST CORPS. I IMMEDIATELY PLACED HIM IN CLOSE CUSTODY. DURING THE PERIOD FROM 31 JUL 43 TO AUG. 30TH, 43, HE HAD NOT REPORTED TO THE GUARD ROOM.

"L/Cpl Moran C E"

THE EVIDENCE IS READ TO THE WITNESS.

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS.

I, CAPT. J.G. ROGERSEN, ON THE STRENGTH OF 1 BN, 1 C.B.R.D., SUBMIT IN EVIDENCE CERTIFICATE IN ACCORDANCE WITH P.C.2797 OF 10 APRIL 42, SIGNED BY SGT LE CONTE, A[illegible]073, N.C.O. IN CHARGE DETACHMENT, CANADIAN PROVOST CORPS, REGARDING THE ACCUSED.
(EXHIBIT "A" HERETO ATTACHED.)

I ALSO SUBMIT DECLARATION OF A COURT OF INQUIRY RELATING TO THE ABSENCE OF THE ACCUSED.
(EXHIBIT "B" HERETO ATTACHED.)
THE EVIDENCE IS READ TO THE ACCUSED.
THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS, make any comment.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:

DO YOU WISH TO MAKE ANY STATEMENT OR TO GIVE EVIDENCE ON OATH? YOU ARE NOT OBLIGED TO SAY ANYTHING OR GIVE EVIDENCE UNLESS YOU WISH TO DO SO, BUT WHATEVER YOU SAY OR ANY EVIDENCE YOU GIVE WILL BE TAKEN DOWN IN WRITING AND MAY BE GIVEN IN EVIDENCE.

SUMMARY OF EVIDENCE

IN THE CASE OF:

NO. C-000587 LCpl ADAMAN, C.E., ON THE STRENGTH OF H&S, COY

A BN, 4 C.E.F.M.D., A BOARDING OFFICE CANADIAN ARMY OVERSEAS.

BY DIRECTION OF THE COMMANDINGOFFICER, THE SUMMARY OFEVIDENCE
WILL BE TAKEN DOWN IN WRITING AND MAY BE GIVEN IN EVIDENCE.
YOU ARE NOT OBLIGED TO SAY ANYTHING OR GIVE EVIDENCE UNLESS YOU
WISH TO DO SO, BUT ANYTHING YOU SAY OR ANY EVIDENCE YOU GIVE
MAY BE TAKEN DOWN IN WRITING AND MAY BE GIVEN IN EVIDENCE.

DO YOU WISH TO MAKE ANY STATEMENT OR TO GIVE EVIDENCE ON OATH?

THE ACCUSED HAS CAUTIONED AS FOLLOWS:

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS.
THE EVIDENCE IS HEAD TO THE ACCUSED.
(EXHIBIT "B" HERETO ATTACHED.)
PRESENCE OF THE ACCUSED.
I ALSO SUBMIT DECLARATION OF A COPY OF INFORMATION REFERRING TO THE

(EXHIBIT "A" HERETO ATTACHED.)
ACCUSED.
CHARGE DETACHMENT, CANADIAN PROVOST CORPS, REFERRING THE
OF LO ARMIE 45, SIGNED BY 2ND LE CORPE ARLOES, N.C.O. IN
SUBMIT IN EVIDENCE CERTIFICATE IN ACCORDANCE WITH P.C.S.5575
I, CAPT. D.C. ROSEMARY, ON THE STRENGTH OF A BN, C.E.F.M.D.,

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS.

THE EVIDENCE IS HEAD TO THE \REPRESENTATIVE\ WITNESS.

REPORTED TO THE GUARD ROOM.
DURING THE PERIOD FROM 2F JULY 43 TO AUG. 30TH, 43, HE HAD NOT
CDN PROVOST CORPS. | IMMEDIATELY ARRESTED HIM IN CLOSE CONFORM.
HAS BROUGHT TO THE GUARD ROOM UNDER ESCORT BY A MEMBER OF THE
ON THE 30TH AUG. 43, WHEN AT APPROXIMATELY 1250 HRS, PTE DUNCAN
BY AND IN CHARGE OF THE GUARD ROOM FROM 0800 HRS TO 1600 HRS

PORTION, HAVING BEEN DULY SWORN, STATES:
NO. 4 BN, NO. 4 C.E.F.M.D., ATTACHED FOR DUTY TO REGIMENTAL
NO. K-63682 LCpl ADAMAN, C.E., ON THE STRENGTH OF H&S, COY,

WITNESS

SECOND FOM THE PROSECUTION

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS.

THE EVIDENCE IS HEAD TO THE WITNESS.

THE ORDERLY OFFICER OF THE DAY, THEN.
BUT NO ENTRY OF THE ENVIRONMENS COULD BE FOUND. | NOTIFIED
ENVIRONMENS WERE MISSING. | IMMEDIATELY HAD THE GUARDS REMARCHED
TO NO.1 GUARD HOUSE AT 2120 HRS, PTE DUNCAN ALONG WITH TWO OTHER
I CHECKED THE ENVIRONMENS AND FOUND ALL PRESENT. WHEN I RETURNED
"B" ARE IN CHARGE OF THE GUARD ROOMS ON 3F JULY 43. AT 2120 HRS
PORTION DUTIES, HAVING BEEN DULY SWORN, STATES:
NO. 4 BN, NO. 4 C.E.F.M.D., ATTACHED TO H&S, COY FOR REGIMENTAL

WITNESS

TIMES FOM THE PROSECUTION.

IS TAKEN ON OATH.
BY DIRECTION OF THE COMMANDINGOFFICER, THE SUMMARY OFEVIDENCE

THE ACCUSED DECLINES TO MAKE A STATEMENT AND RESERVES HIS DEFENCE, SAYING, "I HAVE NOTHING TO SAY JUST NOW."

THE ACCUSED DECLINES TO CALL WITNESSES ON HIS BEHALF.

I CERTIFY THAT THE FOREGOING SUMMARY OF EVIDENCE CONSISTING OF 2 PAGES, WAS TAKEN DOWN BY ME IN THE PRESENCE AND HEARING OF THE ACCUSED, AND THAT THE RULES OF PROCEDURE, 4(C)(D)(E)(F) AND (G) HAVE BEEN COMPLIED WITH.

"J.G. Rogerson"
CAPT.,
1 BN, 1 C.B.R.D.
OFFICER DETAILED TO TAKE SUMMARY OF EVIDENCE.

IN THE FIELD,
31 AUG. 43

SUMMARY OF EVIDENCE
in the case of

No D-109962 Private Dumas, Raymond, on the strength of "C" Company, No 1 Battalion, No 1 Canadian Base Reinforcement Depot, a soldier in the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

The accused having been asked if he had any objection to Lieut J Guay "C" Company, 1 Bn 1 CBRD acting as interpreter in these proceedings and the accused having no objections, Lieut Guay was sworn in as interpreter by Lieut. R.M. Bell "E" Company 1 Battalion 1 CBRD.

First Witness
for the prosecution

E 23597 Sgt Savard, D.H. on the strength of "C" Company, No 1 Battalion, No 1 Canadian Base Reinforcement Depot, having been duly sworn states:-

"I am platoon sergeant of No 4 Platoon. The accused whom I now recognize is in my platoon. At 0730 I called the roll but the accused failed to answer his name. I called his name again but there was no answer. I then went into the tent lines and to his tent looking for him, but the accused could not be found. I called the roll again at 1500 hrs and at 2200 hrs and the accused was still absent. I reported the absence of the accused to the Company Orderly Room when I discovered him absent at 0730 hrs. Prior to absenting himself, the accused had been placed under field punishment and at the time the accused broke out of barracks he was still under field punishment. That is why I ordered Corporal Lecompte to place the accused under close arrest if he saw him.

"D.H. Savard Sgt"

The evidence is read to the witness.
The accused declines to cross-examine the witness.

Second Witness
for the prosecution

No. D 57265, Cpl Lecompte J M, on the strength of "C" Company No 1 Battalion No 1 Canadian Base Reinforcement Depot, having been duly sworn states:-

"At approximately 1200 hrs 23 Jul 1943, Sgt Savard advised me that Pte Dumas, the accused whom I now recognize, was absent and that if I saw the accused I was to place him under close arrest. I was present at the tattoo roll call at 2200 hrs and the accused was not there and was reported absent. Sgt Savard called the roll and I heard the accuses' name called but the accused failed to answer. In the morning of 24 Jul 43 at 0600 hrs I called the roll and the accused answered his name. The accused was in his tent at reveille roll call at 0600 hrs. I then placed the accused under close arrest.

"Cpl Lecompte J M"

The evidence is read to the witness.
The accused declines to cross examine the witness.

The accused was cautioned as follows:-
Do you wish to make any statement or to give evidence on oath?
You are not obliged to say anything or give evidence unless you wish to do so, but watever you say or any evidence you give will be taken down in writing and may be given in evidence.
The accused declines to make a statement and recervee his defence saying " I have nothing to say just now".
The accused declines to call witnesses on his behalf.

I certify that the foregoing Summary of Evidence consisting of 2 pages was taken down by me in the presence and hearing of the accused and that the rules of procedure 44(c)(d) (e) (f) and (g) have been complied with.

"R.M. Bell, Lieut"
1 Bn 1 CBRD
Officer detailed to take summary of Evidence

In the field
28 July 1943

Exhibit "A"

SCHEDULE "F" "J.M.R."

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 OF 10 APR 42

I CERTIFY that No. D-109962 Rank Pte Name Dumas R

Unit 1st Battaltion CBRD was arrested at Stora North Africa(place)

at 1439 (hour) on 30 Aug 43 (date) and that at the time of his arrest he was wearing (military uniform)# ~~(civilian clothes)~~ #

Signature of Provost-Marshal, Assistant Provost-Marshal) or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer,warrant) officer, or non-commisioned officer in charge of the) detachment of the Canadian Provost Corps, Canadian Army, into whoe custody the above named person was taken on arrest. " _____Sgt"

Strike out part inapplicable.

"F.D.T."
4 Sep 43

EXHIBIT "B"

Army Form B 115

REcord of the Declaration of a Court of Inquiry on the illegal absence of a Soldier

RECORD of the Declaration of a Court of Inquiry assembled at in the field on the 22nd day of Aug 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of
No. D-109962 Pte Dumas R. C Coy 1 Bn 1 Cdn Base Rft Depot

DECLARATION

The Court declare, that No D109962 Pte Dumas R. C Coy 1 Battalion, 1 Cdn Base Rft Depot illegally absented himself without leave 2155 hrs in the field on the 31 Jul 43 and that on the 21st day of Aug he was deficient and that he is still deficient of the following articles:

100% Value	75% Value
£13 11 7	£ 10 2 6

Names of President and Members
Capt. J.H. Chicoine President
Lt. F.M. Dussault Member
A/CSM J.G. Rochon Member

Signature of Commanding Officer "W.P.Bristowe"
Comd 1 Bn 1 CBRD

Certified true Copy

Signature of Officer having custody of the Original Record

"F.D.T."

M.F.B. 355
22M—5-41 (372-3)
H.Q. (772-39-620
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	"C" Company Regiment (or unit)
D 109962	Private	Dumas, R	1 Bn. 1 C.B.R.D.

1. The following is a fair and true summary of the entries in the ~~Conduct sheets~~ Service and General Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. Sec 15 (1)	13 times	22 times
For A.A. Sec 40	5 times	8 times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~ K.J.E.

or,

~~There are no entries in the conduct sheets of the accused.~~ K.J.E.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~ K.J.E.

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or

~~The accused at the present time is under sentence for beginning on the~~ K.J.E.

day of

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and two days in military ~~Air Force~~ custody, making a total of two days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~recruiting~~ attestation paper is 20 years 10 months

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 24 July 1941

7. ~~The service which the accused~~ is allowed to reckon towards discharge is K.J.E.

8. ~~The accused is entitled to reckon~~ K.J.E. service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force award~~ military (or is in possession of or entitled to). ~~State any air force decoration or reward.~~ N/A

10. ~~If the accused is a warrant officer,~~ K.J.E. ~~the accused before he was made a warrant officer last held~~ ~~Air Force~~ the regimental rank of

"A" "F.D.T."
8 Sep 43

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number D109962 Rank Private Unit Name Dumas, R. of 1 Bn., No 1 CBRD Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
Civil Court	11 Dec 1942	1 Larceny of bicycle 2 Taking car without consent 3 Larceny of clothes 4 Taking a car without consent.	one Month hard labour	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1 September 1943 day of September, 1943

"K.J.Cannon" Capt
1 Bn 1 CBRD

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

No D109962 Name Dumas R Sqn., Battery, or Company Corps Inf Date of enlistment 24 July G.C. Badges Service or Proficiency Pay NA M.F.M. 6 (A.F. B.122) 40/P & /8136 (2965)

Date of last entry in Company Conduct Sheet NA No. and date of last drunk NA Period not reckoning towards freedom from extra fine NA Sheet No. 1 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24Jan42	Pte		AA Sec 15(1) AWL from 2359 hrs 24Jan42 until 1155Hrs 26Jan42	Cpl Charbon	7 days CB	27 Jan42	Maj E Allen	FR&I 2 days pay
Field	30Jan42	Pte		AWL from 0800 hrs 30 Jan 42 till 0240 hrs 1 Feb 42	Cpl Charbon	7 days CB	3 Feb 42	Maj E Allen	2 days pay FR&I
Field	30Jan42	Pte		AWL from defaulters parade	Sgt Petit Sgt Legunier	2 days CB	3 Feb 42	Maj E Allen	Escort 1.s0 FR&I
Field	1Feb42	Pte		AWL from defaulters parade	Sgt Brossian	2 days CB	3 Feb 42	Maj E Allen	
Field	2Feb42	Pte	1	AWL from 2359 hrs 2 Feb 42 till 1700 9 Feb 42 (Absent 1day17hrs 1Min) Documentary					
Field	3Feb42	Pte		(2) Sec 40 Absent from place of parade	Sgt Clairoux	14 days detn	2 Feb 42	Lt-ColHoward	Forf 2 days pay FR&I 14 days pay detn forf.

Certified to be a true copy of the Document held in my possession "RJPicard" Capt Adjt 1Bn 1 CBRD(P.T.O)
"F.D.T." 4 Sep 43 Officer in official charge of documents

Certified to be a true copy.
"R.J.Picard Capt.
Officer having official custody of documents

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9Feb42	Pte		(3) AWL from defaulters parade (4) AA Sec 40 Appearing on parade with long hari AA Sec 15 (1)	Sgt Lafrance CSM Guilletts				
Field	8Feb42	Pte		AWL from PT parade about 30 min		1 days pay	11 Feb 42	LtCol Redman	
Field	28Feb42	Pte		AA Sec 15 (1) AWL from 2359 hrs 28 Feb 42 until 0930 hrs 11 Mar 42 (Absent 10 days 9 hrs 31 min)	Cpl Charboneau	21 Days Detn	12 Mar 42	Lt Howard	Forf 11 days pay Cost escort 1.20
Field	5Apr42	Pte		AA Sec 40 failed to obey order given by superior officer	Sgt Jodoin	4 days CB	7 Apr 42	E Allen Maj	
Field	3May42	Pte		AA Sec 15(1)AWL (21 hrs 41 min)	Cpl Moss	7 days CB	6 May 42	E Allen Maj	Forf 2 days pay
Field	2Aug42	Pte		AA Sec 15(1)AWL from 1800 hrs 2Aug 42 until 2130 hrs 2Aug 42 (Absent 3 hrs 30 min)	Cpl Moreau	4 days FP 4 days pay	Aug 4,42	LtCol Richman	
Field	18May42			AA Sec 15(1) AWL from 2130 18May42 to 2245 hrs 28 May 42	L/Cpl Moffet Sgt Squires	15 days pay	29 May 42	LtCol Howard	Forf 11 days pay

M.F.M. 6
(A.F. B.122)
40/P & /8136 (2965)

No. D109962 Name DUMAS, R. Sqn., Battery, or Company Corps Inf. Date of enlistment 24 Jul 41 G.C. Badges Service or Proficiency Pay N.A.

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15 Sep 42	Pte		A.A. Sec.15(1) AWL from 2200 hrs 15 Sep 42 till 0600 hrs 16 Sep 42 (Absent 8 hours)	Cpl.Buswell	14 days C.B.	18 Sep 42	Lt-Col. Redman	1 Days auto forf FR&I149(1
Field	30 Oct 42	Pte		(1) AA Sec 15(1) AWL from 2200 hrs 30 Oct 42til 1900 hrs 31 Oct 42 (absent 20 hrs)(2) AA Sec.15(1) AWL from2300 hrs 31 Oct 42 to 1500 hrs 4 Nov 42 (3 days 16 hrs)		14 days pay 7 days CB	6 Nov 42		6 days pay FR&I 149(1)(a)
Field	30Oct42	Pte		(1)Larceny of bicycle		1 mon. hard labour.	11 Dec 42		Trial-civil court. Forf.1
	30 Oct42	Pte		(2) Taking a car without consent					days pay 149
	2 Nov42	Pte		(3) Larceny of clothes.					(1)(c)(1) Forf
	2 Nov 42	Pte		(4) Taking a car without consent					31 days pay

CERTIFIED TRUE COPY
"R.J. Picard Capt & Adjt
Officer having official charge of documents

149(1)(b)
Total 32 days

(P.T.O.)

CERTIFIED TO BE A TRUE COPY

"R.J. Picard"

1 Bn 1 Cdn Base Reinf Depot
Officer having official Custody
of Documents.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16 Nov 42	Pte.		(1)AA Sec 40 - Failed to get up at reveille when warned to do so (2) AA Sec 40 - 5 min late on parade	S/Sgt Mathier, G. - Cpl Clarke M.	3 days CB	18 Nov 42		
Field	21 Nov 42	Pte.		AA Sec 40 Cond to the prej. etc. Failed to report on guard.	Cpl. Minneault	7 days CB	23 Nov 42		
Field	25 Jan 43	Pte.		(1)AA Sec 15(1) AWL from 0930 hrs 25 Jan 43 until 1145 hrs 25 Jan 43 (Absent 2 hrs 15 min)(2)AA Sec 40 Neglected to obey order given by superior officer.	Sgt.Morran V. Cpl. Durocher, A.	14 days CB	26 Jan 43	Maj.J. Heberts	
Field	26 Jan 43	Pte		AA Sec 40 Neglected to apply face piece during the gas period.	Cpl.Moltais, PA Pte Labroise,M.	7 days CB	27 Jan 43	Lt.C.Gey.	
Field	13 Feb 43	Pte		AA Sec 15(1) AWL from 2000 hrs 13 Feb 43 til 2130 hrs 13 Feb 43 (1 hr 30 mins.)	Cpl Mireault Cpl Aube M	7 days CB 7 days pay	16 Feb 43	Lt.ColGarneau	

CERTIFIED A TRUE COPY
"R.J." Picard
1 Bn. 1 Cdn Base Reinforcement Depot
Officer having official custody of
Documents.

M.F.M. 6
(A.F. B.177)
40/P & /5136 (2565)

No. D10996 Name DUMAS, R. Sqn., Battery, or Company — Corps Inf. Date of enlistment 24 Jul 43 G.C. Badge — Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A — No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No. 3 — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6 Mar 43	Pte		AA Sec 15(1) AWL from 2300 hrs 2 Mar 43 til 0900 hrs 7 Mar 43 (Absent 10 hrs)	1/Cpl. Thifeault, J	7 days CB 1 days pay	20 Mar 43	Lt-Col. T.C. Gauvieau.	
Field	20 Jun 43	Pte		AA Sec 15(1) AWL from 0600 hrs 20 Jun 43 til 2359 hrs 22 Jun 43 (absent 2 days 17 hrs 9 min)	L/Cpl. Moquin Sgt. Logan	3 days pay 7 days CB	23 Jun 43	Lt-Col. W.P. Bristowe	
Field	26 Jun 43	Pte		AA Sec 15(1) AWL from 2200 hrs 26 Jun 43 until 2359 hrs 27 Jun 43 (Absent 1 day 2 hrs)	Sgt. Lasace	21 days pay	2 Jul 43	Lt-Col. W. P. Bristowe	Forf 2 days pay FR&I 149(1)(a) AA 46(3)(c)
Field	11 Jul 43	Pte		(1) AA Sec 15(1) AWL from 1500 hrs 11 Jul 43 til 2200 hrs 11 Jul 43 (Absent 7 hrs) (2) AA Sec 15(1) AWL from 2200 hrs 12 Jul 43	Sgt. Carter, Sgt Clarioux	27 days FP	13 Jul 43	Lt-Col.	Forf 2 days pay FR&I 149
"B"	4 Sep 43			"F.D. 1"					

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				0630 hrs 13 Jul 43 (Absent 8 hrs 30 mins)					
				CERTIFIED TO BE A TRUE COPY "R.J. Picard" Capt. 1 Bn. 1 CBRD Officer having Offical Custody of Documents.					

LIST OF WITNESSES

For the prosecution. No.C.80027 L/Cpl. Carter on the strength of R Company 1 Bn. 1 C.B.R.D. in the Field
No.K.67685 L/Cpl. Moran, G.E. on the strength of "H.Q." Company, 1 Bn. 1 C.B.R.D. in the Field.

For the Defence Nil

LIST OF EXHIBITS

Exhibit A.
Certificate in accordance with P.C. 2797 of 10 Apr 43
Exhibit B
Record of the Declaration of Court of Inquiry.

STATEMENT BY THE ACCUSED

I certify having received free of charge, a copy of the Summary of Evidence, List of Witnesses, List of Exhibits and Charge Sheet.

I desire the services of an officer to represent me at the trial.

"R. Dumas" D-109962

Evidence and Charge Sheets (if necessary) to be PINNED here.

B.

Certificate of President as to proceedings.

I certify that the above Court assembled on the 4th day of Sep 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

"FDT" *~~[illegible]~~

*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 4th day of Sep 19 43.

"F.D. Tweedie" Col.

President of the Court Martial.

C.

Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D.

Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~[illegible]~~ "GHB"

Signed this 5th day of Sep 19 43.

To be promulgated on parade.

"G.Hedley Basher" Col.

Confirming Officer. Comd. 1 Cdn Base Reinforcement Depot.

Promulgated on parade and extracts taken in the case of D109662 Pte. Dumas, R. "C" Coy. 1 Bn. 1 C.B.R.D.

(a) (Dated) 6 Aug 43 (Signed) "W.P.Bristowe" Lt-Col. C.O. 1 Bn. 1 CBRD.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

HV.75

PTE DUMAS R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D109962 Private Raymond Dumas

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

~~At present under sentence of~~ ~~imprisoning on remand~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for SIX (6) months.

(Sgd) ..... 13 Feb 45 (Sgd) A.J. Poulin Major

Judge-Advocate, if any. Date awarded. President. (RP 45(2))

(See back of Convening Order as to assembly and dispatch of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~(1)

(1. AA 57A. Delete if not used.)

FEB 19 1945 (Sgd) N.K. Wilson Brig

Date COMMANDER

Commanding 1 CDN BASE RFT GROUP

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D 109962 Pte Dumas R R22Regt	20 Feb 45	S.E. Evans Lt 2 Con Reallocation Centre CA (E)

4 Cdn Rft Bde

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4V.75

FIELD GENERAL COURT-MARTIAL

CFA66 (To face p 1 of AFA31) 40/P.R.(S.)1698 (40/10)

4/38B

Convened by Order of A Col 2 I Flyn OBE Comd 4 Cdn Sub Rst Bde dated 12 Feb 1945

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Numb.	(a) Permt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D109962	Private	Raymond	Dumas	4 Cdn Sub Rst Bde

PROCEEDINGS REVIEWED

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

7 Apr 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date) 13 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 21-103

A1. The President, Members, waiting Member, ~~Judge-Advocate~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns KRs. For guidance on procedure when a variation in this form arises, see Form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for births and instrs on how to record addresses, evidence, etc, which occurs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~and~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~duly~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~duly~~ brought before the Court. At 0945 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~fit~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 552. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~the interpreter ?~~ and ~~The Interpreter to swear~~ Do you object to C 22036 Cpl Levy PA as shorthand writer ? Ans No Sir. The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ? Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, ~~Judge-Advocate~~ and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs composing the Court, etc:

President	Major	A.J.J. Poulin	4 Cdn Sub Rst Bde
Member	Capt	A Arnold	4 Cdn Sub Rst Bde
Member	Lieut	C.S. Lalonde	4 Cdn Sub Rst Bde
Judge-Advocate			
Prosecutor	Capt	R.R. Brown	4 Cdn Sub Rst Bde
Defending Offr	Lieut	J. Riva	4 Cdn Sub Rst Bde

Questions by President: Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused D109962 Pte Dumas R before arraignment make(s) (no) objection(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 112), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 27), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~duly~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records their pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 3. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

N86

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*ii*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(1)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(1), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused: Do you wish to make a statement? Ans N O S T A T (4)
(*1. RP 37(E). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.~~ The Court decides (not) to advise accused to change ~~his~~ (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and ~~he (they)~~ ~~change(s) his (their) plea(s) on~~ charge(s). Part I of the Schedule is amended accordingly.(1)
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "C", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (ii).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans ..... Do you intend to call witnesses on your behalf?
Ans ..... Are they witnesses as to character only? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 66(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans N O S T A T
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s) purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(f) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex ..... respectively.(2)
(*1. MFB 353 or MFB 294. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans N O S T A T (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence (s). The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(1)
(*1. Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas AO 309, 2322, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(c), 44(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 547. As to assembly and dispersal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED, NUMBER D109962 PRIVATE RAYMOND DUMAS OF 4 CDN FWD RFT BN, 1 CDN BASE RFT GROUP, A SOLDIER OF THE CANADIAN ARMY OVERSEAS, ALLIED ARMIES IN ITALY, IS CHARGED WITH:

1ST CHARGE
A A Sec 15 (1)

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, in Italy, absented himself without leave from 1245 hrs 8 Jan 45 until apprehended at 0200 hrs 30 Jan 45 (21 days 13 hrs 15 mins).

L J Flynn

(L J Flynn) Lt-col
Commanding

In the Field
12 Feb 45

4 Cdn Fwd Rft Bn - 1 Cdn Base Rft Group - CMF

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

L J Flynn

(L J Flynn) Lt-col
Commanding

In the Field
12 Feb 45

4 Cdn Fwd Rft Bn - 1 Cdn Base Rft Group - CMF

FIELD GENERAL COURT-MARTIAL

CFA26 (1st Rev of AFA2)
400-FA26/1-97 (35468)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) eppmt, A/rank or A/eppmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D1.09962	Private	Raymond	DUMAS	4 Cdn Fwd Rft Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 12 Feb 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	JLJ Poulin	4 Cdn Fwd Rft Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	A Arnoldi	4 Cdn Fwd Rft Bn
Lieut	CF Lalonde	4 Cdn Fwd Rft Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	D MacDonald	4 Cdn Fwd Rft Bn

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

(L J Flynn) (Signed personally. RP 105 fn 2) Lt-col (Rank.)

Date 12 Feb 45

Commanding 4 Cdn Fwd Rft Bn - 1 Cdn Base Rft Gp
Convening Officer. CMF

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

FEB 13 1945

K.R. (CAN) Para 557

I hereby certify that I have this morning examined No D109962

PTE DUMAS, R. on strength 4 Cdn

Rft Bn, 1 C B R Gp, and in my opinion he is FIT ~~UNFIT~~ to undergo

trial by Court Martial

Capt

Medical Officer 4 Cdn Rft Bn.

PLEA IN MITIGATION IN THE CASE OF D109962 PRIVATE DUMAS R

Private Dumas is 22 years of age. His record of service is very good. He has been in the army since 1941. He has served in Africa for a period of 16 months and he has been in Italy since September of 1944. He has been wounded on the 2nd of December 1944 and has been in hospital at Convalescent Depot for a period of 1 month and a-half. This is the only time he was away from his unit. The reason why he went absent without leave is because since he has been in Italy he has been asking for a leave and was never granted one. His conduct also has always been good and if he is given a chance he will still be a good soldier.

Exhibit C

Summary of Evidence in the case of D109962 Private Raymond DUMAS of 4 Cdn Fwd Rft Bn 1 C B R G who is charged WCAS absenting himself without leave A A 15 (1).

By direction of the Commanding Officer the evidence is taken upon oath.

1st Witness: M16222 Sgt Tamblyn J W, 4 Bn 1 C B R G, having been duly sworn states:

I am M16222 Sgt Tamblyn J W, PE Sgt with "A" Coy 4 Bn 1 C B R G.

I recognize the accused as Pte DUMAS R of R 22 R.

At approx 1330 hrs 7 Jan 45 I warned the accused Pte DUMAS R of the R 22 R that he would be proceeding on draft to his field unit the R 22 R the following morning the 8 Jan 45.

At approx 0930 hrs 8 Jan 45, I saw the accused Pte DUMAS of the R 22 R aboard a truck bound for his unit the R 22 R. Pte DUMAS R left 4 Bn on draft for his unit.

J W Tamblyn Sgt

(M16222 Sgt Tamblyn JW)

The accused declines to cross-examine this witness.

2nd Witness: A3885 Pte Knowles, H, 4 Bn 1 C B R G having been duly sworn states:

I am A3885 Pte Knowles, H, file clerk 4 Bn Orderly Room.

I produce a certified true copy of an X-List R 22 R Part II Order No. 15 dated 2 Feb 45 purporting to relate to the accused and showing that D109962 Pte DUMAS R absented himself without leave from 1245 hrs 8 Jan 45(produced, shown to accused, marked Exhibit "A" and attached hereto).

I further produce Certificate under A A 163 (1) (jj) purporting to relate to the accused and showing that D109962 Pte DUMAS R was arrested at 0200 hrs 30 Jan 45 (produced, shown to accused, marked Exhibit "B" and attached hereto).

H. Knowles

(A3885 Pte Knowles H)

The accused declines to cross-examine this witness.

Question to the Accused:

Do you wish to make a statement or to give evidence upon oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but anything you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by the Accused: I have nothing to say Sir.

I certify that R P 4 (c) (d) (e) and (f) have been complied with.

I certify that this summary of evidence was taken down by me in the presence and hearing of the accused.

R R Brown

(R R Brown) Captain
Officer taking Summary

In the Field
12 Feb 45

Certified to be a true copy from Regimental Books in my custody.

A. E. Davidson

(A E Davidson) Capt & Adjt
4 Cdn Fwd Rft Bn - 1 Cdn Base Rft Group - CMF

Last Order No. 14 31 Jan 45	"X" LIST ROYAL 22e REGIMENT Part II Orders issued by CANADIAN SECTION, 2nd ECHELON, AFHQ	This Order No. 15 2 Feb 45

"A" OFFICERS

1. COURSES

(a) Proceeded on Course (No. 12 Tactics) 29 Jan 45 and att to CMTC Benevento fap (29 Jan 45 to 17 Feb 45)
Lieut C. Major

(b) Proceeded on Course (No. 12 Mortar) 29 Jan 45 and att to CMTC Benevento fap (20 Jan 45 to 17 Feb 45)
Lieut F.L.J.P.R. Lafleche

"B" OTHER RANKS

2. STRENGTH INCREASE

(a) T.O.S. X-3 List from Royal 22e Regiment

G53955	Pte	Albert,	A.	30 Jan 45
E108015	Pte	Bernard,	L.P.	26 Jan 45
D138200	Pte	Cloutier,	T.M.	26 Jan 45
D142084	Pte	Jacob,	R.J.	26 Jan 45
B142641	Pte	Lachaine,	N.J.	28 Jan 45
B81074	Pte	Leblanc,	[illegible]	26 Jan 45
D94026	Pte	Lemaire,	M.	26 Jan 45
D16395	Pte	Martin,	J.A.L.H.	25 Jan 45
E108533	Pte	Morel,	[illegible] P.	30 Jan 45
C75055	L/Cpl	Moise,	[illegible]	30 Jan 45
D142176	Pte	Paquin,	L.J.R.	27 Jan 45
E4952	L/Cpl	Perreault,	F.	26 Jan 45
D36153	L/Cpl	Prescott,	R. Clerk "C"	27 Jan 45
D41030	Pte	Richer,	F.R.	29 Jan 45
E46977	Pte	Ross,	F.	29 Jan 45
E5463	Pte	Sylvestre,	F.	26 Jan 45

(b) T.O.S. X-3 List from 6 Cdn Base Rft Bn 27 Jan 45
E46905 Pte Menard, R.

(c) T.O.S. X-2 List from X-9 List 28 Jan 45 on comm to 2 Cdn F.P. Camp (awarded 6 Mos Imp 13 Jan 45)
D141373 Pte Paquette, J.G.R.

(d) T.O.S. X-3 List from 17 Cdn Spec Emp Coy

E12121	Pte	Baron,	J.	29 Jan 45
C121769	Pte	Charron,	J.A.R.	30 Jan 45
B138233	Pte	Paradis,	J.B.	31 Jan 45

(e) T.O.S. X-3 List from X-9 List 1 Feb 45
E5200 Pte Kotsos, J.

3. INTERNAL POSTINGS

(a) Posted from X-4 List (48n) to X-3 List

D118489	Cpl	Dubreuil,	A.	27 Jan 45
E13084	Pte	Jacques,	R. Dr Mech MV "C"	28 Jan 45

Exhibit "A"
[illegible] Capt

4. ABSENT WITHOUT LEAVE(OTHER)

(g) A.W.L. from 1630 hrs 20 Jan 45 still absent 1630 hrs 26 Jan 45 (6th day)
B547?0 Pte St.Arnaud, R.A. X-4 List (1Bn)

(h) A.W.L. from 2145 hrs 20 Jan 45 still absent 2145 hrs 26 Jan 45 (6th day)
E106?04 Pte Bouillon, A. X-4 List (1Bn)
D10?079 Pte Turcotte, L. "

(i) A.W.L. from 0900 hrs 13 Jan 45 Ast 0215 hrs 27 Jan 45
D136?54 Pte Desrochers, J. . .Y. X-4 List (4Bn)
D144?75 Pte Dube, M. "

(j) A.W.L. from 0?00 hrs 7 Jan 45 Ast 2135 hrs 29 Jan 45
B4?52 Pte Sarah, F.P. X-4 List (1Bn)

(k) AMENDMENT: Part II Order No 9 para 6(a) of 30 Jan 45 insofar as it refers to the u/n is cancelled
040232 Pte Aubin, J.F.A. X-4 List (4Bn)
D109?62 Pte Dumas, R. X-4 List (4Bn)

(l) AMENDMENT: Part II Order No 13 para 4(a) of 31 Jan 45 insofar as it refers to the u/n is cancelled
D109?62 Pte Dumas, R. X-4 List (4Bn)

PUNISHMENTS

(a) On 27 Jan 45 awarded 7 days F.P. and a forf of 7 days pay for an off under AA 15(1) AWL from 1845 hrs 6 Jan 45 to 1715 hrs 11 Jan 45(absent 3 days 4 hrs 30 mins), Held in close arrest from 1715 hrs 11 Jan 45 to date of trial. Forfs 15 days pay under FR&I 149(1)(a)(1) forfs 4 days pay under FR&I 149(1) (2) Forfs 7 days pay under FR&I 149(2) Total forf of 26 days pay
040232 Pte Aubin, J.F.A. X-4 List (4Bn)

(b) On 31 Jan 45 awarded 28 days F.P. and a forf of 28 days pay for (1) an off under AA 15(1) AWL from 1030 hrs 19 Jan 45 to 1822 hrs 19 Jan 45(absent 7 hrs 52 mins) (2) an off under AA 40 Forfs 28 days pay under FR&I 149(2) Forfs 1 days pay under FR&I 149(1)(a) Total forf of 29 days pay
D95?72 Pte Boucher, J.M. X-4 List (1Bn)

(c) Sentence of 18 Mos Imp with H.L. awarded 29 Mar 44 vide SR22eR Part II Order No 16/44 SUSPENDED 24 Jan 45 Auth - Officer i/c 1 Echelon APM
G21037 Pte Marchand, Y.

(d) Sentence of 2 Yrs Imp with H.L. awarded 24 Mar 44 vide R 22e R Part II Order No 13/44 SUSPENDED 24 Jan 45 Auth - Officer i/c 1 Echelon APM
D94109 Pte Menard, L.

Certified to be a true copy from Regimental Books in my custody.

A. E. Davidson

(A E Davidson) Capt & Adjt
4 Cdn Fwd Rft Bn - 1 Cdn Base Rft Group - CMF

Last Order	"X" LIST ROYAL 22e REGIMENT	This Order
No. 14	Part II Orders issued by	No. 15
31 Jan 45	CANADIAN SECTION, 2nd ECHELON, AFHQ	2 Feb 45

"A" OFFICERS

1. COURSES

(a) Proceeded on Course(No. 12 Tactics) 29 Jan 45 and att to CMTC Benevento fap (29 Jan 45 to 17 Feb 45)
Lieut C. Major

(b) Proceeded on Course(No. 12 Mortar) 29 Jan 45 and att to CMTC Benevento fap(20 Jan 45 to 17 Feb 45)
Lieut F.L.J.P.R. Lafleche

"B" OTHER RANKS

2. STRENGTH INCREASE

(a) T.O.S. X-3 List from Royal 22e Regiment

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E108015	Pte	Bernard,	L.P.	26 Jan 45
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B142641	Pte	Lachaine,	N.J.	28 Jan 45
B81074	Pte	Leblanc,	[illegible]	26 Jan 45
D94026	Pte	Lemaire,	M.	26 Jan 45
D16595	Pte	Martin,	J.A.L.H.	25 Jan 45
E108533	Pte	Morel,	[illegible]	30 Jan 45
C75055	L/Cpl	Moise,	[illegible]	30 Jan 45
D142176	Pte	Paquin,	L.J.R.	27 Jan 45
E4952	L/Cpl	Perreault,	F.	26 Jan 45
D36153	L/Cpl	Prescott,	R. Clerk "C"	27 Jan 45
D41030	Pte	Richer,	F.R.	29 Jan 45
E46977	Pte	Ross,	F.	29 Jan 45
E5463	Pte	Sylvestre,	F.	26 Jan 45

(b) T.O.S. X-3 List from 6 Cdn Base Rft Bn 27 Jan 45
E46905 Pte Menard, R.

(c) T.O.S. X-2 List from X-9 List 28 Jan 45 on comm to 2 Cdn F.P. Camp(awarded 6 Mos Imp 13 Jan 45)
D141373 Pte Paquette, J.G.R.

(d) T.O.S. X-3 List from 17 Cdn Spec Emp Coy

E12121	Pte	Baron,	J.	29 Jan 45
C121769	Pte	Charron,	J.A.R.	30 Jan 45
B138233	Pte	Paradis,	J.B.	31 Jan 45

(e) T.O.S. X-3 List from X-9 List 1 Feb 45
E5200 Pte Kotsos, J.

3. INTERNAL POSTINGS

(a) Posted from X-1 List (Bn) to X-3 List

D118489	Cpl	Dubreuil,	A.	27 Jan 45
E13084	Pte	Jacques,	R. Dr Mech MV "C"	28 Jan 45

Exhibit "A"
Davidson Capt

3. POSTINGS(CONT'D)

(b) Posted from X-4 List (13n) to X-4 List (4Bn) 30 Jan 45
Auth - 4 Bn/92 G/25 Jan 45

E61142	Pte	Auger,	L. J.
E29209	Pte	Bisson,	G.
D95871	Pte	Boucher,	R. A.
G56767	Pte	Collette,	M.
D163132	Pte	Dagenais,	W. J. A.
D106214	Pte	Guilbeault,	V.
G75113	Pte	Tremblay,	S.

(c) Posted from X-3 List to X-4 List (4Bn)

E19014	Pte	Roiduc,	C.	27 Jan 45
D5763	Cpl	Caissy,	L.	28 Jan 45
D118489	Cpl	Dubreuil,	A.	26 Jan 45
D51411	Pte	Froment,	J.	29 Jan 45
E5209	Cpl	Girard,	J.	27 Jan 45
G83285	A/Cpl	Leblanc,	A. (MM)	27 Jan 45
D129323	Pte	Martel,	[illegible]	27 Jan 45
D56615	Cpl	Menard,	C.	28 Jan 45
E101036	A/Cpl	Piche,	J. B.	27 Jan 45

(d) Posted from X-2 List to X-4 List (4Bn) 26 Jan 45 Released from 25 F.P. Camp

E10139	Pte	Fortin,	F.

4. ABSENT WITHOUT LEAVE

(a) A.W.L. from 0900 hrs 19 Jan 45 Still absent 0900 hrs 27 Jan 45 (8th day)

K51033	Pte	Hacault,	L. J.	X-4 List (4Bn)
B42181	Pte	Jackson,	R.	"
B27400	Pte	St.Jean,	A.	"

(b) A.W.L. from 0830 hrs 26 Jan 45 Still absent 0830 hrs 27 Jan 45 (1st day)

E23809	Pte	Wilson,	C.	X-4 List (4Bn)

(c) A.W.L. from 1245 hrs 8 Jan 45 Still absent 1245 hrs 16 Jan 45 (8th day)

D105962	Pte	Dumas,	R.	X-4 List (4Bn)

(d) A.W.L. from 1245 hrs 8 Jan 45 Ret from AWL 1715 hrs 11 Jan 45

B40232	Pte	Aubin,	J. H. A.	X-4 List (4Bn)

(e) A.W.L. from 1630 hrs 24 Jan 45 Still absent 1630 hrs 25 Jan 45 (1st day)

E4930	Pte	Prunea,	P.	X-4 List (4Bn)

(f) A.W.L. from 0730 hrs 21Jan 45 Still absent 0730 hrs 29 Jan 45 (8th day)

E5477	Pte	Chouinard,	H.	X-3 List (13n)

4. ABSENT WITHOUT LEAVE(CONT'D)

(g) A.W.L. from 1830 hrs 20 Jan 45 still absent 1830 hrs 28 Jan 45 (8th day)
B64780 Pte St. Arnaud, R. A. X-4 List (1Bn)

(h) A.W.L. from 2145 hrs 20 Jan 45 still absent 2145 hrs 28 Jan 45 (8th day)
E109004 Pte Bouillon, A. X-4 List (1Bn)
D108079 Pte Turenne, L. "

(i) A.W.L. from 0900 hrs 19 Jan 45 Ret 0215 hrs 27 Jan 45
D138854 Pte Desrochers, J. . . Y. X-4 List (4Bn)
D144276 Pte Dube, M. "

(j) A.W.L. from 0600 hrs 7 Jan 45 App 2135 hrs 29 Jan 45
E4652 Pte Sarah, J. P. X-4 List (1Bn)

(k) AMENDMENT: Part II Order No 9 para 6(a) of 20 Jan 45 insofar as it refers to the u/n is cancelled
C40232 Pte Aubin, J. H. A. X-4 List (4Bn)
D109962 Pte Dumas, R. X-4 List (4Bn)

(l) AMENDMENT: Part II Order No 14 para 4(a) of 31 Jan 45 insofar as it refers to the u/n is cancelled
D109962 Pte Dumas, R. X- List (4Bn)

5. PUNISHMENTS

(a) On 27 Jan 45 awarded 7 days F.P. and a forf of 7 days pay for an off under AA 15(1) AWL from 1245 hrs 8 Jan 45 to 1715 hrs 11 Jan 45(absent 3 days 4 hrs 30 mins) Held in close arrest from 1715 hrs 11 Jan 45 to date of trial. Forfs 15 days pay under FR&I 149(1)(c)(ii) Forfs 4 days pay under FR&I 149(1)(a) Forfs 7 days pay under FR&I 149(2) Total forf of 26 days pay
C40232 Pte Aubin, J. H. A. X-4 List (4Bn)

(b) On 31 Jan 45 awarded 28 days F.P. and a forf of 28 days pay for (1) an off under AA 15(1) AWL from 1030 hrs 19 Jan 45 to 1822 hrs 19 Jan 45(absent 7 hrs 52 mins) (2) an off under AA 40 Forfs 28 days pay under FR&I 149(2) Forfs 1 days pay under FR&I 149(1)(a) Total forf of 29 days pay
D95872 Pte Boucher, T. W. X-4 List (1Bn)

(c) Sentence of 18 Mos Imp with H.L. awarded 29 Mar 44 vide R22eR Part II Order No 16/44 SUSPENDED 24 Jan 45 Auth - Officer i/c 1 Echelon AFHQ
G21037 Pte Marchand, W.

(d) Sentence of 2 Yrs Imp with H.L. awarded 24 Mar 44 vide R 22e R Part II Order No 19/44 SUSPENDED 24 Jan 45 Auth - Officer i/c 1 Echelon AFHQ
D94109 Pte Menard, L.

6. NEXT OF KIN
(a) Change of address N-o-K Mrs. Helene Girard(Mother) from Iberville, station Lac St Jean, Que., Canada, to Jonquiere, 24 st Denis, Co. Chicoutimie, P.Q., Canada
E6209 Cpl Girard, J.

7. HONOURS AND AWARDS
(a) Awarded 1939 - 45 Star
E4489 Pte Desjardins, J.P.

(b) AMENDED TO: Part I- Order No 4A para 5(a) of 21 Jan44 insofar as it refers to the u/n is cancelled
D164021 Pte Drouin, J.L.L. M.

8. STRENGTH DECREASE
(a) S.O.S. X-3 List to 16 Cdn Spec Emp Coy
D134875 Pte Couture, J.A. 24 Jan 45
D4175 Pte Dagnon, J.A. 17 Jan 45
D128541 Pte Rousseau, J. 25 Jan 45

(b) S.O.S. X-3 List to X-9 List 27 Jan 45 Auth - Pend ng Reboard
D57125 Pte Delanger, Y.

(c) S.O.S. X-4 List (4Bn) to Royal 22e Regiment 30 Jan 45
Auth - 1 CD/160 d/27 Jan 45
D51411 Pte Fresnet, L.

(d) S.O.S. X-4 List (4Bn) to Royal 22e Regiment 29 Jan 45
Auth - 1 CD/160 d/27 Jan 45
E5767 Cpl Chisey, L.
D56413 Cpl Menard, G.

(e) S.O.S. X-3 List to 16Cdn Spec Emp Coy 24 Jan 45
C121769 Pte Charron, J.A.B.

(f) S.O.S. X-3 List to 16 Cdn Spec Emp Coy 23 Jan 45
D137934 Pte Binette, J.E.

(g) S.O.S. X-4 List (4Bn) toRoyal 22e Regiment 26 Jan 45
Auth - 1 CD/120 d/30 Jan 45
G73017 L/Cpl Corbin, P.
D15906 Sgt Dore, J.
C100120 Pte Dube, A.
D140759 Pte Henault, J.L.G.

(h) S.O.S. X-4 List (4Bn) to Royal 22e Regiment 27 Jan 45
Auth - 1 CD/163 d/25 Jan 45
D140023 Pte Rayson, J.C.G.
E747 Pte Rioux, R.
E4594 Pte Welsh, W.

Gly

"X" LIST ROYAL 22e REGIMENT No. 15
2 Feb 45
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8. STRENGTH DECREASE(CONT'D)

(i) S.O.S. X-5 List to S-8 List 29 Jan 45 Auth - AFW 5169
d/30 Jan 45

E4671	Pte	[illegible],	[illegible]
E5096	Pte	Blais,	H.
E4504	Pte	Cyr,	L.
D140107	Pte	Lapouriere,	[illegible]
D15771	Pte	Lavoie,	M.
E313[illegible]	Pte	Morel,	[illegible]

(j) S.O.S. X-4 List (Part) to Royal 22e Regiment 28 Jan 45
Auth - Gen OCT/AS/1 CD/183 d/26 Jan 45

C40232	Pte	Aubin,	J.H.A.
E19014	Pte	Boloue,	[illegible]
E[illegible]209	Cpl	Girard,	[illegible]
C63265	A/Cpl	Leblanc,	[illegible] (MM)
D129323	Pte	Martel,	J.D.M. Inf Sig "C"
E101[illegible]	A/Cpl	Picke,	J.S.

W.H. Laughlin
(W.H. Laughlin) Captain,
for Officer i/c
Canadian Section, 2nd Echelon, AFHQ

SHB

Certificate in accordance with the Army Act Sec. 163 (i) (ii)

I certify that

No D.109962. Rank Pte. Name DUMAS, R.

of the The Royal 22nd. Regiment. Ist. Canadian Division.

was arrested at CATTOLICA. at 02.00. hrs,

on the 30th. day of January, 1945.

Signature of P.M., A.P.M., or other Officer into whose custody the above named person was taken on arrest.

F. O'Brassard

Rank Capt.

Appointment (if any)

Officer Commanding 506. Provost Coy, C.M.Police.

Date 30th. January, 1945.

Exhibit 'B'

Rebecca Capt.

PS56 1375 HM 11-44

Exhibit "D"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D109962	Private	DUMAS R	4 Cdn Fwd Rft Bn 1 C B R Gp

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For NO MFM 6 AVAILABLE ..... times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for .....

beginning on the ..... day of .....

From 0200 hrs 30 Jan 45.

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 14 days in military custody, *i.e.*, nil days in open arrest, 14 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 22 years

6. The date of his attestation ~~calling up for military service~~ is 24 Jul 41

7. The service which the accused is allowed to reckon is N/A

8. The accused is in possession of†

†State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

		Date of Promotion.
In the substantive rank of	N/A	
In the war substantive rank of	N/A	
In the acting rank of	N/A	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W1 55900/1002 70,000 2/44 21-4751. Forms/B.296/War/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NO NFM 6 AVAILABLE		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 12th day of February 1945

G E Davidson

(A E Davidson) Capt & Adjt

4 Cdn Fwd Rft Bn - 1 Cdn Base Rft Bn - CMF

RECEIPT FOR CHARGE SHEET & SUMMARY OF EVIDENCE

I hereby certify that I have this date 12 Feb 1945 received from 4 Cdn Rft Bn, 1 C B R Gp, 1 copy of Charge Sheet and Summary of Evidence referring to charge (s) of AWL

AA 15 (1)

for which I was remanded for Court Martial.

R. Dumas
(Sig of Accused)

REQUEST FOR DEFENDING OFFICER

I hereby request that Lieut J. Riva if available, act in my defence. If this officer is not available I request that the Commanding Officer of 4 Cdn Rft Bn, 1 C B R Gp appoint an officer to act in my behalf.

R. Dumas
(Sig of Accused)

Pursuant to Chap V Sec V Sub Sec 25 of MML, I hereby certify that I have been duly warned that the Prosecutor is an officer possessing legal qualifications.

R. Dumas
(Sig of Accused)

4L35.
Pte. Dumas. R.R.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A117237 Pte Roderick Rodeny DUMAS - CIC - 2 CITR

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 18(4)	GUILTY	GUILTY	
Alternative 2nd	AA Sec 40	withdrawn		
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence of~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 30 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To undergo detention for a period of One (1) Year

(Sgd) ..... Judge-Advocate, if any. 2 Jan/45 Date awarded. [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 57, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~(1. AA 57A. Delete if not used.)~~

Date 2 Jan 45 (Sgd) [signature] Brig
Comd
Commanding 18 Cdn Inf Bde

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A.117237 Pte. DUMAS, R.R.	8 JAN 1945	[signature] for (AJA BAXTER) Maj. Adm Offr 2 CIB

ENTERED ORDER No. 8
DATE 10 Jan 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 22 JAN 1945 HQ 8 CDN INF BDE A.M.G.

RECORDED AT CMHQ IN AB 160, 4L-35

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of APA81) 40/P & S/1098 (6144) 4/38B

Convened by ~~Order of~~ Brigadier K G Blackader DSO, MC, ED Comd 18 CITB dated 30 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A117237	Pte	Roderick Rodeny	DUMAS	CIC 2 CITR

PROCEEDINGS REVIEWED 22 Jan 45 [signature] Maj. for OFFICER COMMANDING BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 2 JAN 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any;~~ and ~~Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs as how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (~~is~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~is~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~is~~) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to~~ ..... as interpreter? Ans .....
~~The Interpreter is sworn.~~(1) ~~Do you object to~~ ..... as shorthand writer? Ans .....
~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO - SIR!

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT COL	D.L. REDMAN VD	H.Q. CRA
Member	CAPT	H.S. THOMPSON	2 CITR
Member	LT	J.C. BEDARD	4 CITR
~~Judge-Advocate~~			
Prosecutor	LT	P. SAPERIA	2 CITR
Defending Offr	LT	J. CADIEUX	2 CITR

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrns may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO - I M (5)
(*1. RP 27(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1) The Prosecutor withdrew the 2nd (ALT) Charge
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, complys with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 45, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 34(2) (d), RP 45, 120(A). 2. AA 34(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO - I M
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFD 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Big H.W. O.H. NOTE - ATI (2)
(*1. RP 37(C), 46(D). 2. Add (as, if any, recorded per Notes). Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and then J.A., if served~~.(2)
(*1. When several accused tried consecutively see RP 71 (2). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see insters on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Legal Office,
Reg. H.Q., 2 CITR.
28 Dec 44.

A.117237,
Pte. DUMAS, R.R.

This is to notify you that, under R.P. 76, it is the intention of the prosecuting officer tp produce as a witness for the prosecution at your Court-Martial, Mr. Owen STONE, although his evidence is not included in the copy of the Summary of Evidence you have received.-

The evidence that Mr. Stone will give will be as follows:-

"I am Mr. Owen STONE of 3, Cline Road, Guildford, Surrey.

I was in Heneky's Wine Shop at about 7 P.M. (1900 hrs) on or about the 6th Nov 44, having a drink. Two Cdn. soldiers, whom I now recognize as the accused, entered and I approached them and I asked them if they could get me a pair of boots. They said they could get me some towels and socks. I took them to a shed in North St. and showed them where they could put the stuff. I had more to drink than was good for me, and thought no more about the stuff. I went to the shed on several occasions afterwards and never thought anything more about the stuff."

.....Lt.
(P. Supernia)

2 CITR/13

LIST OF WITNESSES

In the case of A.117237, Pte. Roderick Rodeny DUMAS,
(No.) (Rank) (Surname & Initials)

CIC, on strength of 2 Cdn. Infantry Training Regiment, a soldier of the Cdn. Army Overseas.

(For the Prosecution)

1. Alfred John RICE, Police Constable 34 of the Guildford Borough Div.
2. B.116507, L/Cpl. Darby, D.H. #9 Prov. Coy., Cdn. Prov. Corps.
3. K.51375, L/Cpl. Clarke, A.E. #9 Prov.Coy.Cdn.Prov.Corps.

(For the Defence)

4. Capt. W.O. Toombs, Q.M. of Depot Bn., 2 CITR.

Defence: NIL.

LIST OF EXHIBITS

In the case of A.117237, Pte. Roderick Rodeny DUMAS,
(No.) (Rank) (Surname & Initials)

CIC, on strength of 2 Cdn. Infantry Training Regt., a soldier of the Cdn. Army Overseas.

(For the Prosecution)

Exhibit "A": - 2 kit bags, 45 towels, and 29 prs. socks. (Being retained at 2 CITR until date of Court-Martial)

-

(For the Defence)

NIL.

REQUEST FOR DEFENDING OFFICER

I, A.117237, Pte. Roderick Rodeny DUMAS,
hereby request that the Convening Officer appoint any available Officer to represent me at my forthcoming trial by Court-Martial, ~~should he be available.~~

Laurentide Camp,
18 Dec 44. ...R.R. Dumas..... Pte.
(R.R. Dumas)

RECEIPT FOR DOCUMENTS.

I, A.117237, Pte. Roderick Rodeny DUMAS,
hereby acknowledge that I have received a true copy of the Summary of Evidence taken in England preliminary to my Court-Martial, and I further acknowledge receipt of a true copy of the Charge Sheet under which I am being brought to Court-Martial.

Laurentide Camp.
18 Dec. 44. ...R.R. Dumas..... Pte.
(R.R.Dumas)

NA117237 Name DUMAS R.R. | Sqn, Battery, or Company | Corps CIC | Date of enlistment 30Jan43 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40(F&S)150 (5412)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				First Sheet destroyed 23 Sep 43----date of last entry 5 Jul 43					
Chatham Ont.	15Mar43	Pte		AWL from 0200 hrs 15 Mar 43 till 2330 hrs 16 Mar 43 (1dy,22hr,30min)	Cpl Haskell	4 days C.B. extra fatigues	17Mar43	Capt Scott	Forf 3 dys pay FRI 149
Chatham Ont.	11Apr43	Pte		AWL from 0200 hrs 11 Apr 43 till 0150 hrs 15 Apr 43. (3 days, 22 hrs, 10 min) AA Sec 15 (1)	Cpl Haskell	7 days C.B. extra fatigues	15Apr43	Major Doyle	Forf 4 dys pay FRI 149
Chatham Ont.	26Apr43	Pte		AWL from 0200 hrs 26 Apr 43 to 0140 hrs 30 Apr 43 (3 dys, 23 hrs 10 min) AA Sec 15 (1)	Cpl Allen	7 days C.B.	30Apr43	Capt Sewtell	Forf 4 dys pay FRI 149
Chatham Ont.	13Jun43	Pte		AWL from 0200 hrs 13 Jun 43 to 0150 hrs 21 Jun 43. (7 days, 23 hrs, 10 min) AA Sec 15 (1)	Cpl Haskell	10 days detn.	21Jun43	LtCol A. Garrod	Forf 8 days pay FR&I 149

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Ipperwash Ont	5Jul43	Pte		AWL from 1200 hrs 5 Jul 43 to 1515 hrs 3 Aug 43 (29 days, 1 hr, 15 min) AA Sec 15 (1)	L/Cpl Morrison Documentary	28 days detn.	7Aug43	Major G.K. McCAGY	Forf 30 days pay FRAI 149 Cost of app. $6.15
Ipperwash Ont	27Sep43	Pte		AWL from 1200 hrs 27 Sep 43 till apprehended in Detroit at 2200 hrs 17 Oct 43 (20 days, 10 hrs)	Patr. P. Reilly	28 days detn.	22Oct43	LtCol A. Garrod	Forf 21 days pay FRAI 149 Cost of app. $6.55
Ipperwash Ont	28Nov43	Pte		AWL from 2359 hrs 26 Nov 43 till apprehended at Detroit at 0500 hrs 7 Dec 43 (8 days, 5 hrs, 1 min) A.A. Sec 15 (1)	L/Cpl Green Cpl Winter Doc'ty	14 days detn	11Dec43	LtCol A. Farmer	Forf 9 days pay FRAI 149 Cost of app. $8.55
Ipperwash Onte	4 Jan44	Pte		AWL from 1200 hrs 4 Jan 44 till apprehended at Detroit at 2255 hrs 21 Jan 44. (17 days, 10 hrs 55 min) A.A. Sec 15 (1)	Cpl Sisson	90 days detn	26Feb44	D.C.M.	Cost of app. $7.05

No. A117237 Name DUMAS R.R. Sqn, Battery, or Company | Corps CIC | Date of enlistment 30Jan43 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 10/FAS/136(5418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No Two | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
C. Ipperwash	30May44	Pte		AA 15(1) AWL from 1200 hrs 30 May 44 till apprehended at 0510 hrs 5 Jun 44 (5 days, 17 hrs, 10 min)	Documentary	16 days pay 46 2 (d) Cancel border passes for 30 dys	8 Jun 44	LtCol A. Garrod	Forf 6 days pay FR I 149 (1)(a) Cost of app. $5.20
C. Ipperwash	11Jun44	Pte		AWL from 2200 hrs 11 Jun 44 till roll-call 1345 hrs, 12 Jun 44. A.A. 15 (1)	Documentary	Admonished	13Jun44	Capt B.A. Morrison	1 days pay FR I 149(1)(a
C. Ipperwash	28Jun44	Pte		AWL from 1200 hrs 28 Jun 44 till 0920 hrs 30 Jul 44. Absent 31 days, 21 hrs, 20 min. AA 15(1)	L/Cpl F. Decker Documentary	28 days detn.	31Jul44	LtCol A. Garrod	Forf 23 days pay FR&I 149 (1)(a)
C. Ipperwash	22Aug44	Pte		AA 40 Conduct to the prej. etc. refused to obey and order whilst undergoing detention	L/C Murphy	10 days detn	22Aug44	LtCol A. Garrod	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30 Sep44	Pte		AA Sec 15 (1) WOAS AWL from 2200 hrs 30 Sep 44 till 0030 hrs 1 Oct 44. Time absent- 2 hrs 30 min.	Cpl Fraser R.M.	Forf 5 days 3 pay	Oct 44	LtCol R.C. Coleman	
Field	7 Nov 44	Pte.		AA Sec 15(1) WOAS AWL FROM 0600 hrs 7-Nov-44 till 1115 hrs. 13 Nov 44. (6 days, 5hrs. 15 Min)		28 days	(22-12-44) Pay.	LtCol M.C. McMillan.	Forf 7 days pay FR&I 149 (a)

CERTIFIED TRUE COPY CONSISTING OF ...2... PAGES

DATE 27 Dec 44

L P Byrne

(L.P. Byrne) Lieut

Officer Having Custody of Regimental Books

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of
Permanent Force
unit
..... dated ....., and in his regiment (or corps), the rank of
..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number A117237 Rank Pte.
Unit
Name Roderick Rodeny LUMAS of 2 CITR. Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
D.C.M.	26 Feb 44, Ipperwash, Ont.	Sec. 15(1) (AWL 17 days, 10 hrs.55 min)	90 days' Detention.	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2nd day of Jan 45 .....

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

M.F.B. 355
2254—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A.117237,	Pte.	Roderick Rodeny DUMAS,	2 CITR.

1. The following is a fair and true summary of the entries in the ~~Service and General Regimental and Squadron, Battery~~ ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Sec. 15(1)	5 times	Sec. 15(1)	12 times
For	Sec. 40	1 times	Sec. 40	1 times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

~~or~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 75 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and 50 days in military Air Force custody, making a total of 50 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 20 yrs 6 months.

6. The date of his ~~commission~~ specified in his ~~record of service is~~ attestation paper 14 Apr 42.

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~he is in possession of or entitled to~~. State any ~~air force~~ military decoration or reward.

C.V.S.M. & Clasp.

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of~~

EX B

2 CITR
2 Jan 46

Re A 82084 Pte Waldeck F.L.
A 117237 Pte Dumas RR

1 The stolen property Exhibit A in the FGC's 14 of a/m is being retained by the Admn Offr at 2 CITR pending instructions as to its disposal.

2 It consists of 2 kit bags
45 towels
29 pro socks

Baporia Lieut
Asst Admn Offr

SUMMARY OF EVIDENCE (2CITR/15)

In the case of A.117237, Pte. Roderick Rodeny DUMAS,

CIC, on strength of 2 Cdn. Infantry Training Regiment, a soldier of the Cdn. Army Overseas.

(Continued)

The accused was cautioned as follows:-

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

THE ACCUSED DECLINES TO MAKE A STATEMENT AND RESERVES HIS DEFENCE.

I certify that the foregoing Summary of Evidence consisting of pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C) (D) (E) (F) have been complied with.

Laurentide Camp,
18 Dec 44.

P. Saperia Lt.
(P. Saperia).
Officer detailed to take the Summary of Evidence.

EXHIBIT

SUMMARY OF EVIDENCE

In the case of A.117237, Pte. Roderick Rodeny DUMAS, CIC, on strength of 2 Cdn. Inf. Trng. Regt., a soldier of the Cdn. Army Overseas.

(Continued)

Third Witness (Cont'd)

ments with a civilian who had offered to purchase from them boots, socks, towels, and combs, approximately a week before their arrest."

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

A.E. Clarke .....L/Cpl.
(A.E. Clarke)

FOURTH Witness Prosecution.

Capt. W.O. Toombs, Q.M. of Depot Bn., 2 CITR, having been duly sworn, states as follows:-

"I am Capt. W.O. Toombs, Q.M. of Depot Bn., 2 CITR.

On 13 Nov 44, at approximately 1500 hrs. I was interviewed by L/Cpl. Darby of the Cdn. Prov. Corps who advised me of the fact that two Cdn. soldiers had been questioned regarding taking some property from the Q.M. stores of which I had custody. I immediately instituted taking of stock in order to find out what shortages there were and found a shortage of socks and towels.

As Quartermaster, I am familiar with War Dept. property and can identify as such these articles which have been produced as Exhibit "A". The value of a kit bag is $1.02, the value of a towel is 32¢, and the value of a pr. of socks is 37¢."

The accused declines to cross-examine this witness.

W.O. Toombs .....Capt.
(W.O. Toombs)

(Cont'd Page 4)

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SUMMARY OF EVIDENCE

In the case of: A.117237, Pte. Roderick Rodeny DUMAS, CIC, on strength of 2 Cdn. Inf. Trng. Regt., a soldier of the Cdn. Army Overseas.

Second Witness Prosec. (Continued)

"At 1105 hrs. 13 Nov 44, I was in the Orderly Room of #9 Prov. Coy., Cdn. Prov Corps, when a telephone call from Sgt. D. Eldridge, Guildford Civil Police, came in, to which I was called. He told me that an informer had advised him that two Cdn. soldiers had been seen carrying 2 kit bags into an alley-way in Guildford. He requested me to come as soon as possible so I proceeded to Guildford and arrived there at approx. 1155 hrs. On arrival at the North St. Police Station, I was advised that the soldiers had been apprehended by P.C. Rice and were in a back room with Sgt. Eldridge. I went to this room and there met Sgt. Eldridge and the two soldiers, and, after a brief summary of circumstances by Sgt. Eldridge, I proceeded to interrogate the two soldiers and after giving them the usual warning. They both admitted being A.W.L. from their units and, on questioning them on the property found in the shed of the alley-way, they advised me that they had made an entry into the Q.M. stores at 2 CITR and stolen 2 kit bags, approximately 50 towels, and approximately 50 prs socks. They also informed me that they had made previous arrangements with a civilian who had offered to purchase from them boots, socks, towels, and combs, approx a week previous to their arrest.

At this point, Sgt. Eldridge requested my presence with him at a search of a house in Guildford which he suspected might be the house of a civilian prospective purchaser of the stolen articles.

The property referred to was taken into custody by me and I now produce it as Exhibit "A", consisting of 2 kit bags, 45 towels, and 29 prs. socks."

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

D.H. Darby .....L/Cpl.
(D.H. Darby) B.116507.

Third Witness Prosecution.

K.51375, L/Cpl. Clarke, A.E. #9 Prov Coy., Cdn. Prov. Corps, having been duly sworn, states as follows:-

"I am K.51375, L/Cpl. Clarke, A.E. #9 Prov. Coy., Cdn. Prov. Corps.

"On 13 Nov 44, I arrived at the Police Station when L/Cpl. Darby was interrogating Pte. Dumas. I heard Dumas say that he and Pte. Waldeck, whom I now recognize as the accused, had entered the Q.M. stores at 2 CITR and taken 2 kit bags, approx. 50 towels, and approx. 50 prs. socks. I also heard Pte. Dumas say that he and the his companion, Pte. Waldeck, had made previous arrange-

(Continued Page 3)

SUMMARY OF EVIDENCE

In the case of A.117237, Pte. Roderick Rodeny DUMAS, CIC, on strength of 2 Cdn. Infantry Training Regt., a soldier of the Cdn. Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

First Witness Prosecution. Alfred John RICE, Police Constable 34 of the Guildford Borough Div., Surrey Joint Police, having been duly sworn, states as follows:-

"I am Alfred John RICE, Police Constable 34, of the Guildford Borough Div., Surrey Joint Police.

At 10.15 a.m. (1015 hrs) on Monday, 13 Nov 44, in consequence of instructions from Police Sgt. 43 Eldridge, I kept observations from a concealed position on a shed at the rear of Phillip's Shoe Shop, North St., Guildford. At 1115 hrs. the same day, I saw two Cdn. soldiers, one of whom I now recognize as the accused, Pte. Dumas, R.H., approach the yard. Dumas went into the shed while his companion, Pte. Waldeck, stood by the gate. Dumas went over to the corner of the shed where a quantity of Govt. property, which I had already seen, was hidden under a number of fruit and flower baskets. He lifted one of the baskets and placed his hand in a basket containing army socks and turned them over with his hand. He then placed the basket back over the socks and started to leave the shed. As he did so, I stopped him and he said to me: "Alright, I know what you want me for." I asked him "Did you put that army property in the shed?" He replied "Yes". He told me that his mate was outside. His mate, Waldeck, was then standing against the gate at the entrance to the yard. I asked him if he knew anything about the Govt property in the shed. He replied "I guess so, I put it there". I then took both of them to the North St. Police Station and they admitted to me that they were absent without leave so I told them that they would be detained pending further inquiries. I later cautioned them and charged them with being A.W.L. from their unit and they made no reply.

I was present when both Dumas and Waldeck admitted that they had entered into the Q.M. stores at 2 CITR sometime during the night previous and had stolen the property concerned from there."

The accused declines to cross-examine this witness.

.....
(A.J. Rice) P.C. #34, Guildford.

Second Witness Prosecution. B.116507, L/Cpl. Darby, D.H. #9 Prov. Coy., Cdn. Prov. Corps, having been duly sworn, states as follows:-

"I am B.116507, L/Cpl. Darby, D.H. #9 Prov Coy., Cdn. Prov Corps.

(Continued page 2)

consider his category again you can judge by yourselves.

Even with his low category this soldier is ready to go in action.

We are ready to accept the evidence of the court, but considering these facts I would ask the court to be as lenient as possible in their sentence.

E-3
F
RM

"I lea in Investigation of [illegible]"
A 117237 PTE RODERICK RODENY DUMAS

Mr President, Members of the Court,

Before giving your sentence I would like to put in front of the court for consideration the career and story of this soldier.

He enlisted as volunteer when 18 years old in 1943. Was at the time A category.

Came in England in August 1944 and was still a category, although he as always been sick in Canada, writing his bed very often, but he never complaint.

In this country as been on training one week only and was put on draft for Italy.

While on this draft has met his bed once more and was told by his sergent to report to M.O.

The M.O. took him off the draft, then was paraded to S.P.D. and finally had an interview with the "psychiatrist" as then was reboarded and classed M-4 and now after further investigations will probably have an S-4.

He as never been able to through grenade nor qualify on riffle on account of nervousness.

His education very low "grade 4" only

Considering all these facts I would say that this soldier as done his duty [illegible] he is in the army and as been a good soldier as much as he could.

Considering his low category and this offer that he had from a civilian in Guilford I would say that he has been [illegible] tempted, not as an excuse but if you

7 GCM in the case of

A 117237 Pte Dumas, R.R.

2 CITR. 2 SAN 45.

The Prosecutor made the following statement respecting the 30 days, period which the accused has been in custody awaiting trial:

Pte Dumas was on strength No 22 C.S.E.C. and was att to 2 CITR for disciplinary action on 11 Dec 44. At that time it was discovered he had not been remanded so that was done. Then witnesses had to be called. There was also delay caused by contacting Mr. Stone.

MM

MED OFFRS CERTIFICATE 2 CITR/11

K.R.Can.Para 557

I certify that I have this morning examined No. R117237.....

...Pte....DUMAS....B.R.... and in my opinion he

is FIT to undergo trial by Court-Martial.

Station: Laurentide Camp .....Capt.

Date: 2-JAN-45 (RCAMC) Attached to 2 CITR

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A117237	Pte		Roderick Rodeny	DUMAS	CIC 2 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 30 Dec 44 endorsed by me, (~~Actual or Acting Rank Rank~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable before the trial for reasons of urgent operational duty~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~It does not appear (a) that there are four Offrs of the Cdn Army Overseas, or a Fd Offr as President, for the purpose of the trial, or~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~It does appear as fully above stated that the requirement is impracticable.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
LT-COL	D L REDMAN, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by Commanding Officer	2 CITR
Lieutenant	to be detailed by Commanding Officer	4 CITR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	to be detailed by Commanding Officer	2 CITR

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

K G Blackader (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 30 Dec 44

(K G Blackader)
Commanding 13 Cdn Inf Trg Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAMS 12b (2nd) (OF AFA) 60-7-38 (6) 1897 14631)

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused, A.117237, Pte. Roderick Rodeny DUMAS, CIC, on strength of 2 Cdn. Infantry Training Regt., a soldier of the Cdn. Army Overseas, is charged with:-

FIRST CHARGE
Sec. 18(4)
Army Act

WHEN ON ACTIVE SERVICE STEALING PUBLIC PROPERTY

in that he

at Laurentide Camp, on 13 Nov 44, did steal from the Quartermaster Stores, 2 CITR, 2 kit bags, valued at $2.04; 45 towels, valued at $14.40; and 29 prs. socks, valued at $10.73, the property of the Cdn. Govt.

ALTERNATIVE SECOND CHARGE
Sec. 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, on 13 Nov 44, was improperly in possession of 2 kit bags, valued at $2.04; 45 towels, valued at $14.40; and 29 prs. socks, valued at $10.73; the property of the Canadian Government.

Laurentide Camp,
28 Dec 44.

J A Wilson Col
(J A Wilson) Col
Comdr
2 C I T R

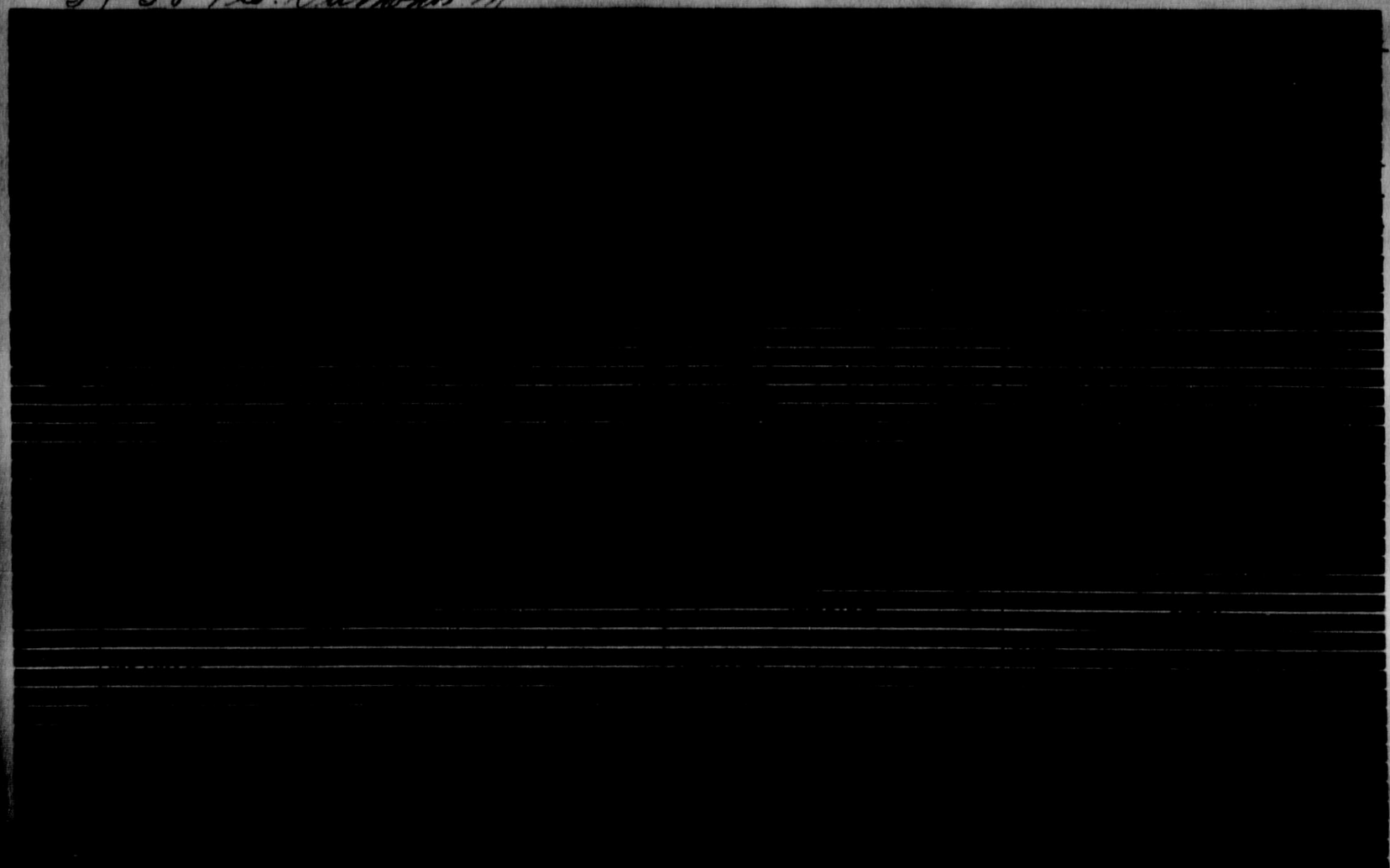
Approved on behalf of the J A G Cdn Army O pursuant to KR (Can) 540 & ORO 4/56 (13)
J M Robinson Capt
for D J A HQ Cdn

To be tried by Field General Court Martial.

In the Field
30 Dec 44

K G Blackader
(K G Blackader) Brig
Comd
13 Cdn Inf Trg Bde

5Y-38 Pte. Dumont M



SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C 52931 PTE DUMONT MAURICE X4LIST CIC 13CBRBN

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~As presently under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 29 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for nine (9) months

~~(Sgd)~~ ~~Judge Advocate, if any~~

29 Jan 46 (Sgd) J A Baillargeon President. (RP 45.2)

Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 1 Feb 46 (Sgd) J J Flynn Lt Col

Commanding 1 Cdn Corps Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C-52931 Pte Maurice Dumont	1 Feb 46	J R Kibbey Lieut 1 Cdn Corps

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT [illegible] 54-38

RECEIVED Convening Hdqrs 1 Cdn Corps JAG BRANCH

FIELD GENERAL COURT-MARTIAL

CFA86 (To face of AFA47) 40/P & S/1698 (6144) 4/38B

Order of LT Col J J FLYNN T/Comd 2 CBRSp dated 27 JAN 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
C52931	PTE		MAURICE	DUMONT	X4LIST CIC 13CBRBN

PROCEEDINGS REVIEWED 9 Feb 46 by Brody major REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held at Holland (country) on (date(s)) 29 JAN 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~Judge if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~were~~ amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~were~~ fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to an interpreter? Ans~~

~~The Interpreter is sworn.(1) To you object to as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~Judge if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, viz:

President	Major	J A Baillargeon	GL HQ 2 CBRG
Member	Capt	D L Macdonell	CIC PE 13 CBRBN
Member	Capt	H N Macleod MC	CIC PE 13 CBRBN
~~Judge Advocate~~			
Prosecutor	Lieut	D R Saunderson	CIC PE 13 CBRBN
Defending Offr	Lieut	J C Allard	CIC PE 13 CBRBN

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused C 52931 PTE DUMONT M. before arraignment makes(s) (no) ~~(a)~~ plea. (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 128), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in All rons and name of the accused making the plea.)

A9. The accused is ~~were~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ 2 Cdn Corps B/F 84 Vol 2 Page 17

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea, and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO SIR.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (three) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by usual RP paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

~~C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.~~(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read aloud as relate to the charges dealt with under C2. If any pleas is changed to Not Guilty, trial thereon proceeds as under paras D1 to D8 inclusive in Record Form D on p 3 and making any appropriate record thereof on s sheets.*)

(2) The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using ~~Record Form E on p 3~~.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

~~D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules~~ relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans.....Do you intend to call witnesses on your behalf?
Ans.....Are they witnesses as to character only? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 44(A) fn 1. Bks(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 42, 120(A). 2. AA 54(7), RP 42, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using ~~Record Form E below~~.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans NO SIR.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (b), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 294. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans yes through my Defending Offr.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A., if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its proviso, is to be awarded in cases of charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 3008, 3330, 563-566, Overseas AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(8), 98(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HEADQUARTERS 13 CANADIAN BASE REINFORCEMENT BATTALION

2 C. B. R. Gp.

MEDICAL CERTIFICATE

I certify that I have this day examined C 2931 Pte DUMONT M

(X-4 List) CIC of 13 Cdn Base

Rft Bn., 2 C.B.R. Gp. and find him ~~unfit~~ fit to undergo trial by Court Martial.

29 Jan 1946

M.O. 13 C.B.R. Bn.

FIELD GENERAL COURT-MARTIAL

CFAAO (Reprint of AFAO) 40/FGCM/1097 (2568)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C32931	Pte		Maurice	DUMONT	X4 List CIC 13 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (date) 27 Jan 46 endorsed by me, ~~[illegible]~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial ; ~~[illegible]~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~s~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~[illegible]~~ hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	F A BAILLARGERON	G L Hq 2 CBRG

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	D L MACDONELL	CIC PE 13 CBR Bn
Capt	H N MACLEOD MC	CIC PE 13 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	J H WATSON	CIC PE 13 CBR Bn

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND
(Country.)

L J Flynn
(Signed personally. RP 105 (4.2.)) (Rank.)

(L J FLYNN) Lt-Col

Date 27 Jan 46

Commanding T/Comd - 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused, C-[illegible]2931 Pte Maurice DUMONT (X-4 List) Canadian Infantry Corps on strength of 13 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with

Sect. 15(1) Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field at 0800 hrs on 26 August 1945 absented himself without leave until he was apprehended at ROTTERDAM at 1835 hrs on 31 December 1945 by the Corps of Military Police.

(Absent 127 days 10 hrs 35 mins)

In the Field
13 Jan 46

M.A. Frank

(M.A. Frank) Major
Officer Commanding
13 CBR Bn 2 CBR Gp

To be tried by Field General Court Martial.

L J Flynn

In the Field
27 Jan 46

(L J FLYNN) Lt-Col
T/Comd - 2 Cdn Base Rft Gp

The Court is satisfied that the correct Reg No of accused is :- C 5293'.

The President has accordingly amended the charge sheet and initialed the same

H Davidson
Pres.

'E3 C 52931. Ste Dumont M

Gentlemen.

Ste Dumont volountered for Service in the army in Feb 44 in Aug of the same year he landed in England in Sept 44 he was in Belgium with the Chaudière Regt. and completed the campaign with them. was promoted to the rank of A.Cpl in action but was never confirmed.

When he came to this battalion for reallocation, he asked for leave, but was not granted a pass. He decided to go A.W.L. for 2 or 3 days to see his fiancee. Eventually, once away, the days slipped by with rapidity until he realized his 2 or 3 days holiday he had intended to take had lengthened into weeks. And the presence of his fiancee contributed more or less in putting off his intended return. May the court consider these factors and thus be as lenient as can be.

J. C. Ellard Lt

SUMMARY OF EVIDENCE EXHIBIT "A" Boulanger Pres

In the case of C-32931 Pte Maurice DUMONT, (X-4 List) Canadian Infantry Corps, on strength of 13 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

The following documents were placed before the Officer detailed to take the Summary of Evidence and are included in this Summary of Evidence as Exhibits 'A and 'B' respectively, pertaining to the accused and duly initialled by the officer detailed for purposes of identification.

'A' A certified true copy of the record of the Declaration of a Court of Inquiry concerning the absence of the accused dated 20 September 1945.

'B' A certificate of arrest of the accused at ROTTERDAM at 1835 hrs on 31 December 1945.

The accused does not question the above documents.

(D.R. Abbey) Lieut.

The accused was cautioned as follows:-

Do you wish to make a statement or give evidence on oath? You are not obliged to make any statement or give evidence unless you wish to do so but whatever you say or any evidence you may give will be taken down in writing and may be given in evidence.

The accused declines to make a statement.

Certified that all the provisions of R.P. 4 (c)(d)(e) and (f) have been complied with. Taken down by me, in the Field, in the presence and hearing of the accused this 12 day of January 1946.

(D.R. Abbey) Lieut.
Officer detailed to take the Summary of Evidence.

Exhibit "A" DRA

RECORD of the Declaration of a Court of Inquiry assembled at Field on the 20 day of September 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. C-32931 Pte DUMONT, M.

DECLARATION

The Court declare that No. C-32931 Pte DUMONT, M. (X-4 List) CIC 13 C.B.R.Bn. 2 C.B.R.Gp. illegally absented himself without leave in the Field at 0800 hrs on the 26 day of August 1945, that he is still so absent, and that on the 20 Sep 45 he was deficient, and that he is still deficient of the following articles :—

ARTICLES	VALUE	ARTICLES	VALUE
Appendix "A"			

Capt. W.L. Liscombe President

Lieut J.M. Skelton Member

Signed at Field Member

this 20 day of Sep 1945

Signature of Commanding Officer M.A. Frank (Major) T/Commander

Certified true copy [signature] Major
Signature of Officer having custody of original record

3/608 MFB 375-AFB 115 40-P&S/292 (6610)

[illegible] 13 C[illegible] BASE REINFORCEMENT BATTALION

[illegible] GROUP

SCALE 111 KIT COMPLETE WITH VOLUME [illegible] PRICES

	100% FULL VALUE	75% FULL VALUE
Anklets, Web, prs (1)	.99	.74
Blouses, Battle Dress (1)	6.50	4.87
Berets Khaki	1.20	.90
Boots, Ankle, prs (2)	11.64	8.73
Greatcoats, Dismounted	11.55	8.66
Trousers, Battle Dress, prs (1)	6.55	4.91
Cap Comforter	.34	.25
Badges, cap	.09	.07
Bags, Kit, Universal	1.02	.76
Braces, prs (1)	.32	.24
Drawers, Cellular, Short, prs (1)	.43	.32
Dressing Field	.24	.18
Forks, table	.07	.05
Gloves, Knitted	.47	.35
Housewife, Complete	.17	.12
Jersey Pullover	1.79	1.3[illegible]
Knife, Clasp	.86	.64
Knive, Table	.15	.11
Shirts, Angola, drab (2)	4.06	3.04
Socks, Worsted, prs (2)	1.38	1.03
Spoon, Dessert	.09	.07
Towels, [illegible] (2)	.68	.51
Brushes, Hair	.34	.25
Brushes, Shaving	.37	[illegible]
Brushes, Shoe, Polishing	.28	.21
Combs, Hair	.04	.0[illegible]
Razor, Safety	.06	.04
TOTALS:	51.78	38.49

Exhibit "B" DRA

[illegible] OF ARRIVAL IN ACCORDANCE WITH ARMY ACT, SECTION 103 (1) [illegible]

[illegible] No. ~~C 32931~~ C 32931 Rk. Rank Cpl. Name DUMONT M.

13 Batt R.H.U. ROYAL CANADIAN ARMY (unit) was arrested at ROTTERDAM

at 1835 hrs on 31 Dec.45 (date). He was dressed in uniform/xxxx

31 Dec.45.

Signature of Provost Marshal, [illegible] or other Officer into whose custody the above named person was taken on arrest.

[signature] Capt.

(Rank)(Unit or appointment) [illegible] PROVOST COL. C.M.P.

Attested by New O.C. 59 Prov Coy R. A. Fox Capt. O.C. 59th Provost Coy. C.M.P.

NOTES

1. This certificate must be signed personally by the officer concerned.

2. [illegible] circumstances may it be signed by one Officer 'for' another, or by anyone who [illegible] not held a commissioned rank.

3. [illegible] circumstances should the place of apprehension be described as 'in the field'. [illegible] actual place of apprehension should be stated, or if difficulty is experienced [illegible] describing the place, the map reference should be given.

LIST OF WITNESSES

In the case of C-12931 Pte Maurice DUMONT.

(For the Prosecution)

NIL

(For the Defence)

NIL

LIST OF EXHIBITS

In the case of C-12931 Pte Maurice DUMONT.

(For the Prosecution)

(A) A certified true copy of the Record of the Declaration of a Court of Inquiry concerning the absence of the accused dated 20 September 1945.

(B) A certificate of the arrest of the arrest at ROTTERDAM at 1835 hrs on 31 December 1945.

(For the Defence)

NIL

CERTIFICATE OF ACCUSED.

I, C-12931 Pte Maurice DUMONT, hereby acknowledge that I have received, free of charge, a copy of the Summary of Evidence and a copy of the Charge Sheet therein.

I also request that an officer be appointed to act as my Defending Officer at my forthcoming Court Martial.

M Dumont

(M. Dumont)

EXHIBIT "B" Lamarcon Pres

FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
C-32921	PTE.	DUMONT, M	13 Cdn Base Rft Bn.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For Sec. 15(1) ..... 1 times.

For Sec. 40 ..... 1 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 31 Jun 44

Date of last entry in Field Conduct Sheet 17 Aug 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. [illegible]

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for ~~12~~ 29 days in military custody, i.e., ... days in open arrest, ~~12~~ 29 days in close arrest; of which ..... days were spent in hospital.

5. The present age of the accused is 25

6. The date of his attestation is 16 Feb 44

7. [illegible] is .....

8. The accused is in possession of †

† State the military decorations (if any) held by accused.

9. [illegible]

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Wt. 13479/2817 30,000 5/44 51-432 T.Ltd. Form B.296 (War)

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 29 day of Jan 46

(R.V.SWETNAM) Capt.,
ADJT.,13 CBRBn.,2 CBRGp.,

C-52931 DUMONT, Maurice
No. Name

Sqn., Battery, or Company

OLD SHEET DESTROYED 27 Oct. 44
Corps CIC

Date of enlistment 16 Feb 44

G.C. Badges

Service or Proficiency Pay

M.F.M. 6
(A.F. B.122)
40/P.& /8136 (2965)

Date of last entry in Company Conduct Sheet 12-8-44

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No. 1

Signature O.C. Company, etc.

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Valcartier	17 Aug 44	Pte.		AA Sec 40 Was not shaved on Parade.	Sgt.Alain	3 Days C.B.	17-8-44	Lt.J.Leveille	
In the Field	31 Jan 45	Pte.		WAOS AWL from 0900 hrs 31 Jan 45 until 2200 hrs 31 Jan 45 Abs. 13 Hrs.	Cpl.Drolet,C. Pte.Gerard,A.	1 Days PaY 5 Days C.B.	1 Feb 45	Capt.Rochon,A.	

CERTIFIED TRUE COPY OF THE ORIGINAL IN MY POSSESSION

(R.V. SWETNAM) Capt.

(P.T.O.)

55410 (AFRICA)

TPR DUMONTIER G.H.

SS-110 (AFRICA)

TPR DUMONTIER G.H.

D36557, Tpr (A/L/Cpl) Dumontier, H. G.,
3 Bn., 1 Cdn Base Rft Depot.

B9

55-110

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this seventh day of October, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Base Reinforcement Depot, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~[illegible]~~ GB

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

~~[illegible]~~ GB

Gen. Graham Lay Branch
19 Oct 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	F. M. Nash, E.D.	CAC, 1 Bn., 1 C.B.R.D.

Members.

Rank.	Name.	Regiment.
Captain	D. W. Hay,	CIC, 2 Bn., 1 C.B.R.D.
Captain	T. R. Wood,	RCASC, 3 Bn., 1 C.B.R.D.

*Signed G. Wilfrey Basher Colonel
Commandant, 1 Cdn Base Reinforcement Depot
Commanding Officer. Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
36557, Tpr(A/L/Cpl.) Dumontier, H.G., 3 Bn., 1 C.B.R.D.	FIRST CHARGE AA Sec 15 (1)	Guilty.	Guilty - To suffer Field Punishment for 14 days. Forfeits 14 days pay. 11-10-43	Confirmed

G. Henry Basher
Colonel
Commandant, 1 Con Base Reinforcement Depot

FOR FULL DETAILS OF CHARGE SEE CHARGE SHEET.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) G. Henry Basher Colonel (Signed) F. M. Nash Major
Commandant, 1 Con Base Reinforcement Depot
Commanding 1 Bn. 1 C.B.R.D.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 11th day of Oct. 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
Fmb *(3. ~~The Interpreter~~)
*(4. The officers under instruction)
were duly sworn.

*Omit if not applicable.

Signed this 11th day of Oct. 1943

F. M. Nash Major
President of the Court Martial

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Fmb. Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 14 day of Oct 1943

G. Henry Basher Colonel
Commandant, 1 Con Base Reinforcement Depot

Promulgated and extracts taken in the case of D36557 Tpr (A/L/Cpl) DUMONTIER H.G.
(a) (Dated) 14 Oct 43 (Signed) J. Regnault Dt+4/adj 1 C.B.R.D.

Promulgated and extracts taken in the case of
(Dated) (Signed)

Promulgated and extracts taken in the case of
(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

hob.

CHARGE SHEET

The accused, D.36557 Tpr(A/L/Cpl) George Harold DUMONTIER, Canadian Armoured Corps, on strength "B" Coy, 3 Bn., 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with:

First Charge
Sec. 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, absented himself without leave from 1500 hours 24 Sep 43 till 1800 hours 24 Sep 43. Total time absent 3 hours.

In the Field
24 Sep 43

Vincent McKenna
(Vincent McKenna)Lt Col MC ED
Commanding Officer,
3 Bn., 1 Cdn Base Rft Depot

To be tried by F.G.C.M.

7 Oct 43.

G Fidney Basher Colonel
Commandant, 1 Cdn Base Reinforcement Depot

S72 36

I hereby certify that I have this morning examined D 36557
A/4CPL. DUMONTIER HG. 3 Bn., 1 C.B.R.D. and that in my opinion fmh
he is fit to undergo trial by Court Martial.

This 11 day of W. S. Woolner Capt
October 1943.

I hereby certify that I have this morning examined D 36557 TPR
L/C. Dumontier H[illegible] 3 Bn., 1 C.B.R.D. and that in my opinion fmh
he is fit to undergo trial by Court Martial.

This 10th day of W. S. Woolner Capt
October 1943.

fmd.

PAGE 1

Accused D36557 Tpr. (A/Sgt) George Harold Dumontier - C.A.C. 3 Bn 1 C.B.R.D
(Number) (Rank) (Christian Names) (Surnames) (Unit)

Held in the Field in North Africa on 10 Oct 43
(Country) (Date)

	Rank	Name	Unit
PRESIDENT	Major F.M. Nash	E.D. C.A.C.	1 Bn. 1 C.B.R.D
MEMBERS	Capt D.W. Hay	C.I.C	2 Bn 1 C.B.R.D
	Capt. T.R. Wood	R.C.A.S.C.	3 Bn 1 C.B.R.D
JUDGE ADVOCATE (if anY)			
OFFICERS UNDER INSTRUCTION:	Major J.D. Shaunessy	C.D.C.	3 Bn. 1 C.B.R.D
	Lt. J.A. MacDonald	R.C.A	3 Bn 1 C.B.R.D
	Lt. R.E. Mullin	R.C.A.	3 Bn 1 C.B.R.D
	Lt. S. Dixon	R.C.C.S.	3 Bn 1 C.B.R.D
	Lt. G.A. Craig	R.C.C.S.	3 Bn 1 C.B.R.D

PROSECUTING OFFICER Major W. Stuart-Jones. ~~Capt R. Phillpot~~ Lawyer? Ans. No

DEFENDING OFFICER Lt. W. Patterson Lawyer? Ans. No

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs P 17(E), 22(a)).

The President, in closed court (R.P.22, fn 1), reads the Convening Order and the Charge Sheet(s) to the Members and the Court satisfy themselves that it is properly convened (A.A.49;R.P.105) and constituted that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P. 106).

The accused is (are) brought before the Court, and at ~~1830~~ 1630 hrs hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can) 557 (See CMHQ Circular Letter 173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

President to the Accused:
Do you object to _____ as interpreter? Answer _____

The interpreter is duly sworn

Do you object to Mbr & Sgt Edwards as shorthand writer? Ans. No

The shorthand writer is duly sworn (Forms of Oath on Page "D").
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (R.P.10

President to the accused:

Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Answer No

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (R.P.26-27 (Forms of Oath on Page "D"))

(PTO)

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has(has not) elected trial by Court Martial (A.A. 46(8)).

(If special plea(s) is (are) made for separate trial on one or more charges (Rs 62(E), 108); or as to the jurisdiction of the Court (R.P.34) or in bar of trial (R.P. 36) or as to accused's mental fitness to stand trial (A.A. 130, R.P.57), record such pleas and evidence (if any) on separate sheet (s) to be initialled by the President and attached to the proceedings.

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112)
He pleads as follows.

FIRST CHARGE Guilty

SECOND CHARGE_____

THIRD CHARGE_____

FOURTH CHARGE_____

FIFTH CHARGE_____

SIXTH CHARGE_____

SEVENTH CHARGE_____

EIGHTH CHARGE_____

NINTH CHARGE_____

TENTH CHARGE_____

ELEVENTH CHARGE_____

TWELFTH CHARGE_____

THIRTEENTH CHARGE_____

FOURTEENTH CHARGE_____

FIFTEENTH CHARGE_____

SIXTEENTH CHARGE_____

(For procedure on alternative charges, see R.P.37, fn 2)

Further proceedings are recorded on Pages hereto attached.

full

PAGE "A"

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President).

1. R.P. 35(B) is complied with by the President, ascertaining that accused understands the nature of the charge (s) (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(b) and advising him to withdraw his plea if he thinks the accused ought to plead "NOT GUILTY" thereto.

2. President to the Accused
X Q. Do you desire to make any statement of the circumstances, in reference to the charge (s) (R.P.37(B)) Ans. No.

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross examination thereon).

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the Proceedings.(If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (R.P.37(B)).

X 4. President to the Accused:
Q. Do you wish to make any statement in mitigation of punishment? (R.P. 37(C). Ans yes -

(Statement (if any) is recorded on separate sheet, initalled by the President and attached hereto. No cross-examination).

X 5. President to the Accused
Q. Do you wish to give evidence yourself or call any witnesses as to character? (R.P.37(C)). Ans. yes -

(Such evidence, confined to character only, is recorded on separate sheet, initalled by the President and attached hereto).

6. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (M.F.M.6) signed in the manner required by A.A. 163(i)(h) and purporting to refer to the accused by his number(if any) rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings. (R.P. 46; Overseas R.O. 3131).

7. President to the Accused:
Q. Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)). Ans No. (No cross examination). (Record address, if any, on separate sheet, initalled by the President and attached hereto).

8. The Court is now closed to consider sentence.(Record on Page 2 of A.E.A.3)
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, (R.P.48). Sentence should be dated

NOTE: When the President announces that "The Court is closed for the consideration of the sentence", he will add that "the sentence is to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in Open Court are accordingly terminated".
The sentence is not announced to the accused by the Court.

J.M. Hoskins
(Signature of the President)

PAGE "B"

(For use when accused pleads "Not Guilty" to all Charges)

(All printed matter not applicable to be struck out, and all alterations, erasures, and additions to be initialled by the President).

1. President to the accused
Q. Do you wish to apply for any adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (R.P. 39(A)). Ans._____

2. The Prosecutor's opening address(if any)(R.P.39(B)) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto.(See RECORD OF EVIDENCE on Page "D").

3. The Prosecution is closed.(If submission that there is no prima facie case established, see R.P.40 fn1;R.P.70 fn 1).

4. The accused is informed that he may, if he wishes, give evidence but if he does so he will be liable to cross examination (R.P.40 fn 2) or that he may, if he wishes, make an unsworn statement, upon which he can not be cross-examined.(R.P.40(D)(ii)(a)).

5. President to the accused:
Q. Do you apply to give evidence yourself as a witness?Ans_____
Q. Do you intend to call any other witnesses in your defence? Ans._____
Q. Is he a witness as to character only? (R.P.40(B)) Ans_____

6. The evidence for the Defence(if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing address of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto.(For order of addresses see Rs P 40, 41 and 42).

8. The court is now closed to consider the finding(Rs P 43 and 117

9. The court being re-opened, the accused is again brought before it, and the findings of "Not Guilty"(if any) are pronounced and(if findings of "Not Guilty" on all charges) the accused is released.

Where the Court acquits the accused of one or more charges and find him guilty of any other charge or charges, the President of the Court, when announcing the findings of not guilty will add that "The findings of the Court on the.....charge(s) being subject to confirmation, will be promulgated later".

10. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (MFM 6) signed in the manner required by AA 163(1)(h) and purporting to refer to the accused by his number(if any) rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings, (R.P. 46; Overseas R.O.3131).

11. President to the accused:
Q. Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of the punishment(R.P. 46(D)). Ans._____(No cross examination).
(Record address, if any, on separate sheet, initialled by the President and attached hereto.

(Continued)

PAGE "C"

(For use when there are pleas of "Guilty" and "Not Guilty"

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President).

1. R.P.35(B) is complied with, in respect to "Guilty" pleas, by the President ascertaining that accused understands the nature of the charge(s)(fn 3) and his plea thereto, explaining the difference in procedure by the plea(RP37)(B) and advising him to withdrew his plea if he thinks the accused ought to plead "Not Guilty" thereto.

2. President to the Accused:

Q. Do you wish to apply for adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby or that you have not had sufficient time for preparing your defence?(R.P.39(A). Ans_____

3. The Prosecutor's opening address(if any) (R.P.39(B) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto.(See Record of Evidence on Page "D").

4. The Prosecution is closed.(If submission that no prima facie case established, see R.P.40 fn 1; R.P. 70 fn 1).

5. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination.(R.P.40 fn 2) or that he may, if he wishes, make an unsworn statement upon which he can not be cross examined (R.P.40(D)(ii)(a)).

6. President to the Accused
Q. Do you apply to give evidence yourself as a witness? Ans_____
Q. Do you intend to call any other witness in your defence? Ans____
Q. Is he a witness as to character only?(R.P.40(B) Ans._____

7. The evidence for the defence(if any)is recorded on separate sheets, initialled by the President and attached hereto.

8. The closing addresses of the Prosecutor, Defending Officer and Judge Advocate(if any) are recorded on separate sheets, initialled by the President and attached hereto.(For order of addresses, see RsP. 40,41 and 42).

9. The Court is now closed to consider the finding.(RsP43 and 117) (Record Finding on Page 2 of A.F.A.3).

10. The Court being re-opened, the accused is again brought before it and the findings of "Not Guilty"(if any) are pronounced(RP117(B)).

Where the Court acquits the accused of one or more charges and find him guilty of any other charge or charges, the President of the Court, when announcing the finding(s) of not guilty will add that "The findings of the Court on the_____charge(s), being subject to confirmation, will be promulgated later".

11. The charges, to which the accused pleaded "Guilty" are read to the accused.

12. President to the Accused
Q. Do you desire to make any statement of the circumstances in reference to the charge(s) to which you have pleaded "guilty"(R.P.37(B)
Answer_____

(Statement(if any) not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross examination theron).

13. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If not such Summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings(RP37(B)

(P. T. O.)

PAGE "B" (CONT'D)

12. The Court is now closed to consider the sentence(Record on Page 2 A.F.A. 3).
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, (R.P.48); sentence should be dated.

When the President announces that "The Court is closed for the consideration of the sentence" he will add that "The sentence to be awarded by the Court, being subject to confirmation, will not be announced but will be promulgated later and the proceedings in Open Court are accordingly terminated".

The sentence is NOT announced to the accused by the Court

.....
(Signature of President).

Record evidence in narrative form, i.e, "No. 1357, Corporal W. Jones, W.R., being duly sworn states:- "I am a Corporal of #5 Platoon to which the accused belongs. On 14 Jan 42 at 1500 hrs I ordered the accused to go on parade. He refused and did not do so". If a shorthand writer is employed, he should record the evidence verbatim, i.e., by questioning and answer. After completion of Examination-in-Chief, enter the words "Cross examined by the Defending Officer" and thereafter record the evidence in the same manner. If the Prosecutor then re-examines, enter the words "Re-examined by the Prosecutor" and record evidence similarly. If a shorthand writer is not employed, the evidence of each witness must be read over to him after he has given evidence and a note made after the evidence of each witness"R.P.83(B) complied with". If a shorthand writer is employed, it shall not be necessary to read the evidence over unless the witness so desires; if the evidence is not read over, a note should be made after the evidence of each witness "In the opinion of the Court and Judge-Advocate, it is unnecessary to comply with R.P.83(B)".

FORM OF OATHS FOR USE IN COURTS MARTIAL

President and Members

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law".

Judge Advocate

"I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court martial until it is duly confirmed, and that I will not, on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law".

Shorthand Writer

"I swear by Almighty God that I will truly take down to the best of my power, the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same".

Interpreter

"I swear by Almighty God that I will, to the best of my ability, truly interpret and translate, as I shall be required to do, touching the matter before this court-martial".

Witness

"I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth and nothing but the truth".

14. President to accused:

Q. Do you wish to make any statement in mitigation of punishment? (R.P.37(C) Ans_____
No cross examination.
(Statement(if any) is recorded on separate sheet,initialled by the President and attached hereto)

15. President to accused:

Q. Do you wish to give evidence yourself or call witnesses as to character? (R.P.37(C) Ans_____

16. Statement of Character and Service(A.F.B.296) and Field Conduct Sheet (M.F.M.6) signed in the manner required by AA 163(1)(h) and purporting to refer to the accused by his number(if any) rank,name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings. (R.P.46; Oversens R.O.3131).

17. President to the accused

Q. Do you wish to address the Court on the Statement of Character Service and Conduct and in mitigation of punishment?(R.P.46(D). Answer_____. No cross examination.

(Record address (if any) on separate sheet, initialled by the President and attached hereto).

18. The Court is now closed to consider the sentence.(Record on Page 2 of A.F.A.3).

When the President announces that "The Court is closed for the consideration of the sentence", he will add that "the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in Open Court are accordingly terminated".

.....
(Signature of President)

PAGE "E"

RECORDING AND DISPOSAL OF PROCEEDINGS

1. The original record, only, is required except where the charge(s)is (are) one(s) respecting injuries sustained by the accused, when a true copy thereof will be prepared and forwarded.

2. All alterations, interlineations and erasures shall be initialled by the President or Judge-Advocate (if any).

3. The President or Judge Advocate(if any) will attach all documents at the top left corner thereof to the top of page 3 of this form in the following order.

(i) Charge Sheet initialled by the President.
(ii) Medical Certificates, initialled by the President.
(iii) Record of Evidence, initialled by the President,with the pages numbered consecutively.
(iv) Exhibits, in order of production, marked as such by consecutive letters and initialled by the President.
(v) The Summary of Evidence(if not already an exhibit) and initialled by the President.
(vi) Declaration (if any) under R.P.104 (Form - MML p.741) and initialled by the President.

4. The heading of each of the three pages "A", "B" and "C" indicates the nature thereof. As occasion requires, the appropriate page will be used and the others returned with the Proceedings to the Confirming Officer or to the D.J.A., H.Q., 1st Cdn Army in accordance with the appropriate drill for different formations. The delivery of the documents should be made without delay by the speediest method. When not delivered by hand by the President, they should be accompanied by a covering letter in an envelope marked "Confidential". The release of exhibits will not be granted until after confirmation and review of the proceedings. Application therefore must be made to the J.A.G. Branch, C.M.H.Q. through the normal channels.

Fmd.

SUMMARY OF EVIDENCE

In the case of; D.36557 L/Cpl. Dumontier, H.G. "B" Coy. 3rd. Bn. 1 C.B.R.D.

By the direction of the Commanding Officer evidence will be taken upon oath.

First Witness: D.71030 R.S.M. Davey, J.H. having been duly sorwn states:

I am D.71030 R.S.M. Davey, J.H."B" Coy. 3rd. Bn. C.B.R.D. On the 24th Sept. 1943 at or about 1950 hrs. all ranks were warned that a parade would be formed up at 1500 hrs., the usual afternoon parade. I called for markers in a loud voice on two occassions. I then gave the command "On Parade". Tp. Sgts. we e ordered to call the roll and approximately 40 other ranks were reported as present , 91 (ninety-one) other ranks were reported as being absent. Amongst the absentees was D.36557 L/Cpl. Dumontier, H.G. whom I recognize.

J.H. Davey
R.S.M.

The accused declines to cross examine the witness.

Second Witness: K.37701 L/Sgt. Surbey, J.E. having been duly sworn States:

I am L/Sgt. Surbey, J.E. K.37701, "B" Coy. 3rd. Bn. 1 C.B.R.D. Upon calling the roll of # 4 Tp. at approximately 1500 hrs 24 Sept. 1943 I found that L/Cpl. Dumontier was absent.

Accused:- Did you call my name out ?

Witness:- No.

J.E. Surbey L/Sgt.

The officer taking the summary therupon warned accused as follows.

"Do you wish to make any sataement or give evidence. under oath? You are not obliged to say anything or give any evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declined to make a statement.

I certify that the foregoing Summary of Evidence was taken by me in the presence and hearing of the accused and the Rules of Procedure 4 (C) (D) (E) & (F) have been complied with.

A.F. Abram
Lieut. A.F. Abram
"B" Coy. 3rd. Bn. 1 C.B.RD.
Officer taking Summary

PLEA FOR MITIGATION OF PUNISHMENT

in th e case of B.36557 Lcpl Dumontier, G.H., "B" Coy 3 Bn 1 C.B.R.D.

Lcpl Dumontier has been in the service for three and a half years, during which time his character has been exemplary. He has been a junior N.C.O. for approx one and a half years, during which time he has worked hard and been a very conscientious N.C.O. The eviden and facts of the case as produced by the prosecution would tend to indicate a very serious crime had been committed, however, I am sure that this N.C.O. did not realize at the time the seriousness of this charge. I therefore ask the court when passing sentence for maintenanceof discipline to be as lenient as law permits.

Four

FIRST CHARACTER WITNESS

D.71030 R.S.M. Davie, J.H., having been duly sworn states:

I recognize the accused.

I have known Lcpl Dumontier for one and a half years, his brother is a Sgt in 12 C.T.R. and Lcpl Dumontier was promoted to the rank of Lcpl about a year ago, and attended a junior N.C.O.s course which he passed with a high recommendation. During the time that I have known this N.C.O. he has performed his duties efficiently and in a soldierly manner.

Fmk.

FIELD CONDUCT SHEET.

*No. D3655 Name Dumontier, H. Sq., Batty., or Company "B" Corps 12 CATR AF Date of Enlistment 12-8-40 Army Form B122 Sheet No.

Date of last entry in Company Conduct Sheet | No. and date of last drunk | G.C. Badges | Long Service and G.C. Pay | Signature O.C. Company, etc. Maj B.K.Gordon

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded and Remarks
Field	5-9-41	Tpr		A.A. 15(1) AWL 15 hrs 29 mins.	Documentary	7 days CB	8-9-41	J. Walker Capt Ffts 1 days pay

CERTIFIED TRUE COPY FROM REGTL BOOKS IN MY CUSTODY

J.D. Segsworth

(J.D. SEGSWORTH) LT & A/ADJT
3 BN 1 CDN BASE RFT DEPOT

*Serial Number in case of enemy prisoner of war.

[P.T.O.

Fmch.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D,655	L/Cpl	Dumontier, H.	3 Bn 1 C.B.R.D.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, R.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For	times	AA15(1)- 1 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges, for ..... days in civil custody, and ..... days in military custody, making a total of ..... days, of which ..... days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 27 DEC 1919

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper is 12 Aug 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve 2 yrs 49 days

8. The accused is entitled to deferred pay or gratuity in respect of nil. service.

9. The accused is entitled to reckon 2 yrs 49 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~(as is in possession of or entitled to, state any military decoration or award.)~~

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of .....

12. (*In the case of an officer.*) The accused holds in the army the rank of ..... dated ..... and in his regiment (or corps or department) the rank of ..... dated .....

(P[illegible]) W[illegible] 10,000 10/40 A.S.E.W.[illegible] Gp.[illegible]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ____ Rank ____ Name ____ of ____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 4th day of Oct 43

Adjutant
1 Bn I Cdn [illegible] Reinforcement Depot

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ____ years, ____

In the rank of ____ years, ____

In the rank of ____ years, ____

(INSTRUCTION—If any reader on any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from each member as are available and the paragraphs concerned amended accordingly.)

4V32
L/CPL DUMONTIER VA

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L/CPL. PTE. 4 CDN. ARMD. TROOPS DUMONTIER Noel Augustine N°A N.S. HIGHRS

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 40	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be Reduced to the ranks.
To forfeit all ordinary pay for a Period of (60) sixty days.

(Sgd) ..... 26 Jan 45 (Sgd) ..... President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the findings and sentence set forth in Part I is: ~~confirmed~~ MR. I vary the sentence so that it shall be as follows: To forfeit all ordinary pay for a period of sixty days and ~~confirm the finding~~ but remit the remainder of the sentence.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) ..... (J M Rockingham) Brig
Date 26 Jan 45 Commanding 2 Can Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

L/CPL 40 Hqs
NOEL AUGUSTINE DUMONTIER 29 JAN 45 M J Heffernan Capt
N/A N.S. Highrs

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 164 / 40.32

FIELD GENERAL COURT-MARTIAL

CPA66 (In lieu of AFA81) 40/P & R/1686 (6144) 4/38B

Convened by Order of Brig. J.M. Rockingham DSO Comd 9. C.I.B. dated 21 JAN 45

23 FEB 1945 JAG BRANCH CMHQ

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number (a) Prmnt R. (b) Appmt, A/B or A/Appmt. Full Christian Names. Surname. Unit.

L/CPL 01401 PTE Noel Augustine DUMONTIER N°A N.S. HIGHRS

PROCEEDINGS REVIEWED 2 CDN ARMD TROOPS Army Gp R.C.A.

2 C Armd Trps
26 Feb 45

PRESIDING OFFICER. JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held at ~~the~~ HQ In (country) HOLLAND. on (date(s)) 21/15.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all references from ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AFS. for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by their CO.~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to an Interpreter? Ans~~ ~~a shorthand writer? Ans~~

~~The Interpreter is sworn.(1) Do you object to the shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 118, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	D EASTWOOD	N°A N.S. HIGHRS
Member	CAPT	J R PALMER	S.D. & G HIGHRS
Member	LIEUT	E W POLLARD	H.L.I. of C.
Judge-Advocate			
Prosecutor	LIEUT	A E SMITH	N°A N.S. HIGHRS
Defending Offr	LIEUT	A M HARPER	N°A N.S. HIGHRS

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See p 2.)

A8. The accused ~~stood mute~~ pleaded ~~Not Guilty~~ to the charge ~~and the~~ arraignment makes(s) (note) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in all cases and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AFA to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~adjourned and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form No 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. Excerpt at p. 412

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. N/E. (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) (changes) (do) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3.* *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (ii).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by continuing with paras D1 to D8 inclusive in Record Form D on p 3 and making on appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 167.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. ..... Do you intend to call witnesses on your behalf?
Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf AA5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (a), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. The alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. Just CONTACT WITH SGT.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para.* *RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy [extract] of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex C respectively.(3)
(1. *MFB 355 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. I accept the findings of Guilty.
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas NO XIII, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 61(5), MML p 120. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, L.101101 L/Cpl. Noel Augustine DUMONTIER, North Nova Scotia Highlanders, a soldier of the Canadian Army Overseas, is charged with:

First Charge
Army Act
sec 40

When on Active Service, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, at approximately 0530 hours, on 14 Jan 45, when serving with his section on outpost duty, improperly withdrew his section, leaving the post unmanned.

[redacted]

In the Field
18 Jan 45

(D.M. Forbes) Lt.-Col.
Commanding
North Nova Scotia Highlanders

To be tried by Field General Court Martial:

(J M Reckingham) Brig
Comd 9 Cdn Inf Bde

In the Field
21 Jan 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
L 101101	L/Cpl	--	Noel Augustine	DUMONTIER	Nth NS Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 21 Jan 45 endorsed by me, ~~or by my predecessor in command~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable, having due regard to the exigencies of the service, that such offence should be tried by a Field General Court-Martial~~ *(Delete part in brackets when not required for compliance with RP 105(C).)*

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I have reasonable grounds for stating that it is not practicable for the Court to assemble at any place where a Permanent Court-Martial may be convened.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I have appointed the following officer to act as Prosecutor at the trial.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj (Rank.)	D Eastwood (Must be named. RP 106.)	Nth NS Highrs (Unit.)

MEMBERS.

Capt	J P Palmer	SD & G Highrs
Lt (Rank.)	G W Pollard (Named or detailed. RP 106.)	H L I of C (Unit.)

WAITING MEMBER.

Capt (Rank.)	J E Gillespie (Named or detailed, if any. RP 106.)	HQ 9 Cdn Inf Bde (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland (Country.)

J M Rockingham (Signed personally. RP 105 fn 2.)
(J M Rockingham)

Brig (Rank.)

Dat 21 Jan 45

Commanding 9 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFA 86 (In lieu of AFA 3); 40-9 & 8-1691 (85-43))

(See overleaf for oaths and notes for use on trial.)

MEDICAL CERTIFICATE

I certify that I have this morning examined

No. 401101 Rank Pte. Name Dumontier Initials M.A. Unit N.N.S. Highlrs

and in my opinion he is fit or [redacted] to undergo trial by

Court-Martial.

STATION: In the Field.

DATE: 23 Jan 45.

K.A. Campbell Capt.

(K.A. Campbell) Capt.
Medical Officer
North Nova Scotia Highlanders

L101101 L/CPL. ~~DU~~ NOEL AUGUSTINE DUMONTIER
N.N.S.H.

E. I am F2077 PTE. BECK E.R. of 10 Plt. "B. Coy". I recognize the accused as L/cpl. Dumontier. I have known him for 5 months. As far as I know he is honest, he was doing a good job while in his section.

Question by Court — Have you known him in the unit.

I have known him through Bologna & Cape Griz Nez and was in his section in the field. He was not leading the section during these battles as far as I know he carried out all of his orders in action.

I am F2641 PTE. BEATON D.J. of 10 Plt. "B" Coy. I recognize the accused as L/cpl. Dumontier and have known him since 22 Aug. 44. I have served in the same section as accused. As far as I know he always carried out orders in action. As far as I know he was honest and of good character.

(R. of S. 53 B complied with)

Plea in Mitigation

I in entering plea in mitigation in the case of T/Sgt. Dumonier, I bring these points to attention of court, Accused has been shown to be a man of upright character and honest, and that he obeyed his command during action. He enlisted June 42 and has served since that time, with only 2 reprimands. Both of these were for 7 days C.B. He joined his unit July 44 and has served with distinction since that date. His Plt. Com. who is also a witness for prosecution, stated out of court that accused was one of the best and most reliable men he had in his plt. T/Sgt. Dumonier has been an NCO only since Nov. 44. Since he became new NCO he was not familiar with duties and responsibilities of his appointment. I ask the court to take into consideration his length of service in action, the statements of character by witnesses and especially the fact that accused received his appointment merely 2 months prior to offense.

(R.P. 6 3B complied with)

NOTES E3

Exhibit A

SUMMARY OF EVIDENCE in the case of L.101101 L/Cpl. Noel Augustine DUMONTIER, North Nova Scotia Highlanders.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS for the Prosecution

Lieut. B Fitch, sworn states: "I am Lieut. Burton Fitch, 10 platoon, B Company, North Nova Scotia Highlanders. On the 13 Jan 45 I ordered Cpl. Barrett, who was acting as platoon Sgt. to arrange that a section at a time would man an outpost on our Company front. At 0530 hours on the morning of 14 Jan 45, I telephoned the outpost and received no answer. I awoke a couple of my men with the intention of seeing what the trouble was, ~~and was told that Cpl. Dumontier's section that was supposedly on duty at the time had already returned~~. I investigated and found Cpl. Dumontier and members of his section asleep in their quarters. Cpl. Dumontier told me that he had been onduty at the outpost and that he had brought his section in before the appointed hour. I warned him that he was on charge."

Not admissible at trial

Q. What was the tour of duty laid down for the outpost?
A. From 1800 hours until 0600 hours daily.

Q. Was Cpl. Dumontier familiar with these instructions?
A. I don't know as I was acting 2 i/c of the company and my platoon was being administered by Cpl. Barrett.

Signed
Burton Fitch, Lieut.
North Nova Scotia Highrs.

The accused declines to cross-examine this witness.

SECOND WITNESS for the Prosecution

F.10308 Cpl. Barrett, R.D. sworn states: "I am F.10308 Cpl. Barrett, R.D. acting platoon sergeant of No. 19 platoon, B Coy. North Nova Scotia Highlanders. At 1530 hours 13 Jan 45 I had an "O" Group of my section leaders which included L/Cpl. Dumontier and Cpl. Mitchell, stating various times each shift at the outpost was to go on dty The first shift was from 1800 hours to 2400 hours and the second shift was from 2400 hours until 0600 hours. At about 0530 hours 14 Jan 45 I was awakened by Mr. Fitch ~~who asked me what time the last shift was to come off duty. I infor~~ed him that it was at 0600 hours. He then told me that the section was in their quarters at 0600 hours. He then warned L/Cpl. Dumontier that he was on charge."

Only admissible at trial unless accused was proved to be present.

Q. Are you sure that L/Cpl. Dumontier was present at the "O" Group?
A. Yes, sir.

Q. What shift did L/Cpl. Dumontier have at the outpost?
A. From 2400 hours until 0600 hours.

Signed
Cpl. R.D. Barrett
North Nova Scotia Highrs.

The accused declines to cross-examine this witness.

THIRD WITNESS for the Prosecution

F.22660 Pte. Anderson, H.E. sworn states: "I am F.22660 Pte. Anderson, H.E. 10 platoon, B Coy. North Nova Scotia Highlanders. On the evening of 13 Jan 45 I was instructed by my section commander who at that time was L/Cpl.

.....2 OVER

THIRD WITNESS (Cont)

L/Cpl. Dumontier N.A. that our section was to man the outpost in front of our company from midnight until 0600 hours 14 Jan 45. We proceeded to the outpost at about 2315 hours and relieved Cpl. Mitchell's section. At about 0505 hours 14 Jan 45 L/Cpl. Dumontier instructed us to get ready to go back to our quarters. We arrived at our quarters at about 0530 hours.

Q. Did you have a watch with you at that time?
A. Yes, sir.

Q Did you look at your watch to see what time it was when you left the outpost?
A. Yes, sir.

Q. Did L/Cpl. Dumontier have a watch?
A. I don't know sir.

Q. Did you hear him enquire about the time?
A. No, sir.

Signed
Pte. W.E. Andersen
North Nova Scotia Highrs.

The accused declines to cross examine this witness.

Question to the accused.

Q. Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but whatever you may or any evidence you give will be taken down in writing and may be used as evidence against you.
A. No, sir.

Rules of procedure 4 (c) (d) (e) (f) and (g) have been complied with.

I certify that the foregoing summary of evidence, consisting of three pages, was taken down by me in writing in the presence of the accused, this 18 day of Jan, 1945.

Signed
(H.E. Smith,) Lieut.
North Nova Scotia Highlanders
Officer i/c Summary

In the Field
18 Jan 45

Summary of Evidence in the case of L 101101 L/Cpl Dumontier, Noel Augustine, North Nova Scotia Highs.

The C.O. Directs that the evidence be taken on Oath.

FIRST WITNESS for the Prosecution. 2 and Lieut Burton Fitch, No 10 Pl. B Coy North Nova Scotia Highlanders. On the 13 Jan 45. I ordered Cpl Barrett, who was acting as Pl Sgt to arrange ~~for~~ that a section at a time would man an outpost on our Coy Front. At 0530 hrs on the morning of 14 Jan 45 I telephoned the outpost and received no answer. I awoke a couple of my men with the intention of seeing what the trouble was, but was told that Cpl Dumontier's section that was supposedly on duty at the time had already returned. I investigated and found Cpl Dumontier and members of his section asleep in their quarters. Cpl Dumontier told me that he had been on duty at the outpost and that he had brought his section in before the appointed hour. I warned him ~~that~~ that he was on charge.

Q - What ~~were the hours laid down for~~ was the tour of duty laid down for the outpost

A - From 1800 hrs until 0600 hrs daily.

Q - Was Cpl Dumontier familiar with these instructions

A - I dont know as I was ~~not~~ acting 2½ of the Coy and my Platoon was being administered by Cpl Barrett.

Signed. Burton Fitch Lt

The accused declines to cross examine this witness.

SECOND WITNESS for the Prosecution. F 10308 Cpl Barrett R.D. 2 and F 10305 Cpl Barrett R.D. acting Pl Sgt of No 10 Pl. "B" Coy North Nova Scotia Highs. At 1530 hrs

13. Jan 45 I had an "O" Gp. of my section leaders which included L/Cpl Dumontier and Cpl Mitchell, stating various times each shift at the outpost was to go on duty. The first shift was from 1500 hrs to 2400 hrs and the second shift was from 2400 until 0600 hrs. At about 0530 hrs 14 Jan 45 I was awakened by Mr Fitch who asked me what time the last shift was to come off duty. I informed him that it was at 0600 hrs. He then told me that the section was in their quarters at 0530 hrs. He then warned L/Cpl Dumontier that he was "on charge"

Q Are you sure that L/Cpl Dumontier was present at the "O" Gp?

A Yes sir.

Q What shift did L/Cpl Dumontier have at the outpost?

A. From 2400 hrs until 0600 hrs.

Signed Cpl. P.D. Barrett

The accused declines to cross examine the witness

THIRD WITNESS for the prosecution F22660 Pte Anderson, H.E. sworn states I am F22660 Pte Anderson, H.E. of No 3 Section, 10 Pl. "B" Coy. North Nova Scotia Highrs. On the evening of 13 Jan 45, I was instructed by my section Comd. who at that time was L/Cpl Dumontier N.A., that our section was to man the outpost in front of our coy. from mid-night until 0600 hrs 14 Jan 45. We proceeded to the outpost at about 2315 hrs

and relieved Cpl Mitchell's section at about
0515 hrs 14 Jan 45 L/Cpl Dumonten instructed us
to get ready to go back to our quarters We arrived
at our quarters at about 0530 hrs

Q. Did you have a watch with you at that time?

A. Yes sir

Q. Did you look at your watch to see what
time it was when you left the outpost

A Yes sir.

Q. Did L/Cpl Dumonten have a watch

A. I don't know sir

Q. Did you hear him enquire about the time

A No sir

signed [illegible]

The accused declines to cross examine this witness

Q written to the accused.

Q. Do you wish to make any statement or
to give any evidence on oath? You are not
obliged to say anything or to give any evidence
unless you wish to do so, but whatever
you say or any evidence you give will
be taken down in writing and may be used
as evidence against you.

A. No sir

Rules of procedure 4 (c) (d) (e) (f) and (g) have been complied
with

I certify that the foregoing summary of evidence
consisting of three pages was taken down

by me in writing in the presence of the deceased this 18 day Jun 45.

In the field
18 Jun 45

H H Smith 1st
Officer i/c Summary

Exhibit B.

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L.101101	L/Cpl.	Dumontier	Nth NS Highlanders

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 617, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, provision being given in the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	NIL times	2 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, NIL

or

Nature of entries in the conduct sheet of the accused: ~~Nil~~

2. The accused has not been previously convicted, *or*

~~Previous conviction of the accused by court martial or civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the Additional Statement (if any) attached.~~

3. ~~The accused is not under sentence at the present time, or~~ The accused at the present time is under sentence for ~~imprisonment for the period of~~ days from the ~~date~~ day of

4. The accused has been in confinement, awaiting trial on the present charges, for 11 days in military custody, making a total of 11 days.

5. The present age of the accused according to his record of service is 23

6. The date of his attestation specified in his record of service is 30-6-42

7. ~~The accused was [illegible] to the reserve.~~

8. ~~The accused is entitled to [illegible] in respect of [illegible]~~

9. ~~The accused is entitled to [illegible] for the purpose of [illegible]~~

10. The accused is in possession of, ~~or entitled to, a military decoration or military award for~~ ~~is in possession of [illegible] entitled to wear any military decoration or military~~ C.V.S.M.

11. ~~If the accused is a warrant or~~ The accused before he was made a warrant officer had held the substantive rank of

12. ~~In the case of an officer.~~ The accused holds or has held the temporary rank of ~~and~~ and in his substantive rank of [illegible] Acting

(1) [illegible] (2) [illegible] A. & E.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. L.101101 Rank L/Cpl. Name Dumontier N.A. of Nth N S Highr Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		--------NIL--------		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 25 Jan 45 day of 1945

M J Heffernan Capt Adjt
offg i/c Records
North Nova Scotia Highlanders

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of		Date of Promotion.
L/Cpl	2 mons 9 days to 19 Jan 45	10 Nov 44
~~In the rank of~~		
~~In the rank of~~		

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

Infantry

No. L.101101 Name DUMONTIER Sqn., Battery, or Company "B" Coy Corps Q.O.C.H. of C. Date of enlistment 30-6-42 G.C. Badges Service or Proficiency Pay Exhibit "C" M.F.M. 6 (A.F.R. 122) 40/P & S. 136 (2637)

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10-7-43	Pte		Conduct to the P. of G.O. and M.D., in that he, had a dirty rifle. A.A. Sec. 40.	H. 19489 Sgt. Arbour, A.	7 days C.B.	10-7-43	Capt. W.E. Osler	
Field	21-3-44	Pte		A.A. Sec. 40 Regt. titles not on uniform.	H. 56398	7 days C.B.	22-3-44	Capt. A.C. Kavanagh	

M. J. Heffernan capt

CERTIFIED TRUE COPY

M. J. HEFFERNAN, CAPT.
OFFICER i/c RECORDS.

NNSH

(P.T.O.)

I, L.101101 L/Cpl. Dumontier, N.A. am desirous of having an officer defend me at my Courts Martial.

N.A. Dumontier

PP-6
PTE DUMPHY J.A.

805/1Spec Sal/5
C52722 Pte John Adolphus DUMPHY
1 Spec.Salvage Det.

PP-6

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this SIXTH day of SEPTEMBER, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "F" GROUP, CANADIAN REINFORCEMENT UNITS CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint

*(1) Three Officers to form the Court]

*[(2) A Field Officer as President]

for the following reasons, namely:—[

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lt.Col.	D.L. REDMAN, V.D.	H.Q., C.R.U.

Members.

Rank.	Name.	Regiment.
Capt.	T.J. MARRION	1 C.C.R.U.
Lieut.	C.F. ROWAN	1 C.C.R.U.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (LOUIS KEENE) Colonel
Commanding "F" Group, C.R.U.
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
G52722 Pte.John Adolphus DUNPHY 1 Special Salvage Det.	Sect 40 Army Act	Guilty	Guilty	
	Sentence To undergo detention for a period of sixty (60) days. 7th Sept 1943 [signature]			confirmed Louis Keene Col
	(See attached charge sheet)			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) [signature] (Signed) [signature]
(LOUIS KEENE) Colonel
Commanding "F" Group, C.R.U.
Convening Officer (c) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 7th day of Sept 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
MA ~~2. The witnesses~~
MA *(3. The Interpreter)
*(4. The officers under instruction)
were duly sworn.

*Omit if not applicable.

Signed this 7th day of Sept 1943

[signature]
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 702 M.M.L. 1929.

MA ~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~
MA
MA ~~Signed this day of 19~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 8 day of Sept 1943

[signature]
Confirming Officer.

Promulgated and extracts taken in the case of G.52722 Pte.John Adolphus Dunphy
(a) (Dated) D.O. No.55 Dtd.9 Sept 43. (Signed) J. A. MacKenzie - Capt O.C. 1 Coln. Spec. Sal. Det.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

1. CDN. SPECIAL SALVAGE DETACHMENT R.C.O.C.
CANADIAN ARMY OVERSEAS.

CHARGE SHEET.

The accused G.52722 John Adolphus DUNPHY, Royal Canadian Ordnance Corps., on strength of No. 1 Canadian Special Salvage Detachment R.C.O.C. is charged with While on Active Service,

SEC. 40 ARMY ACT. CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

at Bordon Hants, at approximately 1745 hrs., on the 28 th. day of August 1943, without authority was concerned in the taking and using of a Canadian Army Vehicle W.D. No. C.M.4231380.

J.A. MacKenzie

.....CAPTAIN.
(J. A. MacKENZIE) OFFICER COMMANDING.
1. CDN. SPECIAL SALVAGE DETACHMENT R.C.O.C.
CANADIAN ARMY OVERSEAS.

Bordon Hants.
1 Sept 43.

To be tried by Field General Court Martial

Louis Keene

(LOUIS KEENE) Colonel
Commander
"P" Group, C.R.U.

Bordon, Hants.
6 Sept. 1943

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No. G.52722 Pte Dunphy J.A.
(Rank) (Name)
of NO.1 C.O.R.U. and in my opinion he is fit to undergo
trial by Court Martial.

Station

Date 7 Sept 45

Sgd. ..... Bruce Capt
(Medical Officer)

Medical Officers' Certificate
K.R. (Can) para 557

I certi...

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT N.1. C.O.R.U. - Bordon. Hants.
ON THE 7th DAY OF Sept 1943

The accused Pte. Dunphy J.A. G 52722 Unit. 1. ~~Special Salvage~~ Det. R.C.O.C.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lieut. Col. D.L. Redmond Unit. H.Q. C.R.U.

Members Capt. J.J. Marsion Unit. No. 1. C.O.R.U.

Lieut. C.F. Rowan Unit. 1. C.O.R.U.

The officers under instruction are duly sworn:-

Major J.A. Bennell Unit. 1 C.O.R.U. - RCOC

MM Capt. ~~J.W. Field~~ D.H. Wallace Unit. 1 C.O.R.U. - RCOC

Prosecutor Lieut. A.W. Field Unit. No. 1 C.O.R.U.

Defending Officer Capt. J.F. Lanau Unit. No. 1. C.O.R.U.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
MM The Prosecutor produces MFB 355, ~~AFB 296~~ and MFM 6.
The Court complies with R.P. 36(B).

Pursuant to R.P. 37 THE ACCUSED:-

MM (a) ~~Makes a statement in mitigation of~~ punishment.
MM (b) ~~Calls witnesses as to character.~~
MM (c) ~~Calls witnesses in mitigation of punishment.~~ attached
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER.

[signature]

G52722 Pte DUNPHY, J.A.

Address by Defending Officer for Mitigation of Sentence:

SIR, President and Members of the Court:-

It is respectfully requested that the following points be considered when passing sentence on the accused:

(1) His youth, being just 20 years old.

(2) Although he realizes the graveness of his act, it was committed as a thoughtless lark. No attempt was made to make use of extra petrol which was readily available in considerable quantities. No work tickets or pass was raised, which points out the act was not premeditated.

(3) It is felt that if, on some of the former seven offences of which this soldier has been found guilty, he had been chastised more severly, he would not have committed the comparatively grave breach of discipline for which he has now readily admitted his guilt.

Respectfully submitted,

(J.F. [illegible]) Captain,
Defending Officer,
1 CORD.

SUMMARY OF EVIDENCE:

In the case of G.52722 Pte. John Adolphus Dunphy R.C.O.C. on strength of No. 1 Cdn. Special Salvage Detachment R.C.O.C. a soldier of the Canadian Army Overseas.
By direction of the Commanding Officer this Summary of evidence is taken on Oath.

First Witness Prosection

A.58736 Pte. Quackenbush W. on strength of No. 1 Cdn. Special Salvage Detachment R.C.O.C. having been duly sworn states.
On the 28 of Aug 43. I was on guard duty at the depot, with Pte. Morris. We relieved L/Cpl. Duthie and Pte. Snow at approximately 1715 hrs, so that they could go to supper. I proceeded from the guard room, shortly afterwards to make my rounds in a bush just outside the Depot enclosure. I met Pte. Dunphy at the gate just coming into the Depot. He said to me as he passed that he was coming in after his Bicycle which Morris had brought down, or words to that effect. I did not see Pte. Dunphy again until he came into the Guard room around 2230 hrs. with Pte. Morris, followed shortly afterwards by L/Cpl. Duthie and two Provost.

W. Quackenbush
A.58736 Pte. Quackenbush W.

The accused declines to cross examine this witness.

Second Witness Prosection

C.30382 A/L/Cpl. Duthie J.H. on strength of No. 1. Cdn. Special Salvage Detachment R.C.O.C. having been duly sworn states.
I was N.C.O. in charge of guard on duty in the guard room on the 28 Aug 43. At approximately 2230 hrs. I heard a Vehicle and Motor Cycle at the Depot gate, so I went out to see what was wanted. When they drove inside the enclosure I saw there was a Jeep and two Motor Cycles. It was quite dark so I did not recognize who was in the Jeep until I was quite close to the party walking towards me. I then recognized the accused Pte. Dunphy and Pte. Morris, as they passed me and walked into the Guard Room. I went over and took a look at the Jeep. I recognized it, as one of our own Salvaged ones, commonly used for work around the yard. I than went over to the Motor Cycles and saw that they were ridden by two (2) Provost. We all went into the Guard Room, where the Provost turned Pte. Dunphy and Pte. Morris over to me, saying that htey had picked them up in the Jeep outside and found that they had no Work Ticket. I Detailed an escort and turned them over to the Unit Orderly Sgt.

L/Cpl Duthie J.H.
C.30382 A/L/Cpl. Duthie J.H.

The accused declines to cross examine this Witness.

Third Witness Prosecution. F. 44925 L/Cpl. Hartling G. on strength No 3 Company Canadian Provost Corps, having been duly sworn states:

I was on duty on the 28 Aug 43 with L/Cpl. Poirier A.A. on A Traffic Patrol. At approximately 2050 hrs. same date, I noticed a W.D. Vehicle without any markings, on the Winchester - Basingstoke Road. After following the Vehicle a short distance, I became suspicious of said Vehicle and stopped it. At the time of stopping Pte. Morris was driving. I asked for his work ticket which he could not produce. He told me the Vehicle which was No. C.M. 4231380 was on test, but on further questioning admitted taking the Vehicle without authorization. I checked his Identity and found it to be correct. He was accompanied by Pte. Dunphy, whose Identity was also checked and found to be correct. In the back seat of the Vehicle was Sgn. Dover L.G. and Sgn. Johnston, W.S. of the 1st. Canadian Signal R.U. On finding the Vehicle had been taken without authorization, I placed the four (4) occupants of the Vehicle, under close Arrest, and escorted them to No. 3 Provost Coy, Orderly Room, where we tried to contact their units. I telephoned but could not do so. At this point we were informed that the two (2) Soldiers from the 1st Canadian Signal R.U. were not members of the party, but had been picked up on the Road. We then escorted the Vehicle and Four (4) occupants to Bordon Station, where we left the two (2) Signal Soldiers off to return to their Unit, and proceeded to the Guard House of No. 1 Canadian Special Salvage Detachment Depot R.C.O.C. where we handed the two (2)soldiers over to L/Cpl. Duthie in charge of the Guard, and received live body receipts for the two (2) soldiers, and receipt for the vehicle which I now produce. I explained to L/Cpl. Duthie that he could hold these soldiers either under open or close Arrest as he saw fit. He placed them both under close Arrest. I noted the Vehicle Number concerned to be C.M. 4231380, 5 Cwt. Willis.

G. Hartling
F.44925 L/Cpl. Hartling G.
No. 3 Cdn. Provost Coy., C.P.C.

The accused declines to Cross Examine the Witness.

Fourth Witness Prosecution. G.49466 L/Cpl. Poirier A.A. on strength No. 3 Canadian Provost Corps Company, having been duly sworn states:

I have read over and corroborate the above statement.

A.A. Poirier
G.49466 L/Cpl. Poirier A.A.
No. 3 Cdn. Provost Coy., C.P.C.

The accused declines to Cross Examine the Witness.

The accused having been duly cautioned as follows:

Do you wish to make any statement or to give any evidence on Oath? You are not obliged to say anything, or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

Declines to make any statement, and Reserves his Defence.

I certify that the foregoing Summary of Evidence consisting of two (2) pages was taken down by me in the presence and in the hearing of the accused and that Rules of Procedure 4(c)(d)(e)(f) and (g) have been complied with.

G. Chown Capt.
(G.G. Chown) Captain, Officer detailed to take Summary of Evidence

Bordon, Hants.
7 Sept. 43.

List of Witnesses.

Summary of Evidence.

In the case of G.52722 Pte. John Adolphus Dunphy, R.C.O.C., on strength of No. 1 Cdn. Special Salvage Detachment R.C.O.C.

(For the Prosecution)

1. A. 58736 Pte. Quackenbush W.
   1. Cdn. Special Salvage Detachment R.C.O.C.

2. C. 30382 A/L/Cpl. Duthie J.H.
   1. Cdn. Special Salvage Detachment R.C.O.C.

3. F. 44925 L/Cpl. Hartling G.
   No. 3 Provost Company.

4. G. 49466 L/Cpl. Poirier A.A.
   No. 3 Provost Company.

(For the Defence)

none.

LIST OF EXHIBITS.

In the case of G. 52722 Pte. John Adolphus Dunphy, R.C.O.C., on strength of No. 1. Cdn. Special Salvage Detachment R.C.O.C.

(For the Prosecution)

A. Receipt for Accused.

B. Receipt for W.D. Vehicle No. C.M. 4231360.

(For Defence)

none.

J.a. Ma. Kenzie
Captain.
(J.A. MacKenzie) Officer Commanding
1. Cdn. Special Salvage Det., R.C.O.C.

3 Sept 43.
Bordon, Hants.

I G.52722 Pte. John Adolphus Dunphy, R.C.O.C. on strength No. 1. Canadian Special Salvage Detachment R.C.O.C. hereby request that the Convening Officer appoint an Officer to represent me at my forthcoming Court Martial.

Bordon Hants.
1 Sept 1943

Pte J. A. Dunphy
(Accused)
Pte. J.A. Dunphy.

I hereby acknowledge that I have received a true copy of the Summary of Evidence taken at Bordon Preliminary to my Court Martial and I further acknowledge receipt of a copy of the Charge sheet under which I am being brought to Court Martial.

Bordon Hants.
1 Sept. 1943.

Pte J. A. Dunphy
(Accused)
Pte. J.A. Dunphy.

No. 52722 Name Dunphy J.A. | Sqn., Battery, or Company | Corps R.C.O.C. | Date of enlistment 31-3-42 | G.C. Badges | Service or Proficiency Pay | A.M.F. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. M.R. MacKlaren Lieut | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing with trial	By whom awarded	Remarks
Field	5/1/43	Pte.		Old sheet destroyed 31/9/42	Last entry	3/8/42 Nil Cases Drunkeness			
"	3/3/43	Pte.		Absent from drill Sq., (1 hr.) AWL.1600hrs. 3/3/43 to 0800 hrs. 4/3/43 (16 hrs) Sec. 15 (1)	Sgt.Miller Cpl.Prunell	7 days C.B. 7 days Pay	6/1/43		
Field	10/3/43	Pte.		A.A.Sec.15(1) In that he WOAS AWOL from 0800 hrs. 9/3/43 to 1330 hrs.9/3/43(absent 5 hrs 30 min.)	Cpl. Prunell	7 days C.B.	10/3/43	Major W.E. Bawden	
Bordon	29/3/43	Pte.		WOAS-AWOL from 0100 hrs.29/3/43 till 0750 hrs. 29/3/43 (Absent 6 hrs.50min.)A.A.Sec. 15 (1)	Cpl.Ings	3 days C.B. 1 days Pay	29/3/43	J.A. MacKenzie Capt.	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	31/7/43	Pte.		WOAS Disobeying lawful command A.A. Sec. 9 (2)	L/Cpl.Morissette L/Cpl.Cooley	7 days C.B. 7 days Pay	31/7/43	Tremblay L.Capt.	
Bordon	31/Jul/43	Pte.		WOAS-AWOL A.A. Sec.15 (1) (Absent 3 days 10 hrs.)	L/Cpl.Morrison	4 days Pay 14 days C.B.	4/8/43	MacKenzie J.A. Capt.	FR&I 149 (1)(a)
Bordon	9/8/43	Pte.		WOAS disobeying a lawful command A.A. Sec. 9 (2)	Sgt.John	7 days F.P.	10 Aug 43	MacKenzie J.A. Capt.	FR&I 149 (1) (b)

Certified true copy, original in my possession.

J.A. MacKenzie Captain,
(J.A. MacKenzie) Officer Commanding,
1.Cdn.Special Salvage Dets,R.C.O.C.
Canadian Army Overseas

M.F.B. 355
36M—11-41 (2273)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
G.52722	Pte.	John Adolphus DUNPHY	1.Cdn.Spec.Salvage Det.,R.C.O.C.

1. The following is a fair and true summary of the entries in the MFM 6 Service and General Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.W.L.	5	times	5	times
For A.A.Swc. 9 (2)	2	times	2	times
For		times		times
For		times		times

Jmk Cont ~~Number of instances of gallantry or distinguished conduct~~

or,

Jmk Cont ~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

Jmk Cont ~~3. The accused is not under sentence at the present time.~~

or,

Jmk Cont ~~The accused at the present time is under sentence for ..... beginning on the ..... day of.~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 10 days in Air Force military custody, making a total of 10 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 20 years

Jmk Cont 6. The date of his ~~XXXXXXX~~ attestation specified in his record of ~~XXXXXX~~ attestation paper 31-3-42

7. The service which the accused is allowed to reckon towards discharge is 1 year 4 Months 29 Days

8. The accused is entitled to reckon 1 year service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward.
military military military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force

Jmk Cont

Jmck Capt

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force / unit ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

Jmck Capt

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army / Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Name ..... of ..... Unit / Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

Jmck Capt.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody. J. A. MacKenzie Capt.

Signed this ~~Fourth~~ Seventh day of Sept. 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

[illegible signature]

42-6

T. pr. Dunawitz S.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B155046 Gpr Irving Kumanuky

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY		is NOT guilty of Desertion but ~~is~~ guilty of absence w/o without leave
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) [illegible]
(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 64 days, of which Nil days were spent in hospital.(2)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court:

to suffer eighteen (18) months imprisonment with hard labour.

(Sgd) [illegible] Judge-Advocate, if any. 9 Feb 45 Date awarded. (Sgd) CC Stepney President. (pp 45, 50) Major

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the findings and sentence of the Court.

I ~~direct that the accused be not committed to prison or detention barracks until further orders~~.(1) [illegible]
(1. AA 57A. Delete if not used.)

(Sgd) [illegible] Brig

Date 9 Feb 45 Commanding 12 Can Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B155046 Gpr Irving Kumanuky	14 Feb 45	Ivan Dawe Capt

~~Lieut Colonel~~ 4 PLDG

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 4 APR 1945 CMHQ

RECORDED AT CMHQ IN AB 160 4Z-C

CPA66 (To Hon for AFA83) 40/P & B/1898 (4000) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened at Brig's HQ 12 Cdn Inf Bde Comd 12 Cdn Inf Bde dated 7 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.
B155046	Gpr	Irving	Kumanuky

PROCEEDINGS REVIEWED
[illegible] Major
REVIEWING OFFICER, J.A.G. BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the (Country) Italy on (date(s)) 9 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A85, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2); accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP, 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused:~~ Do you object to ~~the Interpreter~~ as interpreter? Ans No

The ~~Interpreter~~ is sworn.(1) Do you object to ~~the~~ as shorthand writer? Ans No
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	CC Stepney	Lanark & Renfrew Scottish
Member	Capt	J D Davis	12 Cdn Inf Bde Coy RCASC
Member	Lt	L D Gorman	Westminster Regt.
Judge-Advocate			
Prosecutor	Capt	C A Thorne	4 PLDG
Defending Offr	Lt	D M Forbes	12 Inf Bde RCASC

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Confirming Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment, unless RP 89 (3) and fn 2 were not followed. See DI p 2.)

A8. The accused B155046 Gpr Irving Kumanuky before arraignment make(s) (no) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(5), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is (not) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A)-(B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)
President to accused: Do you wish to make a statement ? Ans .....(4)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 37(D) fn 5 para 2; MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence was read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras C1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1 or 2nd charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 1 or 2nd charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty on the latter charge(s)~~ and that, accordingly, the trial will proceed on all charges.
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.
President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Yes I will give evidence as a witness Do you intend to call witnesses on your behalf ?
Ans Yes I will call witnesses as to character. Are they witnesses as to character only ? Ans No
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf AB5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 40(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1 or 2nd charge(s), being subject to confirmation, will be promulgated later.(1) Or, ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are suspended, terminated and closed.~~
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding one dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes a witness as to character
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(2), and certified true copy of Conduct Sheet(s)(3), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(4)
(1. MFB 355 or MFB 284. 2. MFM 6. 2. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes in mitigation of punishment
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 42, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2223, MML p 60, 737-739. As to sentences consequent on civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Con 564. 2. RP 50. As to release from arrest on Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B155046 Tpr Irving DUNAWITZ
4th P.L.D.G. a soldier of the Canadian Army Overseas
is charged with:-

First Charge
Army Act
Sect 12 (1) (a)

When on Active Service, DESERTING HIS MAJESTY'S SERVICE

in that he

in the field on the 28th of Nov at 1700 hrs after having been duly warned of an impending action against the enemy, with intent to evade the said action absented himself without leave from the Unit lines of the 4th P.L.D.G. until surrendering himself to the Cdn Provost Corps at 1945 hrs 6th Dec 1944.

REMANDED FOR FIELD GENERAL COURT MARTIAL.

In the field
1945
7 Feb 45

C. Petch Lt-Col.,
Commanding Officer
4th Princess Louise Dragoon Guards

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
7 Feb 45

(J S H Lind) Brig
Comd 12 Cdn Inf Bde

CC

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 155046	Trooper		Irving	DUNAWITZ	4 PLDG

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) 7 Feb 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". pl

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ pl
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. pl

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ pl
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ pl
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	C. E. Petepiece	Lan & Ren Scot R

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by CO 12 Cdn Inf Bde Coy RCASC	
Capt or Lt	to be detailed by CO Westmr R(M)	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	to be detailed by CO 8 Cdn Lt Fd Amb RCAMC	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.) (J S H Lind) (Signed personally. RP 105 fn 2.) Brig (Rank.)

Date 7 Feb 45 Commanding 12 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE

I have this morning examined the accused B 155046

Tpr Dunawitz, I. and find him Fit.
(fit)

to undergo trial by F.G.C.M.

In the field
9 Feb 45

(L.J.CALVERT) Capt.,
RMO., 4th Princess Louise Dragoon Guards.

CCP

~~B188046 Tpr DUNAWITZ, Irving~~ CCP
~~Charge - Desertion~~ CCP

D3.

1st Witness for the Prosecution - C70439A/Sgt Barbier R.J.

Having been duly sworn ~~states~~ -

I ~~am~~ was C70439A/Sgt Barbier R.J. 7 tp 4 PLDG CCP
to which Tpr Dunawitz belonged
The accused in Court is Tpr Dunawitz
On the 28th of Nov I checked up
the tp billets & area at approx 1630 hrs CCP
Tpr
Dunawitz was absent at
that time we were on ½ hr
notice to move to the front
The next time I saw Tpr Dunawitz
was at ~~area~~ Ravenna in
Jan
On the morning of 28 Nov
we had a tp parade I
was on the parade & checked
the billets to see that everyone
was on the parade Tpr Dunawitz
was on that parade.
~~Dur~~ we had a rest period CCP
during which Lt Shortt
spoke to the men. ~~He spoke~~
~~of a impending~~ Afterwards I CCP
heard the men discussing

CC6

what mr Shortt had told us.

Pros:- I present to the court a certificate in accordance with sec 163 (1)(j) of the Army Act purporting to be signed by Capt Charlton O.C. 3 Cdn Provost Coy. This document refers to the accused.

Cross Examination by Defence

Q. Did you call the roll in the morning.

A. Yes.

Q. Did you see Dunawitz on parade

A. I cant recall but all the men were present.

Q. What do you know of Dunawitz's reputation as a soldier

A. A brother sergeant who is dead now has often spoken of him highly -

Q. Do you remember seeing Dunawitz at the gathering where Mr Shortt gave his talk

A. I cant swear to that

~~Q.~~

R P 83B
Complied with
CC6

3

CCP

2nd Witness for the prosecution 4 E A Shortt 4 PLDG

Having been duly sworn states

I am 4 E.A. Shortt. 0½ #7 tp
A Sgt 4 PLDG Tpr Dunawitz
was a member of my troop &
I recognize him as the accused.
On the morning of 28 Nov I took
my troop for a route march.
I called a halt for a 5 or 10
minute break - smoke.
I called them together in a
group & warned them of coming
operations & that they were on
½ hr notice. Tpr Dunawitz
was included in the gathering
I spoke to the men for 15 to 20
minutes.
Before I broke them off in the
first place I warned them to
stay near by as I wished
to talk to them

Cross-Examination by Defence.

Q Did you see Dunawitz
during the talk
A I cant recall

4

CCP.

Q. Do you remember seeing him on the morning parade before the route march.

A. I ~~don't~~ have no distinct memory of seeing him

Q. How do you know he was there

A. My sergeant reported all men of my troop present & I checked the number personally

Q. ~~Do~~ was the roll called

A. Yes by my sergeant.

Q. All you knew was the correct number were there

A. The sergeant told me every man was on parade & I counted them to make sure.

Q. Was there anyone absent.

A. No. They were all accounted for

Q. How many were there on parade

A. Between 24 & 28

CCP.

RP 83 B
Complied with
CCP.

5. CCS

D6 1st Witness for the Defence — B155046 Tpr Dunawitz, Irving

Having been duly sworn states –

I am B155046 Tpr Dunawitz, Irving, CCS
of 7 Tp 4 DLDG

Q. What happened when you were broken off during the route march

A. Lt Shortt broke us off & told us not to disperse. Myself & others went around the otherside of a church & were there for ~~the~~ ~~[illegible]~~ twenty CCS minutes or so

Q. What was going on when you came back

A. The ~~group~~ troop went over to CCS the cemetary & then started back to billets

Q. When did you decide to return from Rome

A. On the 5th Dec I read in a newspaper about the Regt taking Ravenna. I gave myself up the following day

Q Were you ever warned that the unit was on 1/2 hr notice to move.

A No sir

Q When you left your unit did you intend to return

A Yes sir

Q Did you hear any rumours about being on 1/2 hr notice to move.

A The first time I heard it was when we got back from the route march

Cross Examination by Pros

Q When Mr Shortt broke you off did you hear him tell you to stay around because he had something to say to you.

A. He may have said it but I didn't hear him distinctly

Q after you rejoined the group in the cemetary did you hear any discussion about going into action

A No sir. I didn't

1. CCP

Q: Did you go back to the billets with the troop

A Yes sir

Q For how long were you around the billets

A About ½ hr or so

Q Did you have your meal

A Yes sir

Q Did you hear any discussion there about the unit going into action.

A No sir

Q Did you hear the unit was on ½ hr notice to move

A Yes sir

Q Did you hear why

A I was told it was to move to other billets

Q Who told you

A I don't know

Q In your evidence you said WE surrendered ourselves

A. Yes

Q Who was with you

A Spr Carnegie

8

CCP

2nd Witness for the Defence - K 73272 Tpr Carnegie, J.G.

Having been duly sworn states
I am K73272 Tpr Carnegie J.G. of 4 P.L.D.G.

~~Q Do you know~~ I recognize the CCP
accused as Tpr Dunawitz

Q You were on a route march on 29 Nov. Tell the court what happened on the halt.

A. We were broken off & had a smoke Tpr Dunawitz & myself went around the corner of a church to have a talk & relieve ourselves. We came back from CCP around the church, the rest of the troop were moving towards the cemetary. We followed along

Q. Did you at any time ~~hear~~ hear a CCP warning that you were on 1/2 hr notice to move into action

A No sir

Q Did you hear a talk ~~given~~ by Lt Shartt given during the halt

A No sir

Cross Examination by Prosecution

Q when you were at Rome did you read about the unit in a newspaper

A Yes Sir

9. CCP

Q. Were you with Joe Dunawitz when you read it.

A. Yes sir.

Q. How soon after reading the newspaper did you surrender.

A. We ~~[illegible]~~ surrendered that evening. CCP

Re-Examination by Defence.

Q. It would have been possible for Dunawitz to read the newspaper the day before, would it.

A. Yes sir it would have

Examination by the Court

~~Q. Would it have been possible for Dunawitz~~

Q. When did you read the newspaper.

A. On the 6th Dec

Q. Did Dunawitz tell you anything about the writ going into action, On the 8th

A. No sir

Closing address of D. of. C.C.P.

The defence adopts two main points in support of the contention that the accused is not guilty of desertion. The defence do admit the offence of absence without leave. Firstly that when the warning was given the accused was not present. Secondly that the accused surrendered himself knowing that he would again serve on active service against the enemy.

Lt. Short has shown that the accused was present on the route march and that he did not see the accused leave after the Drill Parade prior to the talk when the warning was given. The accused states that he and a comrade were around the other side of the church & did not hear the talk. The comrade supports this. Surely it is at least within the realm of possibility that with 24 to 25 men scattered about on a group, that two men might leave unnoticed to the other side of the church without Lt. Short seeing them go. Lt. Short says he did not definitely see the accused at the time he gave his talk - but he was sure they were there because he did not see them leave. The prosecution have attempted to discount the credibility of the accused and the witness for him by showing that their stories do not agree - as to length of time behind the church - exactly what they talked about & other points. These are small points it is submitted - and it is not surprising that their stories do not agree in every detail when one considers that it is over

C. C. F.

three months since the circumstances took place. In fact had the stories been exactly the same, they would have been more suspicious, because it would then have been apparent that they had been prepared ahead to obtain a grant on. So you have the sworn evidence of the accused, supported by sworn evidence of another that the warning was not heard. The only sworn evidence that the accused was on the parade, apart from his own admission, is the method of counting bodies is the only evidence the prosecution have brought forth. But the defence have come forward to clarify the situation on oath; although it is apparent that no prima facie case of desertion has been made.

2. Even assuming the accused was warned, which is not admitted but definitely denied — the accused is still not guilty because he surrendered thus admitting any suggestion that he intended to return. It also rebuts any suggestion that the accused intended to avoid a "particular service" in the terms of ~~par~~ Army Act S 12. note 1 par 2 in 1944.

The accused when reading the news that his unit was in action surrendered by upon the same action which it is alleged he intended to avoid. Even if it could be shown that it was not the same battle + there is no evidence of this, the example in M M L says "such as active service" + he most certainly intended to return to active service. His sworn testimony also states that he intended to return.

Since the prosecution have not shown, apart from hearsay, that the accused had been warned, nor established an intention not to return "to such service" the defence contend that the case of desertion has failed.

CC5
12.

CC5

Closing Address of Prosecution in the Case of Tpr Dunawitz I.

Sir:

Again, as in the previous case, the question of desertion hinges on the intent of the accused to avoid a particular service for which he had been warned. It is not necessary that the warning be an actual formal warning. If the accused knew of the impending action and went absent to avoid it he is guilty of desertion. The rule used to determine whether the man did in fact know, is the standard of the average reasonable man. If such a man would have known then the accused is presumed to know.

Here, the accused says that he was not present at the warning but admits that he heard the unit was on ½ hours notice. Two witnesses for the prosecution state that the whole troop were present true they will not swear, after about three months, that the accused was seen by them on the parade. The accused admits that he was with the troop when they went into a cemetery just after Lt Shortt had spoken to them and yet he says he "can't recall" any discussion with or by the members of the troop regarding the talk given by Lt Shortt. On the other hand, Sgt Barbier states that there was a good deal of discussion about the coming "show" and I submit this is not only unprejudiced testimony but entirely credible testimony whereas the curious blanks in the memory of the accused and the conflict of his testimony gives rise I submit to a good deal of doubt as to his credibility. There is I submit ample evidence on which the Court can find both

over

the detail of the particular service and the intention of the accused to avoid it.

If however the Court decides that there is not sufficient evidence of Desertion, then the facts of the absence without leave are fully proven

E. Stone
Capt

CC. 14 CC5

Character Witness - C100227 Tpr Mach E.M.

Having been duly sworn states, I am C100227 Tpr Mach E.M. 7 Sp 4 PLDG and I recognize the accused as B155046 Tpr Dunawitz, I.

Tpr Dunawitz is a very good soldier in & out of action. He has never shown any cowardice. He has never let his comrades down. I was a sec cpl in action, Tpr Dunawitz was then in my section.

CC5

Acc. 18 CCP

Address ~~Statement~~ in Mitigation of Punishment ccp.

E3.

The accused has a clean crime sheet & has been in custody for 64 ~~48~~ days. I bring to your attention the extremely good character evidence of two witnesses, One a Sgt. The other a Cpl at the time of the offence & urge that his good character as a fighting man should be taken into consideration in determination of the sentence.

CCP.

Cf A CCP 9 Feb 45

CERTIFICATE UNDER ARMY ACT SECTION 163 (I) (J)

I, CAPT A. CHARLTON, DARM RARE certify that No.B-I55046 Pte.DUNAWITZ I. of the P.L.D.G. 5 Cdn. Div. surrendered himself to H 4011 Sgt.Nicol W.J. of the No.3 Cdn.Provost Corps. Detachment at Rome at 1945 hrs. on the 6 Dec.44 as a ~~deserter~~(or ~~[illegible]~~ absent without leave.)

[signature] Capt Darm. Rare

Officer Commanding Detachment
3rd Canadian Provost Company
Rome, of which H 4011 Sgt. Nicol
W.J. is a member.

~~Shift "A" to the Secy of Endorsement~~
~~dated Jan 25/45~~

E.A.P.

Ex B cc 9 Jul 45

ARMY FORM B 206 (war)

STATEMENT OF THE CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

For use at trials by Field General Courts- Martial only

Number	Rank	Name	Regiment
B 155046	Tpr	Dunawitz, I.	4th P.L.D.G.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:-

For .... times

For .... times

For .... times

For .... times

For .... times

WHP

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

WHP ~~Previous convictions of the accused by a court martial or a civil court are set out in the schedule overleaf.~~

WHP ~~The accused at the present time is under sentence for~~ .....

~~beginning on ..... day of~~ .....

4. The accused has been waiting trial on the present charges for _____ days in civil custody; and for 64 days in Military custody; i.e. Nil days in open arrest, 64 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 25 years

6. The date of his attestation is 27 Aug 43

WHP ~~The service which the accused is allowed to reckon is~~ _____

8. WHP ~~The accused is in possession of~~ _____ (military decoration if any)

WHP ~~The accused is a warrant officer or N.C.O.). The accused has served continuously without reduction, to the present date:-~~

	Date of promotion
In the substansive rank of _____	_____
In the war substansive rank of _____	_____
In the acting rank of _____	_____

INSTRUCTION:- If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraphs must be struck through.

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or Punishment suspended
		N I L WHP		

I hereby certify that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 7th day of Feb 45

WH Powell
(W.H. POWELL) Capt.,
Adjt., 4th Princess Louise Dragoon Guards.

Ex C CCP 7 Feb 45

MFM 6
(AFB 122)
40/P&S/136 (3438)

No B 155048 Name Dunawitz, I. Sqn, Battery, or Company Corps CIC Date of enlistment 27 Aug 43 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				SUPPLEMENTARY Entries Nil					
				W H Powell (W.H. Powell) Capt., Adjt., 4th Princess Louise Dragoon Guards.					
				No Original Available. 7 Feb 45					

(PTO)

SUMMARY OF EVIDENCE

Summary of evidence in the case of B 155046 Tpr Irving DUNAWITZ of the 4th Princess Louise Dragoon Guards, Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on Oath.

1st Witness prosecution

P 17142 S.S.M. Prettie, R.G. 4th P.L.D.G. having been duly sworn states:-

I am and was at all times material hereto P 17142 SSM Prettie, R.G. On the 28th Nov I was and still am SSM of "A" Sqn 4th P.L.D.G. B 155046 Tpr Dunawitz whom I recognize as the accused was a member of "A" Sqn at that time. At about 1730 hours on the 28th of Nov Sgt Barbier reported that Tpr Dunawitz was marked absent from his troop. Tpr Dunawitz was continually marked absent until he was handed over to me by the R.P's on the 22nd Dec 44. During the period from 28 Nov to 22 Dec 44 I did not see Tpr Dunawitz.

On the morning of Nov 28th Major Burke "A" Sqn Commander warned the troop leaders that the Sqn was on half hours notice to move forward against the enemy.

The accused declines to cross examine this witness.

R.G. Prettie SSM

2nd Witness for the Prosecution

C70439 Sgt Barbier, R.J. 4th P.L.D.G. having been duly sworn states:

I am and was at all times material hereto C70439 Sgt Barbier, R.J. I was troop Sgt of 7 troop "A" Sqn 4th P.L.D.G. on the 28th Nov 44. B115046 Tpr Dunawitz was a member of 7 troop on that date. At about 1630 hours on the 28th Nov through information given to me by Cpl Nash I checked on the troop and Tpr Dunawitz was nowhere in the troop area. I was with 7 troop until approximately the 8th of December and in that time Tpr Dunawitz did not return to the troop and I did not see him.

On the morning of the 28th of Nov the troop was warned on parade that they were on half hours notice to move to the front. The troop officer Lieut Shortt warned them.

The accused declines to cross examine this witness.

R.J. Barbier Sgt

3rd Witness for the prosecution

Lieut E.A. Shortt "A" Sqn 4th P.L.D.G. having been duly sworn states:-

3rd Witness cont'd

I am and was at all times material hereto Lieut E.A. Shortt. I was on the 28th Nov troop officer of 7 troop "A" Sqn 4th P.L.D.G. Tpr Dunawitz whom I recognize as the accused was a member of 7 troop. I took the troop on a route march on this morning and at one halt by a church I gave the troop an outline of the infiltration movement we were to do at night and warned them that we were on half hour notice to go into action. Tpr Dunawitz was on this parade.

The accused declines to cross examine this witness.

E.A. Shortt
E.A.Shortt Lieut.

4th Witness
for the Prosecution

A/Capt W.R. Chamberlain M.C. 4th P.L.D.G. having been duly sworn states:-

I am and was at all times material hereto A/Capt W.R. Chamberlain M.C. I present to the Court a certificate in accordance with Sect 163 (1) (j) of the Army Act purporting to be signed by Capt Charlton, Officer Commanding Detachment,3rd Cdn Provost Company,Home. This document refers to the accused man.

The accused declines to cross examine this witness.

Wm R Chamberlain Capt
W.R. Chamberlain Capt & Adjt

The certificate referred to by the witness, produced, read over to the accused, marked exhibit "A", signed by me and attached hereto.

.....
E.S.Thorne Capt
4th Princess Louise Dragoon Guards

The accused having been duly warned as follows:-
"Do you wish to make any statement or to give any evidence upon Oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence", declines to make any statement or to give evidence.

Certified that the Rules of Proceedure 4 (c) (d) (e) & (f) have been complied with.

This summary of evidence consisting of two (2) pages was taken down by me in writing in the presence and hearing of the accused.

In the field

.....
E.S.Thorne Capt
4th Princess Louise Dragoon Guards.

LIST OF WITNESSES

For the Prosecution

P17142	SSM	Prettie, R.G.
C70439	Sgt	Barbier, R.J.
Lieut	E.A.	Shortt
Capt	R.W.	Chamberlain MC

For the Defence

Nil

List of Exhibits

1. [redacted].
Certificate of apprehension.

Prosecuting Officer

Capt E.S. Thorne 4th P.L.D.C.

Defending Officer

I wish/do not wish to have the u/m Officer to defend me at my trial.

In the field

I. Dunn

4A-50

Cpl. Dunbar. F.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B 63773 Cpl Frank Joseph DUNBAR - CIC - 3 CIRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

Not

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(4). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be reduced to the ranks and to forfeit all ordinary pay for a period of Eighteen (18) days.

(Sgd) ..... Judge-Advocate, if any. 10 Oct 44 Date awarded. (Sgd) John Munro President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.) Major

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further order~~.(1)

(1. AA 57A. Delete if not used.)

Date 11-9-44 (Sgd) ..... Commanding Con. Reinforcement Unit C.R.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B-63773 Cpl. Dunbar, F.J.	12 Oct 44 (3 CIRU Pt II D.O. No 239 d/13 Oct 44)	W. G. Moore Lieut. (W. G. Moore) A/Adjt., 3 C.I.R.U.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 4/A-50

RECEIVED 19 OCT 1944 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA66 (To take place of AFA81) 40/P & B/Lists 16(44) 4/38B

Convened by Order of Brigadier J.E. Ganong, ED Comd HQ 8th Cdn Gp CRU dated 9 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 63773	Cpl	Frank Joseph	DUNBAR	CIC 3 CIRU

PROCEEDINGS REVIEWED 19 Oct 44

JAG Edward Davis Capt

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date(s)) 10 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, ~~JA~~, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans .....

The Interpreter is sworn.(1) Do you object to Sgt A Veneer as shorthand writer ? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JA~~, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	E M Fuller ED RC	HQ 8th Cdn Gp
Member	Capt	D A Bate	1 C SRu
Member	Lieut	J L McLennan	4 C SRu
Judge-Advocate	~~Lieut~~		
Prosecutor	Lieut	R J Weldon	3 C SRu
Defending Offr	Captain	F L J Martin	3 C SRu

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See Dir p 3.)

A8. The accused ..... before arraignment make(s) (not) (a) plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 6.20(E), (GE), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~(y) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A94 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Gvilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA~~, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No Sir.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para. if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1. 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 41, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No Sir. They will be with me but I am not going to call them.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 552. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Nothing to offer.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him, and the JA, if any.(2)
(1. *When several accused tried sequentially see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its powers, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas AO* 109, 1323, *MML p* 66, 737-739. *As to sentences consigned for civil offences by the law of England see AA* 41(2), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(3), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused Number B63773, Corporal Frank Joseph DUNBAR Canadian Infantry Corps, on the strength of 3 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 15(1)

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, absented himself without leave from 3 Canadian Infantry Reinforcement Unit, from 2300 hours, the 17th day of September, 1944, until surrendering himself to 3 Canadian Infantry Reinforcement Unit Guard Room at 2055 hours, the 5th day of October, 1944.

Total time absent: 17 days, 21 hours and 55 minutes.

A.S. Pearson
(A.S. Pearson) Colonel,
Commander,
3 Cdn Inf Rft Unit.

In the Field,
6th day of October,
1944.

To be tried by Field General Court Martial

J.L. Ganong
(J.L. Ganong) Brigadier
Commanding
"D" Group, Cdn Rft Units

In the Field
9 Oct 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA2)
40/P&S/1607 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 63773		Cpl	Frank Joseph	DUNBAR	CIC 3 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 9 Oct 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	E.M. Miller, ED	HQ CMU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

1 Captain	to be detailed by Commanding Officer	1 CIRU
1 Lieutenant	tobe detailed by Commanding Officer	4 CIRU
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.) — [signature] (Signed personally. RP 105 fn 2.) — Brigadier (Rank.)

Date 9 Oct 44 — Commanding HQ "D" Group, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Medical Officer's Certificate
C.R. (Can) Para 557

I certify that I have this morning examined No [redacted] Cpl. Dunbar, F.J.
of [redacted] and in my opinion is fit to undergo
trial by Court Martial.

Station: Aldershot, Hants

Date: 10 Oct'44

W. J. Russell Capt
.....
Medical Officer
No 3 Con Inf Rft Unit

PLEA IN MITIGATION

CASE OF

B.63773 Cpl DUNBAR FJ 3 CIRU

Cpl Dunbar is one of the original members of my bn. He has been a full corporal for approx 2 years during which time he has carried out his duties in a very satisfactory manner. He landed on D day in Normandy with myself and to my personal knowledge did a fine job in the field of fighting there, till he was wounded on the 14th of August. He has now recovered from his wound. I feel that owing to the need for battle experienced men that in the best interests of the Canadian Army and his own regt he should be returned to his field unit as soon as possible.

[illegible] Capt
Q.O.R. of C.

SUMMARY OF EVIDENCE

In the Case of Number B63773, Corporal Frank Joseph DUNBAR, Canadian Infantry Corps, on the strength of 3 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas:

By direction of the Commanding Officer, this Summary of Evidence is taken on Oath

---

FIRST WITNESS FOR THE PROSECUTION

Lieut James Howard Galloway, Canadian Infantry Corps, Assistant Records Officer, 3 Canadian Infantry Reinforcement Unit having been duly sworn, states:-

I am Lieut. J.H. Galloway, Canadian Infantry Corps, Assistant Records Officer, 3 Canadian Infantry Reinforcement Unit. I now produce from my custody, as Exhibit "A", to this Summary of Evidence, a certified true extract from 3 Canadian Infantry Reinforcement Unit Part II Daily Order No. 219, dated the 19th day of September, 1944, issued by Colonel A.S. Pearson, Officer Commanding, showing the accused, B63773, Cpl. Dunbar, F.J., as being absent without leave from 2300 hours, the 17th day of September, 1944. This evidence pertains to the accused whom I now recognize.

(J.H. Galloway) Lieut

The accused declines to cross-examine this witness.

SECOND WITNESS FOR THE PROSECUTION

Number C100013, Corporal William Alexander PAYMENT, Canadian Infantry Corps, on the strength of the Regimental Police, 3 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am C100013, Cpl. Payment, W.A., Canadian Infantry Corps, on the strength of 3 Canadian Infantry Reinforcement Unit, and attached to the Regimental Police of this Unit. On the 5th day of October, 1944, I was the N.C.O. in charge of the Guard Room, when at 2055 hours, the accused B63773, Cpl. Dunbar, F.J., whom I now recognize, surrendered himself to me as an absentee. I immediately placed him in close arrest.

C/100013 W A Payment Cpl
(C100013, Cpl. Payment, W.A.)

The accused declines to cross-examine this witness.

The accused having been warned according to Rules of Procedure 4(E) reserves his defence.

I certify that the foregoing Summary of Evidence consisting of One Page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c) (d) (e) (f) and (g) have been complied with.

W G Moore Lt
(W.G. Moore) Lieut.
Officer detailed to take the Summary of Evidence.

In the Field,
6th day of October, 1944.

Exhibit A

3 CANADIAN INFANTRY REINFORCEMENT UNIT
DAILY ORDERS PART II
issued by
COLONEL A.S. PEARSON, O.B.E., ED.,
COMMANDER

Last Order
No. 217
18 Sep 44

No. 218
19 Sep 44

13. ABSENCE WITHOUT LEAVE

(a) The u/m are absent without leave from times shown:

B63773 CPL DUNBAR F J (Dr Mech "C") QOR of C 2300 hrs 17 Sep 44

"J.H. Galloway" Lieut.
for (M.R. Medland) Capt & A/Adjt
3 Cdn Inf Reinforcement Unit

CERTIFIED TRUE EXTRACT OF THE ORIGINAL DOCUMENT WHICH IS IN MY POSSESSION.

M.R. Medland Capt.
(M.R. Medland) Capt. & A/Adjt,
3 Cdn Inf Rft Unit.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B 63773	CORPORAL	DUNBAR P.J.	CIC 3 CIRU

1. The following is a fair and true summary of the entries in the Field Service and General ~~Regimental and Squadron, Battery or~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
~~For~~	A.A. 40	1 times	A.A. 15(1)	4 times
For		times	A.A. 40	2 times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct NIL

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~ A.F.A. 73

3. The accused is not under sentence at the present time

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 5 days in ~~Air Force or~~ military custody, making a total of 5 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 25 Years, ~~attestation paper as~~

6. The date of his ~~enrolment~~ attestation specified in his record of service is 14 Jun 1940 ~~attestation paper~~

7. The service which the accused is allowed to reckon towards discharge is 4 years,

8. The accused is entitled to reckon 4 years service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to an air force decoration, or air force reward~~ (or is in ~~military~~ ~~military~~ possession of or entitled to). State any ~~air force~~ military decoration or reward. C.V.S.M. and Clasp.

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force~~ the regimental rank of

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

1 Dec 1942 ..... Date of promotion.

In the rank of A/Cpl ..... years. 3 Months.

In the rank of Cpl ..... 1 years. 7 Months.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day of October 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked B signed by the president, and annexed to the proceedings.

(W.E. THORNE) CAPT.,
Records Officer,
3 Cdn. Inf. Rft. Unit.

Old Sheet Destroyed.

MFM 6
(AFB 122)
40/P&S/136 (3438)

No B 63773 Name DUNBAR F.J. Sqn. Battery or Company | Corps CIC | Date of enlistment 14-6-40 | GC Badges | Service or Proficiency Pay

Company Conduct Sheet Date of last entry in 12-11-40 | Date and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One. | Signature OC Company, etc D.J.L. Quinn Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sussex, N.B.	18-1-41	RFN		AA 15(1) AWL from 1700 hrs 18-1-41 until 1400 hrs 21-1-41	Sgt Burgess Sgt King E.	10 days CB Forf 10 days pay	22-1-41	Lt.Col.H.C. McKendrick	H.C.M.
Sussex, N.B.	1-6-41			AA 15(1) AWL from 0200 hrs 1-6-41 to 1930 hrs 1-6-41 (17 ½ hrs)	Sgt Love S. Cpl Winney W				
Field	30-12-41	RFN		AA 40 Conduct to the prej etc in that he was improperly dressed when checked by Cdn Provost Corps at about 1005 hrs 30-12-41 at Spring Gardens London	L/C McIntosh L/C Good Documentary	2 days C.B.	7-1-42	H.C.McKendrick Lt. Col.	H.C.M.
Field	17-10-42	RFN		AA 15(1) AWL from 0630 hrs 17-10-42 until 1100 hrs 17-10-42 (4 hrs 30 minutes)	Sgt Porter	5 days C.B. 5 days Pay.	17-10-42	E.A.Dunlop Captain	EAD.
Field	16-8-43	CPL		AA 15(1) AWL from 0700 hrs 16-8-43 until 1330 hrs 18-8-43 (2 days 6 hours 30 minutes)	L/C Morin EI	Admonished	19-8-43	S.M.Lett	Forf 3 days pay PRAI 149 (1a) (PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2-1-44	CPL		AA 40 Conduct to the prej etc in that he was improperly dressed when checked by Cdn Prov in London 2 Jan 44.	Documentary	Severe Reprimand.	6-1-44	Lt.Col.J.W. Ritchie.	
Field	7-10-44			CERTIFIED TRUE COPY OF ORIGINAL MFM 6 IN MY POSSESSION.					

(W.E. THORNE) CAPT.,
Records Officer,
3 Cdn Inf Rft Unit.

I hereby acknowledge that I have been served a true copy of the Summary of Evidence taken at Aldershot Hants, on the 6th day of October, 1944, preliminary to My Court Martial.

I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial

(B63773, Cpl. Dunbar, F.J.)

Dated at Aldershot Hants,
this 6th day of October, 1944.

I hereby request that the Convening Officer appoint an Officer to represent me at my Trial.

I desire the services of CAPT F.L.J. MARTIN

if he is available.

(B63773, Cpl. Dunbar, F.J.)

Dated at Aldershot Hants,
this 6th day of October, 1944.

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

UUU-139

Tpr. Dunbar, G. P.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K35 Tpr George Patrick DUNBAR, 9 CAR (BCD)

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		Not guilty	Not guilty	of desertion but guilty of absence Limited to leave
2nd		Guilty	guilty	
3rd		Guilty	guilty	
4th		Guilty	guilty	
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~Awarded under section 139~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of 78 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for a term of 18 months and to be placed under stoppage of pay in the sum of $32.68 & complete good kit efficiency.

(Sgd) Donald Shaw Capt — Judge-Advocate, if any. 3 Jul 44 — Date awarded. (Sgd) R. Macdonald Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(1), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back Finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally: AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

I direct that the accused be not committed to prison or detention barracks until ~~further orders~~ (1) (1. AA 57A. Delete if not used.)

(Sgd) [illegible]

Date 3 Jul 44

Commanding R. C. Can Armd Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
K35 Tpr. George Patrick Dunbar	8 July 44.	L. Macdonald. Capt. A Adj't.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 5 AUG 1944 CMHQ

RECORDED AT CMHQ IN AB 160, 7777-139

FIELD GENERAL COURT-MARTIAL

CPA90 (In lieu of AFA3) 41 P A R (1898) (2684)

Convening Order of Lt-Col P A Yokes A/Comd 5 Cdn Armd Bde dated 29 Jun 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-35	Tpr	-	GEORGE PATRICK	DUNBAR	9 Cdn Armd Regt (BCD)

PROCEEDINGS REVIEWED 5 Sept 44 [illegible]
R Beaudry Capt
JAG

15 JUL 1944

129

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 3 July 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF AF5, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court martial instead of being dealt with summarily by the CO (1).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: (1) You object to be interpreter? Ans~~

~~The Interpreter is sworn (1). You may object.~~ ~~as interpreter? Ans~~

~~The Shorthand writer is sworn (1).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans N/D. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 31, RP 25, 71, (B, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	D. J. SHAW	2 Cdn Armd Regt
Member	Capt	H R S Ellis	Ldsh (NS) 5 Cdn Armd Regt (KBH)
Member	Lt	J E Oldfield	Westmr Regt (Mot)
Judge-Advocate	Capt	W. D. W. SHAW ADJA	HQ 5 Cdn Armd Div
Prosecutor	Capt	J Looney	9 CAR (BCD)
Defending Offr	Lt	N B Flemming	5 - (RMBH)

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No. (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused ~~stands mute~~ before arraignment make(s) (no) (~~a~~) plea. ~~DMWS~~

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposit, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

~~DMWS~~ A9. The accused is (~~not~~) arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 48b to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

~~DMWS~~ A10. The Court (~~adjourned and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No, Sir (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (opening) address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the~~ accused on the charge(s).(2) The Court is closed and considers the submission.(3) The Court is re-opened, and the President announces that the submission is ~~disallowed~~ on the charge(s), and allowed on the charge(s), and ~~that, accordingly, the trial will proceed on the former, but the accused is (was) found Not Guilty~~ on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Give evidence. Do you intend to call witnesses on your behalf? Ans. No, Sir. ~~Are they witnesses as to character only?~~ Ans. ~~No~~
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the first charge(s), being subject to confirmation, will be promulgated later.(1) ~~The President announces that the accused is found Not Guilty on all charges and he (or the military) authority proceedings are accordingly terminated. Part I of the Schedule is deleted and signed.~~(2)
(1. *AA* 54(3) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E, but~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No, Sir
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)
(1. *MFB* 355 *or MFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Use them as my offr (Each "F") (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishments or punishments laid down in AA* 41, 44 *and its proviso, to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas* 80 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1B), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE , SHEET

The accused K 38 Tpr George Patrick DUNBAR, 9th Cdn Armd Regt (SD) a soldier of the Cdn Army Overseas is charged with

FIRST CHARGE
AA Sec 12(1)(a)

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE

in that he

while in custody awaiting trial absented himself from 0600 hrs 21 Apr 44 until apprehended by Mil police in NAPLES at about 0700 hrs 29 May 44, dressed in civilian clothes.
(Absent 38 days)

SECOND CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field did absent himself without leave from about 1100 hrs 28 Feb 44 until apprehended by Mil polce at MESSINA at 1030 hrs 8 Mar 44
(Absent 8 days 23 hrs 30 mins)

THIRD CHARGE
AA Sec 24(2)

WHEN ON ACTIVE SERVICE LOSING BY NEGLECT HIS EQUIPMENTS CLOTHING AND REGIMENTAL NECESSARIES

in that he

in the field on 16 Apr 44 was deficient of:

ITEM	QUANTITY	VALUE	75% VALUE
Caps Mechanics	1	.16	.12
Drawers cell prs	1	.43	.32
Gloves wool prs	1	.47	.35
Greatcoat 1939 pattern	1	11.31	8.48
Jerkins leather	1	5.77	4.33
Overalls combo prs	2	5.06	3.80
Shoes canvas prs	1	.65	.49
Badges shoulder CAC prs	1	.03	.02
Brasses button	1	.04	.03
Brushes cloth	1	.48	.36
Brushes hair	1	.34	.26
Brushes shoe polishing	1	.28	.21
Housewife	1	.17	.13
Patches distinguishing prs	1	.03	.02
Shorts gym prs	2	.56	.35
Vests gym	2	.72	.54
Towels hand	1	.32	.24
Ointment AG tins	1	.16	.12
Detectors sleeve prs	1	.12	.09
	TOTAL	27.39	20.56

FOURTH CHARGE
AA Sec 24(2)

WHEN ON ACTIVE SERVICE LOSING BY NEGLECT HIS EQUIPMENTS CLOTHING AND REGIMENTAL NECESSARIES

in that he

in the field on 8 Jun 44 was deficient of:

ITEM	QUANTITY	VALUE	75% VALUE
Anklets prs	1	.99	.75
BD Blouse	1	5.25	3.93
Boots rubber prs	1	1.52	1.14
Caps TB	1	1.00	.75
BD Trousers	1	5.39	4.05
Badges shoulder prs	2	.08	.04
Housewife	1	.17	.13
Knife clasp	1	.86	.64

WMWS

ITEM	QUANTITY	VALUE	75 % of VALUE
Patches'Distinguishing prs..	2.....	.08	.04
Belts'waist WE P '37.....	1	.74	.56
Mugs enamel	1	.13	.09
	Totals	16.17	12.12

Field
8 jun 44

.....
(FA Vokes)Lt Col Comd
9th Cdn Armd Regt(BCD)CA

To be tried by Field General Court Martial.

(F A Vokes) Lt-col
A/Comd 5 Cdn Armd Bde

In the Fd
9 Jun 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8) 46/Pam/1997 (D968)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 325, 330.)

ACCUSED.

Number	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-39	Tpr	–	George Patrick	DUNBAR	9 Cdn Armd Regt (RCD)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 29 Jun 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint – (a) three Offrs to form a~~ ~~, or the President, for the reasons I have attached hereto.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder. (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	W. J. [illegible]	2 Cdn Armd Regt Ldr (RCD)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lt	to be detailed by	5 Cdn Armd Regt (RCAC)
Capt or Lt	to be detailed by	Toronto Regt (Mot)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	to be detailed by	9 Cdn Armd Regt (RCD)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	W. J. W. SHAY ADJA	HQ, 5 Cdn Armd Div

On Active Service in the Fd

in ITALY (Country.)

P. A. VOKES (Signed personally. RP 105 fn 2.) (Rank.) Lt-Col

Date 29 Jun 44

A/Commanding 5 Cdn Armd Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

This is to certify that I have this date examined K-35 Tpr Dunbar, G.P., 9th Cdn Armd Regt (BCD) CA and found him fit to undergo trial by Court Martial.

In the Field:

Date: 3 July 44

for [redacted] Capt.
Medical Officer i/c.

Witness

PLEA OF MITIGATION IN CASE OF K-35, Tpr Dunbar, G.P. of 9 CDN ARMD REGT(RCD)

By way of a plea of mitigation on behalf of the accused K-35, Tpr Dunbar, G.P. I wish to bring certain facts to the attention of the court.

(1) The accused while awaiting trial has been under close arrest a total of 78 days.

(2) Of this period, approximately one month was spent in irons.

(3) The accused is married and has 2 children aged 5 & 8 yrs. His wife and children are wholly dependent on him.

(4) The accused has been in the army since fall of 39 and on Active Service since 1941.

H B Fleming Lieut.

(H B FLEMING) Lieut
5 Cdn Armd Regt (SNRH)
Defending Offr

I

Pros:- Intend proving "intention" & "awk"

1st Wit Pros:- K880 Sgt Foster, S., BCD, duly sworn, states:-

acsd is Spr Dunbar.

On 21 Apr 44 at 0600 L/Cpl Ohl who was duty asst prov reported to me. 2 checked Dunbar's bed & the area-bed made up to resemble man under blankets. Reported to RSM who told me to search area. 2 did so & was satisfied that not in camp area. Searched a larger area, approx 3 mi in all directions from camp. not in any of these areas. Reported to MP's, etc.

2 was Reptl Prov Sgt & acsd was placed in my custody under close arrest. He was awaiting Crt Martial, the summary had been taken & was awaiting assembly.

Next time saw him after he was returned from Naples - approx 2 mos later - Had not been on parade in interval. Produce Cert of apprehn (Exh "A")

XX m:- when retd to unit acsd wearing BD

Re-exam:- nil

Court:- nil

RP 83(B) complied with.

2nd Wit Pros:- K1610 SQMS. Roth, LT. BCD. duly sworn, states:-

When acsd went the 2nd time he had had a complete kit. when retd he had deficiencies amounting to $16.17. Produce Decl of Crt of Eng. (Exh "B")

XX m:- nil

Court:- nil

RP 83(B) complied with

Pros:- closed.

1st Wit Defence] The accused,

duly sworn, states

From time 2 left near Madaloni. hitch hiked to FOGGIA & from there to MATERA and NAPLES where met American friends. Ate & ~~slept~~ at Amer stn & slept near there. At no time did 2 have civilian clothes on. 2 wore clothes 2 left with - Issue coveralls, shirts, shoes & beret. Never denied. 2 was Cdn or claimed to be any other. Could speak enough Italian to pass & had enough money to buy civilian clothes. Had made some money from Americans and when that was spent intended to rejoin unit.

Wearing denim which had been dyed black by the regt. Took shaving kit, etc. when picked up had shaving kit

XX m:- Other equipment at camp. Had no BD with me.

Re-exam:- nil

Court:- Did n[illegible] work for Italians | Ate with Ameri[illegible] on m[illegible] | [illegible] the [illegible]

Had met Cdns but they had no interest in me.

RP 83(d) complied with

Pros in closing:-

Have shown absence - taken in civilian clothes, coveralls are worn by civvies & nothing to show that in services. On MB 18 the Crt of Enq found blouses BD & trousers BD missing and coveralls not deficient & must have been obtained elsewhere.

Def off in closing:-

At time of absence not in action - Re civilian clothes - coveralls not working out dress but are issue.

J A:- Functions of court, credibility of witnesses. burden of proof, reasonable doubt, desertion, powers of special pending AA 56.

W M W Shaw
Capt

Summary of Evidence in the case of K 35 Tpr Dunbar, G.P., 9th Cdn Armd Regt (BCD) C A, Cdn Army Overseas.

The Commanding Officer directs that evidence be taken on oath.

FIRST WITNESS FOR PROSECUTION

L 36041 Cpl Messervey, R.F., HQ Sqn, 9th Cdn Armd Regt (BCD)CA, sworn, states:

On 28 Feb 44 I was Orderly Corporal of H Q Sqn, 9th Cdn Armd Regt (BCD) C A. I am well acquainted with K 35 Tpr Dunbar, G.P. whom I recognize here as the accused, who was a member of my tp for six weeks. At 1000 hrs 28 Feb 44 I was given a list of personnel who would be on guard at 1330 hrs 28 Feb 44. I went to Tpr Dunbar's tent for the purpose of warning him for guard duty. He was absent from his tent. I warned the remainder of the personnel on guard. After doing this I returned to Tpr Dunbar's tent and found him still absent, I saw Tpr Ondahl, the accused's tent mate and I asked him if he had seen Tpr Dunbar. His answer was "no". In company with Sgt Gordon, Provost Sgt, 9th Cdn Armd Regt (BCD) C A, we searched the camp area, not finding Tpr Dunbar I reported him absent to HQ Sqn Orderly Room about 1230 hrs 28 Feb 44.

The accused declines to cross-examine the witness.

R F Messervey
.....
(Signature of Witness)

SECOND WITNESS FOR PROSECUTION

L 36895 Tpr Ondahl, E.R., Recce Tp, HQ Sqn, 9th Cdn Armd Regt (BCD)CA, sworn, states:

I was on 28 Feb 44 and still am a soldier of the 9th Cdn Armd Regt (BCD)CA. I am well acquainted with K35 Tpr Dunbar, G.P. whom I recognize here as the accused, as we have been room mates for about 2 months. It was on a sunday 28 Feb 44, just before dinnerat approx 1100 hrs that I last saw Tpr Dunbar. When I returned from dinner at approx 1230 hrs he was not around the tent and I did not see him again until today, 18 Apr 44. On 28 Feb 44 at about 2000 hrs I was in bed when Sgt Gordon asked me if I knew where Dunbar was, I did'nt know so Sgt Gordon told me to have Tpr Dunbar report to him when he returned. The following morning he asked me again if I had seen him and I told him no.

Q.1. Did Dunbar tell you he was leaving ?
A.1. No Sir.

The accused declines to cross-examine the witness.

E R Ondahl
.....
(Signature of Witness)

C
WMWS

THIRD WITNESS FOR PROSECUTION

K 1610 SQMS Roth, L.T. HQ Sqn, 9th Cdn Armd Regt (BCD)C A, sworn, states:

I am K 1610 SQMS Roth, L.T., QMS, HQ Sqn, 9th Cdn Armd Regt (BCD) C A. On the morning of the 16 April 44 I inspected the Kit of K 35 Tpr Dunbar, G.P., and found deficiencies amounting to $27.39 as shown on the following list:

		Price
Caps Mechanic	- 1	.18
Drawers, cellular, prs	- 1	.43
Gloves, woolen, pr	- 1	.47
Great Coat, 1939 Patt	- 1	11.31
Jerkins, leather	- 1	5.77
Overalls, combination, prs	- 2	5.06
Shoes, canvas, prs	- 1	.65
Badges, shoulder, CAC prs	- 1	.03
Brasses, button	- 1	.04
Brushes, cloth	- 1	.48
Brushes, hair	- 1	.34
Brushes, shoe polishing	- 1	.28
Housewife	- 1	.17
Patches, dist, prs	- 1	.03
Shorts, gym prs	- 2	.86
Vests, gym	- 2	.72
Towels, hand	- 1	.32
Ointment, A.G. tins	- 1	.15
Detectors, sleeve prs	- 1	.12
		$ 27.39

The accused declines to cross-examine the witness.

F. Roth
(Signature of Witness)

FOURTH WITNESS FOR PROSECUTION

2877715 Cpl F. Taylor, C.M.Police.

Document purporting to be a signed statement of the evidence of 2877715 Cpl F. Taylor, C.M.Police, was read over to the accused, marked Exhibit "A" and attached hereto.

I certify that in my opinion owing to the exigencies of the service, including the time and expense involved, that attendance of this witness at the taking of the summary of evidence cannot readily be procured.

G. McGlwaine, Lt
(Signature of Officer Taking Summary)

C
WMWS

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused: I have nothing to say at this time.

Gnr A Dunbar
(Signature of Accused)

The accused declines to call witnesses in his own behalf.

I certify that RP 4 has been complied with.

Taken by me In the field in the presence and hearing of the accused this 16th day of April, 1944.

(Signature of Officer taking Summary)

Additional Summary of Evidence in the case of K 35 Tpr Dunbar, G.P., 9th Cdn Armd Regt (BCD), Cdn Army Overseas.

The Commanding Officer directs that evidence be taken on oath.

FIRST WITNESS FOR PROSECUTION

D 162 L/Cpl Wilson, J.H., "B" Sqn, 9th Cdn Armd Regt (BCD), sworn states:

On the night of the 20 April 44 I was on Guard duty at 2230 hrs. It was our duty to assist the Regimental Provost in guarding the prisoners in the area alloted for keeping them in. I took over from L/Cpl Shaw at 2230 hrs and was on duty until 0230 hrs 21 April 44. As there had been no proper guard room set up and the prisoners, of which there were eight (8) were sleeping on the ground in a given area. We had no flashlights and our orders were to patrol around this area and check the prisoners beds at different intervals. At 0230 hrs I was relieved by L/Cpl All and before going off duty we both made a check of the beds together. To my knowledge the accused was in his bed at that time.

The accused declines to cross-examine the witness.

...J.H. Wilson.....
(Signature of Witness)

SECOND WITNESS FOR PROSECUTION

K 880 Sgt Foster, S., HQ Sqn, 9th Cdn Armd Regt (BCD)CA, sworn states:

At the time in question I was Regt'l Provost Sgt of the 9th Cdn Armd Regt (BCD)CA. At 0600 hrs 21 April 44 L/Cpl All, who at that time was Acting Provost Lance Corporal on duty, reported to me that Tpr Dunbar, G.P. was missing. Tpr Dunbar was one of the prisoners under our charge. I immediately went to the sleeping area and checked the accuseds bed. The bed was made up and filled in with Kit bags which resembled a sleeping man. I first informed SSM Allen, HQ Sqn, then RSM Hodgson, who ordered me to search the immediate camp area and inform Major West, OC HQ Sqn of my findings. This I did, satisfying myself that the accused was not in the camp area. I was then given instructions by Maj West to travel further afield in search of the accused. I, in the company of Cpl Hanley of "B" Sqn, who was assisting in provost duties, Cpl Williams and L/Cpl Greeno, made a through search of the surrounding area for a radius of three (3) miles. We searched all houses and possible hiding places and also informed all Allied Military Police in the neighbouring Towns of the description and character of the accused. We then returned to camp.

Q.1. Did you find any trace of the accused in you search of the area?
A.1. I believe we did Sir. Certain evidence picked up pointed that the accused had gone in the direction of LUCERA.

Q.2 Did you check in LUCERA?
A.2. Yes, Sir, I checked with Cdn Provost Corp but could find no trace.

Q.3. When was the last time that you can remember seeing the accused?
A.3. At approx 2100 hrs on the 20 April 44 .

Q.4. Was the report of L/Cpl All the first indication you had of the accused being missing?
A.4. Yes, Sir.

Q6 Are you satisfied that the pro personnel under you were doing their duty to the best of their ability on the night in question?
A6 Yes, sir.
Q6 h Was the accused under close arrest at the time of these events happening?
A6 Yes sir, he was.

The accused declines to cross-examine the witness

.....Sgt.....
(Signature of witness)

EXHIBITS

I produce a certified true copy of MB 68 which is marked "A" and is attached to this additional summary

I produce a certificate in accordance with the Army Act Sec 108 (1)(jj) which is marked "B" and is attached to this additional summary.

.....Sgt.....
(Signature of Witness)

THIRD WITNESS FOR THE PROSECUTION

K 1610 S/Sgt Roth L T, HQ Sqn 9 Cdn Armd Regt, sworn, states:

I am K 1610 S/Sgt Roth L T QMS HQ Sqn, 9 Cdn Armd (RCD). On 8 Jun 44 I inspected the kit of K 38 Tpr Dunbar G P and found deficiencies amounting to $16.17. Previous to this, when Tpr Dunbar had been apprehended and returned to unit lines, I had checked his kit on the 10th April44. I found deficiencies which amounted to $27.39, which I replaced, and the accused was then in possession of a complete kit. After Tpr Dunbar went AWL the second time I again checked his kit and found deficiencies amounting to $22.82. When Tpr Dunbar was apprehended the second time I made another kit check on 8 Jun 44 which included equipment he had returned with. The revised list them amounted to $16.17.

.....
(Signature of Witness)

Anklets prs	1	.99
BD Blouses	1	5.25
Boots rubber prs	1	1.82
Capt TS	1	1.00
BD Trousers	1	5.39
Badges shoulder prs	2	.08
Housewife	1	.17
Knife clasp	1	.86
Patches dist prs	2	.06
Belts waist	1	.74
Mugs enamel	1	.13
	Total	16.17

The accused declines to cross-examine the witness.

.....
Signature of Witness)

"C"

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

After the above caution the accused elected to give evidence on oath.

FIRST WITNESS FOR DEFENCE

The accused K 36 Tpr Dunbar, G.P., 9th Cdn Armd Regt (BCD)CA, sworn, states:

At no time during my absence was I dressed in civilian clothes or attempted to pose as a civilian. I chummed around with numerous Americans and at all times they knew I was a Canadian. I had sufficient money on my person and also I speak Italian fluently enough to have posed as a civilian had I so desired. When apprehended, and at all times during my absence, I was dressed in issue coveralls --the clothes in which I left camp. As this clothing was Canadian issue at no time did I consider I was in civilian clothes.

Geo A. Dunbar
.....
(Signature of Witness)

The accused does not call any witnesses for the Defence.

I certify that RP 4 has been complied with.

Taken by me In the Field in the presence and hearing of the accused this 8th day of June 1944.

F. Downs Capt
.....
(Signature of Officer Taking Additional Summary)

"C"

Certificate in accordance with the Army Act Sec. 163 (1) (jj)

I certify that

No K.35 Rank TROOPER Name DUNBAR G.P.

of the 9th ARMOURED REGIMENT

was arrested at NAPLES at 0700 Hrs.,

on the 29th day of MAY 1944.

Wearing CIVILIAN CLOTHING.

Signature of P. M., A. P. M., or other Officer into whose custody the above named person was taken on arrest.

Rank CAPTAIN

Appointment (if any)

Commanding 111 PROVOST COMPANY, C. M. POLICE

Date 29th MAY 1944

"A"

WMWS

PSSN/771/5-44/2 500

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 14th day of MAY 19 44, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. K-35 Tpr. Dunbar, G.P.

DECLARATION

The Court declare that No. K-35 Tpr. Dunbar, G.P.

HQ Squadron 9th Cdn Armd Regt (BCD)

illegally absented himself without leave In the Field

at 0600 hrs on the 21st day of April 1944;

and that on the 14 May 1944 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE		ARTICLES	VALUE	
Anklets, web, prs.....1	$	99			
Blouses, BD 1	5	25			
Boots, ankle, prs 1	5	46			
Boots, rubber, high prs 1	1	52			
Caps, T B 1	1	00			
Drawers, cell, short pr 1		43			
Trousers, BD, prs 1	5	39			
Socks, worsted, prs ... 1		37			
Badges cap (BCD) 1		09			
Badges, shoulder, CACpr 2		06			
Housewife 1		17			
Knife, clasp 1		86			
Patches, dist, prs 2		06			
Belts, WEP 37 1		74			
Mugs, drinking, 1 pt .. 1		13			
TOTAL	$ 22	52			

(Signed) Capt G P Baker President

(Signed) Lt R B Ballantyne Member

Signed at In the Field

(Signed) SSM W M Allen Member

this 14th day of May 19 44

Signature of Commanding Officer F. A. VOKES, Lt Col

Certified true extract of MB 68
T. Mac donald Capt Lady
4 adjt.

RECORD of the Declaration of a Court of Inquiry assembled at

on the day of 19 , for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION

The Court declare that No.

illegally absented himself without leave

at on the day of ;

and that on the he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE

President

Member

Signed at

Member

this day of 19

Signature of Commanding Officer

M.S. No. 69
250 Bks. 7-40 (1962)
H.Q. 1773-61-48

CERTIFICATE in accordance with A.A. Section 163 (1) (ii)

I certify that No. K 35 Rank TPR Name DUNBAR G. P.

Of the ROYAL CANADIAN ARMOURED CORPS 9TH ARM REGT. 5TH CANADIAN DIV Was arrested at MESSINA.

At 10.30 hours On the 8TH MARCH 1944.

He was wearing Austrian uniform Cuneo by an overall.

(Signed) [signature] Lt.

[signature] A.P.M. [signature]

Signature of the Provost Marshal. A.P.M., or other Officer into whose custody the above person was taken on arrest.

STATEMENT OF **EVIDENCE** IN THE CASE OF.
No. 135
TPR. DUNBAR G.P.
9TH ARM. REG. R.C.R.C.
5TH CANADIAN DIV.

Sir,

At MESSINA, on the 8TH MARCH 1944 at about 10.30 hrs. I was on duty at PROVOST H.Q. when a civil policeman reported that there was an ALLIED soldier acting very suspiciously near the docks. Accompanied by L/CPL MUNDEE, C.M. POLICE, I proceeded to VIALE S. MARTINO, and there saw the A.M. soldier. He was dressed in blue overalls and was wearing a black beret. On being questioned, he stated that he had been absent from his unit for about (10) ten days.

I then arrested and conducted him to the MESSINA GARRISON GUARD ROOM, where he was handed over to the N.C.O. i/c to be detained. Receipt attached.

IN THE FIELD
8.3.44

REMARKS

F. Taylor CPL.
C.M. POLICE

Sir, I have read over and corroborate the above statement

IN THE FIELD
8.3.44

C. Mundee
C.M.POL

No. K.35 Rank T.R.R.
Name DUNBAR G.P.
Regiment 9th Arm. Reg. 5th Canadian Div.
was handed over by the Military Police at Messina Guard Room (21000)
about 10.45 hrs on the 8th March 44
~~No. [illegible]~~ /Lobar.
Signature of NCO R.F. Paradise Sgt.
20th Lord Light Inf.

CHARGE EXHIBIT A

Army Form
(See King's R

ROYAL CANADIAN ARMOURED CORPS.

9TH ARM. REGT. 5TH CANADIAN DIV.

Battery
Squadron
Troop or
Company

CHARGE against No. K 35 Rank TPR.

Name DUNBAR G. P.

Place ? Date of Offence ?

OFFENCE W.O.A.S.

Names of Witnesses :—

2877715 CPL. F. TAYLOR C. M. POLICE.

4031443 L/CPL. C. MUNDEE C. M. POLICE.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

30138. Wt.W31274-1961. 2,000,000 70/42. K. & H. Ltd. G652/42.

P.T.O.

NOTICE PERSUANT TO R P 76

Notice is hereby given that on the forthcoming trial by Field General Court Martial of

K 35 TPR DUNBAR G P

it is intended to call as a witness, Capt A L Macdonald, Adjutant 9 Cdn Armd Regt(SCD) C A, who will produce as an exhibit Part I Order No 29A, a copy of which is attached hereto.

CANADIAN ARMOURED BRIGADE
FILE
JUN 2 2 1944

(J Looney) Capt
Officer Taking Summary

PART I ORDERS
BY
LT COL F A VOKES COMD
9TH CDN ARMD REGT (BCD) C A

Last Order
No 29
15 Jun 44

This Order
No 29A
21 Jun 44

---

1 ABSENCE WITHOUT LEAVE

K 35 TPR George Patrick DUNBAR, AWL from about 1100A hrs 28 Feb 44 until apprehended by military police at MESSINA at approximately 1030A hrs 8 Mar 44 (absent 8 days 23 hrs 30 mins)

(A L MACDONALD) A/CAPT & ADJT
for Officer Commanding
9 CDN ARMD REGT (BCD) C A

WMWS

No K 35 Name DUNBAR G P Sqn, Battery, or Company Corps Serial 1104/1 Date of enlistment 4-9-40 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/PAS/136 (3428)

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 1 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	9-9-41	Tpr	Nil	A A Sec 15(1) AWL 8 days,5 hrs	L/C Weeks	168 hrs Det	17-9-41	Capt H F E Angle	Forf 8 days pay FRI 149(1)(a)
In the Fd	27-5-42	Tpr		A A Sec 15(1) AWL 15 mins	Tpr Smirfitt R	3 days C.B	28-5-42	Lt A E Wilbur	Forf 7 days pay FRI 149 (1)(b)
In the Field	5-9-42	Tpr		A A Sec 40. Water bottle not in correct place	Sgt Handling	3 days C.B.	5-9-42	Major H F E Smith	
In the Field	21-9-42	Tpr		A A Sec 15(1). AWL 20 hrs 20 minutes	Documentary	7 days C.B.	22-9-42	Major H F E Smith	Forf 1 days pay FRI 149 (1)(a)
In the Field	15-11-42	Tpr		A A Sec 15 (1). AWL 21 hrs and 30 minutes.	L/C Caza F E	7 days C.B.	15-11-42	Lt Col W Murphy	Forf 7 days pay FRI 149 (2)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Fi ld	6-1 43	Tpr	Nil	A A Sec 11. Failed to obey Unit Orders	L/Cpl Wickesn	2 days C.B.	10-1-43	Major H F E Smith	
Field	30-7 43	Tpr		A A Sec 40. Neglected to call cooks	Cpl Quissy	3 days C.B.	30-7-43	Maj C W West.	
Field	6-8- 43	Tpr		A A Sec 15(1). AWL 1 hr 20 min	Cpl Coe R C	5 Days C.B.	9 Aug 43	Major C A West	
Field	20-8 43	Tpr		A A Sec 15(1). AWL 1 day 4 hrs	Sgt MacEwan	Forf 7 days pay FRI 149(2)	26-8-43	Lt Col H Angle	Forf 2 days pay FRI 149(1)(a)
Field	15-9 43	Tpr		A A Sec 15(1).AWL 9 days 3 hrs	Tpr Vaughn	14 Days C.B.	15 Sep 43	Lt Col H Angle	Forf 10 days pa FRI 149(1)(a) Forf 21 days pay FRI 149(2)
Field	27 Dec 43	Tpr	Nil	A A Sec 15(1). AWL 3 hrs 30 mins	Cpl Mawer L/C Valouch	7 days F.P.	27 Dec 43	Lt Col H Angle	Forf 7 days pay FRI 149(2)

Certified true copy from the Regimental books in my custody

(L MacDonald) Capt & Adjt
9 Cdn Armd Regt (BCD)

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K 35	Trooper	George Patrick DUNBAR	9 Cdn Armd Regt (SCD) CA

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not appended to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, reference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		* Since Enlistment.	
For A A Sec 40	1	times	2	times.
For A A Sec 15 (1)	4	times	8	times.
For A A Sec 11	0	times	1	times.
For		times		times.
For		times		times.

~~Number of instances of military or distinguished conduct~~

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~Particulars of convictions~~ of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and explanations with which, under section 77 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence of~~ ~~imprisonment~~ ~~for~~ ~~months~~ ~~commencing on the~~ ~~day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 78 days in military custody, making a total of 78 days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ record of service is 31 yrs 1 month.

6. The date of his ~~attestation~~ specified in his ~~attestation paper~~ record of service is 27 May 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 yrs

8. The accused is entitled to deferred pay or gratuity in respect of 3 yrs service.

9. The accused is entitled to reckon ——— service for the purpose of determining his pension, etc.

10. The accused is in possession of, or ~~has been awarded the following decorations or medals~~ (or is in possession of or ~~has been awarded~~ (*state any military decoration or reward*)): Cdn VSM & Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated and in his regiment (or corps or department) the rank of dated

(*Signature*) W. [illegible] Lt. Col.

"E"
Witness

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. K 35 Rank Tpr Name DUNBAR G P of 9 Cdn Armd Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~17th~~ 3 day of ~~April~~ ~~June~~ JULY 1944

L. Macdonald Capt & Adjt

(L Macdonald) Capt & Adjt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

Instruction.—If any matter in any of the above paragraphs caused to stand from the regimental books the paragraph must be struck through, except that on the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.

I hereby request the convening officer to detail an Officer to represent me at my forthcoming trial by Court Martial.
I desire the services of Capt A E Shepherd, 5th Cdn Armd Regt (SNNH) if he is available.

Sergt Dunbar
(G P Dunbar) Tpr
9th Cdn Armd Regt (BCD) C A

In the Field
Date - 18 June 44

This is to certify that I have this date received one copy of the Charge sheet and one copy of the Summary of Evidence in my case.

Sergt Dunbar
(G P Dunbar) Tpr
9th Cdn Armd Regt (BCD) C A

In the Field
Date -

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused K35 Tpr George Patrick DUNBAR, 9 CAR (BCD)

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Not Guilty of desertion but guilty of absence without leave.	
2nd	Guilty	Guilty	
3rd	Guilty	Guilty	
4th	Guilty	Guilty	
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

"WMS" [redacted] (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 76 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for a term of 18 months and to be placed under stoppages of pay in the sum of $32.68 to make good kit deficiencies.

(Sgd) "WMS Shaw" Capt — Judge-Advocate, if any. | 3 Jul 44 — Date awarded. | (Sgd) "R.J. Graham" Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally: AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

[redacted] "J H C" [redacted] "I.H. Cumberland" [redacted]

(Sgd) (I.H. Cumberland) Brig

Date 3 Jul 44

Commanding HQ 5 Cdn Armd Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
K35 Tpr George Patrick DUNBAR	8 July 44	" L. MacDonald" Capt & Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

CERTIFIED TRUE COPY (D.M. Owen)

4-4-4-139

CPA96 (In lieu of AFA3) 40-P & S-1608 (2884)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col F A Vokes A/Comd 5 Cdn Armd Bde dated 29 Jun 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K-35	Tpr	GEORGE PATRICK	DUNBAR	9 Cdn Armd Regt (BCD)

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 3 July 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet [redacted] attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At ..... hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) [redacted] "WMS"

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. [redacted] "WMS" [redacted] or shorthand writer. Any [redacted] "WMS"

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans .....(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	R J Graham	2 Cdn Armd Regt LdSH (RC)
Member	Capt	H.R.S. Ellis	5 Cdn Armd R ⊖NBH
Member	Lt	J E Oldfield	Westar Regt (mot)
Judge-Advocate	Capt	W m W Shaw ADJA	HQ 5 Cdn Armd Div
Prosecutor	Capt	J Looney	9 CAR (BCD)
Defending Offr	Lt	H B Fleming	5 CAR (⊖NBH)

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 1 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) [redacted] plea "WMS" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rpnt and name of the accused making the plea.)

"WMS" A9. The accused is [redacted] arraigned [redacted] on all charges in the charge sheet.(1) The accused does [redacted] not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

"WMS" A10. The Court [redacted] considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No Sir (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement at~~ The Court decides (not) to advise accused to change his ~~(their) plea(s) of Guilty to Not Guilty as to charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) as to charge(s).~~ Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C , initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

"WMWS" D2. The Prosecutor makes (an) [redacted] opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) [redacted]

(*1. Delete remainder of this para. If submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. give evidence Do you intend to call witnesses on your behalf ?

"WMWS" Ans. No Sir [redacted] ? Ans. .....

(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(b).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the first charge(s), being subject to confirmation, will be promulgated later.(1)

"WMWS" [redacted]

(*1. AA 54(2) (c), RP 43, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. [redacted]

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. No, Sir

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)

(*1. MFR 353 or MFR 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes through def offr (Exh "F" (2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its perwiss, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-346. Overseas MO 109-253, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused K 35 Tpr George Patrick DUNBAR, 9th Cdn Armd Regt (BCD) a soldier of the Cdn Army Overseas is charged with

FIRST CHARGE
AA Sec 12(1) (a) WHEN ON ACTIVE SERVICE DESERTED HIS MAJESTY'S SERVICE

in that he,

while in custody awaiting trial absented himself from 0600 hrs 21 Apr 44 until apprehended by Mil police in NAPLES at about 0700 hrs 29 May (Absent 38 days) dressed in civilian clothes

SECOND CHARGE
AA Sec 15(1) WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the field did absent himself without leave from about 1100 hrs 28 Feb 44 until apprehended by Mil Police at MESSINA at 1030 hrs 8 Mar 44 (Absent 8 days 23 hrs 30 mins)

THIRD CHARGE
AA Sec 24(2) WHEN ON ACTIVE SERVICE LOSING BY NEGLECT HIS EQUIPMENTS CLOTHING AND REGIMENTAL NECESSARIES

in that he,

in the field on 16 Apr 44 was deficient of:

ITEM	QUANTITY	VALUE	75% VALUE
Caps Mechanic	1	.16	.12
Drawers cell prs	1	.43	.32
Gloves wool prs	1	.47	.35
Greatcoat 1939 pattern	1	11.31	8.48
Jerkins leather	1	5.77	4.33
Overalls combo prs	2	5.06	3.80
Shoes canvas prs	1	.65	.49
Badges shoulder CAC prs	1	.03	.02
Brasses button	1	.04	.03
Brushes cloth	1	.48	.36
Brushes hair	1	.34	.26
Brushes shoe polishing	1	.28	.21
Housewife	1	.17	.13
Patches distinguishing prs	1	.03	.02
Shorts gym prs	2	.86	.65
Vests gym	2	.72	.54
Towels hand	1	.32	.24
Ointment Ag Tins	1	.15	.12
Detectors sleeve prs	1	.12	.09
	TOTAL	27.39	20.56

FOURTH CHARGE
AA Sec 24 (2)
WHEN ON ACTIVE SERVICE LOSING BY NEGLECT HIS EQUIPMENTS CLOTHING AND REGIMENTAL NECESSARIES

in that he,

in the field on 8 Jun 44 was deficient of:

ITEM	QUANTITY	VALUE	75% VALUE
Anklets prs	1	.99	.75
BD Blouse	1	5.25	3.93
Boots rubber prs	1	1.85 52	1.14
Caps TB	1	1.00	.75
BD Trousers	1	5.39	4.05
Badges shoulder prs	2	.06	.04
Housewife	1	.17	.13
Knife clasp	1	.86	.64

"AWS"
"RJG"

ITEM	QUANTITY	VALUE	75% of VALUE
Patches distinguishing prs	2	.06	.04
Belts waist WE P '37	1	.74	.56
Mugs enamel	1	.13	.09
	TOTAL	16.17	12.12

Field
8 Jun 44.

"F.A.Vokes"
(FA Vokes) Lt Col Comd
9th Cdn Armd Regt (BCD) CA

To be tried by Field General Court Martial.

"F.A. Vokes" Lt.-Col
(F.A. Vokes) Lt-col
A/Comd 5 Cdn Armd Bde

In the Field
29 Jun 44

"WMWS"
"[illegible]"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-35	Tpr		George Patrick	DUNBAR	9 Cdn Armd Regt (BCD)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 29 June 44 endorsed by me [redacted] "FAV" Lt.Col, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [redacted] "FAV" Lt.Col
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted] "FAV" Lt.Col
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	R J Graham		2 Cdn. Armd Regt LdSH (RC)

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt or Lt	to be detailed by		5 Cdn Armd Regt (SNRH)
Capt or Lt	to be detailed by		Westmr Regt (Mot)

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	to be detailed by		9 Cdn Armd Regt (BCD)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	W M W Shaw	ADJA	HQ 5 Cdn Armd Div

On Active Service in the Fd in ITALY (Country.)

"F.A. Vokes" Lt.Col
F.A. Vokes
(Signed personally. RP 105 fn 2.)

Lt-Col (Rank.)

Date 29 Jun 44

A/Commanding 5 Cdn Armd Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (Cdn Stores of AFAI) (See overleaf for spelling and notes for use in trial.)

"WMS"
"RJG"

This is to certify I have this date examined K-35 Tpr Dunbar, G.P., 9th Cdn Armd Regt (BCD) CA and found him fit to undergo trial by Court Martial.

In the Field:

Date 3 July 44

"J. Mitchell" Capt
Medical Officer i/c

"WMWS"

PROS:- Intend proving "intention" &"AWL"

1st WITNESS PROS

K880 Sgt Foster, S., BCD duly sworn, states:-
Acsd is Tpr Dunbar.
On 21 Apr 44 at 0600 L/Cpl Ohl who was duty asst prov. reported to me. I checked Dunbar's bed and the area, bedmade up to resemble man under blankets. Reported to RSM who told me to search area. I did so and was satisfied that not in camp area. Searched a larger area, approx 3 mi in all directions from camp. Not in any of these areas. Reported to MP's, etc. I was Regtl Prov Sgt and acsd was placed in my custody under close arrest. He was awaiting Court Martial, the summary had been taken and was awaiting assembly.
Next time saw him after he was returned from Naples. - approx 2 mos later - Had not been on parade in interval. Produce Cert of appreh. (Exh "A")
XX m:- When ret'd to unit acsd wearing BD.
Re-exam:- Nil
Court:- Nil

RP 83 (b) complied with.

2nd WITNESS PROS

K1610 S/MS Roth, L.T., BCD, duly sworn, states:-
When acsd went the 2nd time he had had a complete kit. When ret'd he had deficiencies amounting to $16.17. Produce Decl of Crt of Enq. (Exh "B")

XX m:- Nil
Court:- Nil

Rp 83 (b) complied with.

Pros closed.

1st WITNESS DEFENCE

The accused,
duly sworn, states
From time I left near Madaloni, hitch hiked to FOGGIA and from there to MATERA and NAPLES where met American friends. Ate at Amer stn and slept near there. At no time did I have civilian clothes on. I wore clothes I left with - Issue coveralls, shirts - shoes & beret. Never denied I was Cdn or cledmed to be any other. Could speak enough Italian to pass and had enough money to buy civilian clothes. Had made some money from Americans and when that was spent intended to rejoin unit.
Wearing denim which had been dyed black by the regt. Took [illegible] shaving kit, etc., When picked up had shaving kit.
XX m:- Other equipment at camp. Had no BD withme.
Re-exam:- Nil
Court:- Did not work for Italians. Ate with Americans and on money they gave us. Alone all the time. Had met Cdns but they had no interest in me.

RP 83(b) complied with.

PROS IN CLOSING:-

Have shown absence - taken in civilian clothes, coveralls are worn by civvies and nothing to show that in services. On [illegible] MB 68 the Crt of Enq found blouses BD & trousers BD missing and coveralls not deficient and must have been obtained elsewhere.

DEF. OFFR IN CLOSING:-

At time of absence not in action - Re civilian clothes - coveralls not walking out dress but are issue.

J.A. Functions of court, credibily of witnesses, burden of proof, reasonable doubt, desertion, powers of special finding AA56@.

"WMWShaw" Capt

Summary of Evidence in the case of K 35 Tpr Dunbar, G.P., 9th Cdn Armd Regt (BCD) C.A. Cdn Army Overseas.

The Commanding Officer directs that evidence be taken on oath.

FIRST WITNESS FOR PROSECUTION

L35041 Cpl Messervey, R.F., HQ Sqn., 9th Cdn Armd Regt (BCD) CA. sworn, states:

On the 28 Feb 44 I was Orderly Corporal of H Q Sqn., 9th Cdn Armd Regt (BCD) C A. I am well acquainted with K 35 Tpr Dunbar, G.P. whom I recognize here as the accused, who was a member of my tp for six weeks. At 1000 hrs 28 Feb 44 I was given a list of personnel who would be on guard at 1330 hrs 28 Feb 44. I went to Tpr Dunbar's tent for the purpose of warning him for guard duty. He was absent from his tent. I warned the remainder of the personnel on guard. After doing this I returned to Tpr Dunbar's tent and found him still absent. I saw Tpr Ondahl, the accused's tent mate and I asked him if he had seen Tpr Dunbar. His answer was "no". In company with Sgt Gordon, Provost Sgt, 9th Cdn Armd Regt (BCD) C A. we searched the camp area, not finding Tpr Dunbar I reported him absent to HQ Sqn Orderly Room about 1230 hrs 28 Feb 44.

The accused declines to cross-examine the witness.

"R.F. Messervey"
.....
(Signature of Witness)

SECOND WITNESS FOR PROSECTUION

L 36595 Tpr Ondahl, E.R., Recce Tp, HQ Sqn, 9th Cdn Armd Regt (BCD) CA, sworn, states:

I was on 28 Feb 44 and still am a soldier of the 9th Cdn Armd Regt (BCD) CA. I am well acquainted with K35 Tpr Dunbar, G.P., whom I recognize here as the accused, as we have been room mates for about 2 months. It was on a sunday 28 Feb 44, just before dinner at approx 1100 hrs that I last saw Tpr Dunbar. When I returned from dinner at approx 1230 hrs he was not around the tent and I did not see him again until today. 18 Apr 44. On 28 Feb 44 at about 2000 hrs I was in bed when Sgt Gordon asked me if I knew where Dunbar was, I didn't know so Sgt Gordon told me to have Tpr Dunbar report to him when he returned. The following morning he asked me again if I had seen him and I told him no.

Q.1. Did Dunbar tell you he was leaving ?
A.1. No Sir.

The accused declines to cross-examine the witness.

E.R. Ondahl
.....
(Signature of Witness

"C"
"WITNESS"

THIRD WITNESS FOR PROSECUTION

K 1610 SQMS Roth, L.T., HQ Sqn, 9th Cdn Armd Regt (BCD) C A. sworn, states:

I am K 1610 SQMS Roth, L.T., QMS, HQ Sqn, 9th Cdn Armd Regt (BCD) C A. On the morning of the 16 April 44 I inspected the Kit of K 35 Tpr Dunbar, G.P., and found deficiencies amounting to $27.39 as shown on the following list:

		PRICE
Caps Mechanic	1	.16
Drawers, cellular, prs	1	.43
Gloves, woolen, pr	1	.47
Great Coat, 1939 Patt	1	11.31
Jerkins, leather	1	5.77
Overalls, combination, prs	2	5.06
Shoes, canvass, prs	1	.65
Badges shoulder, CAC prs	1	.03
Brasses, button	1	.04
Brushes, cloth	1	.48
Brushes, hair	1	.34
Brushes, shoe polishing	1	.28
Housewife	1	.17
Patches, dist, prs	1	.03
Shorts, gym prs	2	.86
Vests, gym	2	.72
Towels, hand	1	.32
Ointment, A.C. Tins	1	.15
Detectors sleeve prs	1	.12
		$27.39

The accused declines to cross-examine the witness.

FOURTH WITNESS FOR PROSECUTION

.....Wit.....
"L.T. Roth"
(Sig of Witness)

2877715 Cpl. F. Taylor, C.M. Police.

Document purporting to be a signed statement of the evidence of 2877715 Cpl F. Taylor, C.M. Police, was read over to the accused, marked Exhibit "A" and attached hereto.

I certify that in my opinion owing to the exigencies of the service, including the time and expense involved, that attendance of this witness at the taking of the summary of evidence cannot readily be procured.

"C. McIlwaine Lt"
.....
(Signature of Officer Taking Summary)

"C"
"WAWS"

The accused was warned as follows:
"Do you wish to make ant statement or to give evidence upon oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence".

The accused: I have nothing to say at this time.

"George E Dunbar
(Signature of Accused)

The accused declines to call witnesses in his own behalf.

I certify that RF 4 has been complied with.

Taken by me in the Field in the presence and hearing of the accused this 18th day of April, 1944.

"E. McIlwaine, Lt"
Signature of Officer taking Summary)

"C"

"W.M.W.S."

Additional Summary of Evidence in the case of K 35 Tpr Dunbar G.P., 9th Cdn Armd Regt (BCD), Cdn Army Overseas.

The Commanding Officer directs that evidence be taken on oath

FIRST WITNESS FOR PROSECUTION

D 162 L/Cpl Wilson, J.H., "B" Sqn, 9th Cdn Armd Regt (BCD), sworn states:

On the night of the 20 April 44 I was on Guard duty at 2230 hrs. It was our duty to assist the Regimental Provost in guarding the prisoners in the area alloted for keeping them in. I took over from L/Cpl Shaw at 2230 hrs and was on duty until 0230 hrs 21 April 44. As there had been no proper guard room set up and the prisoners, of which there eight (8) were sleeping on the ground in a given area. We had no flashlights and our orders were to patrol around this area and check the prisoners beds at different intervals. At 0230 hrs I was relieved by L/Cpl All and before going off duty we both made a check of the beds together. To my knowledge the accused was in his bed at that time.

The accused declines to cross-examine the witness.

...J.H.Wilson...
(Signature of Witness)

SECOND WITNESS FOR PROSECUTION

K 880 Sgt Foster, S., HQ Sqn, 9th Cdn Armd Regt (BCD)CA, sworn states:

At the time in question I was Regt'l Provost Sgt of the 9th Cdn Armd Regt (BCD)CA. At 0600 hrs 21 April 44 L/Cpl All, who at that time was Acting Provost Lance Corporal on duty, reported to me that Tpr Dunbar, G.P. was missing. Tpr Dunbar was one of the prisoners under our charge. I immediately went to the sleeping area and checked the accuseds bed. The bed was made up and filled in with Kit bags which resembled a sleeping man. I first informed SSM Allen, HQ Sqn, then RSM Hodgson, who ordered me to search the immediate camp area and inform Major West, OC HQ Sqn of my findings. This I did, satisfying myself that the accused was not in the camp area. I was then given instructions by Maj West to travel further afield in search of the accused. I, in the company of Cpl Hanley of "B" Sqn, who was assisting in provost duties, Cpl Williams and L/Cpl Greeno, made a thorough search of the surrounding area for a radius of three (3) miles. We searched all houses and possible hiding places and also informed all Allied Military Police in the neighbouring Towns of the description and character of the accused. We then returned to camp.

Q.1. Did you find any trace of the accused in your search of the area?
A.1. I believe we did Sir. Certain evidence picked up pointed that the accused had gone in the direction of LUCERA.
Q.2. Did you check in LUCERA?
"C" A.2. Yes, Sir, I checked with Cdn Provost Corp but could find no trace.
"WWWS" Q.3. When was the last time that you can remember seeing the accused?
A.3. At approx 2100 hrs on 20 April 44.
Q.4. Was the report of L/Cpl All the first indication you had of the accused being missing?
A.4. Yes, Sir.

Q5 Are you satisfied that the pro personnel under you were doing their duty to the best of their ability on the night in question?
A5 Yes, sir.
Q6 Was the accused under close arrest at the time of these events happening?
A6 Yes sir, he was.

The accused declines to cross-examine the witness

."S.Foster".Sgt.....
(Signature of witness)

EXHIBITS

I produce a certified true copy of MB 68 which is marked "A" and is attached to this additional summary

I produce a certificate in accordance with the Army Act Sec 163 (1)(jj) which is marked "B" and is attached to this additional summary.

."S.Foster.Sgt".....
(Signature of Witness)

THIRD WITNESS FOR THE PROSECUTION

K1610 SQMS Roth L T, HQ Sqn 9 Cdn Armd Regt, sworn, states:

I am K 1610 SQMS Roth L T QMS HQ Sqn, 9 Cdn Armd (BCD), on 8 Jun 44 I inspected the kit of K 55 Tpr Dunbar G P and found deficiencies amounting to $16.17. Previous to this, when Tpr Dunbar had been apprehended and returned to unit lines, I had checked his kit on the 10th April 44. I found deficiencies which amounted to $27.39, which I replaced, and the accused was then in possession of a complete kit. After Tpr Dunbar went AWL the second time I again checked his kit and found deficiencies amounting to $22.52. When Tpr Dunbar was apprehended the second time I made another kit check on 8 Jun 44 which included equipment he had returned with. The revised list then amounted to $16.17.

.."L.T.Roth".....
(Signature of Witness)

Anklets prs	1	.99
BD Blouses	1	5.25
Boots rubber prs	1	1.52
Capt TB	1	1.00
BD Trousers	1	5.39
Badges shoulder prs	2	.08
Housewife	1	.17
Knife clasp	1	.86
Patches dist prs	2	.06
Belts waist	1	.74
Mugs enamel	1	.13
	Total	16.17

The accused declines to cross-examine the witness.

.."L.T.Roth".....
(Signature of Witness)

"C"

"MMWS"

The accused was warned as follows:

> "Do you wish to make any statement or to give evidence upon oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

After the above caution the accused elected to give evidence on oath.

RST WITNESS
OR DEFENCE

The accused K 35 Tpr Dunbar, G.P., 9th Cdn Armd Regt (BCD)CA, sworn, states:

At no time during my absence was I dressed in civilian clothes or attempted to pose as a civilian. I chummed around with numerous Americans and at all times they knew I was a Canadian. I had sufficient money on my person and also I speak Italian fluently enough to have posed as a civilian had I so desired. When apprehended, and at all times during my absence, I was dressed in issue coveralls--the clothes in which I left camp. As this clothing was Canadian issue at no time did I consider I was in civilian clothes.

."George.P.Dunbar".....
(Signature of Witness)

The accused does not call any witnesses for the Defence.

I certify that RP 4 has been complied with.

Taken by me in the Field in the presence and hearing of the accused this 8th day of June 1944.

."J.Looney.Capt".....
(Signature of Officer Taking Additional Summary)

"C"

"WWWS"

PLEA OF MITIGATION IN CASE OF K-35, Tpr Dunbar, G.P. of 9 CDN ARMD REGT (BCD)

By way of a plea of mitigation on behalf of the accused K-35, Tpr Dunbar, G.P. I wish to bring certain facts to the attention of the court.

(1) The accused while awaiting trial has been under close arrest a total of 78 days.

(2) Of this period, approximately one month was spent in irons.

(3) The accused is married and has 2 children aged 5 & 8 yrs. His wife and children are wholly dependent on him.

(4) The accused has been in the army since fall of 39 and on Active Service since 1941.

"H.B. Fleming" Lieut
(H.B. FLEMING) Lieut
5 Cdn Armd Regt (SNHH)
Defending Offr

"P"
"WMGS"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K 35	Trooper	George Patrick DUNBAR	9 Cdn Armd Regt(BCD) CA

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not quoted in the proceedings.

† See para. 671, K.R., 1940.

* The number herein stated should correspond with the number or entries in the conduct sheets produced by the most senior officer present each case), and in the case of a recognised special rate of efficiency or distinguished conduct.

‡ Strike out.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For AA Sec 40	1	times.	2	times.
For AA Sec 15(1)	4	times.	8	times.
For AA Sec 11	0	times.	1	times.
For		times.		times.
For		times.		times.

"I.M." [redacted]

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted. *or*

"I.M." [redacted]

3. The accused is not under sentence at the present time, or "I.M." [redacted]

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 78 days in military custody, making a total of 78 days, of which nil days were spent in hospital.

5. The present age of the accused according to his "I.M." record of service is 31 yrs 1 month

6. The date of his "I.M." attestation specified in his "I.M." record of service is 27 May 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 yrs

8. The accused is entitled to deferred pay or gratuity in respect of 3 yrs service.

9. The accused is entitled to reckon ------ service for the purpose of determining his pension, etc.

10. The accused is in possession of "I.M." [redacted] (*or is in possession of or* [redacted] *state any military decoration or reward*) Cdn VSM & Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated and in his regiment (*or corps or department*) the rank of dated

(Printed) W. (H.Q.) 7144 125,000 6.41 A.R.P.W. Ltd. Gp.488

"P"

"MMS"

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. K 35 Rank Tpr Name DUNBAR G P of 9 Cdn Armd Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3 day of July 1944

[illegible]
(L. Macdonald [illegible])

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 14th day of MAY 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Regimental Necessaries, or Clothing of No K-35 Tpr Dunbar, G.P.

DECLARATION

The Court declare that No. k-35 Tpr. Dunbar, G.P, HQ Squadron 9th Cdn Armd Regt (BCD) illegally absented himself without leave In the Field at 0600 hrs on the 21st day of April 1944; and that on the 14 May 1944 he was deficient, and that he is still deficient of the following articles:-

ARTICLES		VALUE
Anklets, web, prs.....	1	.99
Blouses, BD.....	1	5.25
Boots, ankle, prs.....	1	5.46
Boots, rubber, high prs	1	1.52
Caps T B	1	1.00
Drawers, cell, short pr	1	.43
Trousers, BD, prs.....	1	5.39
Socks, worsted, prs....	1	.37
Badges Cap (BCD)	1	.09
Badges, shoulder, CAC pr	1	.06
Housewife	1	.17
Knife, clasp	1	.86
Patches, dist, prs	2	.06
Belts, WEP 37.....	1	.74
Mugs, drinking, 1 pt ..	1	.13
TOTAL		$ 22.52

(Signed) Capt G.P. Baker President

(Signed) Lt R B Ballantyne Member

Signed at In the Field (Signed SSM W M Allen Member

this 14th day of May 1944.

Signature of Commanding Officer F.A..Vokes T.Lt.COl....

B "WMWS" Certified true extract of MB68

"L MacDonald" Capt & Adjt

Certificate in accordance with the Army Act Sec 163 (1) (ii)

I certify that

No. k.35 Rank TROOPER Name DUNBAR G.P.

of the 9th ARMOURED REGIMENT

was arrested at NAPLES at 0700 hrs

on the 29th day of MAY 1944

Wearing CIVILIAN CLOTHING.

Signature of P.M., A.P.M., or other Officer into whose custody the above named person was taken

" K.L. Hobbs"
Rank CAPTAIN

Appointment (if any)

Commanding 111 PROVOST COMPANY, C.M. POLICE

Date 29th MAY 1944

"A" "NEWS"

CERTIFICATE IN ACCORDANCE WITH A.A. SECTION 163(1) (11)

I certify that No .....k 35 Rank Tpr Name DUNBAR G.P.
of the Royal Canadian Armoured Corps, 9th Arm Regt 5 Cdn Div
Was arrested at MESSINA At 1030 hrs On the 8th March 1944.
He was wearing British uniform covered by an overalls.

(Signed)...T. [illegible]....
D.A.P.M. Lt.

Signature of the Provost Marshall A.P.M., or other Officer into whose custody the above person was taken on arrest.

"C"
"WORKS"

EXHIBIT "B"

CHARGE

Army Form B 252
(See King's Regulations)

ROYAL CANADIAN ARMOURED CORPS — Regiment

9th ARM REGT 5th CANADIAN DIV — Battery / Squadron / Troop or Company

CHARGE against No. K 35 — Rank Tpr

Name DUNBAR G.P.

Place ? — Date of Offence ?

OFFENCE W.O.A.S.

"Ex. Scarson St."
Capt DARM HQ 40 Div

Names of Witnesses :—

2877715 Cpl F. Taylor C.M. Police

4031443 L/Cpl C. Mundee C.M. Police

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded "[illegible]"

Adjutant.

P.T.O.

30133. Wt.W12472/969. 2,000,000. 5/42. K. & H., Ltd. G657/47.

STATEMENT OF **EVIDENCE** IN THE CASE OF

No. M35
Tpr DUNBAR, G.F.
9th Arm Reg. R.C.A.C.
5th Canadian Div.

Sir:

At MESSINA, on the 8th MARCH 1944 at about 10.30 hrs I was on duty at Provost [illegible] when a civil policeman reported that there was an Allied soldier acting very suspiciously near the docks. Accompanied by L/Cpl Mundee C.M. Police, I proceeded to VIALE S. [illegible] MARTINO, and there saw the A.W. soldier. He was dressed in blue overalls and was wearing a black [illegible] On being questioned, he stated that he had been absent from his unit for about (10) ten days.

I then arrested and conducted him to the MESSINA GARRISON GUARD ROOM, where he was handed over to the N.C.O. i/c to be detained. Receipt attached.

In the Field
8-3-44.

"F. Taylor" Cpl
C.M. Police

REMARKS

Sir, I have read over and corroborate the above statement.

REMARKS

"C. Mundee" L/Cpl
C.M. Police

In the Field
8-3-44

RECEIPT

No. K35 Rank Tpr Name DUNBAR G.P.

Regiment 9th ARM Regt 5th Canadian Div.

was handed over by the Military Police at

MESSINA GUARD ROOM (Place)

about 1045 hrs on the 8th March 44.

Sober.

Signature of NCO "R.F. Paradise" Sgt

30th Som Light Inf

NOTICE PERSUANT TO R P 76

Notice is hereby given that on the forthcoming trial by Field General Court Martial of

K 35 TPR DUNBAR G.P.

it is intended to call as a witness, Capt A L MacDonald, adjutant 9 Cdn Armd Regt (BCD) C A, who will produce as an exhibit Part I Order No 29A, a copy of which is attached hereto.

"J Looney" Capt
(J. Looney) Capt
Officer Taking Summary

"WMWS"

I hereby request the convening officer to detail an Officer to represent me at my forthcoming trial by Court Martial. I desire the services of Capt A E Shepherd, 5th Cdn Armd Regt (SNEH) if he is available.

"George P Dunbar"
(G.P. Dunbar) Tpr
9th Cdn Armd Regt (BCD) C A

This is to certify that I have this date received one copy of the Charge sheet and one copy of the Summary of Evidence in my case.

"George P Dunbar"
(G.P. Dunbar) Tpr
9th Cdn Armd Regt (BCD) C A

"WMWS"

PART I ORDERS
BY
LT COL F A VOKES COMD
9TH CDN ARMD REGT (BCD) C A

Last Order
No 29
15 Jun 44

This Order
No 29A
21 Jun 44

---

1 ABSENCE WITHOUT LEAVE

K 35 Tpr George Patrick DUNBAR, AWL from about 1100A hrs 28 Feb 44 until apprehended by military police at MESSINA at approximately 1030A hrs 6 Mar 44 (Absent 6 days 23 hrs 30 mins)

"L.MacDonald" Capt & Adj
(A.L. MACDONALD) A/CAPT & ADJT
for Officer Commanding
9 CDN ARMD REGT (BCD) C A

"WMWS"

No. K 55 Name DUNBAR G P | Sqn, Battery, or Company | Serial Corps 1104/1 | Date of enlistment 4-9-40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/156 (3428)

Date of last entry in Company Conduct Sheet: N/A | No and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Camp Borden	8-9-41	Tpr	Nil	AA Sec 15(1)AWL 8 days, 5 hrs	L/C Weeks	168 hrs Det	17-9-41	Capt H Angle	Forf 8 days pay FRI 149(1) (a)
In the Fd	27-5-42	Tpr		AA Sec 15(1) AWL 15 mins	Tpr Smirfitt R	3 days C B	28-5-42	Lt A E Smith	Wilbur Forf 7 days pay FRI 149 (1) (b)
In the Field	5-9-42	Tpr		AA Sec 40. Water bottle not in correct place	Sgt Handling	3 days C B	5-9-42	Major H F E Smith	
In the Field	21-9-42	Tpr		AA Sec 15(1) AWL 20 hrs 20 mins	Documentary	7 days C B	22-9-42	Major HF Smith	Forf 1 days pay FRI 149 (1) (a)
In the Field	15-11-42	Tpr		AA Sec 15(1) AWL 21 hrs and 30 minutes.	L/C Caza FE	7 days C B	15-11-42	Lt Col W Murphy	Forf 7 days pay FRI 149 (2)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6-1-43	Tpr	Nil	AA Sec 11. Failed to obey Unit Orders	L/C Wickeen	2 days C B	10-1-43	Major HFE Smith	
Field	30-7-43	Tpr		AA Sec 40. Neglected to call cooks	Cpl Quissy	3 days C.B.	30-7-43	Maj C W West	
Field	8-8-43	Tpr		AA Sec 15(1) AWL 1 hr 20 mins	Cpl Coe R C	5 days C B	9-8-43	Major C A West	
Field	20-8-43	Tpr		AA Sec 15(1) AWL 1 day 4 hrs	Sgt MacEwan	Forf 7 days pay FRI 149)2)	26-8-43	Lt Col H Angle	Forf 2 days pay FRI 149)1) (a)
Field	15-9-43	Tpr		AA Sec 15(1). AWL 9 days 3 hrs	Tpr Vaughn	14 days C B	15 Sep 43	Lt Col H Angle	Forf 10 days pay FRI 149(1) (a) Forf 21 days pay FRI 149 (2)
Field	27Dec 43	Tpr	Nil	AA Sec 15(1) AWL 3 hrs 30 mins	Cpl Mawer L/C Valouch	7 days F.P.	27 Dec 43	Lt Col H Angle	Forf 7 days pay FRI 149(2)

Certified true copy from the Regimental books in my custody

"L MacDonald" Capt & Adjt
(L. MacDonald) Capt ' Adjt
9 Cdn Armd Regt (BCD)

5 R 89-90
Pte Dunbar, H.A.
Pte. Thompson, L.G.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-31035 Pte (A/Sjt) Lewis George THOMPSON) No 1 Detn and Fd Punishment Barracks
B-84810 Pte William Alexander DUNBAR) Cdn Provost Corp, att 1 Cdn Discipline Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 40	Guilty	Guilty	
2nd AA 40	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence to~~ [illegible] beginning on [illegible] (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 32 days, of which Nil days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: A 31035 Pte (A/Sjt) LEWIS GEORGE THOMPSON AND B34810 Pte WILLIAM ALEXANDER DUNBAR TO UNDERGO DETENTION FOR A PERIOD OF 60 DAYS

(Sgd) ~~Judge Advocate if any~~ [illegible] 17 Jul 45 (Sgd) [illegible] President. (RP 45, 50.)

Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(Our duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

A31035 Pte THOMPSON L G

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) E. de Burne

Date ..... Commanding ..... Confirming Officer.

6 AUG 1945

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. A-31035 Pte THOMPSON Lewis George B-84810 Pte DUNBAR William Alexander

Date. 14 Aug-45

Signature of Offr. W Slater Major COMMANDANT 1 CDN DETN & FP BKS C P C

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

I certify that there are no illegalities or irregularities to justify withholding confirmation of the proceedings. 24 Aug 45 [illegible] DAAG, Cdn Pers Adm Gp, CMHQ

RECORDED AT CMHQ IN A5 150. Number S-N-59 Thompson S-N-90

RECEIVED 27 AUG 1945 JAG BRANCH CMHQ

CPA86 (In lieu of AFA3) 40/P & S/1000 (9/01) 4738B

FIELD GENERAL COURT-MARTIAL

Convening Order of Brig J S H Lind DSO Comd [illegible] dated 7 Jul 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 326, 332.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A-31035	Pte	A/Sjt	Lewis George	THOMPSON	No 1 Detention and Fd Punishment Barracks Cdn Provost Corp, att 1 Cdn Discipline Centre
B-84810	Pte		William Alexander	DUNBAR	

PROCEEDINGS REVIEWED [illegible] PROCEEDINGS OF TRIAL.

VIEWING OFFICER, JAG BRANCH CMHQ on (date) 17 July 45

36(30 Thompson) 36(31 Dunbar)

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmo RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused ~~is~~ (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused ~~is~~ (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused ~~is~~ (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~

(1. KR Con 557. 2. AA 40(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ [illegible] ~~as interpreter?~~ Ans [illegible]

~~The Interpreter is sworn.(1) Do you object to~~ [illegible] ~~as shorthand writer?~~ Ans [illegible]

~~The shorthand writer is sworn.(1)~~ [illegible]

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	W F HANSBROUGH	HQ/1 C DET BN
Member	Capt	P J POULIN	MCA CDN CM CENTRE
Member	Capt	C K BISSETT	CMPO CDN CM CENTRE
~~Judge Advocate~~	[illegible]		
Prosecutor	Capt	K A McKENZIE	CDN CM CENTRE
Defending Offr	Capt	L A KITZ	CDN CM CENTRE

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dig p 2.)

A8. The accused A-31035 Pte (A/Sjt) THOMPSON L G B-84810 Pte DUNBAR W A before arraignment make(s) (no) (1) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused ~~is~~ (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 73

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ 1 CERS Vol II p 37.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-86 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~as JA, R.M.C.~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge and to call witnesses as to character and make an address in mitigation of punishment.(1)
(*1. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans Thompson (No) Dunbar (No) (5)
(*1. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement(s)~~ The Court decides (not) to advise accused to change ~~his (their) plea(s)~~ of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) as follows~~ ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex O , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B on p 2.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character, or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 56(2) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(7), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Thompson (No) Dunbar (No)
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copies (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A.S. 163(1) (g) (h), and (ii) they purport to refer to soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3) AND Dunbar Marked Ex D and Ex E respectively
(*1. MFB* 255 *or AFB* 296. 2. *MFM* 4. 3. *RP* 46, *KR Can* 552. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Thompson (Yes) Dunbar (Yes) Marked Ex F (2)
(*1. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 343-366, *Overseas AO* 309, 2323, *MML p* 92, 733-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(15), 68(1), *KR Can* 364. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 367. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined A 31035 (No.)
Sgt. (Rank) Thompson (Name) L.G. and in my opinion he is fit to undergo trial by Court-Martial.

Station FIELD (Sgd) (Medical Officer)

Date 17 July 45 Unit #1. CDN. DISC. CENTRE.

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined B84810 (No.)

Pte. Dunbar. W.A. and in my opinion he is
(Rank) (Name)

fit to undergo trial by Court-Martial.

Station FIELD

Date 17 July 145

[signature] Capt. (Sgd)
(Medical Officer)

Unit # I. CDN. DISC. CENTRE.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-21035	Pte	A/Sgt	Lewis George	THOMPSON	No. 1 Detention and Pd Punishment Barracks, att. 1 Cdn Discipline Centre
B-6/810	Pte		William Alexander	DUNBAR	

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 7 July 45 endorsed by me, (~~as by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reason I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E F HAMMOND	2 CDL Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	P J POULIN	RCA - Cdn CM Centre
Captain	C E BISSETT	CM of C - Cdn CM Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in NORTH WEST EUROPE

(Country.)

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 7 Jul 45

Commanding (J S H LIND) F & C Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CAAS 172 (Secs of AFAS) AD/F & S/1497 (A601))

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused persons, A-31035 Pte (A/Sjt) Lewis George THOMPSON and B-54810 Pte William Alexander DUNBAR, both of no 1 Detention and Pd Punishment Barracks, Cdn Provost Corps and both attached to 1 Cdn Discipline Centre, Soldiers of the Canadian Army Overseas, are charged with:-

FIRST CHARGE
Sec 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that they

in the Field, at approximately 2015 hrs 15 Jun 45, improperly and without authority took and used WD Vehicle No 5571609, for private purposes.

In the Field
3 Jul 45

(W S Richmond) Lt col
Commanding
1 Cdn Discipline Centre

To be tried by Field General Court-Martial

In the Field
7 Jul 45

(J S M LIND) Brigadier
Commanding
3 Cdn Base Rft Gp

Plea in Mitigation Ex F [illegible]

I have not had the accused speak ~~further~~ to the court because I feel that in their statement given to the Provost at their apprehension you have a complete and reliable account of this matter. One given early and without help or advice from a defending officer. A short, bald & I suggest accurate account of this affair. An affair of relatively little weigh insofar as wrong doing is concerned.

The N.C.O. Thompson is a 5 year service man. Left Canada in '41. Serving all the time with the 4th. L.A.A. His qualities are manifest from the fact that he became a B.S.M. in his unit. He landed on this Continent on D Day, stayed with his unit until a disturbance in Jan. of this year landed him at 1 Dis. Centre.

Dunbar, another '39 er has been a Cpl. Married. Has 186 points. Came to England in July of 41. To France July 44. Served with 2 Div. Service Corps Coy. Till he went AWL and was sent to Dis. Centre.

While at the Dis. Centre they were both retained and put on staff. Whether you feel this is a good policy or bad it stamps them as persons above the run of mill, at least insofar as that competition is concerned.

On a day off they went to Antwerp, a practice pretty widely followed on a day off, with or without permission ~~[illegible]~~ at least. I think, a procedure, not usually frowned upon.

There they met a drinking companion who agreed to drive them back to camp. He went off somewhere & they took the vehicle of this fellow & cruised to look for him.

Now that is the crime. The reason they are

before you. Not a very serious (2) breach. True, when first accosted they took temporary flight, but reason shortly prevailed & they gave themselves up.

It is the type of offense had it happened in their own bailiwick would have been dealt with by their own C.O. It is the type of offense, I ask the Court to agree with me, that had it happened with a man under your command, you would, individually, have asked your C.O. to deal with. But having spread to the C.M.P. their is the unhappy tendency to consider the offense a Court Martial matter.

One further point. The Summary has a suspicion of being prepared to connect the accused with improper possession. I know I need not deal with this more than lightly as they are not charged with it. This I will say that coming by hitch hiking it is not likely Jerricans, Haversacks, Denim Jacket, Cap Comforter, & a lot of accident reports would have been carried by them.

The prisoners went on a short Scotic. They have been in the Dis. Cent. awaiting trial for 32 days. During that time they undergo the indignitys of an S.U.S.

They both have signed to go home. Their respective records are not clear, but with the law of averages over a five year period they cannot be considered bad types. Indeed, as persons of some substance.

They are hangovers awaiting to go home. I suggest that little value is done to give them a sentence of much duration, and mindful also that they have shown themselves repentent of their wrong and have not made any vexatious pleas or delays are entitled to your magnanimity. L.A.K. Capt.

Ex A

Summary of Evidence in the case of A-31035 Sjt THOMPSON L G and B-84810 Pte DUNBAR W A, both of No 1 Detention and Fd Punishment Barracks, Cdn Provost Corps and both attached to 1 Cdn Discipline Centre, soldiers of the Canadian Army Overseas.

Charges (1) Improperly using WD Vehicle
~~(2) Improper possession of WD Stores~~

By directions of the CO the evidence is taken on oath.

FIRST WITNESS RSM A. MARTIN 185 Provost Company (Ports) C.M. Police

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service not readily procurable and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Exhibit "A". The voluntary statements of the accused referred to by RSM MARTIN are read over to the accused and attached hereto as Exhibits "B" & "C".

M. Rousseau Capt
(Maurice Rousseau) Capt

We do not require the attendance of RSM A. MARTIN for the purpose of cross-examination.

W A Dunbar
B 84810 Pte DUNBAR W A

J G Thompson
A 31035 Sjt THOMPSON L G

SECOND WITNESS Sjt LAVEN L C.M. Police (Ports) 185 Provost Coy

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service not readily procurable and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Exhibit "A".

M. Rousseau Capt
(Maurice Rousseau) Capt

We do not require the attendance of Sjt LAVEN for the purpose of cross-examination.

W A Dunbar
B 84810 Pte DUNBAR W A

J G Thompson
A 31035 Sjt THOMPSON L G

THIRD WITNESS T/6019743 L cpl TURNER A G R 185 Pro Coy (Ports) CMP

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service not readily procurable and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Exhibit "A".

M. Rousseau Capt
(Maurice Rousseau) Capt

We do not require the attendance of Sjt LAVEN for the purpose of cross-examination.

W.A. Dunbar
B 34810 Pte DUNBAN W A

A 31035 Sjt THOMPSON L G

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. We have nothing to say.

The accused do not call any witness.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

M. Rousseau Capt
(Maurice Rousseau) Capt
Officer detailed to take Summary of Evidence

Dated in the Field
13 July 45

Exhibit A

STATEMENT OF EVIDENCE in the case of A 31035 Sgt. THOMPSON L.G.
B 84810 Pte. DUNBAR W.A.

M. Rousseau Capt

No. 1 Detention & Field Punishment Barracks
Canadian Provost Corps
B. L. A.

Sir,

At Antwerp on the 15 June 1945 about 2015 hrs, I received information that two Canadian Provost personnel had been seen in the vicinity of the Riverside Dock Area driving a Jeep in a reckless manner. I proceeded to Kuiperstraat, and there saw the above named soldiers in a Canadian W.D. Jeep No. M 5571609, I signalled and hailed them to stop, they failed to do so. I followed them in a Fordson 15 Cwt. Truck driven by No. 6019743 L/Cpl. Turner A.G.P. C.M.Police, I overtook them at Suikerrui and again signalled them to stop, forcing them to the near side curb and causing them to halt. They immediately reversed, and drove forward again. I continued to follow them for approximately one mile through various side streets, at a speed of about 40 M.P.H. They were driving in a careless, Dangerous manner.

At 2030 hrs. they swerved into the Town Car Park, Breydelstraat, where they were compelled to halt by a road block. I arrested them and conveyed them to the Town Guard Room, where I interrogated them and found them to be A.W.O.L., in Antwerp without a pass, also in improper possession of a C/W.D. vehicle containing the following Allied Stores :-

3 Jerrycans
1 Coat W/P W/C
2 Haversacks Web
1 Sheepskin Coat (Furlined)
1 Canadian Riding Coat
1 Denim Jacket
1 Gersey Pullover
1 Cap Comforter
3 Towels
1 Suit of lined Flying Overalls
5 Tablets of Toilet Soap
2 " " Washing Soap
1 New Shaving Brush (Victoria)
1 Woodbury Shaving Stick (New)
1 Active Service Package (Cont. Chocolate)
1 Active Service Package (" 300 Cigarettes)
7 lbs (approx.) of Tea
2 Khaki Shirts W.D.
3 Tins 50 Cigarettes (BASC Issue type)
4 Pkts Cigarettes (Sweet Corporal)
1 Brief Case containing copies of accident Reports by M.C.O's of 42 Coy C.M.P. (R.C) being forwarded to Admin.HQ 1 Can.Army, from D.P.M. HQ 1st Canadian Army.

I charged them and handed them over to the N.C.O. i/c Town Guard Room at 2050 hrs. to be detained.
Handing over Slip attached.
They were SOBER.
On the 16 June 1945 at 0950 hrs, I proceeded to the Town Guard Room where I interviewed the accused and obtained the attached voluntary statements.

B.L.A.
June 16th, 1945.

R.S.M.
185 Provost Company (Ports) C.M.Police

Sir,

I have read over and corroborate the above statements.

B.L.A.
June 16th, 1945.

W.J. Thompson Sgt.
185 Provost Company (Ports) C.M.Police

Sir,

I have read over and corroborate the above statement with reference to the speed of the vehicle and the manner in which it was driven.

B.L.A.
June 16th, 1945.

Verified. Turner A.G.P. L/Cpl.
185 Provost Company (Ports) C.M.Police

Exhibit B

I No A31035 Sgt. ~~Shop~~ Thompson [illegible]
No 1. Detention & Field Punishment Bks.
Canadian Provost Corps.
B.L.A.

Have been cautioned that I am not obliged to say anything unless I wish to do so, but anything I do say will be taken down in writing and may be given in evidence

[illegible]

Sayeth

We left our camp at approximately 1400h on the 15th June 45. and came into Antwerp on the Thumb. After we arrived in Antwerp we entered a Cafe had a few drinks, and met a Canadian who had a Jeep, who was pretty Drunk, we drank together, and he left saying he was going across the road to another Cafe. He was gone about a half hour, approximately, then we decided we would go and look for him. So we just started cruising around looking for him, when we ran into the Military Police. We realized the position, that we had the Jeep without authority, and decided to make a chase of it. When we arrived at the car park, we realized it was no good carrying on and getting into more trouble so we decided to stop.

[illegible]

I have read over the above statement and had the chance to add, delete, or alter same.

[illegible]

The above statement was taken down by me, and witnessed by Sgt. [illegible] LAVEN C.M. Police at [illegible] 16 [illegible] 45.
[illegible] Cpl Penfolie (P.) [illegible] Martin [illegible] C.M. Police

I, No. A 31035 Sgt. THOMPSON L.G.
No.1 Detention & Field Punishment Barracks
Canadian Provost Corps
B. L. A.

have been cautioned that I am not obliged to say anything unless I wish to do so, but anything I do say will be taken down in writing and may be given in evidence.

(Sgd) L.G.Thompson, Sgt.

Sayeth :

We left our camp at approximately 1400 hrs on the 15 June 1945, and came into Antwerp on the thumb. After we arrived in Antwerp, we enterred a Cafe, had a few drinks, and met a Canadian who had a Jeep, who was pretty Drunk, we drank together, and he left saying he was going across the road to another Cafe. He was gone about a half hour approximately, then we decided we would go and look for him. So we just started cruising around looking for him, when we ran into the Military Police. We realized the position, that we had this Jeep without authority, and decided to make a chase of it. When we arrived at the car park, we realized it was no good carrying on and getting into more trouble so we decided to stop.

(Sgd) L.G.Thompson, Sgt.

I have read over the above statement and had the chance to add, delete, or alter same.

(Sgd) L.G.Thompson, Sgt.

The above statement was taken down by me, and witnessed by Sgt. L.Laven C.M.Police at 0950 hrs, 16 Jun 45.

(Sgd) A. Martin, R.S.M.

Witnessed :- (Sgd) L. Laven, Sgt.
C.M.Police (Ports).

Certified true copy E. Hulst B.
[illegible] Capt

Exhibit C

I; No B 84810 Pte. DUNBAR. W. A. Rousseau Capt
No 1 Detention and Field Punishment Barracks.
Canadian Provost Corps.
D. L. A.

Have been cautioned that I am not obliged to say anything unless I wish to do so but anything I do say will be taken down in writing and may be given in evidence.

W. A. Dunbar

Sayeth.

We left our barracks about 1400h on 16 Jun 45, and thumbed our way into Antwerp. Then we started drinking and going from Cafe to Cafe, we went in a particular Cafe, and met another Chap, and got into a conversation he said it was his Jeep that was parked outside. We asked him where he was going and he said Nymegen. we asked him if he would take us back and he said, "Okay". Well we stayed in there a while and continued to drink. Then he said he was going to see some girl of his and to wait there. Well we waited some considerable time, and we got tired of waiting so we came outside looked around and didn't see him. So we got the Jeep and started going around. The next thing I knew was when I saw a 15 cwt coming up behind, and saw it was a Military Police truck I figured that as I didn't own the Jeep I was in trouble and decided to make a break for it. After some considerable chase around the town we decided to stop in the Car Park, and

and:-

give ourselves up to the Police.

W. A. Dunlop

I have read over the above statement and had the chance to add, delete or alter same.

W. A. Dunlop

The above statement was taken down by me at 1020hrs. on the 16 June 45, and witnessed by Sgt. L. LAVEN C.M. POLICE.

L. Morton RSM

C. M. POLICE (P)

WITNESSED:- W. Lavell Sgt.

C.M. Police (P.)

I, No. B 84810 Pte. DUNBAR W.A.
No. 1 Detention and Field Punishment Barracks
Canadian Provost Corps
B. L. A.

have been cautioned that I am not obliged to say anything unless I wish to do so, but anything I do say will be taken down in writing and may be given in evidence.

(Sgd) W.A. Dunbar, Pte.

Sayeth.

We left our barracks about 1400 hrs. on 15 June 45, and thumbed our way into Antwerp. There we started drinking and going from Cafe to Cafe, we went in a particular Cafe, and met another chap, and got into a conversation. He said it was his Jeep that was parked outside. We asked him where he was going and he said Nymeghen, we asked him if he would take us back and he said, "Okay". Well we stayed in there a while and continued to drink. Then he said he was going to see some girl of his and to wait there. Well we waited some considerable time, and we got tired of waiting, so we came outside looked around and did not see him. So we got the Jeep and started going around.

The next thing I knew was when I saw a 15 Cwt coming up behind, and saw it was a Military Police truck, I figured that as I did not own the Jeep I was in trouble and decided to make a break for it. After some considerable chase around the town we decided to stop in the Car Park, and give ourselves up to the Police.

(Sgd) W.A. Dunbar, Pte.

I have read over the above statement and had the chance to add, delete or alter same.

(Sgd) W.A. Dunbar, Pte.

The above statement was taken down by me at 1020 hrs on the 16 June 1945, and witnessed by Sgt. Laven L. C.M.P.

(Sgd) A. Martin, R.S.M.

Witnessed :- (Sgd) L.Laven, Sgt.
C.M.Police (Ports)

Certified true Copy E. Shubert C
M. Rousseau Capt

Exh B

ARMY FORM B. 296 (WAR.)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A31035	A/Sgt	THOMPSON L G	1 Det & Fd Pun Bks C Pro C

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For 15(1) 1 times.

For 40 1 times.

For 11 1 times.

For ____ times.

Date of first entry in Field Conduct Sheet 19 Nov 42

Date of last entry in Field Conduct Sheet 28 Jan 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for NIL

beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for Nil days in civil custody ; and for 32 days in military custody, i.e., Nil days in open arrest, 32 days in close arrest ; of which Nil days were spent in hospital.

5. The present age of the accused is 26 years 3 months

6. The date of his attestation / calling up for military service is 6 Sep 39

7. The service which the accused is allowed to reckon is

8. The accused is in possession of CVSM and Clasp

*State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously without reduction, to the present date —

	Date of Promotion.
In the substantive rank of Private	6 Sep 1939
In the war substantive rank of	
In the acting rank of Sergeant	26 April 1945

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

*Strike out if not applicable.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT. of Summary Award under Sec 47 AA and of cases in which trial has been dispensed with of accused

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	Field 4May43	AA 6(2) leaving post without orders from his Superior Offr AA 19 drunkenness (2nd Offence)	Reduced to ranks	
FGCM	Field 28Jan45	AA 40 causing disturbance in a public place AA Sec 19 drunkenness	reduced to ranks 6 months detn	91 days of sentence suspended on 24Apr45

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 17 day of July 45

(M A Cooke) Capt & Adjt.
Officer ic Regtl Books 1 Cdn Discipline Centre

No. A31035 Name THOMPSON LG Sqn, Battery, or Company Corps RCA Date of enlistment 5Sep39 GC Badges Service or Proficiency Pay Ex 17 MFM 6 (AFB 122) 40/P&S/156 (5413) C

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 1 Signature OC Company, etc Character

Place	Date of	Rank	Cases of	Offence	Name of Witnesses	Sentence	Date of award or of disposal	By whom awarded	Remarks
	sheet	destroyed		16 Jun 42 Last entry 14 Jun 41	case of drunkenness 4 Jan 41				
Field	15Nov42	Sgt		(1) AA 11 Neglecting to obey Camp stand. Ord.- drove WD vehicle without proper authority (2) AA 40 Conduct etc-failed to halt when ordered to do so by sentry.	Gnr Munn Gnr Phillips Gnr Welgush Gnr Schmidt	Severe reprimand	19Nov42	Lt col JF	Plow
Field	16Mar43	Sgt		15(1) AWL from 2359 18 Mar 43 to 2240 hrs 19 Mar 43(22 hrs 41	Bdr Cooks & min)Cooper	Severe reprimand	25Mar43	Lt col CE Woodrow	1 days pay 149(1)(a)
"	29Apr43	Sgt		FGCM (1) AA 6(2) leaving post without orders from Sup Offr (2) AA 19 drunkenness (2nd off)	Capt Dunlap Sgt Watt L bdr Schertzberg	reduced to ranks	finding and sentence confmd on 4 May 43 by Lt col HA Sparling A/CRA 3 Cdn Div		
Field	19Jan45	BSM		FGCM (1) AA 40 causing disturb. in public place (2) AA 19 Drunk 91 days placed in suspension	Documentary	reduced to rnks 6 mos detn	finding & sentence confmd 28Jan 45	181 dy pr 149(1b) 6 dy pr 149(1c)	

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified true copy of original MFM 6 in my custody		M A Cooke (M A Cooke) Capt & Adjt Officer ic Regtl Books & Docs 1 Can Discipline Centre			

W76 Ex D

ARMY FORM B 296 (WAR.)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-84810	Pte	DUNBAR W A	1 Det & Fd Pun Bks C Pro C - 1 Cdn Disc Centre

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Sec 40 Army Act 1 times.

For Sec 15 (1) Army Act 1 times.

For times.

For times.

Date of first entry in Field Conduct Sheet 13 Apr 43

Date of last entry in Field Conduct Sheet 23 Oct 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. ~~The accused at the present time is under sentence for~~ ~~beginning on the day of~~ ~~ie~~

4. The accused has been awaiting trial on the present charges for NO days in civil custody ; and for 32 days in military custody, *i.e.*, NO days in open arrest, 32 days in close arrest ; of which NO days were spent in hospital.

5. The present age of the accused is 32 years 9 months old

6. The date of his attestation ~~calling up for military service~~ is 12 Feb 1941

7. The service which the accused is allowed to reckon is

8. The accused is in possession of** E.N.S.M. with Clasp

**State the military decorations (if any) held by accused.

9. *(If the accused is a warrant officer or N.C.O.).* The accused has served continuously without reduction, to the present date —

Date of Promotion.

In the substantive rank of

In the war substantive rank of

In the acting rank of

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

of Summary award under Sec 47 AA and of cases in which trial has been dispensed with

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	Field 23 Oct 44.	Sec 15 (1) Army Act two chgs	6 months detn	accused sixty (60) days

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 17 day of JULY 45

M A Scott Capt.
O/C Records

COPY

No. B84810 Name DUNBAR W A | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 12 Feb 41 | GC Badges | Service or Proficiency Pay N/A | Ex E

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 2 | Signature OC Company, etc | Character

17/MFM 6 (AFB 122) 40/P&S/136 (5412)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet 1 destroyed 12 Aug 41: last entry nil: cases of drunkenness nil									
Field	10 Apr 43	Cpl		AA Sec 40 Attempted to sell four army shirts the property of the Cdn Government		Severe Reprimand	13 Apr 43	Major Buckner	
Field	9 Jun 44	Cpl		AA Sec 15(1) AWL 2 days	L/Sjt Plourde	Severe Reprimand	12 Jun 44	Major Tedford	forf 2 days pay
Field	28 Sep 44	L cpl		(1) AA Sec 15(1) AWL 17 hrs (2) AA Sec 15(1) AWL 11 days 4 hrs 35 mins	Sjt McLeod Sjt Plourde L cpl Scott	6 months detn	23 Oct 44	FGCM	forf 12 days pay 149(1)(a).12 days pay 149(1)(c)(i) 182 days pay FR&I 149(2) total 206 days pay
Released from No 1 Fd Punishment Camp 19 Feb 45 Days remission earned 60									
Certified true copy of MFM 6 in my possession					(M A Cooke) Capt & Adjt Officer having custody of Regtl Books & Documents				

LIST OF WITNESSES

PROSECUTION

RSM A MARTIN — 185 Provost Coy (Ports) C.M. Police
Sjt LAVEN L — " " — " "
T/6019743 L cpl TURNER A G R — " — " "

DEFENCE

Lt col Rochon — 1 Cdn FP and Detn Bks) Character
RSM Strong — 1 Cdn FP and Detn Bks) witnesses

LIST OF EXHIBITS

Statement of RSM A MARTIN corroborated by Sjt LAVEN & L Cpl TURNER "A"
Statement of accused (Sjt THOMPSON L G) "B"
" " (Pte DUNBAR W A) "C"

I, the undersigned, hereby acknowledge receipt of one copy of Charge Sheet and one copy of Summary of Evidence free of charge on ~~13~~ July 1945.

W. A. Dunbar
B 84810 Pte DUNBAR W A

L. G. Thompson
A 31035 Sjt THOMPSON L G

I, We the undersigned desire to have an officer assigned to represent ~~me~~ us at ~~my~~ our trial by Field General Court-Martial.

We ~~I~~ desire the services of any officer appointed ~~if he is available.~~

DATE: ~~13~~ 5 July 45

W. A. Dunbar
(Signature of Accused)
B 84810 Pte DUNBAR W A

L. G. Thompson
A 31035 Sjt THOMPSON L

4D.2
L/CPL DUNBAR WA.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-84810 Pte (L/Cpl) Dunbar W. R.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or MF B296.)

Time in confinement awaiting present trial—a total of 1 days, of which 0 days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or MF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for 6 months.

(Sgd) ..... 23 Oct 1944 (Sgd) J H Kenney Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the record be not transmitted to the Confirming Officer whose ORDER is~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) W H Colling Lt-Col
C.R.C.A.S.C. 2 Cdn. Div. C.A. (A.F.)
Date 25 Oct 44 Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (AA 56, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D 84810 L/Cpl Dunbar W R	26 Oct 44	G L Grieve Lt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 14 NOV 1944 JAG BRANCH CMHQ

RECORDED AT CMHQ IN AB 160, 40-2

FIELD GENERAL COURT-MARTIAL

CFAB6 (In lieu of AFAB) 40-P-A-R 1606 (2804)

Convened by Order of Lt-Col W H Colling, Comd HQ RCASC dated 21 Oct 44
2 Cdn Inf Div

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B84812	L/Cpl	W. R.	DUNBAR	3 Cdn Inf Div Sig Regt RCASC

PROCEEDINGS REVIEWED 15 Nov 44
W O'Neil Capt
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS REVIEWED Date 6 JAN 45 Offr. Sec. G.H.Q. 2 Echs 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 23rd day of Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 12/08

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RPs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~[illegible]~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~[illegible]~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~[illegible]~~ fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to an interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to as interpreter? Ans~~

~~The shorthand writer is sworn.(2)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 23, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J H Kenney	5 Cdn Inf Bde Gp RCASC
Member	A/Capt	J C Langston	4 Cdn Inf Bde Gp RCASC
Member	Capt	V W Stewart	6 Cdn Inf Bde Gp RCASC
Judge-Advocate		N/A	
Prosecutor	Capt	G P Bryanian	2 Cdn Inf Div Sig Regt RCASC
Defending Offr		N/A (accused self)	

Questions by President: Is the Prosecutor a lawyer? Ans Nil. Is the Defending Offr a lawyer? Ans N/A (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See 2H p 32.)

A8. The accused ..... before arraignment make(s) (no) objection(s) (2) ~~plea~~

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and findings are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~re-~~arraigned (severally) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 3. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans N.O. .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on .....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on .....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to that Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....Do you intend to call witnesses on your behalf? Ans .....Are they witnesses as to character only? Ans .....
(1. *RP 155.* 2. *RP 40(A), see 80(C).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A).* *See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No. [redacted]
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1.*
* *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B. and Ex C respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *Same.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans No. Per notes. Attached.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or refute anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its perverse, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 343-344, Overseas WO 209, 2323, MML p 80, 737-738. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 12E. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 344.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B84810 L/Cpl Dunbar, W.A., 2 Cdn Div Tps Coy RCASC, a soldier of the Canadian Army Overseas, on active service, is charged with:

FIRST CHARGE
Sec 15(1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE
in that he
in the field, on 28 Sep 44 absented himself without leave from 2230 hrs 28 Sep 44 to 0700 hrs 29 Sep 44. (Absent 8 hrs 30 mins)

SECOND CHARGE
Sec 15(1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE
in that he
in the field, on 29 Sep 44, while under open arrest, absented himself without leave from 0730 hrs 29 Sep 44 to 1205 hrs 10 Oct 44 (Absent 11 days 4 hrs 35 mins)

In the Field
13 Oct 44

A R Tedford
(A.R. Tedford) Major,
OC 2 Cdn Div Tps Coy RCASC.

To be tried by F.G.C.M.

In the Field
20 Oct 44

W H Colling
(W.H. Colling) Lt.-Col.,
C.,R.A.S.C. 2 Cdn Div

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-84810	L/Cpl.		W.A.	DUNBAR	2 Cdn Div Tps Coy R.C.A.S.C.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 20 Oct 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	T.V. Kenney	5 Cdn Inf Bde Coy RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
~~A/Captain~~	~~J.C. Laughton~~	~~4 Cdn Inf Bde Coy RCASC~~
Captain	V.W. Stewart	6 Cdn Inf Bde Coy RCASC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium (Country.)

Dat: 21 Oct 44

W.H. Keating (Signed personally. RP 105 fn.)

Lt Col (Rank.)

Commanding HQ RCASC 2 Cdn Inf Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 98 (To Date of AFA.) Sec. V of D/1607 (Hqs)

(See overleaf for notes and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE
A.R. (Can) Para 557

I certify that I have this morning examined No B-84810

L/Cpl DUMBAR, W.A. of 2 Cdn Inf Div Tps Coy RCASC

and in my opinion he is fit / ~~unfit~~ to undergo trial by court-martial.

Station In the Field

Date 23 OCT 1944

R.F. Ohlke Capt.
Medical Officer.

28. oct. 1944.

The accused on appearing before the court was asked by the Pres. if he wished a Def. officer. The accused replied that he did not wish a Def. off. as the one he had asked for. Capt. R.A. MacDonald. R.C.A.S.C. - H.Q. 2 Cdn. Corps was not available and that he had been advised to this effect prior to the trial.

The President advised the accused that the court would adjourn if he wished to obtain a Def. off. but the accused declared that he wished to proceed with the trial without being defended.

[illegible]

24 Oct. 1944.

Accused addressed the court in mitigation of punishment.

I was drowned off and fed-up. Caused by some difficulties, that was the only reason I had for going A.W.L.

A.

SUMMARY OF EVIDENCE IN THE CASE OF B84810 L/Cpl DUNBAR, W.A., 2 Cdn Div Tps Coy RCASC, a soldier of the Canadian Army Overseas.

The accused has been informed of his rights.

The O.C. directs that all evidence be taken on oath.

FIRST WITNESS for the prosecution: E14033 L/Sjt Plourde, A. having been duly sworn states:

On the 28 Sep 44 I was NCO i/c a party proceeding to the movies in Antwerp. On the road to Hemixem I saw L/Cpl Dunbar walking down the street. At 2230 hrs I told the duty NCO to check tatoo and L/Cpl Dunbar was reported as absent. On 29 Sep 44 at 0700 hrs I told L/Cpl Scott to place L/Cpl Dunbar under open arrest as he had been reported as being in bed. At 0730 hrs I sent L/Cpl Scott to check the bed again and he advised me that L/Cpl Dunbar had gone again. On 10 Oct 44 at 1205 hrs I saw L/Cpl Dunbar enter camp in a lorry. As adm sjt of the platoon, I can state that he was continually absent between the 29 Sep and 10 Oct 44, the date he returned.

(E14033 L/Sjt Plourde, A.)

The accused declines to cross examine the witness.

SECOND WITNESS for the prosecution: D91244 L/Cpl Scott, P. having been duly sworn states:

On the 28 Sep 44 I was 'A' Tpt Pl duty corporal. At 2230 hrs I checked tatoo and found that L/Cpl Dunbar was absent. At 0700 hrs 29 Sep 44 I checked and found that he was in the unit lines. I placed him under open arrest. At 0730 hrs on the same date I checked again and found that L/Cpl Dunbar was not in the unit lines. I reported this to L/Sjt Plourde.

(D91244 L/Cpl Scott, P.)

The accused declines to cross examine the witness.

THIRD WITNESS for the prosecution: D91154 Sjt McLeod, D.W. having been sworn states:

On the 10 Oct 44 at approximately 1155 hrs I was with a petrol convoy proceeding through Antwerp to the unit lines. I was riding as spare driver in the rear lorry. The two lorries in front of me stopped and I saw L/Cpl Dunbar get in the first of the two lorries. We returned to the unit at 1205 hrs and I placed the accused under open arrest.

(D91154 Sjt McLeod, D.W.)

The accused declines to cross examine the witness.

The accused having been duly cautioned in accordance with R.P. 4 (e) does not wish to make a statement or give evidence.

Certified that R.P. 4 complied with.

In the Field
13 Oct 44

(G.P. Copeman) Capt,
2 Cdn Div Tps Coy RCASC.
Officer detailed to take the summary.

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B84810	L/Cpl	DUNBAR, W.A.	2 Cdn Div Tps Coy RCASC

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

Within last 12 months		Since enlistment	
For	times	AA Sec 40	1 times
For AA Sec 15(1)	1 times	AA Sec 15(1)	1 times
~~For~~	~~times~~		~~times~~
~~For~~	~~times~~	GSG	~~times~~

~~Number of instances of gallantry or distinguished conduct~~ GSG

or,

There are no entries in the conduct sheets of the accused.

~~NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~ GSG

~~2. The accused has not been previously convicted~~ GSG

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.~~ GSG

~~3. The accused is not under sentence at the present time.~~ GSG

or,

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and one day in military custody, making a total of one day in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service in~~ attestation paper is 32 years

6. The date of his ~~commission~~ attestation specified in his ~~record of service in~~ attestation paper 12 Feb 41

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~an air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward.

Cdn Volunteer Service Medal & Clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N/A dated ....., and in his regiment (or corps) the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

[redacted] Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Name ..... of ..... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		N/A		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23rd day of Oct 44

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked B signed by the president, and annexed to the proceedings.

COPY

No. B84810 Name DUNBAR, W.A. Sqn., Battery, or Company Corps RCASC Date of enlistment 12 Feb 41 G.C. Badges Service or Proficiency Pay n.a.

M.F.M. 6 (A.F.B. 122) 175M—7-41 (216-20) H.Q. 1772-38-1652

Date of last entry in Company Conduct Sheet n.a. No. and date of last drunk n.a. Period not reckoning towards freedom from extra fine n.a. Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet 1 destroyed 12 Aug 41; last entry nil; cases of drunkenness nil.									
Field	10 Apr 43	Cpl		AA Sec 40 Attempted to sell four army shirts the property of the Cdn Government		Severe Reprimand	13 Apr 43	Major Buckner	
Field	9 Jun 44	Cpl		AA Sec 15(1) AWL 2 days	L/Sjt Plourde	Severe Reprimand	12 Jun 44	Major Tedford	forf 2 days pay

CERTIFIED TRUE COPY OF ORIGINAL

A.R. Tedford

(A.R. Tedford) Major,
OC 2 Cdn Div Tps Coy RCASC.

(P.T.O.)

30-97.

Pte. Dunbrack, H. S.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.144866 PTE. DUNBRACK W. G.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd ~~alternative~~	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At ~~present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of THIRTEEN days, of which NIL days were spent in hospital (1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: One hundred and twenty days detention.

(Sgd) ..... 30 June 1945 (Sgd) John F. Dreamy

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.) Maj. RCA.

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 57, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I do not confirm the finding of the Court on the first charge. I confirm the finding of the Court on the second charge, and I confirm the sentence.

~~I have taken account in determining my decision of matters outside the record.~~ (1. AA 57A. Delete if not used.)

Date 21 June 45 (Sgd) Charles L Roe

Commanding ~~Divisional~~ A/CRA 2 CDN DIV. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B 144866 Pte. Dunbrack W.G.	22/June/45	J.M. Watchorn Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 L 50-97

CPA(R) (Supp No 1 of APA31) 40/P.W.B./1608 (40701)

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of LT. COL. G.C.M. PEARCE 4 Comd 2 CDN DIV RCA dated 20 JUNE 1945

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B144866	PTE	WILLIAM GEORGE	DUNBRACH.	5 CDN FD. SQ. 1 FIELD PARK.

PROCEEDINGS REVIEWED. J.H. Grady Lt. Col. REVIEWING OFFICER, 2 CG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) GERMANY on (date) 20TH JUNE 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 34/26.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0730 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. ~~President to accused: Do you object to as interpreter? Ans.~~ ~~The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans.~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans. Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	JOHN L. DREAMY	4 CDN FD. REGT.
Member	CAPTAIN	W. P. ADAMS	2 A/TK REGT. RCA
Member	LIEUTENANT	W. H. HAWLEY	2 A/TK REGT. RCA
Judge-Advocate			
Prosecutor	LIEUTENANT	MACDONALD H.E.	5 CDN FD. REGT.
Defending Offr	CAPTAIN	BILLO E.J.	5 CDN. FD. REGT.

Questions by President: Is the Prosecutor a lawyer? Ans. No. Is the Defending Offr a lawyer? Ans. No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DII p 3.)

A8. The accused B144866 PTE DUNBRACK W. G. before arraignment makes(s) (no) ~~is~~ plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 42; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 13

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your pleas and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. ..... (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para L3 of Record Form L. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (~~their~~) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (~~are~~) so informed, and he (~~they~~) change(s) his (~~their~~) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex I, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with one standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(1) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 742 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans. .....

Do you intend to call witnesses on your behalf?

Ans. .....

Are they witnesses as to character only? Ans. .....

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. Yes I would like Cpl. Mullens and Lcl Moore as to character, intended

(*1. If evidence has already been given by accused and his witnesses as to his character, delete this para. RP 37(A), 46 for procedure. Statement of accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex II and Ex III respectively.(3)

(*1. MFB 333 or MFB 294. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes through defence Counsel

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to refer on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, to be awarded to convict all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69F, 118, 119(A), KR Con 308, 330, 343-366, Overseas RO 309, 2323, MML p 90, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 364. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 367. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICER'S REPORT

I certify that No. B.141866 Pte DUNBRACK, W.G.
RCASC att to
of 5 Cdn Fd Regt RCAs in a Normal state of health,
and fit to undergo Trial by Court martial,
this day.

F. O. Rgt Gpt
Medical Officer

Station In the Field

Date 20 Jun 45

M. F. B. 246

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his cmd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate cmd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 61, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-144866	Pte		William George	DUNSRACK	5 Cdn Fd Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused being subject to military law, has [~~have~~] committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 18 Jun 45 endorsed by me, [~~as appears more fully on the said charge sheet~~] "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [~~and that it is not practicable to delay the trial for reasons to appear on active service~~]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [~~Each member to appear at the time fixed by the Court, the Pres Offr or President for the purpose, and at such place.~~]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [~~Each member to be sworn before the Court or Judge Advocate.~~]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J. L. DREWRY	4 Cdn Fd Regt

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	W. P. ADAMS	2 Cdn A Tk Regt
Lt.	W.K. HAWLEY	2 Cdn A Tk Regt

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	R.F. RUSSELL	4 Cdn Fd Regt

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Germany (Country.)

(Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Dat 18 Jun 45

Commanding A/CRA 2 Cdn Inf Div

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 2; 40/F & S/1607 (H1-43))

(See overleaf for oaths and notices for use on trial.)

CHARGE SHEET

THE ACCUSED B-144866 PTE WILLIAM GEORGE DUNBACK, R.C.A.S.C., ATT 28 BTY, 5 CANADIAN FIELD REGIMENT, R.C.A., A SOLDIER OF THE CANADIAN ARMY OVERSEAS, IS CHARGED WITH:-

FIRST CHARGE
SECTION 8(2)
ARMY ACT

WHEN ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER

In that he

In the Field, at about 1745 hrs on 7 Jun 45 struck with his fist on the chest Capt J P Reeves.

SECOND CHARGE
SECTION 40
ARMY ACT

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

In the Field on 7 Jun 45 was in improper possession of a bottle containing an alcoholic beverage in his quarters.

SECOND CHARGE
SECTION 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE.

In that he

In the Field absented himself without leave when in arrest from 2200 hrs, 7 Jun 45 until surrendering himself at 0920 hrs, 8 Jun 45. Time absent 11 hours, 30 minutes.

In the Field
18 Jun 45

(E.D. MINENHAUER) LT-COL R.C.A.
COMD., 5 CDN FIELD REGT., R.C.A.

To be tried by FGCM
In the Field
28 Jun 45

(GGK Peake) Lt-Col
A/CRA 2 Cdn Inf Div

Statement of the accused as to whether he desires to have an officer assigned by the Convening Officer to represent him at trial (R.P. 14(B)

" I wish a defending officer."

" I desire the services of Capt. E.J. Billo, 5 Cdn Fd Regt RCA if he is available."

In the Field
18 Jun 45

Wm G. Dunbrack
(B-[illegible] Pte. Dunbrack, W.G.)

GJJ.

B2

I am B144866 Pte DUNBRACK W.C. I cooked for 28 Bty from March 1945 until approx 1 Jun 45. At one time, Cpl Mullins and I cooked for the whole Bty without any complaints. I was working 14 to 16 hrs a day, feeding guards, etc., until 2200 hrs at night. I was also cutting hair. I had a room with a comfortable bed away from the cookhouse, as there was no room in the cookhouse. Capt Reeves came into my room and for no apparent reason ordered me to move out. I was very tired and my nerves were very bad. I may have attempted to stop Capt Reeves from leaving the room and I may have hit him on the chest, although I had no intention of doing so. I have volunteered for the far East and had it not been for this act, I would have left today.

When placed in the guard room, I was feeling very low. There were two large windows to the room I was placed in, and there was apparently noone detailed as a special guard to me. When I was alone, I got out one of the windows and went for a long walk. I then went to sleep in a barn, wakened in the morning, washed and shaved and reported back in to the guard room.

E1

I am G8192 Cpl MULLINS T.I., corporal cook attached fap to 28 Fd Bty, 5 Cdn Fd Regt RCA. sworn I have known the accused the three months he has been with the battery. He has been a good worker. The last week he was on the job, he was nervous. The accused worked normally about 14 hrs a day. On occasion, he worked longer. There were no reliefs possible, due to shortage of cooks

No X-Exam RP 83 (B) complied with

I am C82001 Lsjt MOORE S.C., battery clerk of 28 Fd Bty, 5 Cdn Fd Regt RCA. sworn I have known the accused since he joined the battery. I have had many occasions to come into contact with Pte DUNBRACK, as he is in Bty HQ and he has always been a good worker for the battery. He has, on occasion, done a bit of drinking, but to my knowledge, it has always been after hours.

No X-Exam RP 83 (B) complied with

E3

Defending Officer, Capt BILLO E.J., on behalf of accused, asks Court to consider following points in mitigation of punishment:

I. Accused has pleaded guilty.
II. Volunteered for Far East - needed in Far East rather than in detention barracks.
III. On evidence of Cpl cook, Pte DUNBRACK has been shown to work willingly and well for long hours, seven days a week, while other people have considerable time at their disposal. The Corporal cook has been satisfied with his work.
IV. Although Pte DUNBRACK admits striking Capt REEVES, it might have been unintentional or accidental.
V. Absence of Pte DUNBRACK from guard room was not an attempt to escape punishment, in view of his return to the guard room in the morning.

Exhibit I

(1)

SUMMARY OF EVIDENCE

In the case of

B144866 Pte Dunbrack, William George, 28 Fd Bty, 5 Cdn Fd Regt. R.C.A. (att. from RCASC fap) a soldier of the Canadian Army Overseas.

- - - - - - - - - - -

The C.O. directs that the evidence be taken on oath.

The accused is informed of his rights.

FIRST WITNESS FOR THE PROSECUTION

A/Capt. J. F. Reeves 28 Bty. 5 Cdn Fd Regt RCA having been duly sworn states:-

I am Capt. John F. Reeves "G" Troop Commander 28 Bty 5 Cdn Fd Regt RCA. At approximately 1500 hrs 7 Jun 45 I ordered Pte Dunbrack to move from his allotted billet and to occupy a room ajacent to the Troop kitchen in which he was employed. At approximately 1730 hrs the same day Lt. S. Long reported to me that Pte Dunbrack had informed the acting TBSM that he was not going to move. I informed the Bty Commander of this report and that I would go then accompanied by Lt. S. Long to carry out a kit inspection of Pte Dunbrack's kit. I also informed the Bty Commdr. that I suspected Pte Dunbrack of drinking in his quarters and that this possibly had some bearing on his refusal to move. Accompanied by Mr. Long I went to Pte Dunbrack's allotted billett and entered the room in which he slept. Pte Dunbrack was at the time in the civilian kitchen and followed us into his room. I informed him that I intended to carry out a kit inspection and ordered him to lay all his kit out on the bed. I indicated his kit bag and told him that we would inspect that first. He produced several items one of which was a partly filled bottle of liquid referred to as exhibit "B". I asked him what was in the bottle and he did not answer. I produced a cup and poured some of the liquid from the bottle into the cup so that I could test it. While doing this I asked Dunbrack where he had obtained the bottle. His answer was, "That is a military secret" I asked him if it was for drinking and he said, "yes". He then offered to make what he referred to as a good drink for Mr. Long and myself. He said that the liquid was too strong to be drunk by itself and that you had to mix sugar and water with it. I then asked Dunbrack if the drink contained alcohol. His reply was that it did. I then informed Pte Dunbrack that it was in contravention of both Army and Unit Orders to be in possession of any intoxicating beverage, and that he was to consider himself under close arrest. I then made towards the exit, i.e. the door leading out to the street. Pte Dunbrack pushed in front of us and barred the exit placing one hand on either side of the doorway. I ordered Pte Dunbrack to his room, his reply was to the effect that I would have a much more serious charge to place against him before I ever got out of the house. I again ordered him to his room and he did not obey but continued to block the exit. I walked towards the exit and when I was near to him he struck me with his fist, and attempted to forcibly prevent my summoning the guard. I attempted to subdue him, continually ordering him back into his room. When I determined that I would be unable to subdue him myself I asked Mr. Long to intervene. All during this period Pte Dunbrack was doing his best to knock me down and was accompanying his action by using veryvile language. Mr. Long intervened, Dunbrack then quietened down and returned to his room and sat down. I asked Mr. Long to remain with him while I went and ordered the Orderly Sjt to provide an escort and to march Pte Dunbrack to the Bty Guard Room. I informed the Bty Orderly Sjt of the charges I intended

TO place. He and his escort took charge of Pte Dunbrack. I confiscated the bottle of liquid and reported to the Bty Commander. Pte Dunbrack was in my opinion not drunk at the time, but possibly had had a drink earlier in the day.

Cross examined by Accused:-

Q. Are you positive about my vile language at the time you say that we were having a scuffle.

A. Yes

J. F. Reeves, Capt. RCA

SECOND WITNESS FOR THE PROSECUTION

Lt. S. Long 28 Bty 5 Cdn Fd Regt RCA having been duly sworn states:-

I am Lt. S. Long, GPO "C" Tp 28 Bty 5 Cdn Fd Regt RCA. At approximately 1745 hrs on the 7 Jun 45 Capt. Reeves requested that I accompany him to Pte Dunbrack's quarters to carry out a kit inspection. When we entered Pte Dunbrack's room he came in behind us from the kitchen. Capt. Reeves ordered Pte Dunbrack to lay out his kit on the bed. Pte Dunbrack replied he he did not have all his kit with him. Capt. Reeves then ordered him to lay out whatever kit he had in the room. Pte Dunbrack then brought forth his kit bag and pulled out some of his equipment. He brought forth from the kit bag a bottle three-quarters full of liquid which he placed on the bed. Capt. Reeves picked the bottle up and asked Pte. Dunbrack where he obtained it. Pte Dunbrack said, "That is a military secret". Pte Dunbrack then offered to make a drink for Capt. Reeves and myself, claiming that it could not be drunk straight, but had to be diluted with water and sugar. Capt. Reeves went into the kitchen of the house and came back with a cup, he took the cork off the bottle and poured a small amount into the cup. He asked Pte Dunbrack if the liquid was alcoholic. Pte Dunbrack said, "yes". Capt. Reeves put the cork back on the bottle and told Pte Dunbrack that he would be placed under close arrest for being in possession of liquor. Pte Dunbrack said that if he was going to be brought up on that charge he would be brought up on a much more serious charge than that. Pte Dunbrack went into the hallway and placed himself with his back against the door with his arms outstretched against the walls of the hallway. He said that there would be a much more serious charge than being in possession of liquor placed against him before he was placed in the guard room. Capt. Reeves went into the hallway and ordered Dunbrack back into his room. Pte Dunbrack did not move from the door. Capt. Reeves reached for the door knob but was pushed back by Pte Dunbrack, he again ordered Pte Dunbrack back into his room. Capt. Reeves reached for the door knob again to open the door. Pte Dunbrack pushed him back and struck Capt. Reeves in the chest with his right hand. Capt. Reeves asked me to assist him in removing Pte Dunbrack from the hallway. I entered the hallway and brought Pte Dunbrack back into his room. Capt. Reeves left me to guard Pte Dunbrack while he went to fetch the guard. The guard arrived and took Pte Dunbrack into custody.

Cross examined by Accused:-

Q 1 Sir, did you at any time during the period that you were at my room or billet hear me use any vile language.

A 1 Yes, in the struggle that took place in the hallway, Pte Dunbrack used vile language but I can't remember at the moment the exact things that he said.

Q 2 Did you hear me say to Capt Reeves at the time he was leaving for the guard that now I suppose you will give me the works and that he replied "I sure will"

A 2 No.

S. Long. Lt. RCA

THIRD WITNESS FOR THE PROSECUTION

G3021 L/Sjt. H.W. King, 28 Bty, 5 Cdn Fd Regt RCA having been duly sworn states:-

I am L/Sjt H.W. King I took over the 28 Bty M.T. Guard at 1800 hrs 7 Jun 45. At about 1830 hrs the Bty Orderly Sjt brought Pte Dunbrack to the guard house to put under close arrest. The guard house consists of two rooms downstairs and one room upstairs. I confined Pte Dunbrack in a downstairs room at the end of the hall going into the house . Until 2155 hrs there was a man on guard with him all the time. At 2155 hrs I took the guard out of the room to place him on the b beat. Bdr. Ebbett and Gnr MacDonald were in the adjoining room. At approximately 2205 hrs I returned to the guard house and looked in the room, the window wasopen and Pte Dunbrack had disappeared. I looked through the other rooms and notified the B.S.M. that Pte Dunbrack had broken arrest. At 0920 hrs the 8 Jun 45 Pte Dunbrack reported back into me at the guard house

The accused declines to cross examine.

G3021 L/Sjt King, H.W.

FOURTH WITNESS FOR THE PROSECUTION

G3056 Bdr. R. L. Ebbett, 28 Bty. 5 Cdn Fd Regt RCA having been duly sworn states:-

I am G3056 Bdr. Ebbett, R.L. at the hour of 2155 Sjt King the Guard Commander went to get the guard that went on at 2200 hrs. Out of the room that Pte Dunbrack was in and posted the guard at 2200 hrs. At 2205 hrs he arrived back and looked in the room which Pte Dunbrack was in and he wasn't there, and the window was open in the room which he was in. Myself and Gnr. MacDonald were in the adjoining room to which he was in.

The accused declines to cross examine.

G3056 Bdr. Ebbett, R.L.

The accused having been duly cautioned in accordance with R.P.(4)E wishes to make the following statement.

Q On oath or not on oath

A Not on oath.

I would like to request that I be examined by the Medical Officer concerning my heart and nerves.

B144866 Pte Dunbrack, W.G.

5th Witness for the Prosecution:-

L426 Gnr Callin, W.E. 28 Bty., 5 Cdn Fd Regt RCA having been duly sworn states:-

I am L 426 Gnr Callin, W.E. 28 Bty., 5 Cdn Fd Regt. During my tour of duty on the 4 Jun 45 at approximately 1600 hours I posted 28 Cdn Fd Bty Part I Order No. 152 in "G" Troop Mess, also on the order board in front of the Bty Office. Admitted as Exhibit "A"

The accused declines to cross-examine

W. E. Callin
L426 Gnr. Callin, W.E.

6th Witness for the Prosecution

G8069 B.S.M. Hogan, F.J. 28 Bty., 5 Cdn Fd Regt RCA having been duly sworn states:-

I am G8069 B.S.M. Hogan, F.J. I certify that 28 Cdn Fd Bty RCA orders are posted daily where all personnel in the Battery can see them on proper order boards.

The accused declines to cross-examine

F. J. Hogan
G8069 B.S.M. Hogan, F.J.

THE ACCUSED CALLS ONE WITNESS

FIRST WITNESS

C82001 L/Sjt S. C. Moore, 28 Bty 5 Cdn Fd Regt RCA, having been duly sworn states:-

I am C82001 L/Sjt Stewart Carleton Moore, 28 Bty 5 Cdn Fd Regt RCA. At approximately 1700 hrs 7 Jun 45 I was called from my office to my adjoining room by Pte Dunbrack. I was busy at the time but entered the room approximately 5 minutes later. Pte Dunbrack was sitting on my bed, I looked at him for approximately 30 seconds and I said, "You look as though you have been crying". Pte Dunbrack said nothing, but rolled over sideways on the bed and cried like a baby. I fetched a drink of grape juice for him to try to stop him from crying, but with no success. He kept crying for about ten minutes. Occasionally he would stop for a minute and would mumble a few words but would then break back into bursts of crying. I finally managed to stop him crying by getting him to take a drink of the grape juice. He explained to me that he was in great trouble with Capt. Reeves, but he was in such a disturbed mental condition that I could not make outwhat he was talking about. Finally I pieced his talking together and came to the conclusion that he had been ordered to move from his former billet to a room in the building in which the kitchen is situated, and that in the latter building it would necessitate him sleeping on the floor, instead of his former comfortable bed. Pte Dunbrack as a cook is called upon to serve meals at all hours for incoming reinforcements and men proceeding on details early in the morning and in view of the fact that a man working at all hours should have comfortable sleeping quarters, I asked him to go back to his job and I would speak for him to the BSM. Pte Dunbrack is in Bty H.Q. and does not come under Capt. Reeves who is in "C" Tp. At approximately 1800 hrs I told the BSM of Pte Dunbrack's visit and he said that he would take the matter up with the Battery Commander. At approximately 1900 hrs Capt. Reeeves entered the Bty office and asked for the Orderly Sjt who was out of the office at the time. I got in touch with him by telephone and he reported immediately to the Office and was ordered by Capt. Reeves to place Pte Dunbrack under Close Arrest and take him to the guard room.

Cross examined by Accused:-

Q 1 Did I mention to you that Capt. Reeves had told me that I wasn't to leave the building in which the cook house is located ?.

A 1 Yes.

Q 2 Did I tell you that I was unable to continue with my work until I felt better ?.

A 2 Yes.

S. C. Moore, L/Sjt
C82001 L/Sjt Moore, S.C.

I certify that the foregoing Summary of Evidence consisting of 5 pages was taken by me in writing and RP 4(c) (d) (e) (f) and (g) were complied with

H. E. MacDonald
H. E. MacDonald, Lt. RCA
Officer detailed to take the summary.

In the field
8 Jun 45

LIST OF WITNESSES

In the case of

B144866 Pte Dunbrack, William George,

28 Bty., 5 Cdn Field Regt, RCA
Attached Inf from RCASC

WITNESSES FOR PROSECUTION

First:-	A/Capt. J. F. Reeves	28 Bty 5 Cdn Fd Regt RCA
Second:-	Lt. S. Long	28 Bty 5 Cdn Fd Regt RCA
Third:-	G3021 L/Sjt King, H.W.	28 Bty 5 Cdn Fd Regt RCA
Fourth:-	G3056 Bdr. Ebbett, R.L.	28 Bty 5 Cdn Fd Regt RCA

WITNESSES FOR THE DEFENCE

First:- C82001 L/Sjt Moore, S.C. 28 Bty 5 Cdn Fd Regt RCA

LIST OF EXHIBITS

In the case of

B144866 Pte Dunbrack, William George

28 Bty., 5 Cdn Fd Regt RCA, attached Rep from RCASC

Exhibit "A" Part I Order No. 152 d/4 Jun 45

Exhibit "B" Partly filled bottle of liquid.

Exhibit II

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
B.144866	Pte	DUNBRACK, W.G.	RCASC att 5 CDN FD REGT RCA

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R. 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For	AA Sec 15(1) 3 times	5 times
For	times	times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~ —

~~There are no entries in the conduct sheets of the accused~~

2. The accused has not been previously convicted, *or*

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 75 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~*or* The accused at the present time is under sentence for imprisoning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 3 days in military custody, making a total of 3 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 35 yrs

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 26 Mar 43

7. ~~The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~

8. ~~The accused is entitled to deferred pay or gratuity in respect of service~~

9. ~~The accused is entitled to reckon service for the purpose of determining his pension as~~

10. ~~The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of, or entitled to (give any military decoration or award)).~~

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer (or held the regimental rank of~~

12. ~~(In the case of an officer.) The accused holds on the army the rank of dated and in his regiment (or corps or department) the rank of dated~~

W.L.19107/2259 20M. 5/44. P. Lad. T.D.A.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this _____ day of _____

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of _____ years.

In the rank of _____ years.

In the rank of _____ years.

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.)

Exhibit III

No. H44866 Name DUNNACK, W.G. | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 26 Mar 43 | OC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/150/5418

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc M H Marks Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	Original sheet destroyed 26 Sep 43. Cases of Drunkeness- NIL								M H Marks Capt
Oakville	1 Oct 43	Pte		AWL 23 hours	Sgt Campbell S/Sgt Abram	Total forf 2 days pay, 7 days pay C.B.	2 Oct 43		
Oakville	29 Oct 1943	Pte		Section 40 AA in Victoria Hall conducted himself in manner to bring discredit to army & CCRC	Sgt Bateman Cpl Taylor Pte Hunter	7 days CB			
Toronto	13 Jan 1944	Pte		Conduct to prejudice-failed to arrise at reveille AA 40 open Arrest	Cpl Phillips	3 days CB	13 Jan 44	J Hainsworth Capt	
Peterborough	1 Jun 44	Pte		AWL from 2359 hrs 1 Jun 44 to 1200 hrs 3 Jun 44 (1 day, 12 hrs)	Sgt Allen DA	4 days pay 7 days CB	7 Jun 44	Turnbull Major	Forf 2 days pay FR&I

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Peterborough	3 Aug 44 to 1944			AWL from 032359 Aug 44 to 080040 Aug 44 (4 days, 4 min)	Sgt Chapman C.	168 hrs Detn. Cost of apprehn 12.00	12 Aug 44	J Turnbull Lt-Col	Forf 5 days pay FR&I
Camp Borden Ont	14 Sep 1944	Pte		AWL from 0545 hrs, 14 Sep 44 to 0700 hrs 18 Sep 44 (Sec 15(1) - Absence (4 days, 1 hrs, 15 min.)	L/Cpl Burke C.P.	21 days stoppage of pay	18 Sep 44	Elliot G.R. Colonel	Forf 5 days pay and allce FR&I 149(1)
Camp Borden Ont	25 Oct 1944	Pte		AA Sec 15(1) AWL from 1200 hrs, 25 Oct 44 to 1145 hrs, 30 Oct 44 (Absent 4 days, 23 hrs, 15 mins)	Documentary Evidence	10 days loss of pay	31 Oct 44	Col G.R. Elliott C.A.F.	Auto forf 5 days P&A FR&I 149

Certified true copy.

(D.B. HOWARD) CAPT RCA
ADJT 5 CDN FD REGT RCA

5 R-70

6pl Duncan, L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-135082 Cpl George DUNCAN - CIC - 9 Cdn Repat Dep

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 41(5)	NOT GUILTY	NOT GUILTY	
2nd	AA Sec 40	NOT GUILTY	NOT GUILTY	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial: a total of ..... days, of which ..... days were spent in hospital.~~ (1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

~~Sentence Awarded by the Court:~~

The accused was Released.

(Sgd) ..... 2 augt 45 ..... [signature]

Judge-Advocate, if any. Date Awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date .....

Commanding .....

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 24 AUG 1945 1 BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160. 5R-70

FIELD GENERAL COURT-MARTIAL

CPA86 (To lieu of APA3) 40-P-M-B-1698 (6/45) 4/38B

Convening Order of Brigadier K G Blackader DSO, MC, ED Comd 13 CITB dated 31 Jul 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-135082	Cpl	George	DUNCAN CIC	9 Cdn Repat Dep

[signature] Capt.
Reviewing Officer, JAG Branch C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 1 AUG 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule [illegible] Questions do NOT include all relevant fms RDs. For guidance on procedure when a variation in this form occurs, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 99S, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

~~The interpreter is sworn.~~(1) Do you object to C Pte J. S. of Smarts Wks as shorthand writer? Ans Nil.
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under~~ instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs composing the Court, etc:

President	LT COL	DL	REDMAN	HQ R AA
Member	CAPT	CAB	PRIEUR	4 CITB
Member	LIEUT	G AG	PEAT	9 CAD D
~~Judge-Advocate~~				
Prosecutor	LIEUT	J E	DEHART	9 C REP D
Defending Offr	CAPT	A P	SUTHERLAND	9C REP D

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or for one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AB6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(B).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; ensuring and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 25(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be cleared to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO-SIR(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (his) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1) NOTE-ATT
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Give Evidence. Do you intend to call witnesses on your behalf? Ans NO-SIR. ~~Are they witnesses as to character only?~~ Ans ~~.....~~
(1. RP 114. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.~~(1)
~~Or~~ The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (b), RR 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

~~Or~~ ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans .....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(E) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. MFR 353 or MFR 296. 2. MFM 6. 3. RP 46, KR Can 158. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(2) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(1)
(1. When several accused tried separately see RP 71 (2). One sentence only, comprised of the punishment or punishments laid down in KR 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas KO 309, 1323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B-135082 Corporal George DUNCAN, Canadian Infantry Corps, on the strength of No. 9 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SEC 41 (5)
ARMY ACT

When on Active Service, committing a civil offence, that is to say, stealing,

in that he,

at Hornsey, England, on the 27th day of June, 1945, stole two (2) ration books number P-469504 and P469505, the property of Mr. & Mrs. E. Edwards, 200 Wightman Road, Hornsey, London, N.8.

SECOND CHARGE
SEC 40
ARMY ACT
(ALTERNATIVE)

When on Active Service, conduct to the prejudice of good order and military discipline,

in that he,

In the Field, on approximately the 5th day of July 1945, was improperly in possession of two (2) ration books Number P-469505 and P-469504, the property of Mr. & Mrs. E. Edwards, 200 Wightman Road, Hornsey, London, N.8.

Lt-Col.
(R. White) A/Commander
9 Cdn. Repat. Depot.

Approved on behalf of the JAG, pursuant to KR(Can) 540 ROTO 4956.
29.1.45 A V L Mills Capt
for DJA 3 Det JAG

In the Field
27 July 1945.

To be tried by Field General Court Martial.

(E G Blackader) Brig
Comd
13 Cdn Inf Trg Bde

IN THE FIELD
31 Jul 45

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(R. White) A/Commander
9 Cdn. Repat. Depot.

Approved on behalf of the JAG, pursuant to KR(Can) 540 & ORO 4756.
29.1.45 A V L Mills Capt
for DJA 3 Det JAG

In the Field

27 July 1945.

To be tried by Field General Court Martial.

(K G Blackader) Brig
Comd
13 Cdn Inf Trg Bde

IN THE FIELD
31 Jul 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-135082	Cpl		George	DUNCAN CIC	9 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (date) 31 Jul 45 endorsed by me, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [redacted]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
LT COL	D L REDMAN, VD	HQ CBT

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by Comd	4 Cdn Inf Trg Regt
Lieutenant	to be detailed by Comd	9 Cdn Repat Dep

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	to be detailed by Comd	4 Cdn Inf Trg Regt

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

Date 31 Jul 45

(Signed personally. RP 105 fn 2.)
(R G Blackader)
Commanding 13 Cdn Inf Trg Bde

Brigadier
(Rank.)
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (PAMPHLET No. 1 (1945) OF AFAS) 40-9 & 8/1669 (4611)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. B135082 Cpl Duncan G

of 9 Repat Depot and in my opinion he

is fit to undergo Trial by Court Martial.

~~unfit~~ CBM

Station. Field

Date. 1 Aug 45

B S Vernon Capt

Medical Officer

TRIAL OF

B-135082 CORPORAL DUNCAN G CIC - 9 CDN REPAT DEP

PROSECUTION

FIRST WITNESS

M-30825 L/SGT YEOMANS, R.C., CIC, No 9 C Rep D, sworn, states:-

Q. Do you recognize this? (showing the witness some books or pamphlets)
A. Yes, these are the rations books marked "L-50" which Cpl Duncan, the accused whom I recognize in this Court, gave to me on 6 Jul 45.

(RATION BOOKS P-469504 Marked EX 1)
(RATION BOOKS P-469505 Marked EX 2)

Q. Willyou tell the Court in your own words the dreumstances in which these ration books were obtained by you?
A. On 27 Jun 45, Cpl Duncan and myself returned from course at Ripon, York. We arrived in London too late to catch a train back to camp and I suggested that we'd go out to Mr and Mrs Edwards, some people who were acquaintances of mine. On arriving out there, a man answered the door whom I presumed to be Mr Edwards' brother and he informed us that Mr and Mrs Edwards were away on a holiday to Scotland and that it would be alright for us to come in for the night. I had stayed there before. We immediately went upstairs and I went into the bath-room to wash and shave. Cpl Duncan was in the kitchen washing. A lady came up from downstairs and asked if we wanted to have tea. I never saw the lady. I said, "No thank you we are going out to lunch". We went to a pub at approximately 6:30 in the evening and drank in the pub till the pub closed and Cpl Duncan was going to see a lady home so I gave him the address of Mr and Mrs Edwards as I was going home by myself. I arrived back at Mr and Mrs Edwards' place at approximately 11 o'clock at night, and immediately went to bed. I woke up the next morning at 7 A.M. and woke Cpl Duncan telling him that I was going out for a few minutes. I was gone considerably longer than I expected to be, 1 3/4 hours, and when I came back I knocked on the door and Cpl Duncan answered the door. He informed me that he had been sitting in the front room reading a book. I immediately got my things and we proceeded back to camp, No 1 CITR. On 5 Jul, 45, I received a letter from Mrs Edwards inquiring respecting her ration books. I immediately suspected Cpl Duncan as he and I were the only two people who had been there at their house during their absence. I informed Sgt Radulski, of the RP at No 5 Trg Bn, and we went down to No 1 Trg Bn to see Cpl Duncan. On arriving there, we saw the RSM and asked to be paraded to the Adjutant; we were paraded to the adjutant, Capt Mackie. We went over to the accused's quarters. The accused was present. He was asked to lay out his kit. The OC of his co asked him to lay out his kit. Then Cpl Duncan said to me, "Are you looking for the ration books, Bob?". I answered, "Yes". Then Cpl Duncan reached up in his tunic's pocket which was hanging on the wall and gave them to me (Ex 1 & 2), saying that he intended to give them to me that evening on the bus..

Q. When you went back to the house on 27 Jun at night, did you see Cpl Duncan when he came in?
A. No.

Q. Were you sleeping when he came in?
A. Yes, Sir.

Q. How long would you estimate that Cpl Duncan was alone in the house the next morning?
A. 1 3/4 hours, Sir.

Q. Was he up when you went out?
A. No, Sir, he was sleeping but I woke him up and left him in bed.

Q. Were there any names at the front of Ex 1 and 2 when they were handed over to you?
A. No, Sir.

Q. Do they appear to be in the same condition now as when you got them?
A. Yes, Sir.

Q. Did you examine pages 6 and 7?
A. I have looked through the books and when I came to page 6 there was something that might have been an erasure in each book.

CROSS-EXAMINED

Q. When you returned from the pub to go to bed, do you recall trying the light switch in the hall-way?
A. No, Sir, as I knew it didn't work.

Q. There was the switch control for the bed-room light?
A. In the bed-room and it didn't work, Sir.

Q. You mentioned that you went away in the morning, how long did you stay in the house when you came back?
A. Ten minutes; we went upstairs and grabbed our stuff and both went out.

Q. Were there arrangements for you two to meet again later?
A. Yes, Sir, on the night of 7 Jul, as I was going; we decided that on the train.

Q. Where were you going on leave?
A. Up to Scotland.

Q. Did you intend to call on these friends on your way there?
A. Yes, Sir, for a few minutes.

Q. You also mentioned that you suspected Cpl Duncan, did you suspect him of stealing Ex 1 & 2?
A. Not exactly, but the only time I met him was on the course and I knew we were the only people there during that time.

Q. You did quite a bit of drinking that night?
A. No, Sir, just three to six pints.

Q. How much had Cpl Duncan?
A. Approx the same, Sir.

Q. Did you go to sleep immediately you went to bed?
A. Yes, Sir, at about ten min past eleven o'clock that night.

Q. Did you hear Cpl Duncan come in that night?
A. No, Sir.

Q. Did you see the ration books on the floor or anywhere?
A. No, Sir.

QUESTIONS BY THE COURT

Q. How did Cpl Duncan act when he handed you these books at the kit inspection?
A. Quite calm but a bit confused and he said, "What are you looking for ration books?" and he took them off his tunic's pocket.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH AP 83 (3).

SECOND WITNESS

Miss Mary Edith Norah DALLMAN, 2 OAK AVE, HORNSEY, N8, sworn, states:-

Q. Where do you work?
A. At the Hornsey Food Office where I'm the assistant i/c of the consumers' section.

Q. Do you recognize these books? (showing the witness Ex 1 & 2)
A. These books were issued from our office. I can tell that by the marking "L-50", which is on each of them.

Q. Have you any way of telling to whom these books are issued?
A. Yes, we have a reference leaf and on this the name of each person is entered to whom each serial book is issued.
I have examined the relevant sheet and I have found that these books were issued to Elizabeth Ann Edwards and to Courtney Edwards, 200 Wightman Rd, Hornsey, N8.

Q. Can you tell us whether they are exactly as they were when issued from your office?
A. When these books are issued the surname of the consumers to whom they are issued are written on the front page on the top line and the initials and the consumers' registration numbers are also written on the second line.

Q. Are there any variation from them?
A. No, Sir.

Q. Are there any alterations on the inside?
A. At page 4, there is an erasure. When a person is registered with a poultry keeper, the letters "pk" are put in by the office on page 4 of the new reference leaf. Also on page 6 and 7, counterfoil for eggs, the letters "pk" are entered. Nothing else is entered upon these books when they leave the office. These entries are entered in ink, Sir. These books would have been issued from the office sometime between May and 17 Jun, 1945; they were to become effective on 22 Jul 45.

Q. What would anyone have to do to use them?
A. As they are now, a retailer would not accept them, but if the person who has them wrote his own name, address and registration number on the first page, he could then be registered with a retailer. There is also a possibility that the retailer might notice the markings on pages 6 and 7 and he might query our office about them. The same person who had books properly issued to him could register with another retailer and the effect would be that he would be getting a double entitlement of rations.

Q. Have these books any value?
A. Yes, Sir, these books (Ex 1 & 2) are valuable, particularly in regard to the clothing coupons which are the only ones we get in a year.

Q. Are they ever sold?
A. Oh yes, so I understand.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (3).

THIRD WITNESS

Mrs Elizabeth Edwards, of 200 Wightman Rd, Hornsey, NB, sworn, states:-

Q. What is your occupation?
A. Waitress.

Q. Do you recognize Exs 1 & 2?
A. Yes by the "L-50" on them as being ration books issued in the Hornsey district.

Q. Did you get any new ration books this spring?
A. Yes, two, one for my husband and one for myself.

Q. What did you do with them?
A. I took them home and I put them up in my dressing table in my bedroom. I got them about the beginning of Jun 45.

Q. Is that the condition you got them in?
A. No, on each book are the names of the owner - on mine there would be my name, my registration number and on the other the name of my husband with his registration number.

Q. Have you any way of telling that they are your books?
A. I have no way of telling except by the "L-50" on each of them.

Q. Is there anything else in the book?
A. My husband keeps chickens and they are marked in the books so that we can't get eggs.

Q. When did you first miss the books?
A. I went on a holiday about 16 Jun and I was away for two weeks. On the 2nd following I returned; I took my children's ration books which I brought back from leave from Scotland and I went to get our ration books to register them altogether and they were not where I had put them.

Q. Did you report the books as missing?
A. Yes, to the Food Office. As a result of what my sister-in-law told me, I wrote a letter to Sgt Robert Yeomans respecting the loss of my ration books. I have knew Sgt Yeomans for the past 15 years. He stayed at our house when he was on holidays.

Q. What are the condition of the ligths in your hall-way?
A. There is no light at all in the hall-way in the front door. The bed-room light had been dis-connected before we went on our holidays and there is no light at all in the hall.

CROSS-EXAMINED

Q. How did these men get in your place?
A. My sister-in-law let the Sgt and his friend in because she knew Sgt Yeomans.

Q. Are there any children in the rooms below you?
A. Yes, she's got a flat below.; there is only one entrance for the two flats and there are only two flats in the house.

Q. Would it be possible for an outsider to get in?
A. No, not unless my sister-in-law should open the door for them.

Q. How old are the children?
A. One boy is 12 and one is 3. They are my sister-in-law's children.

Q. Do you know Cpl Duncan?
A. No, I never saw him before.

Q. Were the children's ration books kept with your own?
A. No, I got them when I was in Scotland and I brought them back.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B)

FOURTH WITNESS

Mr Courtney EDWARDS, 200 Wightman Rd, Hornsey NB, sworn, states:-

Q. What is your occupation?
A. Fitter.

Q. Do you recognize Ex 1 & 2?
A. I recognize the "L-50" marked on Ex 1 & 2 which shows that they were issued for the Hornsey District. Before leaving for our holidays, I saw two new ration books in the left hand corner of the top dresser drawer in the bed-room before I went on holiday. I was there when my wife put them there. After my wife and I came back from our holidays, at the beginning of Jul, the Mrs was going down to the registrar with our books, when she went to get the ration books, she found that they were missing. I was there. The Mrs came to me and asked me about the ration books as she couldn't find them. I searched the other drawers but they were not there.

Q. Why did you not take the books with you on your holidays?
A. We had no need for them; they didn't become useful until 22 Jul 45.

Q. You considered the drawer of the dresser a safe place for them?
A. Yes, Sir.

Q. Had you ever used the same place previously for the same purpose?
A. Yes, Sir.

Q. Had you had any trouble before?
A. No, Sir.

CROSS-EXAMINED

Q. When you speak of seeing the books before you went on holiday, how long before?
A. The day before.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B).

THE PROSECUTION IS CLOSED

- DEFENCE -

FIRST WITNESS

THE accused, sworn, states:-

On 27 Jun, Sgt Yeomans and myself arrived in London from course at Ripond, York, that was late in the afternoon. As we couldn't make it to get to camp on reasonable time, we decided to stay in London for the night as the Sgt knew where we could get accommodation. We went up to a house in Hornsey and a man came to the door and apparently he knew Yeomans and told him the people were away but that it was alright for us to stay there for the night. We went in and cleaned up; after we went down to a pub at about 6:30 that night where we remained until it closed at 10:30 PM. When the pub closed the Sgt and I parted company and I took a girl home. I returned to the house, I imagine it would be after midnight, around 1 o'clock. I knocked at the door and I never got any answer. I noticed that the door was wedged shut with a piece of card-board and it opened as I pushed on it. I went upstairs and I tried to light the switch on the wall near the top of the stairs and I couldn't the light on. I started along the hall towards the bed-room where the Sgt would be. I bumped into a bicycle. I lit a match to see my way and I saw the door of the bed-room where I figured Sgt Yeomans was; also I saw two ration books lying what I thought at the time to be a low shelf or on the floor close to the base-board but when I was in the house later, I saw that it

was a three-step stair-way into the bed-room. I picked the books up as I saw them there. It struck me that the people had gone to Scotland and had left them behind. I picked them up to tell Yeomans that they had gone without their ration books. I tried the bed-room light and it would not work. I spoke to Yeomans but I got no answer from him.. I stuck the books in the inside pocket of my tunic because the room was entirely dark; I did more or less as an involuntary action. I couldn't see any place else to put them. In fact I didn't really look for any place. I was three-quarters "canned" and I wanted to get into bed. We had been on the go since 5 o'clock that morning. I had no thought whatever of stealing these books when I put them in my pocket. The next morning, Sgt Yeomans woke me up and told me he was going down to collect some needle-work from a girl and that he would be back in a few minutes. I rolled over and went back to sleep. Some time later, I woke up; in fact the woman from down-stairs came upstairs. She didn't come in the bed-room but I heard someone come up, Sir. I got up and washed and dressed. I went back and sat down in the back room, which is a sort of sitting-room. I turned the radio on. I picked up a book and started to look up through it; it was a novel. I started to read. I don't know how much later but I was half way through the book when I heard someone knocking at the door downstairs. I waited a few minutes to see if the people down-stairs would open it; as nobody did I went and opened it. Sgt Yeomans was at the door. There was a few remarks passed about how long it took him to come back. We went upstairs, picked our kit and left. We got the 1130 AM train in the morning. We had lunch just before taking the train. We parted at Records at 1 CIR and I returned to my camp near Petworth, 1 Irg Bn. About Fri or Sat of that week I started to press up my uniforms and on cleaning out the pockets I ran across these two books.

Q. Why had you left them there all the time?

A. I never thought about them.

Q. What day was the 27 June?

A. I believe a Tue, Sir. I knew that Sgt Yeomans was leaving on 6 Jul because he had told me that he had his application in for his leave. At noon shortly after dinner on 6 Jul, Capt Mackie called me at the Pioneer Shop and asked me to show him to my quarters. Upon arriving there, he told me to lay out my kit, which I did. I picked up some of the kit that was on my bed. It struck me as I saw Sgt Yeomans there and I asked him if he was looking for the ration books. He said, "Yes". I then took the books out of my tunic hanging at the head of my bed and gave them to him. I asked him why he hadn't come to me instead of going through the rig-marole of going to the Coy Comd. I made some remarks to that effect. I told him that I intended to give them back to him that night. I was to meet him that night on the 5:15 PM Haselmere bus.

Q. What do you know about the erasures?

A. I don't know anything about the erasures on Ex 1 & 2.

Q. Did you notice that night that the names were erased on the front page?

A. No, Sir, I didn't notice that till the day when I took them out of my pockets when I pressed my uniforms. I never paid much attention to them. I saw that they were new books and I knew that they wouldn't cause the people any trouble and that there was no rush in returning them. The only way that I could return them was to get in touch with Sgt Yeomans. I didn't then know the number of the house nor the street. When I was there, Sgt Yeomans had marked it on a cigarette package for me so that I'd know where to go home that night. That night I needed a civilian to direct me to t

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At camp I was working on the range everyday and I was really too tired to walk the 2½ miles that separated me from Sgt Yeomans' camp; anyway I knew I'd see him on 6 Jul; On 6 Jul I asked the RSM to be excused from going to the range in the afternoon as I wanted to catch the 5:15 PM Hazelmere bus and he excused me.

CROSS-EXAMINED

Q. That work that you were working at on the range, was that a fatigue that came out each day and came back each night.

A. Yes, Sir.

QUESTIONS BY THE COURT

Q. What didyou do with the ration books after you pressed your uniforms?

A. I put the books back in my pocket, in my tunic pocket and hung the tunic up. I intended to see Sgt Yeomans as I knew he was going down to these people on the following Friday.

Q. What were you doing the next week?

A. We were on the range cleaning up dudd bombs.

Q. How far was Sgt Yeomans' camp from your camp?

A. About two miles, Sir. On the following Fri morning I asked the SM if I could be excused from going out on the range that day. He kept me off. I wanted to catch that 5:15 HAZELMERE bus as I had made arrangements to meet Sgt Yeomans. These arrangements were made before the 27 Jun. I had 14 days' leave coming up and he was going to the same part of Scotland as where I was going; we had more or less arranged that we would go up at the same time. I had changed my mind about taking my leave at that time.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH DP 83 (B).

STATEMENT By Prosecutor is attached

STATEMENT BY THE DEF OFF ON THE FINDING

Cpl Duncan has told the Court a straightforward story which he has also told at the taking of the summary, explaining how the books came into his possession; the circumstances behind his failure to return them earlier; the witnesses have brought out that he returned after drinking at the pub and escorting a girl home to find the place in darkness and lighting a match [redacted] to find his way to the bed-room; that he saw two ration books on a three-way step. It is quitelogical to believe that he would instinctively pick them up and quite logical that with the bed-room in darkness and his companion asleep, that he would, failing a better place to put them in his tunic pocket. The Sgt brought out that the two left almost immediately the sgt returned to the house for the station. The accused had been drinking that night and his memory would not be as good next morning. Before parting at the camp, they arranged to meet again on 6 Jul 45. While Cpl Duncan is to be condemned for notmaking a greater effort to return the books; on the ether hand the majority of men realising that the books were not immediately required would have been satisfied as he was to wait until he'd meet Sgt Yeomans again; the only man who could return them. Another point in his favour is the fact that the books were left all that time in his tunic pocket; it is logical to think that anyone who wished to make use of them would have simply removed the required coupons and destroyed any way of identifying them. The question of the alterations of the books - has been denied by the accused himself and it would be well to remember that these were left in a house which had a common entrance, the lower part of which was occupied by a family of children. The fact that they had been altered does not prove in any way that it was done by Cpl Duncan.

In the case of R-135082 Cpl George Duncan

Closing Address of the Prosecutor:

1. The evidence produced before this court shows that some change in the condition of the ration books in question has taken place. The owners of the books, for whom it meansa year's clothing and food, would be unlikely to effect suhh a change, and the fact that they themselves did not lay any charges shows that their chief concern was in getting the books back. I submit that the logical assumption to make is that the books were defaced by someone who intended to use them to his own advantage.

2. Ration Books in this country are much too precious to be carelessly left lying about, and after nearly six years I believe most housewives in England would be rather careful about putting a new book into a safe place until the date it became valid. Does it not seem strange that the books in question, placed away in the dresser drawer, which place was considered safe and had been used previously for the same purpose, should find their way ~~down~~ to the hall and be picked up on the floor there?

3. A soldier in the Canadian Army who has been any time at all in England must surely realize the value of a civilian

In the Case of B-135082 Cpl. George, DUNCAN.

Closing address of the Prosecutor, continued.

ration book. Even supposing that Cpl George DUNCAN had picked up up the books in the hall (which of course is not admitted but denied) then I submit that by his lack of positive action to return the books over a period of a week or longer, or to even notify anyone that he had them in his possession, was constituted an intention to retain them in his possession for an indefinite period of time.

4. In conclusion, therefore, I submit that the circumstances in this case clearly show Cpl George DUNCAN, took the two ration books and intended to use them for his own benefit. I also submit that this would have been so regardless of whether he found them in the dresser drawer which is maintained by the prosecution, or in the hall as is maintained by the defence.

5. This is respectfully submitted for the consideration of the Court.

J.E. de Hart Lieut.
(J.E. de Hart) Prosecutor.

THE COURT CLOSED

THE COURT RE-OPENED

THE PRESIDENT ANNOUNCED THAT THE ACCUSED HAD BEEN FOUND NOT-GUILTY BY THE COURT AND THAT HE WAS ACQUITTED.

SUMMARY OF EVIDENCE

In the case of B-135082 Cpl. G. Duncan, Canadian Infantry Corps, on the strength of 9 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

M-30825 L/Sgt R.C. Yeomans, Canadian Infantry Corps, on the strength of 9 Canadian Repatriation Depot, having been duly sworn states:

I am M-30825 L/Sgt R.C. Yeomans, Canadian Infantry Corps, on the strength of 9 Canadian Repatriation Depot. I produce two ration books numbered P469504 and P469506. These are the books handed to me by B-135082 Cpl. G. Duncan. I noticed the number 150 on the front of the books. I looked for a name but there was none. I also noticed on page six where something had been erased. I knew B-135082 Cpl. G. Duncan, one week while on course at Ripon York. We arrived in London late on the afternoon 27th June 45 and went out to Mrs & Mrs E.C. Edward's place. The door was answered by a man who I think is Mr. Edwards brother and who knew me. He said Mr. & Mrs Edwards were on holidays, and that it would be all right for B-135082 Cpl. G. Duncan and me to stay the night.
When we got upstairs I proceeded to wash and B-135082 Cpl. G. Duncan was in the front room. When we had cleaned up we both went out. After we had been out together until about 2215 hrs I gave B-135082 Cpl. G. Duncan the address of the house and went on home, getting in about 2330 hrs. I did not hear B-135082 Cpl. G. Duncan come in. In the morning of 28th June 45, I was out for about an hour and three quarters. B-135082 Cpl. G. Duncan stayed in the house. When I got back he said he had been reading a book in the front room. We then left for camp. On July 5th, I received a letter from Mrs. Edwards stating she was missing her two ration books from her top dresser drawer, also asking me how well I know B-135082 Cpl. G. Duncan.
I produce the letter signed "Betty & Court" who are Mr. & Mrs. Edwards. I wrote saying I would do all I could. I informed the Regimental Police Sjt. W. Radulski. We contacted A/Capt. Mackie, O.C. Support Coy, I Cdn Infantry Training Battalion. He called in Lt. Westmore, Platoon Commander. of the Pioneer Platoon. The four of us went to B-135082 Cpl. G. Duncan's hut. Capt. Mackie asked him to lay out his kit, which he started to do. Then he asked me if we were looking for the two ration coupons books. I answered "Yes" and he produced them from the pocket of his tunic which was hanging on the wall. B-135082 Cpl. G. Duncan, said that he intended to give them back to me, before I went back to London on my next leave.

R.C. Yeomans A/L/Sgt.
(M/30825 R.C. Yeomans)

The accused declines to cross examine this witness.

The accused declines to make a statement and reserves his defence.

In the case of B-135082 Cpl. G. Duncan, Canadian Infantry Corps, on the strength of No 8 Canadian Repatriation Depot, A soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

SECOND WITNESS FOR THE PROSECUTION

Elizabeth Edwards, of 200 Wightman Road, Hornsey NS, having been duly sworn states:

I am Elizabeth Edwards of 200 Wightman Road, Hornsey, NS. I went and got my ration books and put them in the left hand top drawer in the bedroom until such times as I could get the childrens' and register them. I went to look for them and they weren't there. I told my sister in law that I had lost them. She said there was nobody in the house but Bob and the friend he had brought. She had never seen the friend before. I wrote and asked Bob if he could give me any light on the subject and what he knew of the chap he brought with him.

Q1. You refer to "BOB", who is that?
A1. L/Sgt. R. Yeomans.

Q2. Were you in the house the weekend that Sgt Yeomans and his friend were here?
A2. No, I was on holidays.

Q3. Did you know he was coming here?
A3. Not at that particular day.

Q4. Had you any objection to him coming in the house?
A4. No, not at all.

Q5. How long have you known Sgt. Yeomans?
A5. Fourteen years.

Q6. Was anybody in the house when Sgt. Yeomans and his friend were here?
A6. My sister in law who occupies the part downstairs.

Q7. Did you report the books as missing?
A7. Yes as missing, but not as stolen.

Q8. To whom did you report?
A8. The Hornsey Town Hall.

Q9. Do you recognise these as the books you lost?
A9. Yes. It has the Hornsey food office stamp on it.

Q10. Was there any writing in the books?
A10. Just the name, initials and registration number.

Q11. Could you get the books without having your name on them?
A11. No. They are all issued with the name and initial, you fill in the address yourself.

X Elizabeth Edwards
(Elizabeth Edwards)

The accused cross examines this witness.

Q1. Is there any way you could account for the books being in the hall?
A1. No not at all.

Q2. Have you any children?
A2. They weren't at home.

Q3. There were no children who had access to them and could have been playing with them and left them in the hall.
A3. There are only the children downstairs but they never come up here when we're not at home.

Q4. Then there's no way you can account for them being in the hall.
A4. No not at all.

X Elizabeth Edwards
(Elizabeth Edwards)

In the case of B-135082 Cpl. G. Duncan, Canadian Infantry Corps, on the strength of 1 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

THIRD WITNESS FOR THE PROSECUTION

Courtney EDWARDS, of 200 Wightman Road, Hornsey, N8, having been duly sworn, states:

I am Courtney EDWARDS, of 200 Wightman Road, Hornsey, N8, When we came back from our holidays two ration books belonging to my wife and me were missing. When the wife went to get them out of the drawer they could not be found. I enquired from my sister if she knew anything about them and she told us that M-30825 L/Sgt RC Yeomans and his friend had stayed the night at the place, and therefore we decided to write to Bob to see if he knew anything about the friend he had brought.

Q12. When you say "BOB" do you mean L/Sgt RC Yeomans?
A12. Yes.
Q13. Where did you last see the ration books before you went away?
A13. In the top dresser drawer in the left hand corner of the bedroom.
Q14. Could the books have been moved from the drawer by anyone in the house?
A14. No.
Q15. Why?
A15. We had no need to use them
Q16. Is that where you usually leave them until they come into use?
A16. Yes.
Q17. When do these books become valid?
A17. July 27th.

Courtney Edwards
(Courtney EDWARDS)

The accused declines to cross examine this witness.

The accused declines to make a statement and reserves his defence.

FOURTH WITNESS FOR THE PROSECUTION

Mary Edith Norah, Dallman, 2 Oak Avenue, Hornsey, N8, having been duly sworn, states:

I am Mary Edith Norah, Dallman, 2 Oak Avenue, Hornsey, N8, employed with the Hornsey Food Office as consumer's assistant.
According to my records, the reference leaves on which E. Edwards and C. Edwards applied for their new ration books the serial numbers of their new books issued to them were P-469504 and P-469505. These books when issued would have borne the surname, initial, national registration number and would also have been marked PK on Pages 4, 6 and 7, the letter marking being due to the fact that these people are registered with a poultry keeper.

Norah Dallman
(Mary Edith Norah, Dallman)

The accused declines to cross examine this witness.

The accused was cautioned as follows:

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give any evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The accused having been duly sworn states:

I am B-135082 Cpl. G. Duncan. On the late afternoon of 27 July 45 Sgt Yeomans and myself arrived in London from course at Ripon, York. As it was too late to get back to camp at a reasonable time we decided to stay over in London as Sgt Yeomans knew where we could get accomodation. We went up to the house, were let in by a man who recognised Sgt. Yeomans

In the case of B-135082 Cpl. G. Duncan, Canadian Infantry Corps, on the strength of 9 Canadian Repatriation Depot.

Army Overseas.

By the direction of the Commanding Officer, this Summary of Evidence is taken on oath.

The accused having been duly sworn, states: (Cont'd)

And we proceeded upstairs. Sgt. Yeomans, shoved in the bathroom and I was washing in the kitchen. The lady of the house came upstairs and asked me if I was "Bob". I told her Bob was the fellow in the bathroom. I then shaved, pressed my pants, and we went down to a nearby pub and drank until the pub closed. Sgt. Yeomans and I then separated. I taking a girl home. I walked back up to the house. I believe it was about one o'clock in the morning. The door was just wedged shut with a piece of cardboard. I pushed it in, shut it and went upstairs. I tried the light switch -- the light switch wouldn't work so I started along the hallway towards the bedroom, that I figured Bob would be occupying. Going along the hall I stumbled over a bicycle. I lit a match to see where I was and by the light of the match I saw the door of the bedroom and at the same time saw two ration books either on the floor close to the baseboard or on the bottom step of a 3 step stairway. I then went into the bedroom with the books in my hand thinking that the people of the household had gone to Scotland forgetting their ration books. I switched the switch of the light in the bedroom and the light wouldn't go on. I spoke to Sgt Yeomans but got no answer from him. I then shoved the ration books in my tunic, hung my clothes on the bottom of the bed and climbed in. Next morning Sgt. Yeomans woke me up and told me he was going down to see a girl and that he would only be a few minutes. I then went back to sleep. I re-awoke, got up, washed, dressed and went into the back room and switched on the radio but it didn't work. I then sat in a chair and picked up a book and started to read it. I read about half way through it when I heard someone at the door downstairs. I waited for someone downstairs to answer but apparently they didn't hear the knocker so I went down and opened the door. Sgt Yeomans was at the door. We immediately went upstairs picked up our kits, left the house and returned to camp. On Friday or Saturday 30th or 31st June I started to press up my uniforms and cleaning out the pockets, I ran across these two books. I had forgotten all about them in the meantime. The following week I was on Range Duty clearing dud bombs on the Mortar Range and was away from camp all day long. On the morning of the 6th I asked the Sgt Major to be excused from range duty as I wanted to catch the 15.15 Hazelmere bus and I had made arrangements previously to meet Sgt Yeomans at that time and I knew that he was going back up to see these people, and I intended to return the books to Sgt Yeomans at that time. On the afternoon of the 6th Capt Mackie called me out of the Pioneer Shop and told me to lay out my kit. It then struck me that it was the Ration Books that were in question, so I produced them out of the pocket of my tunic hanging on the wall and gave them to Sgt. Yeomans.

(B-135082 Cpl. G. Duncan)

I certify that the foregoing summary of evidence consisting of four pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c), (d), (e) (f) have been complied with.

(J.E. de Hart) Lt. Legal Officer detailed to take this summary of evidence.

In the Field
12 th day of July 1945.

The exhibits referred to by the first witness were produced, read over and shown to the accused, are attached he reto and marked exhibits "A" & "B" respectively.

(J.E. de HART Lt. Legal Officer

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at ~~[illegible]~~, In the Field, preliminary to my trial by Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

Signed at 9 C.Rep.D.
In the Field
this ..... day
of 194

Geo Duncan.

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Capt. Luckland if he is available.

LIST OF EXHIBITS IN THE CASE
OF B-135082 Cpl Duncan G.

N I L

LIST OF WITNESSES IN THE CASE
OF B-135082 Cpl Duncan G.

FIRST WITNESS: M-30825 L/Sgt Yeomans R.C. - 9 Cdn Repat Depot
SECOND WITNESS: Mrs. E. Edwards, 200 Wightman Rd, Hornsey, N.8.
THIRD WITNESS: Mr. C. Edwards, 200 Wightman Rd, Hornsey, N.8.
FOURTH WITNESS: Mary Edith Norah Dallman, 2 Oak Ave., Hornsey N.8.

HC-21

PTE DUNCAN G

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B135082 Pte. Duncan, G. S. Sask R.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd	Not Guilty	Not Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

Nil present under sentence for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 3 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To suffer Field Punishment No 1 for twenty eight (28) days and to forfeit all ordinary pay for a period of twenty eight (28) days

(Sgd) Fred K McDougall, Judge-Advocate, if any. Capt — 12 Oct 44, Date awarded. — (Sgd) A C Cavanagh, President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

I direct that the accused be ~~not committed to prison or detention barracks until further ordered~~. (1. AA 57A. Delete if not used.)

(Sgd) [illegible]

Date 12 Oct 44 — Commanding 6 Cdn Inf Bde. — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B-135082 Pte. DUNCAN, GEORGE	14 OCT 44	H Nelson Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 28 OCT 1944 JAG BRANCH

RECORDED IN CMHQ IN A3 169 4C-21

CFA86 (To Hist of AFA2) 40-1-8 (1868 (2864))

FIELD GENERAL COURT-MARTIAL

Convened by Lt Col Guy Simonds Comd 6 C.I.B. dated 12 Oct 44

PROCEEDINGS REVIEWED Date 19 Oct 44 D.J.A. Can. Sec. G.H.Q. 2 Echn. 21 Army Gp

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or ~~confirmed~~ rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number. (a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B135082 Pte.	George	Duncan	S. Sask R.

PROCEEDINGS REVIEWED R. Linsmore Lt 30 Oct 44 REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 12 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 11/40

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is [not] amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [not] brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to~~ Do you object to as interpreter? Ans

The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	A.C. Cavanagh MC	Comd 6 C
Member	Capt	J.J.A. Longdon	Fus M.R.
Member	Lt	L. Tousignant	Fus M.R.
Judge-Advocate	Capt	F.K. McDougall	11 Cdn Inf Div
Prosecutor	Capt	V. Schubert	S. Sask R
Defending Offr	Capt	T.A. Bolle	S. Sask R

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B135082 Pte. DUNCAN, G. S. Sask R. before arraignment makes(s) (no) (a) plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13(2), RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is [not] arraigned [separately] on all charges in the charge sheet.(1) The accused does [not] not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 26, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court [is cleared and] considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.C. 6

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No Sum (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court~~ considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on [redacted] charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to that Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No Sum (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~(no)~~ (no) opening address.(1) Nil
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 91(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the [redacted] Nil charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is [redacted] and allowed on the [redacted] Nil charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty of the latter charge(s).(4) but the accused is found not guilty on the charge
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans ..... Do you intend to call witnesses on your behalf?
Ans ..... Are they witnesses as to character only? Ans .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 40(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 41, 103(*b*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character 1(1)
Ans Yes Character witness
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 1 and Ex 2 respectively.(3)
(1. *MFB* 353 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 1(1) Ans Yes Plea in Mitigation by Defence Counsel (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2) Nil (2)
(1. *When several accused tried separately see RP* 46(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused, B.135082 Pte. DUNCAN, G., SOUTH SASKATCHEWAN REGIMENT, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, on 4 Oct 44, absented himself without leave from 1600 hrs on said 4 Oct 44 until 2000 hours on said 4 Oct 44.

Absent 4 hours.

SECOND CHARGE
AA Sec 40

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DICIPLINE

in that he

In the Field, on 4 Oct 44, improperly used Canadian Military Motorcycle No. C-4102521 without authority.

THIRD CHARGE
AA Sec 40

WHEN ON ACTIVE SERVICE
NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DICIPLINE

in that he

In the Field, on 4 Oct 44, negligently abandoned Canadian Military Motorcycle No. C-4102521 without taking proper precautions to safeguard said motorcycle.

In the Field
11 Oct 44

(V. Stott) Lt.Col.,
Officer Commanding,
South Sask Regt, C.A.(O).

To be tried by Field General Court-Martial

Commanding, 6 Cdn. Inf Bde

Dated this 12th day Oct 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B135082	Pte		GEORGE	DUNCAN	S.SASK.R.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 12 OCT 44 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	A.C. KAVANAGH MC	Cam of C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
CAPT	J.J.J.A LANGLOIS	FUS.M.R
LT	~~L. LAMARRE~~ L. TANGUAY	FUS.M.R.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
CAPT	E.K. McDOUGALL	HQ 2 CDN INF DIV

On Active Service in the Fd

in BELGIUM (Country.) [signature] (Signed personally. RP 105 fn 2.) [signature] (Rank.)

Date 12 oct 49 Commanding 6 CDN INF BDE
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

A C Kavanagh
Maj.

MEDICAL OFFICERS CERTIFICATE
(K.R. (Can) Para 557)

I certify that I have this morning examined No. B.135082...Pte....
..DUNCAN, G.....of South Saskatchewan Regiment, and in my
opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station...In the Field....

Date.....12 Oct 44.....

Medical Officer

Mitigation

Ask for leniency. The remainder of charges are not based on sex. Ask for leniency. It really an Engineer but recently has been transferred to the infantry. Served 2 Div at Dieppe

1st Pros. Wit. L12171 Sgt. Kozak, M. S. Sask R.
duly sworn is examined:-

On 4 Oct about 1600 we moved areas. I heard a bike start & I saw Ace riding in the square on the bike's question. I went outside but he went out the gate. Didn't see him till he reported to me at 2000 hrs without the bike. No C4102521. I made a thorough check

Cross X. The bike could have been returned about 1700 hrs & I wouldn't have known it. While at supper there was no guard on the vehicles.

No Re X

Comt — Nil

83(b) complied with

2nd Pros. Wit L12376 Sgt. Harrison S Sask R
duly sworn deposes:-

As a result of what I was told I made a search of our old area at 2030 hrs looking for C4102521. I didn't find it. Pte. Duncan had had it last.

No Cross X 83(b) complied with

Comt

83(b) complied with.

1st Char. Wit. Sgt Kozak M. S. Sask R sworn

I am sec cmdr. of Accused. He's been with me for about 3 weeks. I have been in action twice with the Acc & in both engagements he proved to be a good man. I've never had any trouble with him.

No Cross X

83(b) complied with.

Summary of Evidence in the case of No. B.134082 Pte. DUNCAN, G., of No 4 Platoon, Support Coy of the South Saskatchewan Regiment, Canadian Army Overseas, charged with:

(1) WOAS, ABSENCE WITHOUT LEAVE. AA SEC 15(1).
(2) WOAS, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE. AA SEC. 40.
(3) WOAS, STEALING WD PROPERTY AA SEC. 18(4)

By the direction of the Commanding Officer the evidence is to be taken on oath.

FIRST WITNESS

The first witness - L.12171 Sgt. KOZAK, M., of No. 4 platoon Support Coy, South Saskatchewan Regiment, sworn states:

I am section commander of No. 3 Section, No. 4 Platoon, Support Coy, South Saskatchewan Regiment and Pte. DUNCAN, G. is in my section. On the 4 Oct 44 at about 1600 hrs my section with their vehs were all concentrated in the courtyard of a school. I had given the order to my section that all personnel were CB to their immediate area. I heard a motorcycle start up and I looked out the window and saw Pte. DUNCAN, G. riding a motorcycle around in the courtyard. I went outside to stop him from doing this but just as I got outside he was going out of the gate on the motorcycle. When the section left this area at 1800 hrs. Pte DUNCAN, G. was still missing as well as the motorcycle.

At 2000 hrs 4 Oct 44 we were formed up in convoy at Brasschaet. Pte. DUNCAN, G. reported to me at my vehicle. I asked him what he had done with the motorcycle and he stated that he had brought it back while the carriers were still parked in the courtyard of the school. The missing motorcycle was the only motorcycle with the section at the time, WD motorcycle No. C-4102541.

CROSS-EXAMINED BY THE ACCUSED.

Q. When you first heard the motorcycle start up, did you see anyone else riding the motorcycle around in the courtyard previous to seeing me?

A. No, I did not.

Q. Between four and five o'clock was there any picquet on the vehicles?

A. No, there was no picquet but I myself was on the alert and watching for your return.

(signed) M. Kozak

SECOND WITNESS

The second witness L.12376 Sgt. HARRISON, T.M. of No. 4 Platoon, Support Coy, South Saskatchewan Regiment, sworn states:

I am Platoon Sgt. of No. 4 Platoon, Support Coy, South Saskatchewan Regiment, and Pte. DUNCAN, G. is in my platoon. On the 4 Oct 44 at about 1600 hrs I went to the school where Sgt. Kozak's section was concentrated to warn him for a move order. When I got there Sgt. Kozak reported to me that Pte. DUNCAN, G. had taken a motorcycle and was still missing. At about 1800 hrs No. 3 Section formed up in our convoy at Brasschaet and I inquired from Sgt. Kozak if Pte. DUNCAN had returned and he had not. At around 2000 hrs. Sgt. Kozak reported to me that Pte. DUNCAN, G. had come back without the motorcycle. I then went down and asked Pte. DUNCAN what he had done with the motorcycle and he told me that he had returned it to the courtyard of the school while the carriers were still in the courtyard. I then went to the courtyard of the school and thoroughly searched it and could find no motorcycle. The number of the motorcycle is WD MC No. C-4102541.

(signed) T.M. Harrison

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS

THE ACCUSED WAS CAUTIONED AS FOLLOWS:

Q. Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you will be taken down in writing and may be given in evidence.
A. I want to make a statement.
Q. On oath or not on oath.
A On oath.

THE ACCUSED SWORN STATES:

At approximately 1600 hrs I was waiting around the courtyard of the school where the vehicles were parked. One of the men from another section in the platoon started up the motorcycle and rode around the yard several times. When he had finished with the bike, I took it and made a number of trips around the yard and then went out the gate and went a short distance down the street to a cafe. In the cafe I met two of the section Cpls. I told them I had the bike and they told me I had better go back to the area with it. I returned to the area shortly afterwards. I parked the bike where I had got it, covered it with a gas cape and left the area on foot. I saw no one around the area when I returned the bike. I returned to the area shortly after dark and found the section had left. I started out looking for them and found them at approximately 2000 hrs, and reported to Sgt. Kozak, M. and informed him when asked, that I had returned the bike to the areabefore the carriers had left.

(signed)
Leo Dumas

THE ACCUSED DOES NOT CALL ANY WITNESSES

I certify that the foregoing summary of evidence consisting of two pages was taken down be me in the presence of the accused, and that RP 4 (C, D, E and F) have been complied with

(V. Schubert) Capt.,
South Sask Regt., C.A.(O).

In the Field
8 Oct 44

Substitute for AFB496
or AFB355

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

No B.135082 Rank Pte. Name DUNCAN, G. Unit S Sask R

Age 29 Married or Single Married No of Dependents 2

Date of Attestation 18 Nov 42

Number of days in close arrest awaiting trial

Civil ____ Military 2 days, 6 hrs. 30 mins Hospital ____ Total 2 days, 6 hrs. 30 mins.

Dates of appointments, promotions etc (if any)

To be A/L/Cpl w e f 13 Jan 43

Reverts to rank of spr w e f 11 May 43

In the Field
12 October 44

H Osborne Capt
Officer i/c Records

South Saskatchewan Regiment
Unit

Note : Certified true copy of AFW 6 must accompany this form.

No B135082 Name DUNCAN, George | Sqn, Battery or Company | Corps R.C.E. | Date of enlistment 18-11-42 | GC Badges | Trade Rate of Pay "B" | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
PETAWAWA ONT	10 Jun 43	Spr		AWL 1 day 23 hrs 45 mins		5 days C.B.	17 Jun 43		Forfeits 2 days pay
PETAWAWA ONT	8 Mar 44	Spr		AWL 5 days 45 mins.		10 days C.B.	10 Mar 44		Forfeits 6 days pay
DEBERT NS	13 Apr 44	Spr		AN ACT PREJUDICE TO GOOD ORDER AND MILITARY DISCIPLINE(Stole cigarettes)	Cpl. Nadon Spr. Clark Spr. Anderson Spr. McKenzie	10 days pay	24 Apr 44	Major J. G. Byrn	
DEBERT NS	29 Apr 44	Spr		NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE	Spr. Frohman	10 days pay	1 May 44	Major J.C. Byrn	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
DEBERT NS	2 Jun 44	Spr		Using Threatening Language to his superior officer(AA Sec. 8(2)	Spr Seymond	10 days detention	3 Jun 44	Major J.I. MACLAREN	
DEBERT NS	2 Jun 44	Spr		FAILing to appear at the place of parade appointed by his C.O. (AA. Sec 15 (2)		Summary Forfeiture of 7 days pay	3 Jun 44	Major J.I. MACLAREN	
	7 Aug 44			Blood Donation					

CERTIFIED TRUE COPY

W.H. Osborne Capt.

339 B. Pte. G. M. Duncan,

Correspondence to be PINNED here.

9606

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this fourteenth day of July 1941.

Whereas it appears to me, the undersigned, an officer in Command of 2 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[I am unable to appoint:—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

*(3. Three Officers having more than one year's service.)

for the following reasons, namely:—]

President.

Rank.	Name.	Regiment.
Major	R.A. Starke	PPCLI

Members.

Rank.	Name.	Regiment.
Lieut ~~Capt~~	J.S. Oppe ~~D.G.H. McDonald~~	P.P.C.L.I. ~~"A" Coy 5 Cdn Fd Amb~~
Lieut	W.G. McGuire	Seaforth of C

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed Arthur E Potts (Arthur E. Potts) Brig

Commanding Comd 2 Cdn Inf Bde

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
M15991 Private DUNCAN, George Middlr. Edmonton Regiment	Sec 41 A.A. Committing a civil Offence, that is to say, ~~[illegible]~~ assault ACTUAL ~~[illegible]~~ ^ ~~[illegible]~~ ^ ~~[illegible]~~ ^

I. [illegible] Major
P.R.C.L.I.

The accused No. M.15991 Private George Middler Duncan, Edmonton Regiment, a soldier of the Canadian Army (Overseas), is charged with:-

Committing a civil offence, that is to say, assault occasioning actual bodily harm,

Sec.41
Army Act

in that he

at Oxted, Surrey on the 28th day of June, 1941, assaulted M.16349 Private George Francis Sunstrum, a soldier of the Edmonton Regiment, Canadian Army (Overseas), by kicking him in the face, thereby occasioning actual bodily harm to the said M.16349 Private George Francis Sunstrum.

Oxted, Surrey,
12th July, 1941.

[signature] .....Major,
a/O.C., Edmonton Regiment.

To be tried by Field General Court Martial

Oxted, Surrey
July, 1941.

Arthur E. Post .....Brigadier,
Commander, 2nd Cdn Inf Bde.

---

(13) R.C. Starkey Major

MEDICAL OFFICERS' CERTIFICATE

K. R. (CAN) PARA 557

I certify that I have this morning examined

No. M.15991 Pte. Duncan, G.M.

of the Edmonton Regiment and in my opinion he

is fit to undergo Trial by Court Martial.

Station the Field

Date 18-7-41

J. H. Coleman, Capt. R.C.H.A.C.

Medical Officer

PROCCEEDINGS OF Field General Court Marshal held at Oxted Surrey on July 18,1941

Pres. Major R.A. Stark P.P.C.L.I.
Members: Lt. J.S. Oppé P.P.C.L.I.
Lt. W.G. McQiure Seaforth of Canada.
Members duly sworn.

The prisoner M 15991 Pte. Duncan G.M. arrainged at 0915 hours and the charge read.

Q. Do you object to being tried by any members of this court?
A. No Sir.
Q. Are you guilty or not guilty?
A. Not Guilty.
The summary of evidence was read to the court.

The first witness called by the prosecutor;Captain McDonald who was duly sworn.
Q.You are Captain McDonald A.R.C.M.C. 5
A. Yes Sir.
Q. Doo you recognize the accused?
A. No.
Q. Would you pleas give evidence as to the amount of damage done to Pte. Sunstrum?
A. Pte. Sunstrum came to the 5th. Field Ambulance on the 28 June 1941 with a laceration of the forehead of 1 inch long and one on the lip 1 inch long, at about 10 o'clock.Both wounds were fixed by Captain Glass of A Company. He was held until June 4 1941.
Q. Were there any other injuries?
A. No other serious injuries.

Witness questioned by the Defendent:
Q. Could the injuries be caused by falling off the pavement?
A. I hardly think so.
Q. Were these lacerations serious?
A. Just ordinary.
Q. Could they be caused by a drunken brawl?
A. There are no distinctions in such wounds.

The second witness called was Pte. Sunstrum, G.F. No. M 16349

Q. You are M 16349 Pte. Sunstrum G.F.?
A. Yes sir.
Q. Would you give evidence as to what happened in the latter part of June in the Haycutter pub.

A.The night of June 28 th. I stepped into the public bar of the Hay-Cutter I was in the large room when I heard the piano playing. I stepped into the little room where the piano was playing. When I stepped in there the accused was using profane lanquage, also trying to cause trouble with a civielian. I asked to stop and quitely come outside. While outside some one suggested he should be sent him home in a car. I went to take my respirator off to help put him in the car== and when doing this the accused took hold of me he knocked me down, he then kicked me in the head.

The witness was questioned by the defendant.

Q. What is your height?
A. 5 feet 11 inches.
Q. What time did you enter the pub.?
A. about 945
Q. How much did you have to drink?
A. two sir.
Q. How many in the pub.
A. 1 sir.
Q. Do you drink much?
A. Average sir.
Q. Do you ever get drunk?
A. No sir
Q. Do you ever swear?

A. No sir.
Q. What right had you to ask Duncan to keep quite?
A. Because ladies and civilians were present.
Q. You did butt in.
A. Yes sir.
Q. How many blows did you get?
A. I don't know sir.
Q. How many beers does it take to make you drunk?

A. How do you mean sir?
Q. Do you ever get drunk?
A. No Sir I have not.

President: Were you alone when you left the pub with Duncan?
A. I cannot be sure sir my back was turned.
Q. Did you have any more to drink thanwhat you stated?
A. No sir.
Q. How many blows did you receive?
A. I do not know sir.

Prosecutor
Q. Did he kick you more than once?
A. I don't know sir.

The next witness called was Mr. W. Collard Oxted Surrey. He was duly sworn in. Questioned by the Prosecutor.
Q. Do you recognize the accused?
A yes.
Q. Would you tell the court about the incident that happened at the Hay-Cutter during the latter part of June.
A. About 10 p.m. on the 28th I was in the Hay-Cutter private bar when I heard a commotion in the big room. I saw the land lord go from behind the bar into the big room and put the accused outside. I went outside to see what was the matter. There I, the accused being held by 2 men. I then saw a man start to walk up to him, the next I saw was the man being knocked down by the prisoner. He fell on to the radiator of a car and then to the ground. The man got up and started to walk towards the prisoner, and then I saw the man hit the car again and fall to the ground. I saw the prisoner break from the men who were trying to hold him, come around to the back of the car and deliberately kick the man in the head. I saw the man was unconscious and I went into the road stopped the first lorry that came along and ordered them to take him to Hospital. I helped lay the man into the lorry, showed the driver my warrent and asked him to call the military police at once.
Q. Do you know the name of the man the prisoner knocked down?
A. No Sir.
Q. Would you recognize him?
A. Yes.
Pte. Sunstrum was brought in and was recognized by the witness.
Witness was questioned by the Defendent.

Q When you say the proprietor of the pub put Duncan out, was anyoune with him.
A. I cannot say and did not seeSunstrum coming out the door w hen I was outside I see the the man at the bottom end of the car.
Q. How many times did you see the man hit the car?
A. Twice.
Q. Where did he hit the car the second time?
A. On the radiator .
Q. was Sunstrum drunk?
A. He did not appear to be .
Q. Did you see Sunstrum hit Duncan?
AYes sir.
Q Did you see the actual blow?
A Yes.
Q. Where did the blow hit the man?
A. In the mouth.
Witness questioned by Court:
Q. Would you say the forde of the blow would drive Sunstrum back into the car should he be sober.
A. Yes it was a struggle.

The third witness N 15889 Pte. L.R.Ryan 5Cdn. R. was called and duly sworn. Questioned by Prosecutor.
Q. Do you recognize the accused?
A. Yes Sir.
Q. Towards the end of June an incident occured in the Hay Cutters would you tell the court what you saw.
A. On the night of June 28 when the fight started I seen Duncan was drunk and there was going to be a fight. I went to see if I could get him home, at that time Sunstrum wanted to quiten Duncan down. I told him to go as I could get him home if he would leave me alone, he wouldn't go and said,"I would quiten him down". Sunstrum took Duncan by the arm at the same time George told him to go away and not bother him. He pushed Sunstrum and knocked him in front of a car, so Sunstrum got up

and took his respirator off and said " I'll quiten you by force"; then they started to spar off getting into close range for blows. Sunstrum Hit George in the face, the first blow struck, then George struck him back and down he went, then George Kicked him.

Q. Where at?
A. I do not know exactly,but in the face somewhere.
Q. What condition was Sunstrum in just before he was Kicked?
A. Unconsious, laying on his back face up after he was kicked George came to me.

Witness questioned by the Defence:

Q. Ryan you said you saw Sunstrum hit Duncan first?
A. Yes sir.

Witness questioned by Court

Q. When Sunstrum hit Duncan was Sunstrum held by anybody?
A. No sir at that time they were apart. When Sunstrum got up from the car he took his respirstor off and squared around. There was no interupting them and both were loose with the crowd in a circle. When Sunstrum got up to return the blow Duncan was still free.
Q. would you say Sunstrum was under the influence of liquor?
A. Yes Sir.
Q. Definitely?
A. Yes sir either drunk or crazy.

The fourth witness called Pte. Monger M.D. M 15998 was duly sworn . Questioned by the prosecutor.

Q. Towards the latter part of June an incident occured at the Hay Cutters would you tell the court what happened? Do you recognize the accused?
A. Yes Sir. I was in the pubabout three weeks ago. Pte. Duncan was there a little under the influence of liquor. He was wandering around the room and in walking upset beer over one table causing an argument and practically got into a fight with a civilian at the table.
Q. Were any blows struck?
A. He struck at them, Duncan was put out of the pub then by two civilians and myself. I didn't follow out but could see through the window he was carrying on with some one, Duncan was facing me I could seehe was fighting, the other man's back was to me.

Witness questioned by the Defence.

Q. Did you say you helped put Duncan out of the pub.
A. Yes Sir.
Q. You didn't see the face of the man who Duncan was fighting with?
A. No sir.
Q. So you don't know if Duncan had a fight or not?
A. He was fighting with some one.
Q. were you sober?
A. I had two or three small glasses of beer.

The first witness for the defence was called Pte. Martin P. Brick M 17070 Admn. H. Questioned by the Prosector.

Q. Something happened at the Hay Cutter during the later part of June would you tell the court what you saw?
A. I was there and saw George Duncan and just before closing time I noticed a disturbance in the other room and I see they were taking George out it was just before 10 and I went as quickly as I could with intentions of seeing him home or doing what I could for him. When I got through the crowd several of our own boys had already got Duncan under control. Being a fairly good friend of Duncan's and being that he had listened to me on previous cases when under the influence of liquor I went up to him and tried to persuade him to calm down and go home. I was under the impression that the situation was well in hand. It was then that I first noted Pte. Sanstrum. No one had a hand on Duncan we didn't anyway and I think that Sanstrum tried to help us quiten Duncan, but his methods were not the same as ours and tried to use a little force taking Duncan by the arm, as this couldn't be done, there were a few words,I do not remember what they were but when he tried to hold Duncan; Duncan told him to keep away. He did not do, he treid to catch hold and Duncan gave him a shove. Sunstrum then changed tactics altogether. He said something to the effect if thats the way you feel and said something else I cannot remember, and took off his respirator. At that time Duncan was still standing before us and no effort was made on my part to stop Duncan and Sanstrum from fighting it out. They came to-gether ~~cautio~~ cautiously but evidently Sanstrum wesn't very skilled because he lost out in the first exchange of blows. He staggered back and there was another exchange of blows and this time Duncan; I thought hit Sanstrum on the jaw knocking Sanstrum down; Sanstrum did not move so I was under the impression he was knocked out. It was after he was laying down for what seemed seconds, but I do not think it was more than one or two that Duncan walked up and give him a kick.
Q. where did he kick him?
A. I could not see but some where at the head end, it may have been a

(5) R.A. Stacke Major

hand or arm but I think it was the face. It WAS THEN that people on the other side of the human ring grabbed hold of Duncan.

Witness questioned by the Defence.

Q. Brick why did you not use efforts to stop Sanstrum and Duncan.

A. The whole thing was more or less distasteful. It not think that Sanstrum had any business in the fight.

Q. Can you give me the nameso of other D. Coy. men there?

A. Jimmie Duncan; Pte. Rye; Murphy Healy.

Q. So between the lot of you, you were looking after Duncan?

A. Yes.

Q. You said They were taking Duncan out; who were they?

A. I think most were civilians and not many soldiers. The piano was playing and I was with a civilian I did not notice them until they were practically out.

Q. So as far as Duncan's D Coy. friends were concerned it was the civilians who were looking after him as far as the door.

A. I had bought a beer and noticed Duncan with some civilians.

Q. You mentioned Pte. Ryan as being a member of D Coy. is that correct?

A. Yes Sir.

Q. You also mentioned other occasions when Duncan had been under the influence of liquor was that correct?

A. Yes but it had never come to blows.

Q. You helped calm him down on those occasions?

A. Yes.

Q. Its true then when Duncan has a few drinks he gets a little out of hand.

A. Yes.

Q. You mentioned Duncan gave Sanstrum a shove did he knock him over when he shoved him?

A. I couldn't say truthfully. Sanstrum tried to take hold of Duncan, who wouldn't stand anyone taking hold of him. I don't think it was a hit.

Q How many times was Sanstrum knocked down?

A. The first time he backed into a car and slid down a light and fender so he was only knocked down once.

Q. Did you notice whether Duncan had on army boots.

A Yes he did sir.

Witness questioned by the Defence.

Q. Brick to your knowledge does Duncan get pugnacious if not interferred with?

A. No sir.

Q. Would you saySanstrum was under the influence of liquor?

A. I would say he was although I do not know him.

Duncan was then asked by the court if he wished to give evidence.

A. there is not much I can give sir. On the night of the 28th of June I was under the influence of liquor. I was outside in front of the Hay Cutter when Sanstrum came up and told me to shut up. There was a scrape. He hit me and I hit him back, thats about all I remember.

President.

Q. There are no other witnesses?

Defence. A. One other I am not calling.

Court adjourned at 1215 hours for lunch. re-opened again at 1333 hours. Prisoner was arrainged. Major Bury D Coy Edmn. R. was called by the defence as a character witness, who was duly sworn.

Sir, the accused is one of the orginal members of the company and came over with us in Dec. 1939. I have always found him a good and willing soldier. I have had practically no trouble with him except when under the influence of drink, and must admit his high water mark is in his boots. He doesn't often go out and get drunk and it is only on those occasions we have trouble with him.

Witness questioned by the defence.

Q. Is he a man you would care to have back in your company?

A. Yes.

Summary of the Defnce.

Though intention is not the essence of assault, I think it could be argued the man did not intend to assault him. Then there is the matter of character, and his Company Commander has sopken highly of him. There is only the one charge of drunkeness against him. There is one point now puzzling me; as the charge reads it is assault causing bodily harm, therefore I would ask it to be common assault. I know drunkeness is not an execuse for the crime.

The true abstract of character from the Regiments Books were produced by

by the regiment.

O R L Stark Major

The accused was found "Guilty" and sentenced to sixty days detention. The court recommends that the twenty days already spent in custody be deducted from this.

R R L Stark Major.
P.P.C.L.I. President

SUMMARY of EVIDENCE in the case of M.15991 Pte. Duncan G.M.
Edmonton Regiment, Cdn Army (O)

By direction of the Commanding Officer, the following summary of evidence is taken on oath: -

1st Witness for
the Prosecution

M.16349 Pte. Sunstrum G.F., Edmonton Regiment, having been duly sworn states:- I am Pte. Sunstrum G.F., M.16349. On 28 Jun 41 I was in the bar of the Haycutter Public House and heard piano playing in one of the other rooms, and went in to listen. There was a disturbance being caused by a soldier, the accused, with civilians and I asked him to quiet down and behave, and after a bit of argument, persuaded him to come outside. We walked out of the Pub, Several people were grouped around, and one suggested he be put in a civilian car and taken home. On the supposition that he had come in the civilian car, I removed my respirator so as to help him get in the car. It was while I was getting my respirator off that he hit me. The blow knocked me down, and while I was lying on the ground hekicked me., which is the last I remember.

The accused declined to cross-examine this witness.

2nd Witness for
the Prosecution

m.15869 Pte. Ryan L.G., Edmonton Regiment, having been duly sworn states:- I am Pte. Ryan L.G., M.15869 of "D" Coy, Edmn R. On 28 Jun 41 I went to the Haycutter Pub and while there I saw Pte. Duncan, but did not stay with him. I had had about 6 beers, but was relatively sober. I was expecting to go to a dance with some fellows, and looking for them, I came around to the front. Duncan was outside the Pub trying to get back in, and the Pub Owner was keeping him out. I was trying to pacify Duncan and think I had him under control when Pte. Sunstrum came up and said he would try to quiet him. I told him to leave Duncan alone, as I had the trouble in hand, but Sunstrum was determined to handle the thing his way. I was holding Pte. Duncan by the right arm, and Sunstrum was holding him by the left, trying to quiet hi , when Duncan tried to pull away and pushed Sunstrum down with his left hand. Sunstrum got up and said, "I'll quiet him by force." The both began sparring around and Sunstrum hit Duncan with his clenched fist. This left Sunstrum open and Duncan returned with a blow that knocked Sunstrum off his feet, and in my opinion knocked hi out. It was while he was lying on the ground that Duncan kicked Sunstrum. After some argument we eventually got Duncan home. In my opinion both Sunstrum and Duncan were drunk.

The accused declined to cross-examine this witness.

3rd Witness for
the Prosecution

M.16301 Pte. Brown H.E., Edmonton Regiment, having been duly sworn states: I am Pte. Brown H.E., M.16301 of H.Q. Coy. On 28 Jun 41 I was at the Haycutter Pub about nine thirty and saw both Sunstrum and Duncan in the Pub, and Duncan was tending to create a disturbance with a civilian

in the Pub. I went into the lavatory and when I came out I saw Pte. Sunstrum lying on the ground bleeding from a head wound.

The accused declined to cross-examine this witness.

4th Witness for the Prosecution

M.15998 Pte. Conger E.B., Edmonton Regiment, having been duly sworn states:- I am Pte. Conger E.B., M.15998 of H.Q. Coy. I was in the Pub on 28 Jun 41 and saw Pte. Duncan slightly drunk, bump a table and upset some beer at which some civilians were seated. This created an argument, and Duncan struck at the civilian. Two other civilians then started to put Duncan out of the Pub, and I assisted them. I stayed inside and standing at the bar, I could see Duncan sparring around with someone, out in the parking ground. The fighters moved over out of view, and I couldn't see the end of the fight. In my opinion Duncan was quite drunk, but I thought Sunstrum was quite sober when I was talking to him.

The accused declined to cross-examine this witness.

5th Witness for the Prosecution

Mr. W. Cowlard M.M. of Oxted, Surrey.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence, hereunder.

" I saw this mentioned soldier, C. Duncan "p" Coy., kick Sunstrum in the face when he was on the ground causing him to have a severe cut over the eye and to be taken to Field Hospital."

Certified true copy. E.W. Day
Sig. of Officer taking Summary.

The accused does not demand the attendance of this witness for cross-examination.

The accused, having been duly cautioned in accordance with Rule of Procedure 4, elected to make statement, not under oath.

The accused, M.15991 Pte. Duncan C.M. Edmonton Regiment states:- Sunstrum hit me first. That is all I remember of the affair.

Certified that Rule of Procedure 4 (C)(D)(E)(F)(G) have been complied with.

Taken down in the presence of and the hearing of the accused, this 10 Jul 41 at Oxted, Surrey.

/crb

E.W. Day
(E. W. Day) Major,
Officer taking summary.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for N.A. beginning on the ——— day of ———

4. The accused has been in confinement, awaiting trial on the present charges

for ——— days in Civil Custody,

and 20 days in Military Custody.

Total 20 days.

Of which ——— days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 32.

6. The date of his ~~attestation~~ record of service specified in his ~~attestation paper~~ record of service is 23 Sep 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is nil.

8. The accused is entitled to deferred pay or gratuity in respect of years' service.

9. The accused is entitled to reckon nil years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to nil.]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of N.A., dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

N.A.,

Date of Promotion.

In the rank of , years,

In the rank of , years,

In the rank of , years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name 14.15993 Pte. Duncan Gill.

of the Edmonton Regiment, 7th Coy

NOTE.—*A verbatim extract from the regimental books, stating their contents and dispositions with trial, must be inserted.*

Description of Court by which Tried, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority	Punishment remitted.
Officer Commanding	Oxted, Surrey 15 Spt. 40	Wilful injury to public property, entailing his greatcoat.	3 Days D.F.	N.A.
		(1) Drunkenness	Admonished	N.A.
Officer Commanding	Oxted, Surrey 19 May 41	(2) Conduct to the prej etc, in that he whilst in detention did cause a disturbance causing damage to the extent of 4 shillings	10 days D.F.	N.A.

(*Continued overleaf*)

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th day of July 1941

[signature] (CAPT. & ADJT.)

(7) [signature] Major

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

No. 16991 Pte Duncan, C.R. of the Edmonton Regiment.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Para. 664, K.R., 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, punishment being given in the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.	*Since Enlistment.
For Wilful injury to public property	nil times	one times
For Drunkenness 19/6/41	one times	nil times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct, nil

or,

~~There are no entries in the Conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted.~~

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Wt. 43648/664 50,000 2/40 W. S. Ltd. 51—6004

(12) R.A. Starke Major

I No.M.15991 Private George Middler Duncan desire to have an officer assigned to represent me at my trial by Field General Court Martial. I desire the services of Capt J.R.C. Carter, if he is available.

G M Duncan

(M.15991 Pte. Duncan, G.M.)

July, 1941.

(11) R.A. Starke Major

2 CIB/5-4-0

.....

MEMORANDUM

To: Maj. R.P. Starke
P.P.C.L.I.

President, F.G.C.M.

The following documents concerning No. M.15991
Rank Pte. Name Duncan G.M.
Regiment Edmonton Reg.
are forwarded with reference to Orders of this date:-

Army Form A.3.

Charge Sheet.

Original Summary of Evidence.

~~List of Exhibits~~ (if any).

Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial.

The Court assembles at the call of the President.

(Signature) [signature]
for S.C. & C.I.B.

2 CIB 5-4-0

14 Jul 41.

R.A. Starke
Major.

PPCLI
Seaforth of C
Edmn R

FIELD GENERAL COURT MARTIAL
M15991 Pte. Duncan, G.M. Edmn R

1. The detail of officers as mentioned below will assemble at time and place to be notified by the President for the purpose of trying by Field Court Martial:-

M15991 Pte. Duncan, G.M. Edmn R

and such other accused person or persons as may be brought before them.

PRESIDENT

Major	R.A. Starke	PPCLI

MEMBERS

Capt.	D.G.H. McDonald	"A" Coy 5 Fd Amb
Lieut.	W.G. McGuire	Seaforth of C

2. The accused will be warned and all witnesses duly required to attend.

3. Proceedings will be forwarded to this HQ on completion.

(Arthur E. Potts) Brig
3 and 2 Cdn Inf Bde

DMR

ARMY FORM B 116.

Edmonton REGIMENT.

STATION In the Field Date 12 Jul 19 41

Application for a Field General *Court-Martial.*

SIR,

I have the honour to submit one charge against No. M.15991 Pte. Duncan, G.M.

of the Regt under my command, and request you will ~~obtain the sanction~~ order that a F. G. Court-Martial may be assembled for his trial at In the Field

The Case was investigated by (*a*) Officer making application

A Court of Inquiry was held on (*b*) N.A. (date) at (Station).

President

Members

Ranks, Names and Corps.

The accused is now at detention room His General Character is (*c*) Fair

I enclose the following documents (*d*) :—

1. One Charge Sheet (in duplicate) (*e*).
2. Summary of Evidence, original (*f*) and ~~four~~ copies.
3. ~~Original Exhibits (g)~~
4. List of witnesses for the prosecution and defence (with their present stations or addresses) (*g*).
5. ~~List of Exhibits (g)~~.
6. ~~Correspondence (g)~~.
7. Statement as to character (A.F.B. 296) and regimental and company, ~~etc., conduct sheets of accused (g).~~
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (*h*). [R.P. 14 (B)].

I have the honour to be,
Sir,
Your obedient Servant,

Signature of Commanding Officer [illegible] Major
for O.C. Edm R

To Commander
2 Cdn Inf Bde

MEDICAL OFFICER'S CERTIFICATE.

I CERTIFY that No. M.15991 Pte. Duncan, G. Edmonton Regiment is* fit to undergo trial by Court-Martial.

Signature of the Medical Officer [illegible] Capt
RCAMC

(*a*) Here insert name of :—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence (R.P. 19 (B) (iii)).
(*b*) To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges ; otherwise to be struck out (R.P. 19 (B) (iv)).
(*c*) To be filled in by the Commanding Officer.
(*d*) Any items not applicable to be struck out.
(*e*) One copy to be sent to the President ; one copy to be filed with the application for trial.
(*f*) Original summary of evidence to be sent to the President.
(*g*) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.
(*h*) 5 and 8 to be sent to the President.

If the accused has elected to be tried under A.A. 46 (3) the fact should be recorded at the top of this form.

(13492) W3.23932/316 25,000 8/39 A.A.E.W.,Ltd. Gp.466
(13722) W3.24974/1616 20,000 11/39 " " Forms/B116/10

S D - 110

Ste. Duncan, N.B.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-136698 Pte Howard George DUNCAN, RCASC, 1 Cdn Disciplinary Centre.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA sec 15 (1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of Kit see RP 44 fn 6.)

~~At present~~ under sentence for ..... beginning ~~on (date)~~ .....

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 32 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for ninety days

(Sgd) ..... Judge-Advocate, if any. 28 Feb 45 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be attained before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding but I mitigate the sentence & award that he undergo field punishment for 28 days". I confirm the sentence as mitigated

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) (G S N Gostling) Brig
2 CDN BASE RPT GP

Date 1 MAR 45 Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 574, 577.)

Accused. Date. Signature of Offr.

B136698 Pte Duncan HG 10 Mar 45 [signature] Lt-Col. Comdg, 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

329 Page "n-1" 16 Mar 45

RECORDED AT CMHQ IN AG 160. 5D-110

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA81 45/P A B/1698 (H141) 4/38B

RECEIVED 26 APR 1945 JAG BRANCH

Convened by Order of Brig G S N Gostling, ED Comd 2 CBRG dated [redacted] FEB 45

ACCUSED.

(Separate trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-136698	Pte	Howard George	DUNCAN,	RCASC, 1 Cdn Disciplinary Centre

PROCEEDINGS REVIEWED 25 Apr 45 [signature]

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Arraignment of Pte in (country) BELGIUM on (date(s)) 28 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 25/125.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see Form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 45, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1540 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ as interpreter? Ans .....

~~The Interpreter is sworn.(1)~~ Do you object to ~~as shorthand writer?~~ Ans .....

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans None (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	P S Oslon RCA att	3 Cdn NETU
Member	Capt	J P G Gagnon CIC	13 CBRBn
Member	Lt	J Y Valade CIC	10 CBRBn
Judge-Advocate		nil	
Prosecutor	Lt	J P Gingras CIC	10 CBRBn
Defending Offr	Lt	W H Sparrow CIC	10 CBRBn

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 28, 37, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 44)

A8. The accused B-136698 Pte DUNCAN H G, before arraignment make(s) (no) (a) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (OR), or as to the jurisdiction of the Court (RP 34, 35(A), 117), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposed, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried ~~separately~~ see RP 71(C), and see separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form RAE

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG GAA P 64

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(1), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused: Do you wish to make a statement? Ans.....(4)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)*
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. ..... Do you intend to call witnesses on your behalf?
Ans. ..... Are they witnesses as to character only? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statements, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (d), RP 45, 120(A). 2. AA 54(2), RP 45, 117. The alternative announcement is not applicable when there are pleas of Guilty outstanding not dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), ~~and certified true copies (copies) of Conduct Sheet(s)~~, purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that those documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 5 and Ex — respectively.(2)
(*1. MFR 215 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 158. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) ~~and Conduct Sheet(s)~~, and in mitigation of punishment?(1) Ans. .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, unrecorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which seriously affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(2), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(*1. When several accused tried separately, some RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be pronounced to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 130, 182, RP 46a-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas 80 109, 1223, MML p 60, 737-739. As to sentences consequent upon civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention: see AA 44(1)(b), 58(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly about disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

COUNTER NUMBER 56106

HOUR 14 20

OPERATOR'S INITIALS KMB

RELIEVING OPERATOR RD

P10

CHARGE SHEET

The accused, B-136698 Pte Howard George DUNCAN, RCASC attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT
LEAVE
in that he

In the Field, in HOLLAND, absented himself without leave from 1000 hrs 17 Jan 45 until apprehended at 1055 hrs 27 Jan 45. (Absent 10 days 55 minutes)

A O Hood

(A O Hood) Lt col
OC 1 Cdn Disciplinary Centre

In the Field
26 Feb 45

To be tried by Field General Court-Martial

(G S N Gostling) Brigadier
Comd
2 Cdn Base Rft Gp

In the Field
28 Feb 45

P70

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-136698	Pte		Howard George	DUNCAN,	RCASC, 1 Cdn Disciplinary Centre.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 28 FEB 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	PS Osler	RCA	att 3 Cdn NETD
(Rank.)	(Must be named. RP 106.)		(Unit.)

MEMBERS.

Capt	to be detailed by OC 13 CBR Bn	13 CBR Bn
Lieut	to be detailed by OC 10 CBR Bn	10 CBR Bn
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.) — [signature] (Signed personally. RP 105 fn 2.) (G S N Gostling) — Brigadier (Rank.)

Dat 28 FEB 45 — Commanding 2 CDN BASE RFT GP

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 96 (In lieu of AFA 2) 40/P & S/1897 (8143) — *(See overleaf for oaths and notes for use on trial.)*

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 132.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 86(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 19)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 2, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 40(*E*), *KR Can* 562(*a*).)

(vii) Summing up by JA, *if any*. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, *if any*, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 565. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any request or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(3), *RP* 118(*C*), *MML* p 759.)

4. The President or JA, *if any*, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

P10

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMH, GL 173)

I certify that I have this day examined B 136698 (No.)

Pte. DUNCAN. H. G. (Name) and in my opinion he is
(Rank)

fit to undergo trial by Court-Martial.

Station 1 C Disc C

Date, 28 Oct /45

[signature] Capt (Sgd)
Medical Officer
(unit) 1 C Disc C

Duncan:

I was on a 48 hr pass from 14 & 16 Jan in Brussels. On the 16 Jan the lorry did show up to take us back to the unit. We were sent for that night to St Jean Barracks. The Sgt Maj told us we could go out that night. I got knocked out with some poisoned liquor the first I had had since landing in France. I came to on the afternoon of 17 Jan in the Maple Leaf Club. From then on I just tried to recuperate, and after the Provost Sgt picked me up he sent me to the M/R four times. When I was arrested I was only about a block from the Provost office, where I was on my way to surrender myself. I have never had any charge against me since I left Canada in Jan 44.

I joined 10 CIB Coy RCASC in Jan 44 and came to France with it in Jul 44. I am a qualified Driver category A and single. I would like to go back to my coy.

The statement was read over to Duncan.

PTO.

Exhibit A
P20

Summary of Evidence in the case of B-136698 Pte DUNCAN H G, RCASC attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas:-

Charge - Absence without leave

By direction of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 4 dated 27 Jan 45.

Exhibit "B" - Certificate of apprehension dated 27 Jan 45.

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I have nothing to say

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4(C) (D) (E) (F) and (G) have been complied with.

(W D Hungerford) Capt
Officer detailed to take Summary of Evidence.

Dated in the Field
27 Feb 45.

PART II ORDER EXTRACT FORM

TO Officer Commanding
1 CDN DISCIPLINARY CENTRE
CDN ARMY OVERSEAS

99/20/ 10 CIB COY RCASC/1 (A5e)

13 FEB 19 45

EXTRACTS FROM: UNIT 10 CANADIAN INFANTRY BRIGADE COY RCASC

Part II Order No. 4 dated 27 JAN 45

ABSENT WITHOUT LEAVE

AWL from 1000 hrs 17 JAN 45 (First Notice)

B136698 Pte DUNCAN H G

This is Exhibit "A"
W. A. Thurnauford
Capt

Certified to be a true extract from the regimental books and documents in my custody.

[signature]
Officer IC Records
Cdn Sec (Ex) 2 Ech 21 A Gp

The following documents are { attached. Please acknowledge receipt on attached duplicate.
required. Please forward same.

Originating Clerk's Initials

for

Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70 ECH—6

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42

I CERTIFY THAT No B-136698, Rank Pte Name DUNCAN H.G.

Unit RCASC 10 C.I.B. 4 Can Div. was arrested at Brussels (Place)

at 1055 (hour) on 27 Jan 45 (date) and that at the time of his arrest he was wearing (military uniform) or xxxxxxxxxxxxxxxxx.

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding officer of the portion of His Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on arrest.

(J. Tweddle) A/Capt.
OC 2 Can L of C Provost Coy.

Field
27 Jan 45

This is Exhibit "B"
H. G. Duncan

Exhibit B pp. ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-136698	pte	Howard George Duncan	- RCASC.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For NIL ..... times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet Nil

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N/A.

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for N/A. days in civil custody; and for 3432 pts days in military custody, *i.e.*, NIL days in open arrest, 3432 days in close arrest; of which NO days were spent in hospital. pts

5. The present age of the accused is 41

6. The date of his attestation ~~calling up for military service~~ is 31 DEC /42

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of‡ CVSM & CLASP.

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27653) Wt.24939/3404 24,000 7/44 A.& E.W.Ltd. Gp.498 Forms/B.296(War)/3

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

Certified true copy of Extract from Pt II Order No 4 dated 27 Jan 45	"A"
Certificate of apprehension dated 27 Jan 45	"B"

I, B-136698 Pte DUNCAN H G, hereby certify that I have received one copy of Charge Sheet and one copyp of Summary of Evidence ~~xx~~ free of charge on 27 Feb 45.

H. G. Duncan

B-136698 Pte DUNCAN H G

46-49.

Ete. Duncan. J

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: [illegible]

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 482 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: to forfeit all ~~n~~ days pay for a period of 30 days

(Sgd) [illegible] 22/9/44 (Sgd) [illegible]

Judge-Advocate, if any. Date awarded. President.

(See back of Convening Order on re accomplishment disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirm.

~~I direct that the accused be not committed to prison or detained in military custody~~ ~~(1. AA 57A. Delete if not applicable.)~~

(Sgd) [illegible] (F.H. Copeldu) Brig

Date 22 Sept 44 Commanding 4 Cdn Inf Bde Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
B93329 Pte Duncan, J.	24 Sep 44	[illegible] A/Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Ref. RECORDED AT CMHQ IN AB 160 4-8-49

RECEIVED - 8 DEC 1944 - JAG BRANCH

CFAMS (To Dep of AFAS) A.F.P.R.B. 1698 (2864)

FIELD GENERAL COURT-MARTIAL

Convened at Brigadier FN Gibbon Comd 4 Cdn Inf Bde dated 21 Sep 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
B93329	Private	James	DUNCAN	Dun. Sco. Highrs 93 Army Gp

PROCEEDINGS REVIEWED 4 Dec 44 REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS REVIEWED Date 4 Dec 44 Dun. Sco. Highrs 93 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 22 Sep 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 4/65

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Cnn RQs. For guidance on procedure when a variation in this form arises, see Forms for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for sorts and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 103-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused ~~is~~ ~~does~~ to be tried by court-martial instead of being dealt with~~ summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you ~~object to~~ as interpreter? Ans

~~The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A.T. O'Donohoe	R.H.F.L.
Member	Captain	H.B. Wein	R Regt C
Member	Captain	D.G. Campbell	6 CIB Cor RCASC
Judge-Advocate	Capt	E.K. McDougall	HQ 2 Cdn Inf Div
Prosecutor	Lt.	J.W. Jones	Essex Scot
Defending Offr	Lt	R.S. Jennaway	RCCS

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 24, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment makes(s) (no) ~~objection~~ plea

(1. If a special plea is made for separate trial on some or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. Four forms of record are references in this to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A95s to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and: considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB Incl Vol Feb 1945

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ND Sm .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1) None
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Evidence on oath. Do you intend to call witnesses on your behalf? Ans Yes Sm. Are they witnesses as to character only? Ans No
(1. RP 38(1), (2). 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the ..... charge(s) being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans ND Sm .....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 1 and Ex 2 respectively.(3)
(1. AFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. When several accused tried separately see RP 120. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its gateways, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 130, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 1313, MML p 90, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(5), 46(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

B 83329 Pte DUNCAN, James, 1st Bn., The Essex Scottish Regiment, a soldier of the Canadian Army (Overseas) is charged with:

FIRST CHARGE:
A.A. Sec 9(2)

When on Active Service ~~Disobeying a~~ ~~Refusing to obey~~ a lawful command given by his superior officer,

in that he,

in the field, at 1500 hrs, 25 AUG 44, when ordered by his officer to continue on with a march, refused to obey, And did not continue on

(P.W. BENNETT) Lt Col,
Officer Commanding,
ESSEX SCOTTISH REGIMENT.

In the Field
5 SEP 44

To be tried by Field General Court Martial.

Brig,
Comd,
4 CAn Inf Bde

In the Field
20 SEP 44

Major

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
88729	Private	James	DUNCAN	Essex Scot

Alexander
Major.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 21 Sep 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder. (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	A J O'DONNOR	MML

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain to be detailed by R Regt C		
Captain to be detailed by Essex Scot		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain to be detailed by CRCASC 2 Cdn Inf Div		

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Captain	E K MacDougall	HQ 2 Cdn Inf Div

On Active Service in the Fd

in NORTHW (Country.)

Date 21 Sep 44

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding 4 Cdn Inf Bde Convening Officer

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

B 83329 Pte DUNCAN, James, 1st Bn., The Essex Scottish Regiment, a soldier of the Canadian Army (Overseas) is charged with:

FIRST CHARGE: When on Active Service ~~Refusing to obey~~ Disobeying a lawful command given by his superior officer, A.A. Sec 9(2)

in that he,

in the field, at 1500 hrs, 25 AUG 44, when ordered by his officer to continue on with a march, refused to obey, And did not continue on

(P.W. BENNETT) Lt Col,
Officer Commanding,
ESSEX SCOTTISH REGIMENT.

In the Field
5 SEP 44

To be tried by Field General Court Martial.

Brig,
Comd,
4 Can Inf Bde

In the Field
10 SEP 44

I desire to have Lt K.C. Jeannéret

REPRESENT me at my proposed trial by Field General Court Martial. If this officer is not available, I then desire to be represented by _____

H Wadbury a/Capt

B 83329 Pte Duncan, J.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on an active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
B87729	Private	James	DUNCAN	Essex Scot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 21 Sep 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offense(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior competent auth~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto. (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder. (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	A J G' DOWNER	HQ1

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain to be detailed by R Regt C		
Captain to be detailed by Essex Scot		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain to be detailed by CRCASC 2 Cdn Inf Div		

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Captain	E K MacDougall	HQ 2 Cdn Inf Div

On Active Service in the Fd

in ITALY (Country.)

Date 21 Sep 44

(Signed personally. ~~RP 105 fn 2.~~)

Commanding 4 Cdn Inf Bde Brigadier
Convening Officer. (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Con) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr *(RP 95(C))*, any objections *(RP 95(E))*, and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. *(or,* None.*)*

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. *(RP 95 fn 1.)* If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. *(RP 122.)* If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. *(RP 80(C), 87(C), 92(C) (D).)*

(ii) At option of accused, statement by accused *(not sworn or subject to cross-exam by Prosecutor, Court or J.A. (RP 40 fn 10).)*, as evidence by accused, as to facts or his character or both. *(See RP 41 fn 2, 46 fn 1, 80.)*

(iii) Evidence of witnesses for accused as to facts or his character or both. *(See RP 46 fn 1.)*

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court *(RP 86(B))*, or to prove previous convictions when accused has called witnesses as to character. *(RP 86(C).)*

(v) Closing address *(on matters other than in mitigation of punishment)* by Defending Offr or accused. *(See RP 40 fns 8-12, 87(C), 92(C) (D).)* But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. *(When accused charged jointly see RP 61.)*

(vi) Closing address by Prosecutor. *(See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subjects of sentence except as provided by RP 40(E), KR Con 565(a).)*

(vii) Summing up by J.A. if any. *(RP 42.)*

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A., if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A., if any, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. *(On top.)*

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). *(KR Con 557.)*

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. *(As to admitting in evidence a certified copy in lieu of original see KR Con 566. As to certified copies of regimental books see AA 163 (1) (g) (k).)*

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. *(RP 95(D).)* A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. *(AA 53(3), RP 118(C), MML p 759.)*

4. The President or J.A. if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

MESSAGE FORM

Register No.

ARMY FORM C-126 (Small)

Transmission Instructions

Priority

ABOVE THIS LINE FOR SIGNALS USE ONLY

FROM (A) Originator: M.O. Essex

Date-Time of Origin: 220925A

Office Date Stamp

For Action

TO

(W) For Information (INFO)

Message Instructions — GP

Originator's No.

This will certify that Pte. Duncan, J. B83329 is medically fit to undergo trial by Field General Court Martial

[signature] C.A. Richardson Capt RCAMC

This Message may be sent AS WRITTEN by any means (except) wireless

Signed

If liable to be intercepted or to fall into enemy hands, this message must be sent IN CIPHER

Signed

Originator's Instructions Degree of Priority

Time	System	Op.
THI or TOR		
Time cleared		

On advice of J A the W. S.
captures Capt. T C Stewart
who belongs to same unit as
the Accused.

1st Pros. Wit. Lt. C. J. Jeffrey, 1 Bn Essex Scot. duly sworn, deposes:-

- I was Pla Cmdr of the Acc. On or about 23 Aug about 1500 hrs we were going into a forward position. Had been going about 3/4 of an hour when Acc dropped out. I went back to urge him on & he stated he could go no further. I ordered him to proceed on. He again said he could go no further & did not attempt to move. I then ordered the Sgt to bring him along and took up my place at front of Pla. I did not see him again till two or three days later.

Cross Ex - Acc in Pla about 2 or 3 wks prior to that. He had been in F Eck with us all the time. He had complained about his ft. & had requested to be transferred to carrier Pla.

Court. I believed him to be category A. He used to drop out on marches. I ordered him to carry on with the march and he did not carry on. I said he could do it as well as the others and he said he couldn't make it. I told the Sgt. to bring him along. Later on he consent with the Pla. He only got back to Pla 2 or 3 days later.

RP83(b) complied with

good Pros Wit F547 04 Sgt. McKinnon J. F. Essex Scot duly sworn is examined:-

I was Pla Sgt of Acc on 23 Aug. Mr Jeffrey was my Pla OC. About 1500 hrs I saw Acc fall out of the march. My Pla OC yelled to me to fall out & tell Acc to fall in & continue to march.

I went over to Duncan who was sitting on side of road & said to him "Duncan get up & carry on with your Pln." He said "I'm sorry Sarge I can't do it." I warned him about 3 times then said if he didn't get up I'd charge him He said "So ahead Sarge." I reported Pln HQ & Acc did not return to his Pln.

Cross Ex Can't say if Mr Jeffrey went back but I think he must have as he yelled at me to see Acc fell in. Acc a good soldier apart from this. He had told me before he had trouble in marching

No Re X

Const - I had told Pln O.C. of his not marching as he had done it before. He once told me he came from RCASC - he was a reinforcement when he came. I ~~did~~ effer don't know if Mr Jeffrey had spoken to him before or after I did. ~~He had been to the~~ Effer

83 p Completed with

Acc duly recorded deposes:-

I joined Essex Scot early in August 44. Been there ever since in F Echelon. The date of this incident was the 25th ~~About three days prior to the~~ Three days prior to this we marched all day and all night. Marched all day the next day & slept that night. The third day we didn't march but rode all night. The day of the offence we marched all morning & started out again in the afternoon.

I knew I couldn't go any further so I told man ahead of me to report to Mr Jeffrey that I had to drop out. I fell out & sat on roadside

Mr Jeffrey shouted to me to get back into file. I said I couldn't - I was finished. He said to the Sgt to fall out & take me back into the march. Sgt told me to get back into file that I was no more tired than the others. I said "I'm sorry Sarge I can't do it." He repeated the question & replied the same way. Then he went after the Plan. I got up after he'd gone & tried for about 300 yds but I couldn't go on. ~~The~~ Exact I caught up to C Coy which was resting & I rested with them. I spoke to Pts. ~~Fredgley~~ Fredgley there. They started marching then but I still couldn't go on. I stayed there about an hour. Then I got a lift from a 15 cwt truck going towards the front. Wanted driver to take me ahead of my Coy so I could wait for them. He couldn't do that but he left me with II/2 Prov. Coy. I then reported to my own Coy again when the Prov. could get a truck up.

I had complained of my feet to Mr. Jeffrey the worst MO & the padre. Nothing came of it. I had wanted a transfer to the carriers I have rheumatism badly. I'm 39 have been in among 4 years. Its my legs. They bothered me back in Canada. I had asked for switch to transfer Plan as I'm useless in infantry

No XX

Count. I can't march. I was tired out. It had been getting me before was. Up till now I've been driving I have been RCASC since I joined up until I was sent up as Infantry Reinforcement. MO said he couldn't help me as I had been sent over as category "A".

2nd Def Unit A20719 Pte. Fredgely, J.W. Essex Scot.

[illegible] deposes:- [illegible] this time. On this d

I saw Acc talking to him Sgt on the road
Our Coy went a few hundred yds. up the road. We
stopped there for a break & Duncan caught up
to us. He had to do about 300 yds. He said his
feet were bad & he couldnt carry on. Our Coy
moved on & Acc. stayed where he was. He is not in
our Coy

No XX

Const. Said he couldnt go on with the march.
Previous day & day before we had done a lot of
marching. So had been the Coy of the Acc.

83 b complied with

3rd Def Unit — B6331 Cpl Johns, W.J. Essex Scot
sworn deposes:

Acc has been in my Coy & section since
Dripper [illegible] Always has been reliable & willing to
carry out orders. At Westin he was very good.
Never has shirked his job at all. He has often
complained of his feet. In the morning he
limps from cramps in his legs. I used to put him
in the rear — he always came in but sometimes
he had lagged behind.

Acc is a good soldier but he cant march

83 (b) complied with

Re. F.G.C.M. Pte Duncan J.

27 Sept. 44.

I feel that the witnesses for the prosecution have covered the evidence and brought forth all points necessary. I have nothing further to add.

[illegible]
Prosecuting Officer.

B 83329

Statement for the Defence. (Pte DUNCAN, James

- Accused is 39 years of age.
- Enlisted voluntarily in July 1940
- has been with RCASC since then (driving & clerical work) till transferred in Aug 44 to C/C.
- Evidence shows he has complained repeatedly about his legs and feet. Also shows he did his best in attempting to keep up to his unit on marches. And shows he is considered a good soldier except for his inability to march long distances.
- He only fell out when he could not go any further. And then he obtained the first conveyance possible to the front lines
- His inability to obey a command is the only reason for his being under charge. And the case should never have reached a Court Martial; ~~as the pro~~ and I am sure the prosecution is not anxious for a conviction

K. Jannerett
Lt RCCS.
Att'd Essex Scottish Reg't.

Y

Substitute for A.F.B.296

STATEMENT OF CHARACTER AND PARTICULARS
OF THE SERVICE OF ACCUSED

No. B 83329 RANK Pte NAME DUNCAN, J.

OF THE ESSEX SCOTTISH REGIMENT, CANADIAN ARMY OVERSEAS.

AGE _____ MARRIED OR SINGLE 5 NO OF DEPENDENTS N.1

DATE OF ATTESTATION 13 JUL 40

NO. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL): 0

CIVIL _____ MILITARY _____ HOSPITAL _____ TOTAL _____

DATE OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY:

N.1

CERTIFIED TRUE COPY OF M.F.B.[illegible] ACCOMPANY THIS FORM.

[signature]

[signature] Ashbury A/Capt

Minister,
ESSEX SCOTTISH REGIMENT.

DATED: In the Field

This 22 day of Sep 1944.

No. B83329 Name DUNCAN, James | Sqn., Battery or Company | Corps C.I.C. | Date of enlistment 13/JUL 40 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

M.F.M. 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Dundurn, Sask.		Tpr	Nil	Sheet One destroyed (2 years) Certified Four Regt'l entries.			Sgd. S.R.Purdy, O.C. T.S.S. 13	Capt. AUG 42	
Petawawa	30APR41	Pte	Nil	Disobeying a lawful comd given by a superior offr. Sec 9 AA	S/Sgt Watley S/Sgt Dwyer	96 hrs detn	30APR41	Maj Cunningham	
Petawawa	26JUN41	Pte	Nil	Refusing to obey a lawful comd given by a superior offr AA 9	Sgt Brunke Pte Kennedy	168 hrs Detn	26JUN41	Maj Cunningham	
Petawawa	20OCT41	Pte	Nil	AWL 1 day 18 hrs. AA Sec 15(1)	Cpl Dongelamns L/C Hammond	5 days CB	23OCY41	Capt Hughes	2 days pay
Petawawa	22JAN42	Pte	Nil	Conduct etc AA Sec 40	Cpl Hammond Pte Hurdis	14 days detn	23JAN42	Maj Cunningham	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Dundurn	11JAN44	Tpr	Nil	Conduct etc. AA Sec 40	SSMBarnes	5 days CB	13JAN44	Capt S.H. Purdy	

Certified true copy.

(I.H. ASHBURY) Capt,
Adjutant,
ESSEX SCOTTISH REGIMENT.

SUMMARY OF EVIDENCE

In the case of B 83329 Pte DUNCAN, James, 1st Bn., The Essex Scottish Regiment, a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS: For the Prosecution

Lt C.J. Jeffrey, an officer of the 1st Bn., The Essex Scottish Regiment, having been duly sworn states:

"I am Lt C.J. Jeffrey of 1st Bn., The Essex Scottish Regiment. On the afternoon of 25 AUG 44, I was platoon commander of No 17 Pl 'D' Coy of which B 83329 Pte Duncan, J. was a member. During a march on that date we were moving to a position towards the front lines when at 1500 hrs, 25 AUG 44, Pte Duncan dropped out. I ordered him to carry on as we had not been marching very long when he dropped out and did not appear to be incapable of completing the journey. He stated that he was tired and could march no farther. I warned him a second time and he would not move. I then ordered my seargeant, F 54704 Sgt J.F. McKinnon to bring him along and I proceeded on with the remainder of my platoon. I did not see him again until two days afterwards, when he was placed in the custody of my platoon, 27 AUG 44."

The accused declines to cross examine the witness.

Sgt. C.J. Jeffrey, Lt. C.J. Jeffrey

SECOND WITNESS: For the Prosecution

F 54704 Sgt McKinnon, J.F., 1st Bn., The Essex Scottish Regiment, having been duly sworn states:

"I am Sgt McKinnon, J.F., F 54704, of the 1st Bn, The Essex Scottish Regiment. I was Sgt of 17 Pl of the Essex Scottish Regiment when approximately about 1500 hrs, of the 25 AUG 44 I saw Pte Duncan fall out of the platoon and sit down on the side of the road, when my platoon commander hollered back to me to make Pte Duncan carry on with the platoon, so I immediately broke away from platoon HQ and went over to Pte Duncan who was sitting down by the curb and I said to him at least five times to get up and fall in with his platoon and carry on the march, that he was no more tired than the rest of us, and he said I cannot do it and I cannot go any further, so I told him if he didn't get up and march with his platoon, that there would be a charge laid against him, so he said go ahead Sarg and I immediately went back and rejoined my platoon and he still never came like he was told to do."

The accused declines to cross examine the witness.

Sgt J.F. McKinnon, Sgt. Sgt. J.F. McKinnon

The accused having been duly cautioned in accordance with R.P.4 (e) says "I do not wish to make a statement at this time".

Certified that R.P. 4 have been complied with.

(G.O. COWLING) Capt, Offr detailed to take the Summary. G.O. Cowling

In the Field

5 SEP 44

4D.45

PTE DUNCAN J.A.

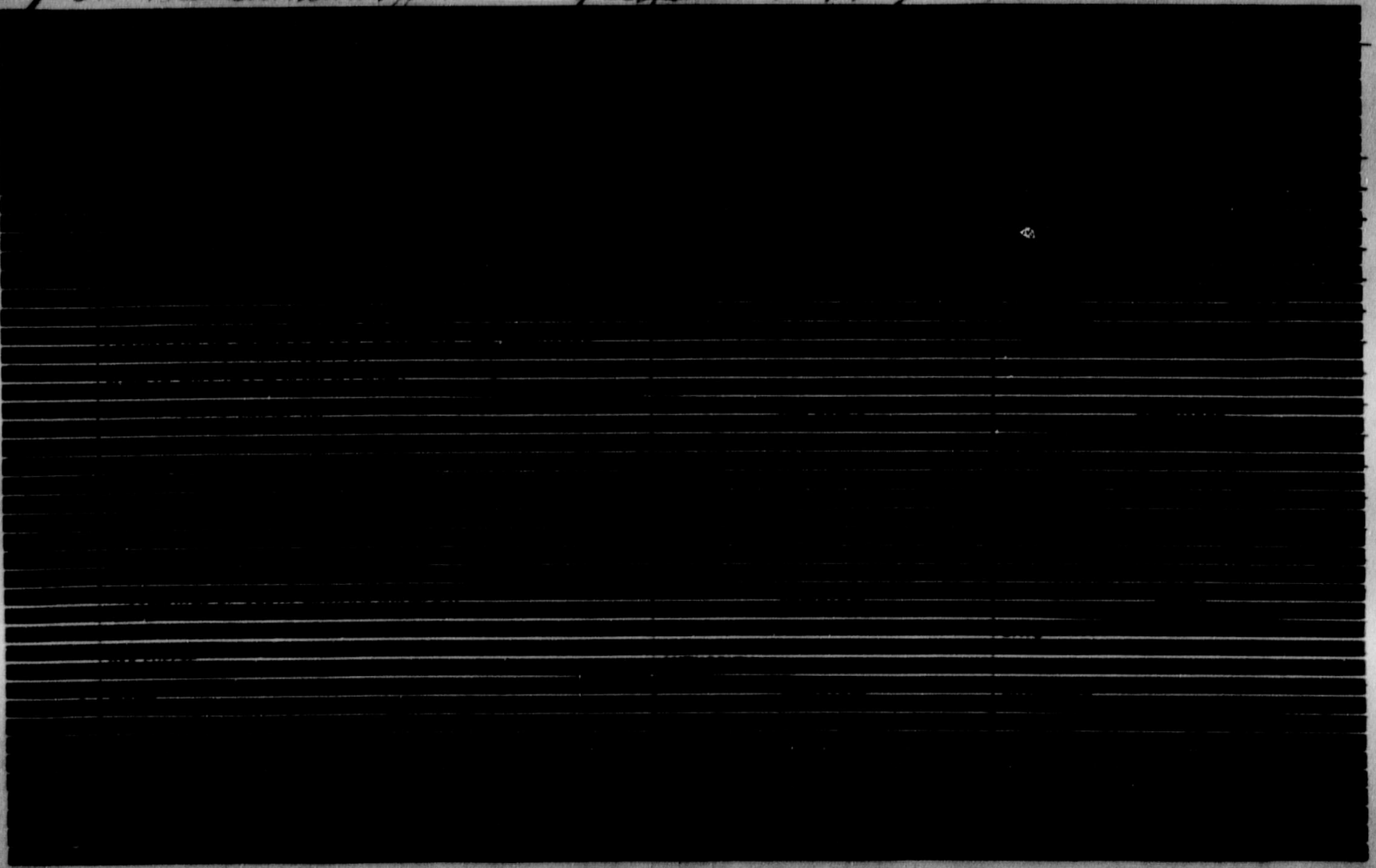
Missing
Proceedings sent to
DND by AG5A

47-41

Pte Duncan J A

Missing
Proceedings
to DND by AGSA

5Y-52 Pte. Duncan, J.A. Repatriated DND by AG5A



O. H. M. S.

Duncan, J. M.
C. 73764

M. F. B. 270

H.Q.

99/37
510/Duncan, J D/1

DEPARTMENT OF NATIONAL DEFENCE—(ARMY)

CROSS REFERENCE

SIW

C 973724 Pte Duncan, J D - HHC

XUK 279

Central Registry	Date	P.A. or B.F.	Initials	Referred to	For Remarks	Initials	Date
		(If purpose for which referred cannot be expressed on one line, add minute to file, and enter here "With Minute")					
DEC 19 1944	30 Dec	BF 2	TF	AG 5	with papers	CR	15/12/44
				AG8	PER B.F.	C.R.	DEC 30 1944
	2 Jan	PA	[illegible]	ADJA	With minute	TF	30 Dec 44
JAN 13 1945	27 Jan	BF	TF	AG8	Per Reg	TF	18 Jan 45
JAN 16 1945	16 Jan	PA	TF	AG8	REQUISITION C.R.		JAN 16 1945
				AG8	PER B.F.	C.R.	JAN 27 1945
JAN 30 1945				DJA	With minute pls	[illegible]	27 Jan 45
JAN 29 1945	29 Jan	PA	TF	AG 8	do	[illegible]	27 Jan
FEB 14 1945	24/2	[illegible]	[illegible]	AG7	WITH PAPERS C.R.		FEB 12 1945
MAR 10 1945	15 Mar	[illegible]	[illegible]	AG7	PER B.F.	C.R.	FEB 24 1945
MAR 15 1945	20 Mar	[illegible]	[illegible]	AG 9	PER B.F.	C.R.	MAR 15 1945
MAR 21 1945	[illegible]	[illegible]	TF	AG-12	Per Reg	CR	MAR 17 1945
MAR 29 1945				AG-11	PER B.F.	C.R.	27 MAR 1945
MAR 30 1945				ADC	Sig 60 i/c pls	TF	28-5-45
APR - 4 1945	15 Apr	BF	RSC	AG12	—	[illegible]	28 Mar
APR - 9	9 Apr	PA	TF	AG10	WITH PAPERS	C.R.	APR - 7 1945
APR 15 1945	[illegible]	[illegible]	T	AG12	PER B.F.	C.R.	APR 15 1945
MAY 10 1945	[illegible]	BF	RSC	AG12	PER B.F.	C.R.	MAY - 7 1945
MAY 11 1945	13 Jul	BF	RSC	AG12	WITH PAPERS	C.R.	11 MAY 1945
MAY 18 1945	18 May	PA	RSC	AG12	WITH PAPERS C.R.		MAY 18 1945
MAY 20 1945	[illegible]	PA	RSC	AG12	BF	CR	20/5
JUN 22 1945	2 Jun	PA	W	AG12	paper	CR	21/6
[illegible] 1945	[illegible]	BF	[illegible]	AG12			
8 OCT 1945	2 Oct	BF	[illegible]	A8	WITH PAPERS	CR	13 Oct 45
	17 Nov	BF	[illegible]				
1 NOV 1945	[illegible]	BF	[illegible]	A8	(BF) Reg	CR	19/11
DEC 12 1945	[illegible]	BF	[illegible]	[illegible]	BF	[illegible]	[illegible]

DO NOT WRITE BELOW THIS LINE

H.Q. 99/37 510/Duncan, J D/1

K.F.B. 387
500M—8-42 (1552)
H.Q. 1773-30-440

DEPARTMENT OF NATIONAL DEFENCE—(ARMY)

CROSS REFERENCE

SIW

C 73724 Pte Duncan, J D - RHC

XUK 279

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		(If purpose for which referred cannot be expressed on one line, add minute to file, and enter here "With Minute")					
DEC 19 1944	30 Dec	[illegible] BF 2	TF	AG 5	with papers	CR	18/12/44
				AG8	PER B.F.	C.R.	DEC 30 1944
	2 Jan	PA	[illegible]	AD1A	With minute	TF	30 Dec 44
JAN 13 1945	27 Jan	[illegible] BF	TF	AG8	Per Reg	TF	18 Jan 45
JAN 16 1945	16 Jan	PA	TF	AG8	REQUISITION C.R.		JAN 16 1945
				AG8	PER B.F.	C.R.	JAN 27 1945
JAN 28 1945				DJA	With minute pls	TF	27 Jan 45
JAN 29 1945	29 Jan	PA	TF	AG 8	do	[illegible]	27 Jan
FEB 14 1945	[illegible]	[illegible]		AG7	WITH PAPERS C.R.		FEB 12 1945
MAR 10 1945	[illegible]	[illegible]		AG7	PER B.F.	C.R.	FEB 24 1945
MAR 15 1945	[illegible]	[illegible]		[illegible]	PER B.F.	C.R.	MAR 15 1945
MAR 21 1945	[illegible]	[illegible]	TF	AG-12	Per Reg	CR	MAR 17 1945
MAR 29 1945				AG-11	PER B.F.	C.R.	27 MAR 1945
MAR 30 1945				ADC	Sig 60 1/c pls	TF	28-1-45
APR - 4 1945	15 Apr	BF	DSC	AG12	—	[illegible]	27 Mar
APR - 9 1945	9 Apr	PA	TF	AG10	WITH PAPERS C.R.		APR - 7 1945
APR 15 1945	[illegible]	[illegible]	[illegible]	AG12	PER B.F.	C.R.	APR 15 1945
MAY 10 1945	[illegible]	[illegible]	DSC	AG12	PER B.F.	C.R.	MAY - 7 1945
MAY 11 1945	13 Jul	BF	DSC	AG12	WITH PAPERS	C.R.	11 MAY 1945
MAY 18 1945	18 May	PA	DSC	AG12	WITH PAPERS C.R.		MAY 18 1945
MAY 20 1945	[illegible]	PA	DSC	AG12	BF	CR	20/5
JUN 22 1945	2 Jun	PA	W	AG12	paper	CR	21/6
[illegible]	[illegible]	[illegible]	DSC	AG12			
6 OCT 1945	[illegible]	BF	[illegible]	A1	WITH PAPERS	CR	13 Oct 45
	[illegible]	BF	[illegible]				
1 NOV 1945	[illegible]	BF	[illegible]	AG	(BF) Reg	CR	19/11
DEC 12 1945	[illegible]	BF	[illegible]	[illegible]	BF	[illegible]	[illegible]

H.Q.

DO NOT WRITE BELOW THIS LINE

NOTICE

1. File should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to B.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures its being completed and kept in order, and also gives other offices an opportunity of using it.

2. Central Registry should be notified whenever a file is passed direct to another branch.

3. All outgoing letters should bear the official file number.

H.Q.

H.Q. 99/37 ~~51~~ C/Duncan, J D/1

N.F.B. 387
[illegible]
H.Q. 1772-59-660

DEPARTMENT OF NATIONAL DEFENCE—(ARMY)

CROSS REFERENCE

SIW

C 73724 Pte Duncan, J D - RHC

XUK 279

Central Registry	Date	P.A. or B.F.	Initials	Referred to	For Remarks	Initials	Date
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				AG8	PER B.F.	C.R.	DEC 30 1944
	2 Jan	PA	[illegible]	AD1A	With minute	TF	30 Dec 44
JAN 13 1945	27 Jan	BF	TF	AG8	Per Reg	TF	18 Jan 45
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				AG8	PER B.F.	C.R.	JAN 27 1945
JAN 28 1945				DJA	With minute pls	TF	27 Jan 45
JAN 29 1945	29 Jan	PA	TF	AG 8	do	[illegible]	27 Jan
FEB 14 1945	[illegible]	[illegible]		AG7	WITH PAPERS C.R.		FEB 12 1945
MAR 10 1945	[illegible]			AG7	PER B.F.	C.R.	FEB 24 1945
MAR 15 1945	[illegible]			[illegible]	PER B.F.	C.R.	MAR 15 1945
MAR 21 1945	[illegible]	[illegible]	TF	AG 12	Per Reg	CR	MAR 17 1945
MAR 29 1945				AG-11	PER B.F.	C.R.	27 MAR 1945
MAR 30 1945				ADC	Sig 60 1/c pls	TF	28-1-45
APR-4 1945	15 Apr	BF	DSC	AG12	—	[illegible]	28 Mar
APR-9 1945	9 Apr	PA	TF	AG10	WITH PAPERS	C.R.	APR-7 1945
APR 15 1945	[illegible]	[illegible]	TF	AG12	PER B.F.	C.R.	APR 15 1945
MAY 10 1945	[illegible]	BF	DSC	AG12	PER B.F.	C.R.	MAY-7 1945
MAY 11 1945	13 Jul	BF	DSC	AG12	WITH PAPERS	C.R.	11 MAY 1945
MAY 18 1945	18 May	PA	DSC	AG12	WITH PAPERS C.R.		MAY 18 1945
MAY 20 1945	[illegible]	PA	DSC	AG12	BF	CR	20/5
JUN 22 1945	[illegible]	PA	W	AG12	paper	CR	21/6
[illegible]	[illegible]	[illegible]	[illegible]	AG12			
6 OCT 1945	[illegible]	BF	[illegible]	A1	WITH PAPERS	CR	13 Oct 45
	[illegible]	BF	[illegible]				
1 NOV 1945	[illegible]	BF	[illegible]	AG	(BF) Reg	CR	19/11
DEC 12 1945	[illegible]	BF	[illegible]	[illegible]	BF	[illegible]	[illegible]

DO NOT WRITE BELOW THIS LINE

99/37/ DUNCAN JD /1 (A8)

2ND ECHELON HEADQUARTERS CAOF

DATE 12 Jan 46

Canadian Military Headquarters
2 Cockspur Street
London, S.W. 1

(Attn: AAG Dis)

C73724 Pte Duncan J.D.
3/DDSG Highrs CAOF

1 Herewith AF A3104 in respect of the sentence set forth below for custody:

Sentence	Date	Suspended	Remitted by
1 yr detn	3 Jan 45	3 May45	GOC 3 Cdn Inf Div CAOF on 1 Jan 46

2 A certified copy of the proceedings is also enclosed.

(W H Pope) Capt
for Officer i/c
2nd Echelon Headquarters CAOF

A.5

Please ensure that correct casualty return has been rendered and documentation of remission is completed.

RO/87/ Duncan J D /1 (AB)

CDN DEC 2 ECH NO BRIT ARMY OF THE RHINE

Date ~~11 Dec 45~~

HQ
3 Cdn Inf Div CAOF

REVIEW OF [illegible]

C.73724 Pte. Duncan, J. D.
3/SDA G Highrs CAOF

1 AF [illegible]3104 is enclosed herewith for action in accordance with Overseas RO 4732, para 4 (b).

2 On completion of Part VI, may the form be returned direct by the reviewing authority to this [illegible].

COURIER/

ENCL(1)

C.

(J A V [illegible]Cade) Major
for Officer i/c
Cdn Dec 2 Ech NO Brit Army of the Rhine

XI.

Space for further Review (continued from page 2).

Date	Directions	Signature and Appointment of Authority giving the directions	If sentence suspended, date of release, and marks earned to count towards remission and Signature of O.C. Prison or Detention Barracks

XII. Remarks and recommendations of C.O. on Second Trial.

Date		Signature

XIII. Remarks and recommendations of Confirming Officer on Second Trial.

Date		Signature

CERTIFIED TRUE COPY

Army Form A 3104.

REVIEW OF SENTENCES AWARDED BY COURT MARTIAL.

D J A,
Cdn Sec G.H.Q. 2 Echn. 21 Army Gp.

I.—Case of No. C.73724 Pte DUNCAN, J.D. Unit (RHC) 12 Bn 2 CBRG

Sentenced to Undergo detention for one year on 3 Jan 45

Age on, and date of, enlistment 18 Yrs Nov 42 Term of service Duration

FIRST TRIAL

For details of offences, see paragraph VII.
For C.O.'s remarks, see paragraph IX.

II.—To .....
Superior Military Authority.

I have directed that the above-named be not committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) for reasons given in paragraph X.

Place .....
Date .....
Confirming Authority.

III.—I direct that the sentence (which I hereby commute to .....) (of which I remit .....) (1) (2) (be suspended) (be put into execution) (1) and be reviewed on .....(3).

Place .....
Date .....
Superior Military Authority (4).

(For action on review, see paragraph VI.)

SECOND TRIAL

For details of offence, see paragraph VIII.
For C.O.'s remarks, see paragraph XII.

IV.—(5) To .....
Superior Military Authority.

This man was again convicted on ..... and sentenced to .....
and I have directed that he shall not be committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) and run (concurrently) (consecutively) (1) with the previous (6) sentence for the reasons given in paragraph XIII.

Place .....
Date .....
Confirming Authority.

V.—(5) I direct that the sentence (which I hereby commute to .....) (of which I remit .....) (1) (2) (be suspended) (be put into execution) and that it run (concurrently) (consecutively) (1) with the previous (6) sentence of .....and be reviewed on .....(3).

Place .....
Date .....
Superior Military Authority (4).

(1) Erase words not required, and initial erasure.
(2) A sentence of penal servitude or imprisonment, combined with Discharge with ignominy, cannot be suspended unless the Discharge with ignominy is remitted.
(3) A suspended sentence must be reviewed at least once every three months, and a sentence put into execution should be reviewed in not more than six months.
(4) An order directing a sentence to be put into execution must be signed by the Superior Military Authority personally.
(5) This paragraph to be left unused until required. If the case is completed at this time, a fresh form, using only paragraphs IV and V, will be made out and attached to this form, and all further reviews will be on the attached form.
(6) A previous sentence of imprisonment or detention in a state of suspension is avoided by the award of a contemporaneous sentence of penal servitude.

(Typed) P.26605/211 80,000 11/42 A.& E.W.Ltd. Gp.4/9 Forms A.3104/11.

VI.—Action on Review.

(Whether the sentence or sentences are suspended or in execution.)

Any Reviewing Authority *under Section 57 of the Army Act* may under that Section mitigate, remit or commute a sentence which is in execution, and if the sentence as commuted or mitigated is penal servitude, imprisonment or detention, it will remain subject to the powers granted by Section 57A of the Army Act. A partial remission of a sentence in suspension is not legal.

Date	Directions	Signature and Appointment of Authority giving the directions.	If sentence suspended, actual date of release and marks earned to count towards remission, and signature of O.C. Prison or Detention Barracks
	Suspended until 3 May 45	"C L M Burns" Maj. Gen GOIC Cdn Sec 1 Ech No 21 Army Gp 29 Mar 1945	Released date 2 May 45 Earned 968 marks 244 days in susp. "C O Rochon" Lt Col
	Remain in suspension BF 1 Jan 46	C Vokes Maj Gen GOC 3 Cdn Inf Div CAOF. 3 Nov 45	
	REMIT REMAINDER OF SENTENCE	do 1 JAN 46	

(Continued on page 4.)

All recommendations, etc., considered upon review, should be pasted here.

Charge or Charges giving particulars	Date of Offence	Date of Trial
VII.—First Trial. AA SEC 40 WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE (Sgd) A.O. Hood Lt-Col O.C. 12 Bn - 2 CBRG — Signature of Officer making entry.	29 Sep 44	3 Jan 45
VIII.—Second Trial. — Signature of Officer making entry.		

IX.—C.O.'s remarks and recommendations on First Trial.

Date		Signature
5 Jan 45	I consider the trial a fair and just one and recommend that the sentence be carried out in full. (Sgd) A.O Hood Lt-Col OC 12 Bn 2 CBRG	

X.—Confirming Officer's remarks and recommendations on First Trial.

Date		Signature
11 Jan 45	Normal review.	(Sgd) ELM Burns Maj Gen Offr i/c Cdn Sec GHQ 1 Ech

If further space required, an additional slip should be pasted here.

220/SUS/9 Bde/1

HQ 3 Cdn Inf Div (CACF)
13 Nov 45

Cdn Sec 2 Ech
HQ BAOR

REVIEW OF SUSPENDED SENTENCE
C-73724 Pte DUNCAN J D
3/SD&G Highrs (CACF)

3/Duncan J.D.
A8

1. Herewith AF A3104 in respect of the marginally noted soldier with the endorsement that sentence remain in suspension.

2. Before this case is again fwd for review it is request that full details of the charge be inserted in pars VII.



(C Vokes) Maj-Gen
GOC 3 Cdn Inf Div (CACF)

EHKH/cwts

Encl

DUNCAN JD

17 Oct 45

HQ
3 Cdn Inf Div CAOF

C73724 Pte Duncan J.D.
3/SDAG Highrs CAOF

120/CM REVIEW CDN/1/10 (A Pers)

HQ Cdn Forces in the Netherlands
2 Oct 45

PFF

Cdn Sec 2 Ech
HQ BAOR

3/SD 087 (CAO)

RECEIVED 4 OCT 1945

REVIEW OF SUSPENDED SENTENCES
M-60491 Pte HART G,Calg Highrs
A-116154 Pte CECILE WH, Essex Scot Regt
C-73724 Pte DUNCAN JD, RHC
A-23167 Pte STEWART LF, Essex Scot Regt

Ref Cdn Sec 1 Ech letter, 510/Pers Files/1 (AG 12) dated 24 Sep 45.

1. The m/n units, formerly in 2 Cdn Inf Div, have all left the theatre on repat draft.

2. As no records are available to show the present whereabouts of these soldiers, APs A3104 are returned herewith for redirection.

(J C Beatty) Capt
SCA Pers 1
for GOC CFN

Extension 523
Encls:
/IE

RSDS/SDS

5110/PERS FILES/1 (AG 12)

24 Sep 45

HQ CFN

REVIEW OF SUSPENDED SENTENCES

1. AFs A3104 are enclosed herewith for the u/m personnel for action in accordance with Overseas RO 4732, para 4 (b).

B.45001	PTE	ALFORD	RB - 10 CIB Grd Def Pl
D.46364	TPR	BEARDSLEY	RR - 27 Armd Regt
H.59076	PTE	BENVIE	RW - 1 Cdn Prc Coy
A.116154	PTE	CECILE	WH - Essex Scot Regt
B.107507	PTE	DUFRESNE	G - Fus M R
C.73724	PTE	DUNCAN	JD - R E C
M.60491	PTE	HART	G - Calg Highrs
H.93435	SPR	HOLL	GW - 30 Cdn Fd Coy RCE
C.30943	PTE	HOWARD	PE - HQ RCASC FCA TPS
C.30987	PTE	LALONDE	S - 3 Prov Coy
P.13332	CNR	McNEIL	M - 4 Cdn Fd Regt
A.23167	PTE	STEWART	LF - Essex Scot R
E.100631	PTE	TAPP	W - R de Chaud
D.77981	PTE	WARD	HG - att 16 CSEC
B.20382	PTE	WELLER	WJ - N N S H

2. On completion of Part VI, may the forms be returned direct by the reviewing authority to this HQ.

for (H. O. Moran) Colonel
OIC
Cdn Sec 1 Sub HQ Brit Army of the Rhine

SDS
ENCL/1

PFF

C.73784 Pte. Duncan, J. D.

1 Cdn Dptn & FF Bns
R.H.C. 8 Jul 45

1 CD/FP-BKS/D-707 (D)

1 CDN DETN & F P BKS
CDN PRO CORPS

13 May 45

Cdn Sec 1 Ech
HQ 21 A Gp.

PFL

C 73724 Pte Duncan J.D.

1. Reference your 510/Duncan/JD/1 (AG12) dated 10 May 45.

2. Please be advised that AFA 3104 was completed and forwarded to Cdn Sec 1 Ech 21 Army Group 2 May 45.

3. For your information please.

C.R. 15 MAY 1945 CDN SEC GHQ 1 ECH 21 ARMY GROUP

Lt Col
COMMANDANT (APM)
1 CDN DETN & FP BKS
CDN PRO CORPS

COR/lah

707 D

2 May 45

C-73724 Pte DUNCAN JD (RHC)

(AG.11) d/l Apr 45

10

30 May 45

510/Duncan JD/1



510/Duncan JD/1 (AG.12)

CAN SEC 1 ECH Hq 21 A Gp

10 May 45

Comd
1 Cdn Detn & F P Pks

C.73724 Pte Duncan, J.D.

1. Ref this Hq letter, same file number as above, d/ 1 Apr 45.

2. No reply has yet been received to the a/m correspondence. Please expedite or advise reason for delay.

(J.T. Harvey, Lt/Cr)
DAAG 'Dis'
Cdn Sec 1 Ech Hq 21 A Gp

XXXXXXXXXXXXXXXX
SDS/APO/HAND

PFH file 10

529/DUNCAN JD/1 (DJA-Rev)

Cdn Sec 1 Ech HQ 21 Army Gp
1 Mar 45

DAAG (Dis)

13

FGCM - 3 Jan45
C-73724 Pte DUNCAN J.D.
RHC 12 CHR Bn

1. AFA 310f and copy of pr ceedings were fwd to you on 10 Feb 45. Copy of AFA 310 is attached.

2. It is presumed that these documents will be retained by you and will therefore no longer be RF'd at this office.

HAND.

(W.H. Waugh) Maj
DJA (Rev)
Cdn Sec 1 Ech
HQ 21 Army Gp

C.R.
7 APR 1945
CDN SEC GHQ 1 ECH
21 ARMY GROUP

99/24/SUSPEND/1

MESSAGE FORM

ARMY FORM C 2136 (Large Modified)
CPG 46
40/P & S/2021 (6504)

Register No. 12

Call	Srl No.	Priority	Transmission Instructions

ABOVE THIS LINE FOR SIGNALS USE ONLY

FROM (A) Originator	Date—Time of Origin	Office Date Stamp
CDN SEC 2 ECH HQ 21 A GP (A7)	051700B Apr	

For Action

1 Cdn Detn and Fd Punishment Bks :
10 CBR Bn :

TO (W) For Information (INFO)

X-4 List (RHC) : X-2 List : HQ 2 CBRG :
A G (2 Ech) : DJAG 1 Ech (Attn DJA Rev) :
Cdn Sec 1 Ech HQ 21 A Gp (AG 11) :

Msge Instrns	GR

Originator's No.

EA7/4299 RESTRICTED (.) Auth granted post u/m from X-2 List to X-4 List (RHC) wef 3 May 45 and 1 Cdn Detn and Fd Punishment Bks to arrange tpt for despatch to 10 CBR Bn (.) Sentence suspended wef 3 May 45 (.) To be held as available fd rft (.) 10 CBR Bn to notify unit to which soldier is sent that he is under suspended sentence (.) Cdn Sec 1 Ech HQ 21 A Gp Letter 510/DUNCAN JD/1 (AG 11) d/1 Apr 45 refers

C 73724 Pte DUNCAN J D RHC

C.R.
CDN SEC GHQ 1 ECH
21 ARMY GROUP

THIS MESSAGE MAY BE SENT AS WRITTEN BY ANY MEANS EXCEPT	IF LIABLE TO BE INTERCEPTED OR TO FALL INTO ENEMY HANDS THIS MESSAGE MUST BE SENT IN CIPHER	ORIGINATOR'S INSTRUCTIONS DEGREE OF PRIORITY
} WIRELESS Ron Irwin		
SIGNED (O R IRWIN) Capt	SIGNED	

Time	Syst	Op
TRI or TOR		
Time Clrd		

TRI	TOR (Cipher)	TOR (Signals)

~~520/Review/1~~
510/Duncan J D/1 (AG 12)

4 Apr 45 //

Comd,
1 Cdn Detn & F P Bks

REVIEW OF SENTENCES

1. In connection with the reports forwarded by you for the review of sentences, I am directed to state that it is not necessary for you to deal with the facts of the offence or offences committed by the soldier under sentence in question as a copy of the proceedings is held at this HQ.

2. The information required from you is as set out in new pro forma used by you covering specifically the following three points:

(a) Is the soldier anxious to return to his former unit and redeem himself?

(b) Has the soldier been entirely satisfactory as to discipline and work during the period of the report?

(c) Is it considered that the soldier would likely render useful service if the sentence were suspended?

for (J. T. Harvey) Major
DAAG 'Dis'
Cdn Sec 1 Ech HQ 21 A Gp

DRLS/POST/COURIER

510/ Duncan JD /1 (AG 11)

CDN SEC 1 ECH HQ 21 A GP

1 Apr 45

Cond,
1 Cdn Detn & Fd Punishment Bks

Sentence Placed In Suspension
C.73724 Pte Duncan, J.D.
(RMC) LB CHR Bn 2 CIRC

1. The m/n soldier was sentenced by FGCM on 3 Jan 45 to undergo detention for one year for an offence under AA Sec 40.

2. This sentence was reviewed by GO i/c this HQ on 29 Mar 45 and the following direction was made:-

"Suspend wef 3 May 45."

3. Herewith AF A3104 bearing this direction. May Part VI be completed and the form returned to this HQ.

4. Cdn Sec 2 Ech HQ 21 A Gp will issue the necessary instrs to post and despatch this soldier to his appropriate rft bn where he will be made available as a rft for the fd. A copy of the instrs will be forwarded to this HQ.

for (J. T. Harvey) Major
DAAG (Dis)
Cdn Sec 1 Ech HQ 21 A Gp

DRLS/POST/COURIER

Copies to:

Cdn Sec 2 Ech HQ 21 A Gp - att'n Records.
Cdn Sec 2 Ech HQ 21 A Gp - att'n P. & T.
CPM, Cdn Army Overseas
Govt Bldg, Bromyard Ave.,
Acton, W.3. (att'n-Pay Sc)
DJA (Reviews) - with FGCM proceedings.

510/ DUNCAN JD /1 (AG/12) 9

WORK SHEET

REVIEW OF SENTENCES AWARDED BY COURT-MARTIAL

I. PA to CO i/c Date 28 Mar 45

II. No C73724 Rank Pte Name DUNCAN JD

Unit (RHC) 12 Bn 2 CBRG Age 20

Date of Enlistment Nov 42

Offence: Was found Guilty: AA Sec 40 - so negligently handled his rifle as to shoot himself through the left foot.

Sentence: To undergo detention for one year.

WEF 3 Jan 45 Last Reviewed First Review

III. Extenuating Circumstances: Nil

Rec by Court: Nil

Character (previous convictions): Awarded 7 days CB in Jul 44 for AWL 18 hrs 40 mins (First entry)

RFSS

No C73724 Name DUNCAN J D | Sqn, Battery, or Company | Corps CIC | Date of enlistment 16-11-42 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&R/126 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial with trial	By whom awarded	Remarks
Field	30-7-44	Pte		AA 15(1) AWL 18 hrs 40 mins		7 days CB 1 days pay	18-7-44	4 CIRU Do	189/Jul 44
Field		Pte		AA 40 Close arrest (time unknown)		1 yr detn tot forf 379 days pay	3-1-45 FGCM	X-3 List BW Do	7/45

Duplicate created from MFM 4 21 MAR 45. Record of conduct in Canada prior to TOS Cdn Army Overseas 15 Dec 43 not available.

M Lavoie Lt
Officer i/c Records "X"
Cdn Sec 2 Ech HQ 21 AG

(PTO)

ARMY FORM C2136 (Small)

MESSAGE FORM

Register No.

Call	Srl. No.	Priority	Transmission Instructions
			510/Duncan JD/1 (AG 11)

ABOVE THIS LINE FOR SIGNALS USE ONLY

FROM (A)	Originator	Date-Time of Origin	Office Date Stamp
	CANFOR (EXFOR REAR)	17 1715A	

For Action

02E

TO

(W) For Information (INFO)

Message Instructions — GR

Originator's No.

A1471(.)RESTRICTED(.)EXPEDITE CERTIFIED COPY MFM6 FOR C73724 PTE DUNCAN J D(.)

This Message May Be Sent AS WRITTEN by any means (except wireless)	If liable to be intercepted or to fall into enemy hands, this message must be sent IN CIPHER	Originator's Instructions Degree of Priority	Time	System	Op
Signed Capt.	Signed	IMPORTANT	THI of TOR		
			Time (hours)		

6

1 Cdn Detn/707

No 1 Cdn Detn & FP Bks
Cdn Pro C
10 Mar 45

Cdn Sec GHQ
1 Ech 21 A Gp

Sentence under review
C 73742 Pte DUNCAN J D
12 CBRBN (RHR)

1. Reference 510/DUNCAN JD/1 (~~AG7~~ AG8) d/14 Feb 45 relative to the m/n soldier.

2. The u/m infm is appended:
(a) Date sentenced by FGCM - 3 Jan 45
(b) Date admitted to detn bks - 10 Jan 45
(c) Number of days remission already lost - NIL
(d) Number of marks already earned - 536 out of 1920
(e) Date of release with full remaining remission - 30 Aug 45

3. An average soldier on the parade square, reacting favorably to strict military discipline. Smart in appearance and bearing, clean in person and clothing. Kit is always neat and tidy. A good worker, now employed in this unit on details. Wishes to return to his former unit upon release from detn.

4. This soldier is serving a sentence for negligence in the use of firearms. This soldier states that he had no intention of causing a wound to render him unserviceable to the army. He was in a cellar room at St Leonard in Belgium where he was billeted with four or five other soldiers and had finished cleaning his rifle. He was in a chair and fell asleep with the rifle across his lap and the muzzle pointing to the ground. The enemy were pouring a heavy conc of mortar fire at this time and he woke with a start and the rifle was discharged. A bullet entered his left foot. He cannot explain how it happened, but he might have had his hand across the butt of the rifle. He did not examine the rifle afterwards for any defect in trigger or sear spring mechanism. He received only a slight wound which has now completely healed and has received no after effects from it.

5. A good all round soldier who will make a useful man upon his returned to his unit. This is his first major crime in the army. It is recommended that consideration be given towards suspension of sentence in this instance.

C.R.
16 MAR 1945
CDN SEC GHQ 1 ECH
21 ARMY GROUP

Lt Col
Commandant (APM)
No 1 CdnDetn & FP Bks
Cdn Pro C
DRLS

COR/BJ.

5

TELEPRINT FORM

FOR SIGNAL USE ONLY

From: CANFOR (EXFOR REAR)
TO: 1 Cdn Detn & F P Bks

091730A Mar 45

A.1362 (.) Restricted (.)

Expedite reports on following personnel whose sentences are being reviewed

G.63389	Pte.	Cormier, G. H.
..22976	Pte	McGee GT
F.87096	Pte	Coleman GR
E.14151	Pte	Gouley A
E.13139	Pte	Anglehart R
G.28430	Pte	Gallant W
G.73724	Pte	Duncan JD
F.55220	Pte	Pottie MP
C.50525	Gnr	Randall CW
E.41555	Pte	Antonelli E
F.89753	Pte	Chiasson T
D.82384	Pte	Findlay D

This message may be sent
as WRITTEN by any means
except wireless.

IMPORTANT

Signed [signature] Capt.

BF fn MFM6

CDN SEC GHQ 1 ECH - 21 A GP 210/Duncan, J.D/1 (AG.7)

4

Coend
1 Cdn Detn & FF Hks

14 Feb 45

Sentence Under Review
C.75745 Pte. Duncan JD

1. [redacted] sentenced by FGCM on 3 Jan 45 to undergo detention for one year.

2. AF A3104 has been received for review of sentence from "Holding Authority" Cdn Sec GHQ 2 Ech - 21 A Gp.

3. Accordingly, it is requested that a report be forwarded to this HQ on the soldier's conduct and behaviour since date of commitment to assist in review of sentence.

(H.O. Moran) Lt Col
AAG
Cdn Sec GHQ 1 Ech - 21 A Gp

DRLS/POST

3

99/37/DUNCAN JD/1 (DJA)

Cdn Sec GHQ 2 Ech 21 Army Gp
10 Feb 45

OIC
Cdn Sec GHQ 1 Ech 21 A Gp
276 AVE MOLIERE BRUSSELS (Attn: AG 5)

Review of Sentence

C73724 Pte Duncan JD AG 7
RHC 12 CBR Bn

1. These proceedings have been reviewed and passed. They are now forwarded to you together with AF A3104 for first review of sentence.

2. When these documents have served your purpose plea so return same to this office.

3. The disposition of the m/n GHQ is 1 Cdn Detn & FP Bks (C).

C.R.
12 FEB 1945
CDN SEC GHQ 1 ECH
21 ARMY GROUP

PFR

[illegible] Hough
[illegible] Major
DJA
Cdn Sec GHQ 2 Ech
21 Army Group

CONSIDER

Time of Signature.....hrs.

510/Duncan JD/1 (AG 5)

18 Dec 44

OC,
8 Cdn Gen Hosp
(Attention: Major R.F. Willson)

G.73724 Pte Duncan, J.D.
RHC

1. Ref our 520/SIW/1 (DJAG) d/16 Dec 44.

2. With regard to para 2 of the a/m letter, it is requested that advice be forwarded to this HQ when disciplinary action is completed.

(H. O. Moran) Lt-Col.,
AAG,
Cdn Sec GHQ 1 Ech - 21 A Gp

DRLS/PCST

DJA
II ~~ADJA~~
Pls advise outcome of disc action

~~[illegible]~~
7000 A

III Found guilty 3 Jan 45 under AA 40 - neg. wounding sentence 1 yrs detent. Confirmed 4 Jan. from 5 Jany.

SC "A"
Cdn Sec GHQ 1 Ech - 21 A

CDN SEC GHQ 1 ECH - 21 A GP

520/SIW/1 (DJAG)

16 Dec 44

Major R.F. Willson
SIW Court
No 8 Cdn Gen Hosp

C-73724 Pte Duncan, J.D.
MC

1 Reference your 1/Recom/1 (Duncan) of 13 Dec 44.

2. It has been decided that proceedings will be taken in this case.

3. Returned herewith are the documents forwarded with your letter a/m.

4. May this HQ be advised in due course.

(T.G. Norris) Col
DJAG
Cdn Sec GHQ 1 Ech - 21 A Gp

Encl
DRLS

Copy to AG 5



FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.73724 Pte Jack Douglas DUNCAN Royal Highlanders of Canada 12 Bn 2 CBRG

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 18 (2) (Alternative)	Not Guilty	Not Guilty	
2nd	AA 40	Not Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 45 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N)A (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for one year.

(Sgd) ..... 3 Jan 45 (Sgd) E.P. Lee Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~(1) E.L.M.B.

(1. AA 57A. Delete if not used.)

Date 4 Jan 45 (Sgd) E.L.M. Burns Maj Gen
Officer i/c Canadian Section
Commanding GHQ 1 Echelon
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
C73724 Pte Duncan, J.D.	5 Jan 45	(Sgd) A.O. Hood, Lt-Col O.C. 12 Bn, 2 CBRGroup

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4 P- 79

CPA86 (To Dep. of AFA31) 40 T & S 1808 (4610)

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Maj Gen E.L.M. Burns Comd GHQ 1 Echelon dated 26 Dec 44

OIC Cdn Sec 21 A Gp

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.73724 Pte		Jack Douglas	DUNCAN	RHC 12 Bn 2 CBRG

CERTIFIED TRUE COPY
[illegible] Major

Cdn Sec GHQ 1 Echelon 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 3 JAN 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 19/35

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for battns and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 44(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member recires. RP 60(B). If objection, see procedure AA 31, RP 25, 71, 98, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.P. LEE	Gen List Cdn Sec GHQ 1 Ech 21 A Gp
Member	Captain	P.A. BAILLARGERON	Gen List Cdn Sec GHQ 1 Ech 21 A Gp
Member	Captain	R.B. VAN DINE	RCASC att Cdn Sec GHQ 1 Ech 21 A Gp
Judge-Advocate			
Prosecutor	Major	R.F. WILLSON	Linc & Well'd Regt att Cdn Sec GHQ 1 Ech 21 A Gp
Defending Offr	Captain	W.G.D. HUNGERFORD	RCASC att Cdn Sec GHQ 1 Ech 21 A Gp

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused ..... before arraignment make(s) (has) (~~no~~) plea(s) (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references as fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 42; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 3. The proceedings are continued on Record Form D & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3, *para* 3; *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (does not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*ii*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No sir .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the first and second charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the first and second charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed on the ~~foregoing~~ ~~but the accused is (are) found Not Guilty on the latter charges~~.(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Yes sir to give evidence myself on oath. Do you intend to call witnesses on your behalf? Ans. no sir. Are they witnesses as to character only? Ans. N/A
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*b*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the findings, if any, of Not Guilty, and states to the accused that the findings of the Court on the second charge, being subject to confirmation, will be promulgated later.(1) ~~He (the President) announces that the accused is found Not Guilty on all charges and that the proceedings are concluded. (use if one admissible alternative and acquittal)~~
(1. *AA* 54(3) (*a*), *RP* 45. 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No sir
(1. *If evidence has already been given by accused or his witnesses or to his character, delete this para. RP* 27(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Previous Convictions(1), and delivers a copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1)-(4), (a), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and regiment as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
available
states no documents relating to character are a
(1. *MFB* 215 *or AFB* 296. 2. *MML p.* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes sir by my defending officer.
(1. *RP* 27(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 27(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 43, 44 *and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 343-344, *Overseas KO* 309, 1323, *MML p* 60, 737-738. *As to sentences assigned for civil offences by the law of England see AA* 44(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, C.73724 Pte Jack Douglas DUNCAN, Royal Highlanders of Canada, on strength 12 Battalion 2 Canadian Base Reinforcement Group, a soldier of the Canadina Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 18(2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDERHIMSELF UNFIT FOR SERVICE

in that he

In the Field, 29 Sep 44, while with his regiment in the line, by discharging his rifle wilfully injured himself by shooting himself through the left foot with intent thereby to render himself unfit for service.

SECOND CHARGE
(Alternative)
Army Act
Sec 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, 29 Sep 44, while with his regiment in the line, so negligently handled his rifle as to shoot himself through the left foot thereby rendering himself unfit for service.

In the Field
18 Dec 44.

(Sgd) A.C. Hood Lt-Col
OC 12 Bn - 2 CBRG

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
26 Dec 44.

(Sgd) R.L.M Burns Maj-Gen
OIC
Cdn Sec GHQ 1 Echn - 21 A Gp

MEDICAL OFFICERS CERTIFICATE

(KR (Can) Para 557)

I certify that I have this day examined C.73734

Pte DUNCAN J.D. and in my opinion he is

fit to undergo trial by Court-Martial.

Station 12 CBRG

Date Jan 3/44

KP Lee Major
President

(Sgd) ??????????????Capt
Medical Officer
12 Bn 2 CBRG

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.73724	Pte		Jack Douglas	DUNCAN	(RHC) 12 Bn 2 CBRG

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~xxxx~~ committed the offence(s) set forth in the Charge Sheet~~(s)~~ attached and on (*date*) 26 Dec 44 endorsed by me, ~~[illegible]~~ ELMB, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~[illegible]~~ ELMB
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~ ELMB
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~[illegible]~~ ELMB
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	E.P. LEE (Must be named. RP 106.)	Gen List-Cdn Sec GHQ 1 Ech - 21 A Gp (Unit.)

MEMBERS.

Capt	F.A. BAILLARGEON	Gen List -att Cdn Sec GHQ 1 Ech - 21 A Gp
Capt (Rank.)	E.B. VAN DINE (Named or detailed. RP 106.)	RCASC - att CdnSec GHQ 1 Ech 21 A Gp (Unit.)

~~[illegible]~~

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~[illegible]~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.) E.L.Mc Burns (Signed personally. RP 105 fn 2.) Maj Gen (Rank.)

Dat 26 Dec 44 Commanding Cdn Sec GHQ 1 Ech - 21 A Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 95 (In lieu of AFA 3) 40/F & S/1697 (6143)

APPROVED
Maj
DJA

EP Lee Major
President

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as practicable*, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (not sworn or subject to cross-exam by Prosecutor, Court or *JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on matters other than in mitigation of punishment) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by *JA*, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or *JA*, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or *JA*, *if any*, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, *etc.* (*As to admitting in evidence a certified copy as item of original see KR Can 556. As to certified copies of regimental books see AA 163 (1) (g) (k).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 113(C), MML p 759.*)

4. The President or *JA*, *if any*, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

C.73724 Pte Duncan J.D. R.H.C.

Opening Address by Prosecutor

There were two witnesses Pte Cameron and Cpl Cameron, but they have since become casualties and are not now available.

D3
FIRST WITNESS FOR THE PROSECUTION — Major J.P. Middleboro, RCAMC att 2 Cdn Gen Hosp, being duly sworn is examined by the prosecutor.

I examined the accused this morning. I found a well healed soft tissue wound on his left great toe lying on the medial side of proximal phalanx. This was in the nature of a groove and passed at right angles to axis of the toe. No disability and I believe the wound could have been caused by weapon held in accused's own hands.

Cross-Examination.

The accused is fit to return to the line.

RP 83(B) complied with.

SECOND WITNESS FOR THE PROSECUTION — B76047 S/Sgt CHESTER H.W. SIS Cdn Provost Corps att 12 Bn 2 CBRG being duly sworn is examined by the prosecutor.

I recognize the accused. On 11 Oct 44 at 21 Cdn Gen Hosp I interviewed the accused and informed him I was investigating circumstance surrounding his wound. I cautioned him that he was not obliged to say anything but whatever he did say would be taken down in writing and may be used in evidence. He volunteered a statement which I reduced to writing, which he read over himself and signed. I produce the statement, marked exhibit "A"

The defence has no objection to admission of statement in evidence.

No Cross Examination

RP 83 (B) complied with.

D.4

MOTION BY DEFENDING OFFICER

I move for dismissal of both charges on following grounds. Firstly case by prosecution has failed to establish a prima facie case there is not a scintilla of evidence to show intent in first charge and blameworthiness in second charge. Firstly Major Middleboro says he found a well healed tissue wound of great toe - no disability and that wound might have been caused by weapon. Second witness who merely produces a memo he took on 11 Oct 44 and purporting to be none other than an explanation by this accused as to actually what happened. Nothing in which discloses intent or negligence. There is nothing on which to found a conviction on the first charte. On the second charge if there is sufficient in your minds to establish blamworthiness, under Army rules and active conditions, only then you can make a finding on that charge.

REPLY BY PROSECUTOR

The prosecution has some difficulty with witnesses and must rely on the circumstances surrounding the

incident - you have his nervous background. In his statement he admits he went to the bldgn for shelter after near misses and heavy machine gun fire for shelter - then you find him escorting prisoners to the rear. He returns to find his Pl Cmdr to take names of those left - he cleaned his rifle and this happened. This is sum and total of his statement. I say there is sufficient evidence there to necessitate an explanation. As to negligence, he has trained since 42 - basic and advanced and in the line some time before this incident happened. He admits trouble with mag and playing with bolt when in that condition, operated bolt back and forward several times, and safety must have been off - then nothing more but a vague explosion. Nature of the wound is also an important factor. As to negligence accused knew of faulty magazine and did not take proper safety precautions. You can find sufficient grounds in the circumstances to put the accused on his defence on both charges.

D6
FIRST WITNESS FOR THE DEFENCE — C73724 Pte DUNCAN J.D. Black Watch RH of C being duly sworn is examined by the defending officer.

I had no sleep for two days. I had completed cleaning my rifle Before I dozed off. I heard a noice and the first thing I heard someone ask me if I wanted a cigarette. I had no thought of getting out of the line. There was heavy mortar fire at the time but it had ceased. What just woke me up I cannot say. I don't think that its fair that I have the suspicion of wounding myself intentionally. I had not asked to be relieved - I was with the unit for 8 days. I only account for dozing off because I had no sleep for 48 hrs. No one found fault with my work - I am a rifleman and would like to go back and prove myself. This injury was not wilfull. I am 20 yrs of age - joined when I was 18 yrs - unmarried.

Cross-examination

I did not hold my hand down on rounds in magazine, when I worked bolt. I did not check to see if a round in chamber when I last closed bolt. You normally, when no round in chamber you close bolt and put safety catch on. I don't recall taking that precaution there. Sometimes we carried rifles loaded and safety catch off. We were close to enemy lines at the time. We were waiting for Calgarys to pass through. There were 5 or 6 of us in the cellar. Maybe if I hadn't been so tired and sleepy I would have been more careful. Cpl took names andwe were going to 18 pl where they were dug in. We were reforming and they were making one platoon out of two. We were cut off first and A & C Coys went through. I cannot explain the incident any different that I explained it in my statement. My memory was so blotted out that is all I can remember about it. I have never been in good physical condition since I've been in Army. MO's brush it off as rheumatism, or stiffness from lack of exercise or something like that. I said I'd go back to the infantry. There are however sometimes you have to run and that leaves me out. After I have stood still for a while I cannot start running. I have always had that, that is why I joined RCOC. The army has brought it on more. We started to fight 3 o'clock on afternoon untill 1500 hrs the next. We took our objective, then enemy counter attacked. Just the one show. I was not fighting all the 48 hrs I was without sleep

By the Court

I was an Airplane Mechanic in civil life.
I suppose the round caught the last time I pushed the bolt home. I was off duty part of the 48 hrs but I got wet in the rain and could not sleep.
R.P. 83(B) Complied with.

PROSECUTION CLOSING ADDRESS

The facts are simple and fresh in your minds - I only want to bring out a few of them showing that the accused's story is not consistent. The charges are in the alternative and it is my submission that there is sufficient evidence to warrant a conviction under the 1st chge. The accused was cleaning his rifle in basement of a bldgn there were a number present. The circumstance leading up indicate in some reppect what was in accused's mind - At least the type of work he was doing and what his Pl Cmdr thought of his position at the time. As far as negligence is concerned, he said he remembered nothing after he worked the bolt - no precautions were taken - He did not see if a round in the chamber - did not hold rounds down when he shoved bolt home. If you do not beleive the accused then thereis sufficient evidence to support the first charge. I leave the question of credibility to you. 303 round through the toe would not blot everything out of your mind, not like a blow on the head. No question of concussion in 303 explosion - there would be very little report or noise. I suggest the natural sequence of events lead up to accused doing this act - return to bldgn then to rear with prisoners followed by return to cellar to find Pl Comdr taking names of those present to transfer to another platoon for action, then the shooting. Unfortunately.

DEFENCE CLOSING ADDRESS

The accused was placed on his defence and under oath gave the court his explanation of what took place. When asked about the particular circumstances surrounding this incident and asked if it was wilful or negligent - his reply was reasonable one - one cannot account for all actions under conditions existing in the front line. It is not likely that if accused intented to injure himself that he would do so in the basement in presence of 5 of his comrades. The prosecution have not been able to produce one single member of these five. That is unfortunate - principle of doubt and establishment of intent in this case is impossible in view of lack of evidence I have referred to. As to the first charge it is impossible to convict this man on his own story where intent cannot be substantially inferred. Charge should be dismissed. As to negligence, he knows certain standards are to be maintained under certain conditions and probably the first thing he learned. Despite the rigorous conditions existing at the time - in contact with enemy certain standards of care must maintained or more accidents would occur. Therefore he is prepared to accept those conditions where they are precedent to good soldiery and in order to prove he is a good soldier he has told you under oath that he wants to go back and prove it. My submission on this charge (2nd) that any sentence you may feel like awarding - have its effect suspended and make it possible for this boy to go back and prove in his own mind and others that he is worthy to be wearing the uniform of the Black Watch.

B3

PLEA IN MITIGATION BY THE DEFENDING OFFICER

The accused is 20 yrs old - enlisted 16 Nov 42 born 3 Nov 24 - from Oshawa, Ont - father inspector with General Motors - both parents living. One brother with PPCLI in Italy, one in RCAF 18 yrs old in Canada education 1 yr high at 15 yrs - unmarried - assigns $20 to his mother. My remarks are only to second charge and material to consider the extent of his blameworthiness pursuant to amend to Sec 40. Weigh evidence as to its relative degree of negligence in these particular cases. In this particular case I ask you to consider this lads unit was in close proximity to the enemy when this unfortunate occurrence took place, and secondly we are unable to produce any comrade to say how he previously acquitted himself in the Bn before this happened. Finally I ask you to view as a case where he wants to go back and prove he is type of soldier he says he is. Therefore I can do no better than ask you to do everything you can which will enable him to return thereby giving him his means to carry outhis will.

(Sgt) R.P. Lee Major
President.

EXHIBIT "A"

21 Cdn Gen Hosp
11 Oct 43

Reg No C73724 Pte DUNCAN, Jack Douglas, Black Watch, (RH of C)
17 Pln "D" Coy, 2 Cdn Infantry Div., states as follows:

I have been warned by S/Sgt Chester, SIS Cdn Provost Corps that I am not obliged to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence. I understand this caution and I make this statement voluntarily.

(Sgd) J. Duncan

I will be 20 years of age in November of this year. I enlisted voluntarily in the RCOC at Kingston, Ont on 17 Nov 42. I served with and had my basic training in the RCOC at Kingston and Cornwall. Four months after enlistment I was transferred with a number of other men from Ordnance to Cdn Infantry Corps and sent to Valcartier camp where I had advanced training for two months. In December 43 I arrived in the UK with other infantry reinforcements and went to 5 CIRU where I remained until March 44 when I went as a reinforcement to my present unit and was placed in "E" Coy which was training coy for reinforcements. Before the unit came to France about the middle of June 44 the majority of "E" Coy including myself were sent to CBRC as a reinforcement Coy for the Black Watch. After 2 weeks there I was sent to 1st Cdn Army Service Incre for about 2 months, then to 4 Div Service Incre, for a few days, then to 4 CIRU where I remained for about 5 weeks, until about 1 Sept 44 when I was sent to France, arriving about 9th or 10th of Sep at 2 CBRC. I rejoined my unit about 22nd or 23rd Sept 44. They were then at a rest camp in Belgium and we stayed there until 28 Sept when we moved up to a town, it was either St Leonard or a part of it and took it with very little opposition, but were driven out again early the next morning by a counterattack and took up a position on the south side of the canal. From about 0530 hrs until about 1100 hrs 29 Sep I was with the Company spread out behind the back of the Canal and were pinned down by machine gun and mortar fire. There were not enough slit trenches to go around, so about 1100 hrs, after a couple of near misses from mortar-bombs, with ther permission of my Cpl, Callaghan by name, I went with another man from the Coy, whose name I don't know, and got into the basement of a nearby building which used to be company headquarters before they moved across the road. There were a number of men going in and out of this building looking for the new HQ. After a while I went to the new HQ to take a look at some prisoners held there and was detailed by the CSM to help escort prisoners back to Battalion HQ about a mile away. On returning to the basement I saw Cpl Callaghan taking the names of those of our platoon who were left. I went out again to look around and then accompanied Cpl Callaghan and another man into the town, about 75 yards up the road to pick up some equipment that had been left behind when we were driven back. Back in the basement, we had something to eat - there were six of us in a room, and I started to clean my rifle. I cleaned it and was playing with the magagine trying to get the spring to work as it seemed to catch and would not push the cartridges out into the breech. It still didn't work but I filled it and put it back on the rifle. I worked the bolt but it seemed to slide over the rounds without pushing one into the chamber. I was sitting on a chair facing the door with the rifle across my knees. I must have dozed off. I had had no sleep for over 2 days Something woke me up - I think the time was about 1530 hrs, it could have been Mortar fire, I don't know what it was. I was lying on the floor and somebody was asking me if I wanted a cigarette, someone else was taking of my boot from my left foot which felt numb. I remember that Pte Cameron was in the room but I don't recall what he was doing. He is in No 5 Section, 17 Platoon. I can't remember anything from the time I was sitting on the chair working the bolt of my rifle until I found myself on the floor. I have a vague recollection of an explosion of some kind. Somebody put a bandage on my left foot. I was very hazy about the whole thing but I sat up and saw blood was coming through the bandage. I didn't know where the blood was coming from but one of the fellows told me I had been shot in the big toe - that it was only a slight wound. Another man told me that the bullet which wounded me came from my own rifle. He said he had looked at it and there was an empty round in

in the chamber. I used the rifle later as a crutch but I didn't look for the empty round myself. I went with the help of another man whom I don't know to Coy HQ and there my wound was dressed again - or I think it was - I was still pretty hazy about the whole thing. From there I was sent to Field Dressing Station and through various hospitals until I arrived at 21 Cdn Gen Hosp on 10 Oct 44.

I have never thought about deliberately wounding myself. I don't know how it happened. I can't explain it any better than I have doen in this statement. I heard from one of the boys whose name I don't know that the safety catch was off the weapon. This would be the case as I was working the bolt the last thing I remember. I don't know what became of the rifle. I never saw it again after leaving Coy HQ on 29 Sept 44. I do not consider that I was negligent in any way.

This statement has been read to me. I have read it over and it is true.

Witness Signature;
H.W. Chester Sgt.

Signature J. Duncan.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: ~~V.75724~~ Pte Jack Douglas DUNCAN Royal Highlanders of Canada 12 Inf B Gp

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(p)	Not Guilty	Not Guilty	
2nd Alternative AA 40	Not Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for one year

(Sgd) ..... 5 Jan 45 (Sgd) H.F. Lee Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding.

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) ELMP
(1. AA 57A. Delete if not used.)

(Sgd) E.L.M. Burns Maj Gen
Officer i/c Canadian Section
Date 6 Jan 45 Commanding GHQ 1 Echn
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
075724 Pte Duncan, J.D.	8 Jan 45	(Sgd) A.G. Ecuyer Lt-Col. OC, 12 Bn, 2 CIB Group

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CPA66 (To Issue of AFA81 40/P or S/1668 (40/01) 4/38B

4P-79

Convened by Order of Maj-Gen E.L.M. BURNS Comd GHQ 1 Echn OIC Cdn Sec dated 26 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G.75724	Pte	Jack Douglas	DUNCAN	Royal Highlanders of Canada 12 Inf B Gp

CERTIFIED TRUE COPY
[signature]

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM Cdn Sec GHQ 2 Echn 21 Army Gp (date(s)) 5 JAN 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 19/35

A1. The President, Members, ~~waiting Member (A, if any, and Offrs under instr, if any~~, assembles, and the Court is closed. EPL

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp. 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 895, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~as~~ attached thereto.(1) EPL The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3) EPL

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) EPL ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2) EPL

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~ EPL
~~The Interpreter is sworn.~~ (1) ~~Do you object to ..... as shorthand writer? Ans .....~~ EPL
~~The shorthand writer is sworn.~~ (1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 23, 71, 72, MML p 742.)

A7. The President, Members, ~~the A. and the Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc: EPL

President	~~Major~~	E.F. LEE	Gen List Cdn Sec GHQ 1 Echn 21 A Gp
Member	Captain	P.A. BAILLARGEON	Gen List Att Cdn Sec GHQ 1 Echn 21 A Gp
Member	Captain	W.B. VAN DINE	RCASC att Cdn Sec GHQ 1 Echn 21 A Gp
Judge-Advocate			
Prosecutor	Major	R.F. WILSON	Line & Staff Regtatt Cdn Sec GHQ 1 Echn 21 A Gp
Defending Offr	Captain	W.G.D. HUTCHISON	RCASC att Cdn Sec GHQ 1 Echn 21 A Gp

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 24, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Comm Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~no~~ plea(s) EP
(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposit., the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) EP not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and see separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *and* 4. *MML p* 54 *para* 47. 4. *See para* B3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides not to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with R/F 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No sir.....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*b*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the First and second charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the first and second charge(s), ~~and allowed on the ..... charge(s)~~, and that, accordingly, the trial will proceed on the former, ~~but the accused is (are) found Not Guilty on the latter charge(s)~~.(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB. *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Yes sir to give evidence myself on oath Do you intend to call witnesses on your behalf? Ans no sir Are they witnesses as to character only? Ans n/a
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf* 895. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E3 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*b*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the second charge(s), being subject to confirmation, will be promulgated later.(1)
(1. *AA* 54(3) (*a*), *RP* 43, 120(*A*). 2. *AA* 54(3), *RP* 43, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No sir
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 3. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces, authenticates, and (if not already done) reads the copy (copies) of Conduct Sheet(s)(1), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed by ..... as required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and regiment as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(2) states no documents relating to character are available
(1. *MFB* 355 *or MFB* 294. 2. *MFM* 6. 2. *RP* 46, *KR Can* 158. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the [illegible] and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes sir by my defending officer.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 1323, *MML p* 60, 757-759. *As to sentences assigned for civil offences to the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(7), *KR Can* 564. 2. *RP* 52. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see matrix on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, C.73724 Pte Jack Douglas DUNCAN, Royal Highlanders of Canada, on strength 12 Battalion 2 Canadian Base Reinforcement Group, a soldier of the Canadina Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 18(2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he

In the Field, 29 Sep 44, while with his regiment in the line, by discharging his rifle wilfully injured himself by shooting himself through the left foot with intent thereby to render himself unfit for service.

SECOND CHARGE
(Alternative)
Army Act
Sec 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, 29 Sep 44, while with his regiment in the line, so negligently handled his rifle as to shoot himself through the left foot thereby rendering himself unfit for service.

In the Field
18 Dec 44.

(Sgd) A.O. Hood Lt-Col
OC 12 Bn - 2 CBRG

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
26 Dec 44.

(Sgd) E.L.M Burns Maj-Gen
OIC
Cdn Sec GHQ 1 Echn - 21 A Gp

MEDICAL OFFICERS CERTIFICATE

(KR (Can) Para 557)

I certify that I have this day examined C.73734

Pte DUNCAN J.D. and in my opinion he is

fit to undergo trial by Court-Martial.

Station 12 CBRG

Date Jan 3/44

MP Lee Major
President

(Sgd) ??????????????Capt
Medical Officer
12 Bn 2 CBRG

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.73734	Pte		Jack Douglas	DUNCAN	(RHC) 12 Bn 2 CIBD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Dec 44 endorsed by me, (or by an offr of my choice for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have stated hereby.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate to attend the Offrs appointed hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Ma Sqn	W.F. LEE		Gen List-Cdn Sec GHQ 1 Kch - 21 A Gp

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	F.A. BAILLARGEON		Gen List -att Cdn Sec GHQ 1 Kch - 21 A Gp
Capt	E.B. VAN DINE		RCASC - att CdnSec GHQ 1 Kch 21 A Gp

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Dat 26 Dec 44

W.L.Mc DUNCAN (signed personally. RP 105 fn 2.) Maj Cmdg (Rank.)

Commanding Cdn Sec GHQ 1 Kch - 21 A Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 93 (In lieu of AFA 2) as F & E Lmt (R1AS)

APPROVED — — —

Maj

DJA

FP Lee Major
President

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (*AA 52, KR Can 562, RP 26, 29, 111.*)

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (*AA 52, MML 762, RP 27, 111.*)

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (*AA 52, MML 762, RP 27, 111.*)

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (*AA 52, MML 762, RP 27, 111.*)

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (*AA 52, MML 762, RP 27, 111.*)

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (*AA 52, MML 762, RP 82, 111.*)

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (*RO (Can) 2693.*)

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(*Referred to throughout CF A 96 as "Notes".*)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 89(C).*)

(v) Closing address (*on matters other than an imputation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 162(a).*)

(vii) Summing up by J.A., if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A. if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A. if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*See top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy as lieu of original see KR Can 562. As to certified copies of regimental books see AA 162 (1) (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

(vii) Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 55(8), RP 116(C), MML p 759.*)

3. The President or J.A. if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", to ... as otherwise directed.

4.

C.73724 Pte Duncan J.D. R.H.C.

Opening Address by Prosecutor

There were two witnesses Pte Cameron and Cpl Cameron, but they have since become casualties and are not now available.

D3
FIRST WITNESS FOR THE PROSECUTION

Major J.P. Middleboro, RCAMC att 2 Cdn Gen Hosp, being duly sworn is examined by the prosecutor.

I examined the accused this morning. I found a well healed soft tissue wound on his left great toe lying on the medial side of proximal phalanx. This was in the nature of a groove and passed at right angles to axis of the toe. No disability and I believe the wound could have been caused by weapon held in accused's own hands.

Cross-Examination.

The accused is fit to return to the line.

RP 83(B) complied with.

SECOND WITNESS FOR THE PROSECUTION

B76047 S/Sgt CHESTER H.W. SIS Cdn Provost Corps att 12 Bn 2 CBRG being duly sworn is examined by the prosecutor.

I recognize the accused. On 11 Oct 44 at 21 Cdn Gen Hosp I interviewed the accused and informed him I was investigating circumstance surrounding his wound. I cautioned him that he was not obliged to say anything but whatever he did say would be taken down in writing and may be used in evidence. He volunteered a statement which I reduced to writing, which he read over himself and signed. I produce the statement, marked exhibit "A"

The defence has no objection to admission of statement in evidence.

No Cross Examination

RP 83 (B) complied with.

D.4

MOTION BY DEFENDING OFFICER

I move for dismissal of both charges on following grounds. Firstly case by prosecution has failed to establish a prima facie case there is not a scintilla of evidence to show intent in first charge and blameworthiness in second charge. Firstly Major Middleboro says he found a well healed tissue wound of great toe - no disability and that wound might have been caused by weapon. Second witness who merely produces a memo he took on 11 Oct 44 and purporting to be none other than an explanation by this accused as to actually what happened. Nothing in which discloses intent or negligence. There is nothing on which to found a conviction on the first charge. On the second charge if there is sufficient in your minds to establish blamworthiness, under Army rules and active conditions, only then you can make a finding on that charge.

REPLY BY PROSECUTOR

The prosecution has some difficulty with witnesses and must rely on the circumstances surrounding the

incident - you have his nervous background. In his statement he admits he went to the bldgn for shelter after near misses and heavy machine gun fire for shelter - then you find him escorting prisoners to the rear. He returns to find his Pl Cmdr to take names of those left - he cleaned his rifle and this happened. This is sum and total of his statement. I say there is sufficient evidence there to necessitate an explanation. As to negligence, he has trained since 42 - basic and advanced and in the line some time before this incident happened. He admits trouble with mag and playing with bolt when in that condition, operated bolt back and forward several times, and safety must have been off - then nothing more but a vague explosion. Nature of the wound is also an important factor. As to negligence accused knew of faulty magazine and did not take proper safety precautions. You can find sufficient grounds in the circumstances to put the accused on his defence on both charges.

D6
FIRST WITNESS FOR THE DEFENCE — C73724 Pte DUNCAN J.D. Black Watch RH of C being duly sworn is examined by the defending officer.

I had no sleep for two days. I had completed cleaning my rifle Before I do_ed off. I heard a noice and the first thing I heard someone ask me if I wanted a cigarette. I had no thought of getting out of the line. There was heavy mortar fire at the time but it had ceased. What just woke me up I cannot say. I don't think that its fair that I have the suspicion of wounding myself intentionally. I had not asked to be relieved - I was with the unit for 8 days. I only account for dozing off because I had no sleep for 48 hrs. No one found fault with my work - I am a rifleman and would like to go ba ck and prove myself. This injury was not wilfull. I am 20 yrs of age - joined when I was 18 yrs - unmarried.

Cross-examination

I did not hold my hand down on rounds in magazine, when I worked bolt. I did not check to see if a round in chamber when I last closed bolt. You normally, when no round in chamber you close bolt and put safety catch on. I don't recall taking that precaution there. Sometimes we carried rifles loaded and safety catch off. We were close to enemy lines at the time. We were waiting for Calgarys to pass through. There were 5 or 6 of us in the cellar. Maybe if I hadn't been so tired and sleepy I would have been more careful. Cpl took names andwe were going to 18 pl where they were dug in. We were reforming and they were making one platoon out of two. We were cut off first and A & C Coys went through. I cannot explain the incident any different that I explained it in my statement. My memory was so blotted out that is all I can remember about it. I have never been in good physical condition since I've been in Army. MO's brush it off as rheumatism, or stiffness from lack of exercise or something like that. I said I'd go back to the infantry. There are however sometimes you have to run and that leaves me out. After I have stood still for a while I cannot start running. I have always had that, that is why I joined RCOC. The army has brought it on more. We started to fight 3 o'clock on afternoon untill 1500 hrs the next. We took our objective, then enemy counter attacked. Just the one show. I was not fighting all the 48 hrs I was without sleep

By the Court

I was an Airplane Mechanic in civil life.
I suppose the round caught the last time I pushed the bolt home. I was off duty part of the 48 hrs but I got wet in the rain and could not sleep.
R.P. 83(B) Complied with.

PROSECUTION CLOSING ADDRESS

The facts are simple and fresh in your minds - I only want to bring out a few of them showing that the accused's story is not consistent. The charges are in the alternative and it is my submission that there is sufficient evidence to warrant a conviction under the 1st chge. The accused was cleaning his rifle in basement of a bldgn there were a number present. The circumstance leading up indicate in some respect what was in accused's mind - At least the type of work he was doing and what his Pl Cmdr thought of his position at the time. As far as negligence is concerned, he said he remembered nothing after he worked the bolt - no precautions were taken - He did not see if a round in the chamber - did not hold rounds down when he shoved bolt home. If you do not believe the accused then thereis sufficient evidence to support the first charge. I leave the question of credibility to you. 303 round through the toe would not blot everything out of your mind, not like a blow on the head. No question of concussion in 303 explosion - there would be very little report or noise. I suggest the natural sequence of events lead up to accused doing this act - return to bldgn then to rear with prisoners followed by return to cellar to find Pl Comdr taking names of those present to transfer to another platoon for action, then the shooting. Unfortunately.

DEFENCE CLOSING ADDRESS

The accused was placed on his defence and under oath gave the court his explanation of what took place. When asked about the particular circumstances surrounding this incident and asked if it was wilful or negligent - his reply was reasonable one - one cannot account for all actions under conditions existing in the front line. It is not likely that if accused intented to injure himself that he would do so in the basement in presence of 5 of his comrades. The prosecution have not been able to produce one single member of these five. That is unfortunate - principle of doubt and establishment of intent in this case is impossible in view of lack of evidence I have referred to. As to the first charge it is impossible to convict this man on his own story where intent cannot be substantially inferred. Charge should be dismissed. As to negligence, he knows certain standards are to be maintained under certain conditions and probably the first thing he learned. Despite the rigorous conditions existing at the time - in contact with enemy certain standards of care must maintained or more accidents would occur. Therefore he is prepared to accept those conditions where they are precedent to good soldiery and in order to prove he is a good soldier he has told you under oath that he wants to go back and prove it. My submission on this charge (2nd) that any sentence you may feel like awarding - have its effect suspended and make it possible for this boy to go back and prove in his own mind and others that he is worthy to be wearing the uniform of the Black Watch.

PLEA IN MITIGATION BY THE DEFENDING OFFICER

The accused is 20 yrs old - enlisted 16 Nov 42 born 3 Nov 24 - from Oshawa, Ont - father inspector with General Motors - both parents living. One brother with PPCLI in Italy, one in RCAF 18 yrs old in Canada education 1 yr high at 15 yrs - unmarried - assigns $20 to his mother. My remarks are only to second charge and material to consider the extent of his blameworthiness pursuant to amend to Sec 40. Weigh evidence as to its relative degree of negligence in these particular cases. In this particular case I ask you to consider this lads unit was in close proximity to the enemy when this unfortunate occurrence took place, and secondly we are unable to produce any comrade to say how he previously acquitted himself in the Pn before this happened. Finally I ask you to view as a case where he wants to go back and prove he is type of soldier he says he is. Therefore I can do no better than ask you to do everything you can which will enable him to return thereby giving him his means to carry outthis will.

(Sgd) E.F. Lee Major
President.

EXHIBIT "A"

21 Cdn Gen Hosp
11 Oct 45

Reg No C753724 Pte DUNCAN, Jack Douglas, Black Watch, (RH of C)
17 Pln "D" Coy, 2 Cdn Infantry Div., states as follows:

I have been warned by S/Sgt Chester, SIB Cdn Provost Corps that I am not obliged to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence. I understand this caution and I make this statement voluntarily.

(Sgd) J. Duncan

I will be 20 years of age in November of this year. I enlisted voluntarily in the RCOC at Kingston, Ont on 17 Nov 42. I served with and had my basic training in the RCOC at Kingston and Cornwall. Four months after enlistment I was transferred with a number of other men from Ordnance to Cdn Infantry Corps and sent to Valcartier camp where I had advanced training for two months. In December 43 I arrived in the UK with other infantry reinforcements and went to 5 CIRU where I remained until March 44 when I went as a reinforcement to my present unit and was placed in "D" Coy which was training coy for reinforcements. Before the unit came to France about the middle of June 44 the majority of "D" Coy including myself were sent to CBRD as a reinforcement Coy for the Black Watch. After 2 weeks there I was sent to 1st Cdn Army Service Incre for about 2 months, then to 4 Dn Service Incre, for a few days, then to 4 CIRU where I remained for about 5 weeks, until about 1 Sept 44 when I was sent to France, arriving about 9th or 10th of Sep at 2 CBRD. I rejoined my unit about 22nd or 23rd Sept 44. They were then at a rest camp in Belgium and we stayed there until 28 Sept when we moved up to a town, it was either St Leonard or a part of it and took it with very little opposition, but were driven out again early the next morning by a counterattack and took up a position on the south side of the canal. From about 0530 hrs until about 1100 hrs 29 Sep I was with the Company spread out behind the back of the Canal and were pinned down by machine gun and mortar fire. There were not enough slit trenches to go around, so about 1100 hrs, after a couple of near misses from mortar-bombs, with ther permission of my Cpl, Callaghan by name, I went with another man from the Coy, whose name I don't know, and got into the basement of a nearby building which used to be company headquartens before they moved accross the road. There were a number of men going in and out of this building looking for the new HQ. After a while I went to the new HQ to take a look at some prisoners held there and was detailed by the CSM to help escort prisoners back to Battalion HQ about a mile away. On returning to the basement I saw Cpl Callaghan taking the names of those of our platoon who were left. I went out again to look around and then accompanied Cpl Callaghan and another man into the town, about 75 yards up the road to pick up some equipment that had been left behind when we were driven back. Back in the basement, we had something to eat - there were six of us in a room, and I started to clean my rifle. I cleaned it and was playing with the magazine trying to get the spring to work as it seemed to catch and would not push the cartridges out into the breech. It still didn't work but I filled it and put it back on the rifle. I worked the bolt but it seemed to slide over the rounds without pushing one into the chamber. I was sitting on a chair facing the door with the rifle across my knees. I must have dozed off. I had had no sleep for over 2 days Something woke me up - I think the time was about 1530 hrs, it could have been Mortar fire, I don't know what it was. I was lying on the floor and somebodywas asking me if I wanted a cigarette, someone else was taking off my boot from my left foot which felt numb. I remember that Pte Cameron was in the room but I don't recall what he was doing. He is in No 5 Section, 17 Platoon. I can't remember anything from the time I was sitting on the chair working the bolt of my rifle until I found myself on the floor. I have a vague recollection of an explosion of some kind. Somebody put a bandage on my left foot. I was very hazy about the whole thing but I sat up and saw blood was coming ~~from~~ through the bandage. I didn't know where the blood was coming from but one of the fellows told me I had been shot in the big toe - that it was only a slight wound. Another man told me that the bullet which wounded me came from my own rifle. He said he had looked at it and there was an empty round in

in the chamber. I used the rifle later as a crutch but I didn't look for the empty round myself. I went with the help of another man whom I don't know to Coy HQ and there my wound was dressed again - or I think it was - I was still pretty hazy about the whole thing. From there I was sent to Field Dressing Station and through various hospitals until I arrived at 21 Cdn Gen Hosp on 10 Oct 44.

I have never thought about deliberately wounding myself. I don't know how it happened. I can't explain it any better than I have doen in this statement. I heard from one of the boys whose name I don't know that the safety catch was off the weapon. This would be the case as I was working the bolt the last thing I remember. I don't know what became of the rifle. I never saw it again after leaving Coy HQ on 29 Sept 44. I do not consider that I was negligent in any way.

This statement has been read to me. I have read it over and it is true.

Witness Signature;
H.W. Chester Sgt.

Signature J. Duncan.

4P.79

FIELD GENERAL COURT-MARTIAL

CFA86 (To Item 10 of AFA81) 40-P & R-1698 (40500) 4/38B

Convened by Order of Maj-Gen E.L.M. BURNS OIC Cdn Sec Comd GHQ 1 Rch 21 A Gp dated 26 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.73724	Pte	Jack Douglas	DUNCAN	RHQ 12 Bn 2 CBRG

CERTIFIED TRUE COPY

Can. Sec. G.H.Q. 2 Ech. 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 3 JAN 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 19/55

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed. KPL

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OF JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 76, 94, 102, 119, 132.)

A2.* The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) KPL The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and KPL each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences. KPL

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) KPL ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by his CO.~~(2) KPL

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. ~~President to accused: Do you object to [illegible] as interpreter? Ans~~ KPL

~~The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer? Ans~~ KPL

~~The shorthand writer is sworn.~~(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc: KPL

President	Major	E.P. LEE	Gen List Cdn Sec GHQ 1 Rch 21 A Gp
Member	Captain	F.A. BAILLARGEON	Gen List Att Cdn Sec GHQ 1 Rch 21 A Gp
Member	Captain	E.B. VAN DIDE	RCASC att Cdn Sec GHQ 1 Rch 21 A Gp
Judge-Advocate			
Prosecutor	Major	E.F. WILLSON	Linc & Well'd Regtatt Cdn Sec GHQ 1 Rch 21 A Gp
Defending Offr	Captain	W.G.D. RUDDIFORD	RCASC att Cdn Sec GHQ 1 Rch 21 A Gp

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See 2d p 3.)

A8. The accused ~~stands~~ before arraignment make(s) (no) ~~stands~~ plea KPL

(2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 56, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. KPL

(1. RP 31, 112. See paras 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and, considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

Vol II p.100

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C.73724 Pte Jack Douglas DUNCAN Royal Highlanders of Canada 12 Bn 2 CBRG

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 18(2)	Not Guilty	Not Guilty	
2nd	Alternative AA 40	Not Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (3)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for one year

(Sgd) ..... 5 Jan 45 (Sgd) E.P. Lee Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~(1) ELMB

(1. AA 57A. Delete if not used.)

(Sgd) E.L.M. Burns Maj Gen
Officer i/c Canadian Section
Date: 4 Jan 45 Commanding GHQ 1 Rch
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C73724 Pte Duncan, J.D.	5 Jan 45	(Sgd) A.O. Hood Lt-Col. OC, 12 Bn, 2 CBR Group

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. *RP* 37(5). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 2; *MML p* 54 *para* 47. 4. *Deleted as part not used. Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court declines to advise the accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. no sir (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 93(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114. KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the first and second charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the first and second charge(s), and allowed on the ~~charges~~, and that, accordingly, the trial will proceed on the former, but the accused is (are) found ~~Not Guilty on the latter charge(s)~~.(4) EPL EPL
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114*, *115*.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. yes sir to give evidence myself. On oath? Do you intend to call witnesses on your behalf? Ans. no sir. Are they witnesses as to character only? Ans. n/a
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2-9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the second charge, being subject to confirmation, will be promulgated later.(1) EPL EPL
(1. *AA* 34(*J*) (*a*), *RP* 42, 120(*A*). 2. *AA* 34(*J*), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. no sir
(1. *If evidence has already been given to accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces a statement of the character of the accused, and a copy (copies) of Conduct Sheet(s)(1), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 160(3) (g) (h), and (2) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(2) EPL
(1. *MFB* 255 *or MFB* 296. 2. *Adm fn* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes sir by my defending officer.(2) EPL
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should call accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 34(*G*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, *44 and its powers, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, *138*, *182*, *RP* 46-50, *88*, *118*, *119*(*A*), *KR Can* 308, *330*, 363-366. *Overseas KO* 359, 2323, *MML p* 60, 737-759. *As to sentences assigned for civil offences to the law of England see AA* 41 (*3*), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44*A* (*B*), *MFB* (*1*), *KR Can* 564. 2. *RP* 52. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, C.73724 Pte Jack Douglas DUNCAN, Royal Highlanders of Canada, on strength 12 Battalion 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Army Act
Sec 18(2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he

In the Field, 29 Sep 44, while with his regiment in the line, by discharging his rifle wifully injured himself by shooting himself through the left foot with intent thereby to render himself unfit for service.

Second Charge
(Alternative)
Army Act
Sec 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, 29 Sep 44, while with his regiment in the line, so negligently handled his rifle as to shoot himself through the left foot thereby rendering himself unfit for service.

In the Field,
18 Dec 44

(Sgd) A.O. Hood Lt-Col
OC 12 Bn - 2 CBRG

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
26 Dec 44.

(Sgd) E.L.M. Burns Maj-Gen
OIC
Cdn Sec GHQ 1 Echn - 21 A Gp

MP Lee Major
President

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, on immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.73724	Pte		Jack Douglas	DUNCAN	(RHC) 12 Bn 2 CBRG

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has ~~XXXX~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Dec 44 endorsed by me, (~~XXXX

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as practicable*, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of proceedings (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 86(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, *statements by accused (not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 2(6)), or* evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions where accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fnn 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged possibly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS R. C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or *JA, if any*, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any *declarations* made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 162 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and such forms part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after finding of sentence awarded. (*AA 53(3), RP 113(C), MML p 753.*)

4. The President or JA, *if any*, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE

(KR (Can) Para 557)

I certify that I have this day examined C.73734

Pte DUNCAN J.D. and in my opinion he is

fit to undergo trial by Court-Martial.

Station 12 CBRG

Date Jan 3/44

HP Lee Major
President

(Sgd) ??????????????Capt
Medical Officer
12 Bn 2 CBRG

C.73724 Pte Duncan J.D. R.H.C.

Opening Address by Prosecutor

There were two witnesses Pte Cameron and Cpl Cameron, but they have since become casualties and are not now available.

D3
FIRST WITNESS FOR THE PROSECUTION — Major J.P. Middleboro, RCAMC att 2 Cdn Gen Hosp, being duly sworn is examined by the prosecutor.

I examined the accused this morning. I found a well healed soft tissue wound on his left great toe lying on the medial side of proximal phalanx. This was in the nature of a groove and passed at right angles to axis of the toe. No disability and I believe the wound could have been caused by weapon held in accused's own hands.

Cross-Examination.

The accused is fit to return to the line.

RP 83(B) complied with.

SECOND WITNESS FOR THE PROSECUTION — B76047 S/Sgt CHESTER H.W. SIS Cdn Provost Corps att 12 Bn 2 CBRD being duly sworn is examined by the prosecutor.

I recognize the accused. On 11 Oct 44 at 21 Cdn Gen Hosp I interviewed the accused and informed him I was investigating circumstance surrounding his wound. I cautioned him that he was not obliged to say anything but whatever he did say would be taken down in writing and may be used in evidence. He volunteered a statement which I reduced to writing, which he read over himself and signed. I produce the statement, marked exhibit "A".

The defence has no objection to admission of statement in evidence.

No Cross Examination

RP 83 (B) complied with.

D.4
MOTION BY DEFENDING OFFICER

I move for dismissal of both charges on following grounds. Firstly case by prosecution has failed to establish a prima facie case there is not a scintilla of evidence to show intent in first charge and blameworthiness in second charge. Firstly Major Middleboro says he found a well healed tissue wound of great toe - no disability and that wound might have been caused by weapon. Second witness who merely produces a memo he took on 11 Oct 44 and purporting to be none other than an explanation by this accused as to actually what happened. Nothing in which discloses intent or negligence. There is nothing on which to found a conviction on the first charge. On the second charge if there is sufficient in your minds to establish blamworthiness, under Army rules and active conditions, only then you can make a finding on that charge.

REPLY BY PROSECUTOR

The prosecution has some difficulty with witnesses and must rely on the circumstances surrounding the

incident - you have his nervous background. In his statement he admits he went to the bldgn for shelter after near misses and heavy machine gun fire for shelter - then you find him escorting prisoners to the rear. He returns to find his Pl Cmdr to take names of those left - he cleaned his rifle and this happened. This is sum and total of his statement. I say there is sufficient evidence there to necessitate an explanation. As to negligence, he has trained since 42 - basic and advanced and in the line some time before this incident happened. He admits trouble with mag and playing with bolt when in that condition, operated bolt back and forward several times, and safety must have been off - then nothing more but a vague explosion. Nature of the wound is also an important factor. As to negligence accused knew of faulty magazine and did not take proper safety precautions. You can find sufficient grounds in the circumstances to put the accused on his defence on both charges.

D6
FIRST WITNESS FOR THE DEFENCE — C73724 Pte DUNCAN J.D. Black Watch RH of C being duly sworn is examined by the defending officer.

I had no sleep for two days. I had completed cleaning my rifle before I dozed off. I heard a noise and the first thing I heard someone ask me if I wanted a cigarette. I had no thought of getting out of the line. There was heavy mortar fire at the time but it had ceased. What just woke me up I cannot say. I don't think that its fair that I have the suspicion of wounding myself intentionally. I had not asked to be relieved - I was with the unit for 8 days. I only account for dozing off because I had no sleep for 48 hrs. No one found fault with my work - I am a rifleman and would like to go back and prove myself. This injury was not wilfull. I am 20 yrs of age - joined when I was 18 yrs - unmarried.

Cross-examination

I did not hold my hand down on rounds in magazine, when I worked bolt. I did not check to see if a round in chamber when I last closed bolt. You normally, when no round in chamber you close bolt and put safety catch on. I don't recall taking that precaution there. Sometimes we carried rifles loaded and safety catch off. We were close to enemy lines at the time. We were waiting for Calgarys to pass through. There were 5 or 6 of us in the cellar. Maybe if I hadn't been so tired and sleepy I would have been more careful. Cpl took names andwe were going to 18 pl where they were dug in. We were reforming and they were making one platoon out of two. We were cut off first and A & C Coys went through. I cannot explain the incident any different that I explained it in my statement. My memory was so blotted out that is all I can remember about it. I have never been in good physical condition since I've been in Army. MO's brush it off as rheumatism, or stiffness from lack of exercise or something like that. I said I'd go back to the infantry. There are however sometimes you have to run and that leaves me out. After I have stood still for a while I cannot start running. I have always had that, that is why I joined RCOC. The army has brought it on more. We started to fight 3 o'clock on afternoon untill 1500 hrs the next. We took our objective, then enemy counter attacked. Just the one show. I was not fighting all the 48 hrs I was without sleep

By the Court

I was an Airplane Mechanic in civil life.
I suppose the round caught the last time I pushed the bolt home. I was off duty part of the 48 hrs but I got wet in the rain and could not sleep.
R.P. 83(B) Complied with.

PROSECUTION CLOSING ADDRESS

The facts are simple and fresh in your minds - I only want to bring out a few of them showing that the accused's story is not consistent. The charges are in the alternative and it is my submission that there is sufficient evidence to warrant a conviction under the 1st chge. The accused was cleaning his rifle in basement of a bldgn there were a number present. - The circumstance leading up indicate in some reppect what was in accused's mind - At least the type of work he was doing and what his Pl Cmdr thought of his position at the time. As far as negligence is concerned, he said he remembered nothing after he worked the bolt - no precautions were taken - He did not see if a round in the chamber - did not hold rounds down when he shoved bolt home. If you do not believe the accused then thereis sufficient evidence to support the first charge. I leave the question of credibility to you. 303 round through the toe would not blot everything out of your mind, not like a blow on the head. No question of concussion in 303 explosion - there would be very little report or noise. I suggest the natural sequence of events lead up to accused doing this act - return to bldgn then to rear with prisoners followed by return to cellar to find Pl Comdr taking names of those present to transfer to another platoon for action, then the shooting. Unfortunately.

DEFENCE CLOSING ADDRESS

The accused was placed on his defence and under oath gave the court his explanation of what took place. When asked about the particular circumstances surrounding this incident and asked if it was wilful or negligent - his reply was reasonable one - one cannot account for all actions under conditions existing in the front line. It is not likely that if accused intented to injure himself that he would do so in the basement in presence of 5 of his comrades. The prosecution have not been able to produce one single member of these five. That is unfortunate - principle of doubt and establishment of intent in this case is impossible in view of lack of evidence I have referred to. As to the first charge it is impossible to convict this man on his own story where intent cannot be substantially inferred. Charge should be dismissed. As to negligence, he knows certain standards are to be maintained under certain conditions and probably the first thing he learned. Despite the rigorous conditions existing at the time - in contact with enemy certain standards of care must maintained or more accidents would occur. Therefore he is prepared to accept those conditions where they are precedent to good soldiery and in order to prove he is a good soldier he has told you under oath that he wants to go back and prove it. My submission on this charge (2nd) that any sentence you may feel like awarding - have its effect suspended and make it possible for this boy to go back and prove in his own mind and others that he is worthy to be wearing the uniform of the Black Watch.

PLEA IN MITIGATION BY THE DEFENDING OFFICER

The accused is 20 yrs old - enlisted 16 Nov 42 born 3 Nov 24 - from Oshawa, Ont - father inspector with General Motors - both parents living. One brother with PPCLI in Italy, one in RCAF 18 yrs old in Canada education 1 yr high at 15 yrs - unmarried - assigns $20 to his mother. My remarks are only to second charge and material to consider the extent of his blameworthiness pursuant to amend to Sec 40. Weigh evidence as to its relative degree of negligence in these particular cases. In this particular case I ask you to consider this lads unit was in close proximity to the enemy when this unfortunate occurrence took place, and secondly we are unable to produce any comrade to say how he previously acquitted himself in the Bn before this happened. Finally I ask you to view as a case where he wants to go back and prove he is type of soldier he says he is. Therefore I can do no better than ask you to do everything you can which will enable him to return thereby giving him his means to carry outhis will.

(Sgd) E.F. Lee Major
President.

EXHIBIT "A"

21 Cdn Gen Hosp
11 Oct 43

Reg No C73724 Pte DUNCAN, Jack Douglas, Black Watch, (RH of C)
17 Pln "D" Coy, 2 Cdn Infantry Div., states as follows:

I have been warned by S/Sgt Chester, SIS Cdn Provost Corps that I am not obliged to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence. I understand this caution and I make this statement voluntarily.

(Sgd) J. Duncan

I will be 20 years of age in November of this year. I enlisted voluntarily in the RCOC at Kingston, Ont on 17 Nov 42. I served with and had my basic training in the RCOC at Kingston and Cornwall. Four months after enlistment I was transferred with a number of other men from Ordnance to Cdn Infantry Corps and sent to Valcartier camp where I had advanced training for two months. In December 43 I arrived in the UK with other infantry reinforcements and went to 5 CIRU where I remained until March 44 when I went as a reinforcement to my present unit and was placed in "E" Coy which was training coy for reinforcements. Before the unit came to France about the middle of June 44 the majority of "E" Coy including myself were sent to CBRD as a reinforcement Coy for the Black Watch. After 2 weeks there I was sent to 1st Cdn Army Service Incre for about 2 months, then to 4 Di Service Incre, for a few days, then to 4 CIRU where I remained for about 5 weeks, until about 1 Sept 44 when I was sent to France, arriving about 9th or 10th of Sep at 2 CBRD. I rejoined my unit about 22nd or 23rd Sept 44. They were then at a rest camp in Belgium and we stayed there until 28 Sept when we moved up to a town, it was either St Leonard or a part of it and took it with very little opposition, but were driven out again early the next morning by a counterattack and took up a position on the south side of the canal. From about 0530 hrs until about 1100 hrs 29 Sep I was with the Company spread out behind the back of the Canal and were pinned down by machine gun and mortar fire. There were not enough slit trenches to go around, so about 1100 hrs, after a couple of near misses from mortar-bombs, with ther permission of my Cpl, Callaghan by name, I went with another man from the Coy, whose name I don't know, and got into the basement of a nearby building which used to be company headquarters before they moved across the road. There were a number of men going in and out of this building looking for the new HQ. After a while I went to the new HQ to take a look at some prisoners held there and was detailed by the CSM to help escort prisoners back to Battalion HQ about a mile away. On returning to the basement I saw Cpl Callaghan taking the names of those of our platoon who were left. I went out again to look around and then accompanied Cpl Callaghan and another man into the town, about 75 yards up the road to pick up some equipment that had been left behind when we were driven back. Back in the basement, we had something to eat - there were six of us in a room, and I started to clean my rifle. I cleaned it and was playing with the magazine trying to get the spring to work as it seemed to catch and would not push the cartridges out into the breech. It still didn't work but I filled it and put it back on the rifle. I worked the bolt but it seemed to slide over the rounds without pushing one into the chamber. I was sitting on a chair facing the door with the rifle across my knees. I must have dozed off. I had had no sleep for over 2 days Something woke me up - I think the time was about 1530 hrs, it could have been Mortar fire, I don't know what it was. I was lying on the floor and somebodywas asking me if I wanted a cigarette, someone else was taking of my boot from my left foot which felt numb. I remember that Pte Cameron was in the room but I don't recall what he was doing. He is in No 5 Section, 17 Platoon. I can't remember anything from the time I was sitting on the chair working the bolt of my rifle until I found myself on the floor. I have a vague recollection of an explosion of some kind. Somebody put a bandage on my left foot. I was very hazy about the whole thing but I sat up and saw blood was coming through the bandage. I didn't know where the blood was coming from but one of the fellows told me I had been shot in the big toe - that it was only a slight wound. Another man told me that the bullet which wounded me came from my own rifle. He said he had looked at it and there was an empty round in

in the chamber. I used the rifle
look for the empty round myself.
whom I don't know to Coy HQ and
or I think it was - I was stil
From there I was sent to Pie
hospitals until I arrived

I have never thought
don't know how it happened.
have done in this statement.
name I don't know that the safe
would be the case as I was workin
remember. I don't know what becam
again after leaving Coy HQ on 29 Sep
I was negligent in any way.

This statement has been read to me.
and it is true.

Witness Signature
H.W. Chester Sgt.

Signature J. Du

in the chamber. I used the rifle later as a crutch but I didn't look for the empty round myself. I went with the help of another man whom I don't know to Coy HQ and there my wound was dressed again - or I think it was - I was still pretty hazy about the whole thing. From there I was sent to Field Dressing Station and through various hospitals until I arrived at 21 Cdn Gen Hosp on 10 Oct 44.

I have never thought about deliberately wounding myself. I don't know how it happened. I can't explain it any better than I have done in this statement. I heard from one of the boys whose name I don't know that the safety catch was off the weapon. This would be the case as I was working the bolt the last thing I remember. I don't know what became of the rifle. I never saw it again after leaving Coy HQ on 29 Sept 44. I do not consider that I was negligent in any way.

This statement has been read to me. I have read it over and it is true.

Witness Signature:
H.W. Chester Sgt.

Signature J. Duncan.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : C 73724 Pte Jack Douglas Duncan Royal Hy Inf Canada 12 Bn 2 C.B.R.C.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 18(c)	not guilty	not guilty	
2nd	alternative AA 24	not guilty	guilty	
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for D/S. beginning on (date) 2/1/45 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which 8 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for one year

(Sgd) ... Judge-Advocate, if any. Date awarded 3 Jan 45 (Sgd) ... President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 739-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

The decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1) E de B

(1. AA 57A. Delete if not used.)

(Sgd) E de Burgh Maj Gen

Date ... Commanding Officer 1st Canadian Infantry Division Confirming Officer.

I certify that there are no illegalities or irregularities to justify withholding confirmation of above sentence.

D.A.G. Cdn. Sec. G.H.Q. 21 Army Gp. 10/2 Jan 45

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
C73724 Pte Duncan, J.D.	5 Jan 45	A Ward Lt-Col. O.C. 12 Bn., 2 C.B.R. Group

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4/P. 79

FIELD GENERAL COURT-MARTIAL

CFA66 (To form of AFA21) 40/1 & 8/1098 (4/44)

4/38B

Convened by Order of Major General E.L.M. Burns Comd 2 Cdn Inf Div dated 28 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank held (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C 73724	Pte	Jack Douglas	Duncan	Royal Hy Inf Canada 12 Bn 2 C.B.R.C.

PROCEEDINGS REVIEWED

R.W. Lawley Capt

1474 Y.S. 1947 REVIEWED AT ... BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 3 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 19/35

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto (1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At ... hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ~~an interpreter~~ ~~Acc~~ ... The Interpreter is sworn.(1) Do you ~~object~~ to ~~an shorthand writer~~ ~~Acc~~ ... The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans ~~Acc~~ ~~non~~. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 16, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	E P Kee	2 Cdn Inf Div Provost Coy
Member	Captain	J R Bouchard-Gion	2 Cdn Inf Div Provost Coy
Member	Captain	E B Van Lier	RCASC attd 2 Cdn Inf Div Provost Coy
Judge-Advocate		-	
Prosecutor	Major	R F Wilkson	2 Cdn Inf Div Provost Coy
Defending Offr	Captain	W C J Harrington	RCASC attd 2 Cdn Inf Div Provost Coy

Questions by President : Is the Prosecutor a lawyer ? Ans ~~Acc~~ Is the Defending Offr a lawyer ? Ans ~~Acc~~ (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 32.)

A8. The accused ... before arraignment make(s) (no) (a) plea ... (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 30, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form ...

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3, *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Forms E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (~~no~~) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ~~first and second~~ charge(s), ~~and allowed on the charge(s)~~ and that, accordingly, the trial will proceed on the former, ~~but the accused is~~ (are) found Not Guilty on ~~the latter charge(s)~~.(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(A) *fn* 1, 86(C). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ~~second~~ charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor ~~declares~~ tenders Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in ~~his charge witnessed~~ by AA 163(3) (*g*) (*h*), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and unit as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB* 255 *or MFB* 294. 2. *MFMC* 6. 3. *RP* 46, *KR Can* 158. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court ~~on the Statement(s) and Particulars of Service(s), and~~ in mitigation of punishment ?(1) Ans .....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to refer on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(1. *When several accused tried separately are RP* 71 (*2*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its genesis, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 68, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 737-739. *As to sentences consigned for civil offences to the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, C.73724 Pte Jack Douglas DUNCAN, Royal Highlanders of Canada, on strength 12 Battalion 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 18(2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he

In the Field, 29 Sep 44, while with his regiment in the line, by discharging his rifle wilfully injured himself by shooting himself through the left foot with intent thereby to render himself unfit for service.

SECOND CHARGE
(Alternative)
Army Act
Sec 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, 29 Sep 44, while with his regiment in the line, so negligently handled his rifle as to shoot himself through the left foot thereby rendering himself unfit for service.

A.O. Hood

In the Field,
7 Dec 44.

(A.O. Hood) Lt-Col
OC 12 Bn - 2 C.B.R.G.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

E.L.M. Burns

In the Field,
14 Dec 44.

(E.L.M. Burns) Maj-Gen
OIC
Cdn Sec GHQ 1 Ech - 21 A Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.73724	Pte		Jack Douglas	DUNCAN	(RHC) 12 Bn 2 CBRG

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (date) 26 Dec 44 endorsed by me, ~~(or by an offr of my staff for me)~~ "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~(a) I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~(b) I am appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.P. LEE	Gen List-Cdn Sec GHQ 1 Ech - 21 A Gp

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	F.A. BAILLARGEON	Gen List-att Cdn Sec GHQ 1 Ech - 21 A Gp.
Capt	E.B. VAN DINE	RCASC - att Cdn Sec GHQ 1 Ech - 21 A Gp

~~WAITING MEMBER.~~

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally. RP 105 fn 2.) (E.L.M. Burns)

Maj-Gen (Rank.)

Dat 26 Dec 44

Commanding Cdn Sec GHQ 1 Ech - 21 A Gp.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 95 (In lieu of AFA 2) 40/P 4/8/1697 (8143)

approved DJA

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40–42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 80(C), 87(C), 92(C) (D).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than on mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fn* 8-12, 87(C), 92(C) (D).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (D). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 40(E), *KR Can* 562(a).)

(vii) Summing up by *JA*, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or *JA*, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or *JA*, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy see Index of original see KR Can* 560. *As to certified copies of regimental books see AA* 163 (1) (g) (h).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p *A* of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML p* 758.)

4. The President or *JA*, if any, will return proceedings promptly with covering letter dated in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)

I certify that I have this day examined C73734 (No.) PTE (Rank) DUNCAN JD (Name) and in my opinion he is fit ~~unfit~~ to undergo trial by Court-Martial.

Station 12 CBRC

Date. Jan 3/44

E L [illegible] [illegible] [illegible]

[illegible] Capt (Sgd)
Medical Officer
Unit 12 Km 2 CBRC

1. C73724 Pte Duncan J.D. R.H.C.

D 2
Opening address by prosecutor

There were two witness Pte Cameron and Cpl Cameron, but they have since become casualties and are not now available.

D 3

First witness for the prosecution

Major J.P. Middleboro, RCAMC att 2 Cdn Gen Hosp. being duly sworn is examined by the prosecutor.

I examined the accused this morning. I found a well healed soft tissue wound on his left great toe lying on the medial side of proximal phalanx. This was in the nature of a groove and passed at right angles to axis of the toe. No disability and I believe the wound could have been caused by weapon held in accused's own hands

Cross-examination

The accused is fit to return to the line

R.P. 83(B) complied with

Second witness for the prosecution

B76047 S/Sgt Chester, H.W. S.I.S. Cdn Provost Corps att 12 Bn 2 CBRC being duly sworn is examined by the prosecutor.

I recognize the accused. On 11 Oct 44 at 21 Cdn Gen Hosp I interviewed the accused and informed him I was investigating circumstances surrounding his wound. I cautioned him that he was not obliged to say anything but whatever he did say would be taken down in writing and may be used in evidence. He volunteered a statement which I reduced to writing, which he read over himself and signed. I produce the statement, marked exhibit "A."

The defence has no objection to admission of statement in evidence

No cross examination

R.P. 83(B) complied with

D4..

2.

Motion by defending officer

I move for dismissal of both charges on following grounds. 1stly case by prosecution has failed to establish a prima facie case there is not a scintilla of evidence to show intent in first charge and blameworthiness in second charge. Firstly Major Middleboro, says he found ~~[illegible]~~ ~~in left great toe~~ well healed tissue wound of great toe - no disability and that wound might have been caused by weapon. Second witness who merely produces a memo he took on 11 Oct 44 and purporting to be none other than an explanation by this accused as to actually what happend. Nothing in which discloses intent or negligence. There is nothing on which to found a conviction on the first charge. On the second charge if there is sufficient in your ~~to~~ minds to establish blameworthiness, under army rules and active conditions, only then you can you make a finding on that charge

Reply by prosecutor

The prosecution has same difficulty with witnesses and must rely on the circumstances surrounding the incident - you have his nervous background. In his statement he admits he went to the bldgs for shelter after near misses and heavy machine gun fire for shelter - then you find him escorting prisoners to the rear. He returns to find his Pl Cmdr to take names of those left ~~to go to mother Pl~~ - he cleaned his rifle and this happened. This is the sum and total of his statement. I say there is sufficient evidence there to necessitate an explanation. As to negligence, he has trained since 42 - basic and advanced and in the line some time before

this incident happened. He admits trouble with mag and playing with bolt when in that condition, operated bolt back and forward several times, and safety must have been off - then nothing more but a vague explosion. Nature of the wound is also an important factor. As to negligence accused knew of faulty magazine and did not take proper safety precautions. You can find sufficient grounds in the circumstances to put the accused on his defence on both charges.

D6.

First witness for the defence

C73724 Pte Duncan J.D. Black Watch, R.H. of C. being duly sworn is examined by the defending officer.

I had no sleep for two days. I had completed cleaning my rifle before I dozed off. I heard a noise and the first thing I heard someone ask me if I wanted a cigarette. I had no thought of getting out of the line. There was heavy mortar fire at the time but it had ceased. What just woke me up I cannot say. I don't think that it's fair that I have the suspicion of wounding myself intentionally. I had not asked to been relieved - I was with the unit for 8 days. I only account for dozing off because I had no sleep for 48 hrs. No one found fault with my work - I am a rifleman and would like to go back as such. I took 38 prisoners back with another lad. I would like to go back and prove myself. This injury was not wilfull. I am 20 yrs of age - joined when I was 18 yrs - unmarried.

Cross-examination

I did not hold my hand down on rounds in magazine when I worked bolt. I did not check to see if a round in chamber when I last closed bolt. You normally, when no round in chamber you close bolt and put safety catch on. I don't recall taking that precaution there. Sometimes we carried rifles loaded and safety catch off. We were close

to enemy lines at the time. We were waiting for Calgary to pass through. There were 5 or 6 of us in the cellar. Maybe if I hadn't been so tired and sleepy I would have been more careful. Cpl took names and we were going to 18 pl. where they were dug in. We were reforming and they were making one platoon out of two. We were cut off first and A & C Corp. went through. I cannot explain the incident any different than I explained it in my statement. My memory was so blotted out, that is all I can remember about it. I have never been in good physical condition since I've been in army. M.O. brush it off as rheumatism, or stiffness from back of exercise, or something like that. To prove that it wasn't intentional, I said I'd go back to the infantry. There are however sometimes you have to run and that leaves me out. After I have stood still for a while I cannot start running. I have always had that, that is why I joined the RCOC. The army has brought it on more. We started to fight 3 o'clock one afternoon until 1500 hrs the next. We took our objective, then enemy counter attacked. Just the one show. I was not fighting all the 48 hrs I was without sleep.

By the Court

I was an airplane mechanic in civil life. I suppose the round caught the last time I pushed the bolt home. I was off duty part of the 48 hrs but I got wet in the rain and could not sleep.

RP 83(B) complied with

Prosecution closing address

The facts are simple and fresh in your minds - I only want to bring out a few of them showing that the accused's story

is not consistent. The charges are in the alternative and it is my submission that there is sufficient evidence to warrant a conviction under the 1st chge. The accused was cleaning his rifle in basement of a bldgn there were a number present. The circumstances leading up indicate in some respect what was in accused's mind — at least the type of work he was doing and what his Pl Cmdr thought of his position at the time. As far as negligence is concerned, he said he remembered nothing after he worked the bolt — no precautions were taken — He did not see if a round in the chamber — did not hold rounds down when he shoved bolt home. If you do not believe the accused then there is sufficient evidence to support the first charge. I leave the question of credibility to you. 303 round through the toe would not blot everything out of your mind, not like a blow on the head — no question of concussion in 303 explosion — there would be very little report or noise. I suggest the natural sequence of events lead up to accused doing this act — return to bldgn then to rear with prisoners followed by return to cellar to find Pl. Cmdr taking names of those present to transfer to another platoon for action, then the shooting. Unfortunately

Defence closing address.

The accused was placed on his defence and under oath gave the court his explanation of what took place. When asked about the particular circumstances, surrounding this incident and asked if it was wilful or negligent — his reply was a reasonable one — one cannot account for all actions under conditions existing in the front line. It is not likely that if accused intented to injury himself that he would do so in the basement in presence of 5 of his comrades. The prosecution have not been able to produce

one single member of these five. That is unfortunate - principle of doubt and establishment of intent in this case is impossible in view of lack of evidence I have referred to. As to the first charge it is impossible to convict this man on his own story where intent cannot be substantially inferred. Charge should be dismissed. As to negligence, he knows certain standards are to be maintained under certain conditions and probably the first thing he learned - Despite the rigorous conditions existing at the time - in contact with enemy certain standards of care must be maintained or more accidents would occur. He is prepared to accept those conditions when they are precedent to good soldiering and in order to prove he is a good soldier he has told you under oath that he wants to go back and prove it. My submission on this charge (2nd) that any sentence you may feel like awarding - have its effect suspended and make it possible for this boy to go back and prove in his own mind and others that he is worthy to be wearing the uniform of the Black Watch.

E 3.

Plea in mitigation by the defending Officer

The accused is 20 yrs old - enlisted 16 Dec 42 born 3 Nov 24 - from Oshawa, Ont - father inspector with General Motors - both parents living. One brother with PPCLI in Italy, one in RCAF. 19 yrs old in Canada - education 1 yr high. at 15 yrs - unmarried - assigns $20 to his mother. My remarks are only to record charge and material to consider the extent of his blameworthiness pursuant to amend to sec 70. Weigh evidence as to its relative degree of negligence in these particular cases. In this particular case I ask you to consider this lads unit was in close proximity to the enemy when this

unfortunate occurrence took place, and secondly we are unable to produce any comrade to say how he previously acquitted himself in the Bn before this happened. Finally I asked you to view as a case where he wants to go back and prove he is type of soldier he says he is. Therefore I can do no better than ask you to do everything you can which will enable him to return thereby giving him his means to carry out his will

E. A. Lee
Major
President

Exhibit A
to the
Statement

21 Cdn. Gen. Hosp.
11 Oct 43.

Reg No. C-73724, Pte. DUNCAN, Jack Douglas, Black Watch, (R.H.of C.) 17 Plw, "D" Coy, 2 Cdn. Infantry Div., states as follows:

I have been warned by S/Sgt Chester, S.I.S. Cdn. Provost Corps, that I am not obliged to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence. I understand this caution and I make this statement voluntarily.

SIGNATURE J. Duncan

I will be 20 years of age in November of this year. I enlisted voluntarily in the RCOC at Kingston, Ont on 17 Nov. 42. I served with and had my basic training in the RCOC at Kingston and Cornwall. Four months after enlistment I was transferred with a number of other men from Ordnance to Cdn. Infantry Corps and sent to Valcartier Camp where I had advanced training for ~~two~~ JD months. In December 43 I arrived in the U.K. with other infantry reinforcements and went to 5 C.I.R.U. where I remained until March 44 when I went as a reinforcement to my present unit and was placed in "E" Coy which was a training Coy for reinforcements. ~~Before~~ JD the unit came to France about the ~~middle~~ JD ~~end~~ of June 44 the majority of "E" Coy including myself were sent to C.B.R.G. as a re-inforcement Coy for the Black Watch. After 2 weeks there I was sent to 1st Cdn Army Troops Mess for about 2 months, then to 4 Div. Troops Mess, for a few days, then to 4 C.I.R.U. where I remained for about 5 weeks, until about 1 Sept 44 when I was sent to France, arriving about 9th or 10th of Sept at 2 C.B.R.G. I rejoined my unit about 22nd or 23rd Sept 44. They were then at a rest Camp in Belgium and we stayed there until 28 Sept when we moved up to a town - it was either St. Leonard or a part of it and took it with very little opposition, but were driven out again early the next morning by a counter-attack and took up a position on the south side of the Canal. From about 0630 hrs until about 11.00 hrs 29 Sept I was with the Company spread out behind the bank of the

J. Duncan

canal and were pinned down by machine-gun and mortar fire. There were not enough slit trenches to go around, so about 1100 hrs., after a couple of near misses from mortar-bombs, with the permission of my Cpl, Callaghan by name, I went with another man from the Coy, whose name I don't know, and got into the basement of a nearby building which used to be Company headquarters before they moved across the road. There were a number of men going in and out of this building looking for the new H.Q. After a while I went to the new H.Q. to take a look at some prisoners held there and was detailed by the CSM to help escort prisoners back to Battalion H.Q. about a mile away. On returning to the basement I saw Cpl Callaghan taking the names of those of our platoon who were left. I went out again to look around and then accompanied Cpl Callaghan and another man into the town, about 75 yards up the road to pick up some equipment that had been left behind when we were driven back. Back in the basement, we had something to eat — there were six of us in a room — and I started to clean my rifle. I cleaned it and was playing with the magazine trying to get the spring to work as it seemed to catch and would not push the cartridges out into the breech. It still didn't work but I filled it and put it back on the rifle. I worked the bolt but it seemed to slide over the rounds without pushing one into the chamber. I was sitting on a chair facing the door with the rifle across my knees. I must have dozed off. I had had no sleep for over 2 days. Something woke me up. I think the time was about 1530 hrs., it could have been Mortar fire, I don't know what it was. I was lying on the floor and some body was asking me if I wanted a cigarette, some-one else was taking my boot from my left foot which felt numb. I remember that the Cameras was in

J. Duncan

J Duncan

the room but I don't recall what he was doing. He is in No. 5 Section, 17 Platoon. I can't remember anything from the time I was sitting on the chair working the bolt of my rifle until I found myself on the floor. I have a vague recollection of an explosion of some kind. Somebody put a bandage on my left foot. I was very hazy about the whole thing but I sat up and saw the blood coming through the bandage. I didn't know where the blood was coming from but one of the fellows told me I had been shot in the big toe – that it was only a slight wound. Another man told me that the bullet which wounded me came from my own rifle. He said he had looked at it and there was an empty round in the chamber. I used the rifle later as a crutch but I didn't look for the empty round myself. I went with the help of another man whom I don't know to Coy H.Q. and there my wound was dressed again – or I think it was – I was still pretty hazy about the whole thing. From there I was sent to Field Dressing Station and through various hospitals until I arrived at 21 Cdn. Gen. Hosp. on 10 Oct 44.

I have never thought about deliberately wounding myself. I don't know how it happened. I can't explain it any better than I have done in this statement. I heard from one of the boys whose name I don't know that the safety catch was off the weapon. This would be the case as I was working the bolt the last thing I remember. I don't know what became of the rifle. I never saw it again after leaving Coy H.Q. on 29 Sept 44. I do not consider that I was negligent in any way.

This statement has been read to me. I have read it over and it is true.

WITNESS Signature: [illegible] Sgt.

SIGNATURE J Duncan

Statement taken down in writing & witnessed by
B-76047, Middlesex, 8/54.

This is Exhibit 'A' referred to in the Summary of Evidence in the case of C.73724 Pte DUNCAN, J.D., taken this 19th day of December, 1944.

J B Barr Lt.
Officer taking Summary.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of C.73724 Pte Jack Douglas DUNCAN, RHC, on strength 12 Bn 2 CBRG, charged with, when on active service wilfully injuring himself with intent thereby to render himself unfit for service (AA Sec 18(2)), when on active service neglect to the prejudice of good order and military discipline (AA Sec 40).

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS

Capt D.R. Buchanan, 20 Cdn Gen Hospital RCAMC, sworn, states:

I examined the accused, Pte Duncan, to-day, 19 Dec 44. I found a half-inch scar on the lateral surface of the proximal phalanx of the left great toe. It is not adherent or painful. There is no limitation of movement. He walks without difficulty and there should be no lowering of category. This could have been caused by a weapon held in the man's own hands. He is fit for full duty.

The accused declines to cross-examine this witness.

DR Buchanan, Capt
Witness.

SECOND WITNESS

B.76047 S/Sgt Chester, H.W., SIS, Cdn Provost Corps, att 8 Cdn Gen Hospital RCAMC, sworn, states:

On 11 Oct 44 at 21 Cdn Gen Hospital I saw the accused, whom I recognize here. I identified myself to him and told him we were investigating the circumstances surrounding his wound. I cautioned him that he was not obliged to say anything unless he wished to do so but whatever he did say would be taken down in writing and may be given in evidence. He made a statement which I took down in writing. He read it over himself and signed it as being a true statement. I submit this statement. There were no threats, promises or inducements made to obtain this statement. (Statement attached hereto as Exhibit 'A')

The accused declines to cross-examine this witness.

HW Chester
Witness.

The accused is cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you do say or any evidence you give will be taken down in writing and may be used in evidence.

The accused declines to make a statement.

The accused does not call any witnesses.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence of the accused and that RP 4 has been complied with.

J R Barr A.

Officer detailed to take the Summary of Evidence.

In the Field,
19 Dec 44.

(CO Y)

No.21 Canadian General Hosp.
11 October 1944

Reg. No. C-73724 Pte. DUNCAN, Jack Douglas, Black Watch, (R.H. of C.) 17 Pltn., D Coy., 2 Canadian Infantry Div. states as follows:-

'I have been warned by S/Sgt. CHESTER, SIS, Canadian Provost Corps, that I am not obliged to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence. I understand this caution and I make this statement voluntarily.

(Sgd) J. DUNCAN

I will be 20 yrs. of age in November of this year. I enlisted voluntarily in the RCOC at Kingston, Ont. on 17 Nov. 42. I served with and had my basic training in the RCOC at Kingston and Cornwall. Four months after enlistment I was transferred with a number of other men from Ordnance to Canadian Infantry Corps and sent to Valcartier Camp where I had advanced trainging for two months. In December 43, I arrived in the U.K. with other infantry reinforcements and went to 5 C.I.R.U. where I remained until March 44, when I went as a reinforcement to my present unit and was placed in E Coy which was training Coy for reinforcements. Before the unit came to France about middle of June 44 the majority of E Coy including myself were sent to C.B.R.C. as a reinforcement Coy for the Black Watch. After 2 weeks there I was sent to 1 Cdn. Army Service Increment for about 2 months then to 4 Div. service incre. for a few days, then to 4 C.I.R.U. where I remained for about 5 weeks, until the 1 Sept. 44 when I was sent to France arriving about 9 or 10 Sept. at 2 C.B.R.C. I rejoined my unit about 22 or 23 Sept. 44. They were then at a rest camp in Belgium and we stayed there until the 28 Sept. 44 when we moved up to a town, it was either St. Leonard or a part of it and took it with very little opposition, but were driven out again early the next morning by a counter attack and took up a position on the south side of the canal. From about 0530 hours until about 1100 hrs, 29 Sept. 44, I was with the Coy. spread out behind the bank of the canal and we were pinned down by machine gun and mortar fire. There were not enough slit trenches to go around, so about 1100 hours, after a couple of near misses from mortar bombs, with the permission of my Cpl. CALLAGHAN by name, I went with another man from the Coy., whose name I don't know, and got into the basement of a nearby building which used to be Coy. HQ before they moved across the road. There were a number of men going in and out of this building looking for the new H.Q. After awhile I went to the new H.Q. to take a look at some prisoners held there and was detailed by the C.S.M. to help escort some prisoners back to battalion H.Q. about a mile away. On returning to the basement I saw Cpl. CALLAGHAN taking the names of those of our pltn. who were left. I went out again to look around and then accompanied Cpl. CALLAGHAN and another man into the town about 75 yds up the road to pick up some equipment that had been left behind when we were driven back. Back in the basement we had something to eat - there were six of us in a room - and I started to clean my rifle. I cleaned it and was playing with the magazine trying to get the spring to work as it seemed to catch and would not push the cartridges out into the breech. It still didn't work but I filled it and put it back on the rifle. I worked the bolt but it seemd to slide over the rounds without pushing one into the chamber. I was sitting on a chair facing the door with the rifle across my knees. I must have dozed off. I had had no sleep for over two days. Something woke me up. I think the time was about 1530 hours, it could have been mortar fire, I don't know what it was. I was lying on the floor and somebody was asking me if I wanted a cigarette, someone else was taking off my boot from my left foot which felt numb. I remember that Pte. CAMERON was in the room but I don't recall what he was doing. He is in No.5 Section, 17 Pltn. I can't remember anything from the time I was sitting on the chair working the bolt og my rifle until I found myself on the floor. I have a vague recollection of an explosion of some kind. Somebody put a bandage on my ~~fmmt~~ left foot. I was very hazy about the whole thing but I sat up and saw the blood coming through the bandage. I didn't know where the blood was coming from but one of the fellows told me I had been shot in the big toe - that it was only a slight wound. Another man told me that the bullet which wounded me came from my own rifle. He siad he had looked at it and there was an empty round in the chamber. I used the rifle later as a crutch but I didn't look for the empty round myself. I went with the help of another

Over

Continued from overleaf.

help of another man, whom I don't know, to Coy. H.Q. and there my wound was dressed again - or I think it was - I was still pretty hazy about the whole thing. From there I was sent to a Field Dressing Station and through various hospitals until I arrived at No. 21 Canadian General Hospital on 10th October 1944.

I have never though about deliberately wounding myself. I don't know how it happened. I can't explain it any better than I have done in this statement. I heard from one of the boys whose name I don't know that the safety catch was off the weapon. This would be the case as I was working the bolt the last thing I remember. I don't know what became of the rifle. I never saw it again after leaving Coy. H.Q. on 29 Sept. 44. I do not consider that I was negligent in any way.

This statement has been read over to me. I have read it over and it is true.

(Sgd) J. DUNCAN

Witness:- G.S. HOLME, Sgt.
Special Investigation Section
Canadian Provost Corps.

Statement taken down in writing and witnessed by B-76047 H. CHESTER S/Sgt, Special Investigation Section, Canadian Provost Corps.

I, Pte J.D. DUNCAN, desire to have an officer assigned to represent me at my trial by Field General Court Martial.

I desire the services of Capt W.G.D. HUNGERFORD if he is available.

Date 19 Dec 44

J.D. Duncan
(Signature of Accused)

4P-79

Pte. Duncan J. D.

4P-79

Pt. Duncan J. D.

4D.124

RFN- DUNCAN R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.64227 Rfn Duncan Richard 1 Cdn COR of C

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which 5 days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

28 days F.P. Punishment and 28 days pay

(Sgd) [illegible] Capt (Judge-Advocate, if any.) 4 Nov 44 (Date awarded.) (Sgd) [illegible] Maj (President. (RP 45, 50.))

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed

~~I direct that the accused be discharged from the service with ignominy.~~ (1. AA 57A. Delete if not used.)

(Sgd) H Lewis (H.C. LEWIS) Lt-Col

Date 16 Oct 44 T/Commanding 8 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
B.64227 Rfn Richard Duncan	3 Nov 44	[signature] Capt. Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. 40-12-4/C

REC'D 21 NOV 1944 ADJUTANT GENERAL'S BRANCH C.M.H.Q.

CPA06 (To lines of AFAM) 40/P.30.87/1(698) 1400/1

FIELD GENERAL COURT-MARTIAL 4/38B

Convened by (Name) Lt-Col T C Lewis a/ Comd 8 Inf Bde dated 8 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B/64227	Rfn	Richard	DUNCAN	1 Cdn COR of C

"D" HQ HONVRB RVP RELEASING OFFICER PROCEEDINGS RECEIVED 20 Nov 44

PROCEEDINGS REVIEWED Date 21 Nov 44 D.J.A. Cdn Sec GHQ 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 9 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. (2) 123

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 90 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to~~ ~~no interpreter~~ Ans ~~Yes~~

The Interpreter is sworn.(1) Do you object to S/Sgt Phillips, RH as shorthand writer? Ans No
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J C H Lapointe	Regt de Chaud
Member	Capt	L J J Bourassa	Regt de Chaud
Member	Capt	H L Day	North Shore (NB) Regt
Judge-Advocate	Capt	A C Hall	ADJA 3 Cdn Inf Div
Prosecutor	Lieut	J L Pond	QOR of C
Defending Offr	Capt	J Y Gosselin	Regt de Chaud

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See QR 132.)

A8. The accused B/64227 Rfn Richard DUNCAN before arraignment make(s) (not) ~~[illegible]~~ plea(s) (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A64 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~[illegible]~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 5

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. Page 1

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No, sir .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E2 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty re~~ ..... charge(s). ~~The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on~~ ..... charge(s). ~~Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (C).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 712.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 60(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF AF5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 40(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record last Notes addresses, statement, evidence and any summing up by the JA under RP 42, 101(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(1) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No, sir
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E and Ex C respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFAT 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans [redacted], sir.(2)
(1. *RP 37(C), 46(D).* 2. *Address. If any recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 114, 119(A), KR Can 808, 730, 548-566, Overseas RO 309, 2203, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(7), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see orders on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

11L

THE ACCUSED ELECTS TO BE TRIED BY FIELD GENERAL COURT MARTIAL

CHARGE SHEET

The accused, B64227 Rfn Richard DUNCAN, Support Coy 1st Bn The Queen's Own Rifles of Canada, C.A.O., B.W.E.F. a soldier of the Canadian Army Overseas, whilst on active service, is charged with:

First Charge
Sec 8 (2)
Army Act

USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

in that he

in the field, at approximately 1645 hrs, 2 Oct 44, did say to C65134 A/Cpl Huff, J.W., his superior officer "You don't know how to run your fucking section" or words to that effect.

In the Field
8 Oct '44

(S M LETY) Lt-col
Comd 1st Bn The Q O R of C

To be tried by Field General Court Martial

(C.F. LEWIS) Lt-Col
T/Comd 8 Cdn Inf Bde

9 Oct 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
~~B-115390~~	~~Rfn~~		~~Percey John~~	~~CAMPBELL~~	~~QOR of C~~
~~A-102295~~	~~Rfn~~		~~Oliver Joseph~~	~~DUROCHER~~	~~QOR of C~~
~~B-680658~~	~~Rfn~~		~~Maurice Francis~~	~~MARTIN~~	~~QOR of C~~
~~B-159177~~	~~Rfn~~		~~Joseph Norman Dourine~~	~~HEADPONT~~	~~QOR of C~~
~~B-154846~~	~~Rfn~~		~~James Louis~~	~~BYERTON~~	~~QOR of C~~
~~A-106459~~	~~Rfn~~		~~Gordon Alfred~~	~~DOBSON~~	~~QOR of C~~
~~K-4016~~	~~Rfn~~		~~Cecil Munroe~~	~~SWEET~~	~~QOR of C~~
B-54227	Rfn		Richard	DUNCAN	QOR of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, ~~has~~ (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Oct 44 endorsed by me, ~~(or by my predecessor in command)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs for the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(C). Delete, if none appointed.)

PRESIDENT.

Maj	J.C.H.	Lapointe	R de Chaud
(Rank.)	(Must be named. RP 106.)		(Unit.)

MEMBERS.

Capt	L.J.J.	Bourassa	R de Chaud
Capt	H.L.	Day	N Shore R
(Rank.)	(Named or detailed. RP 106.)		(Unit.)

WAITING MEMBER.

Lt	S.S.	Score	QOR of C
(Rank.)	(Named or detailed, if any. RP 106.)		(Unit.)

JUDGE-ADVOCATE.

Capt	A.C.	Hall	H Q 3 Cdn Inf Div
(Rank.)	(Must be named, if any. RP 106.)		(Unit.)

On Active Service in the Fd

in Belgium		Lt-Col
(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)

Date 6 Oct 44 T/ Commanding 6 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CF Adds (To item of AFA) 40-9 & 8/1607 (4011)

(See overleaf for oaths and notes for use on trial.)

11L.

THE ACCUSED ELECTS TO BE TRIED BY FIELD GENERAL COURT MARTIAL

CHARGE SHEET

The accused, B64227 Rfn Richard DUNCAN, Support Coy 1st Bn The Queen's Own Rifles of Canada, C.A.O., B.W.E.F. a soldier of the Canadian Army Overseas, whilst on active service, is charged with:

First Charge
Sec 8 (2)
Army Act

USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

in that he

in the field, at approximately 1645 hrs, 2 Oct 44, did say to C65134 A/Cpl Huff, J.W., his superior officer "You don't know how to run your fucking section" or words to that effect.

In the Field
8 Oct '44

(S M LEWIS) Lt-col
Comd 1st Bn The Q O R of C

To be tried by Field General Court Martial

(S.M. LEWIS) Lt-Col
T/Comd 8 Cdn Inf Bde

9 Oct 44

41 C

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt. A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
~~B-115390~~	~~Rfn~~		~~Percey John~~	~~CAMPBELL~~	~~QOR of C~~
~~A-102895~~	~~Rfn~~		~~Oliver Joseph~~	~~DUROCHER~~	~~QOR of C~~
~~B-55058~~	~~Rfn~~		~~Maurice Francis~~	~~MARTIN~~	~~QOR of C~~
~~B-155177~~	~~Rfn~~		~~Joseph Norman Doupias~~	~~HEABTONT~~	~~QOR of C~~
~~B-156842~~	~~Rfn~~		~~James Louis~~	~~EGERTON~~	~~QOR of C~~
~~A-105459~~	~~Rfn~~		~~Gordon Alfred~~	~~DOBSON~~	~~QOR of C~~
~~B-2015~~	~~Rfn~~		~~Cecil Munroe~~	~~SWEET~~	~~QOR of C~~
B-54227	Rfn		Richard	DUNCAN	QOR of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, ~~has~~ (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 5 Oct 44 endorsed by me, (~~or by another officer empowered for me~~). " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	J.C.H.	Lapointe	R de Chaud

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	L.J.J.	Bourassa	R de Chaud
Capt	H.L.	Day	N Shore R

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lt	S.S.	Score	QOR of C

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	A.C.	Hall	Hq 3 Cdn Inf Div

On Active Service in the Fd

in Belgium (Country.)

(Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Date 6 Oct 44

T/ Commanding 6 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFAES 116 (Sec 10) of AFAS) 60-P & S-1697 (4601)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 81.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Con 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Con 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Con 560. As to certified copies of regimental books see AA 163 (1) (g) (k).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 758.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

V8

9 Oct 44

1st Bn The Queen's Own Rifles of Canada (AF)

This is to certify that I have this day examined R64227 Rfn Richard DUNCAN and have found him fit to stand trial by Field General Court Martial.

R.D. Gatward, Capt.

B2

The president having read to the accused para B2 on record form "B", the Judge Advocate addresses the accused:

Do you understand that if you plead"guilty" no witnesses will be called by the prosecution but the court will read the summary of evidence which was taken in your presence and hear anything you wish to say or any witnesses you wish to call, but it will only be a question of assessing sentence?

Secondly, you have pleaded "guilty" to using insubordinate language to a superior officer. I must point out to you that fbr you to be guilty of this charge it is not sufficient that you admit that the words alleged were used. By pleading "guilty" you would also admit that the words used were used with an insubordinate intent. That is to say they must be, either in themselves or in the manner or circumstances in which they were spoken, insulting or disrespectful and it must be that they were intended to be heard by the superior officer to whom they were addressed. Therefore if you plead "guilty" you admit that you intended to be disrespectful toward a/Cpl Huff.

Do you still wish to plead "guilty"?

Accused: Yes, sir.

N O T E

The defending officer declined to make a plea in mitigation. The Judge Advocate pointed out to the defending officer that the accused had elected trial by court-martial and then at the court-martial had pleaded"guilty". The defending officer might have grounds for saying nothing but there might be certain matters unanswered in the minds of the court. He then asked the defending officer if his decision to make no address in mitigation were a considered one and was assured that it was.

Ex "A"

Summary of Evidence

Summary of evidence in the case of B64227 Pte. Duncan R.A. Support Coy, 1st Bn, Queen's Own Rifles of Canada, C.A.O. charged with using obscene and insubordinate language to his superior officer (A.A. Sec 8 (2)).

First Witness - C65134 A/Cpl Huff J.W. Support Coy, 1st Bn, Queen's Own Rifles of Canada C.A.O. having been duly sworn states -

I am in charge of No 2 Section 6 pl. Support Coy 1st Bn, Queen's Own Rifles of Canada. At approx 1645 hrs. 2 Oct 44 the accused B64227 Pte Duncan R.A. began to argue and use obscene language to me in that he said "you do not know how to run your fucking section" or words to that effect. I told him to quiet down and forget it but he kept on arguing violently. Finally my commanding officer, Lt. Col. J.M. Zett told B64227 Pte Duncan R.A. that he was under close arrest. The accused was arguing that I should know whether we were to be attached to Bn HQ or Support Coy saying that I should know as no orders had been given to me. B63609 L/Cpl McCrone A.J. the Regimental Provost then put the accused into custody.

Cross examined by accused -

Q - You didn't say any complaint to anybody?

A - No I didn't. Lt Col. Zett placed you under close arrest.

Q - Did you overhear what Lt. Col. J. M. Zett said to me?

A - Yes, he said, "Are you in the habit of speaking to an NCO in that fashion?"

J. Jo. H cpl.

Second Witness - B138999, Pte. Whitehead J.L. Support Coy, 1st Bn. Queen's Own Rifles of Canada, C.A.O. having been duly sworn states -

I am in the same section as the accused.

(2)

B64227 Rfn. Duncan R.A. 2 heard the accused arguing with C65135 A/Cpl Hoff J.W. although I could not hear what was said. Then I heard Lt-Col. S.M. Lett tell the accused that he was under close arrest. B 2/Cpl. McCrorie A.J. put the accused into custody. The above occurred at approx 1645 hrs. 2 Oct. 44

The accused declines to cross-examine this witness.

J.C. Whitehead

3rd witness - C33194 Rfn. Presley H.R. Support Coy. 1st Bn. Queens Own Rifles of Canada, C.A.O. having been duly sworn states —

I was in the same section as the accused. At approximately 1645 hrs. 2 Oct. 44 altho I was not paying much attention there was an argument between the accused B64227 Rfn Duncan R.A. and A/Cpl. Hoff J.W. C65134 I did not hear what was said. I then heard Lt. Col. S.M. Lett say to B64227 Rfn Duncan R.A. "you are under close arrest."

The accused declines to cross-examine this witness

H.R. Presley

4th witness - B63609 2/Cpl. McCrorie A.J. Bn. H.Q. 1st Bn. Queens Own Rifles of Canada C.A.O. having been duly sworn states -

At approximately 1645 hrs. 2 Oct 44, Lt-Col. S.M. Lett ordered me to take B64227 Rfn. Duncan R.A. into custody which I did so.

Cross examined by accused:-

Q - When you placed me under arrest did I say anything about this being a good way of getting out of doing things I didn't want to do.

8

(3)

A – No. I don't remember you saying it. You didn't say anything like that to me.

~~cpt~~ A J McCrorie

Fifth witness – Lt. Col. S. M. Lett, Officer Commanding, 1st Bn., Queen's Own Rifles of Canada, C.A.O. having been duly sworn states –

I ~~to~~ overheard the conversation between the accused B64227, Rfn Duncan R.A. and C65134 A/Cpl Huff W.J. I now recognize the accused. I had previously seen him in what was to be Bn. H.Q. Having heard the conversation I went up to B64227 Rfn. Duncan R.A. and said to him, "Are you in the habit of speaking to an NCO in that fashion if so, the next time I overhear it you will find yourself on charge." His reply to me was, "You can put me on charge anytime ~~on~~ you like sir, it doesn't make any ~~difference~~ fucking difference to me." I said to him, "You are on charge now in that case." I turned to the Adjutant who was standing there and told him to place B64227 Rfn Duncan R.A. under arrest. This was done by B63609, L/Cpl McCrorie A.J. a member of the Regimental Provost Section. I then heard B64227 Rfn. Duncan R.A. speak to B63609 L/Cpl McCrorie A.J. after he was placed under close arrest. He said, "This is a good way to get out of something you don't want to do" or words to that effect.

The accused declines to cross examine this witness.

~~The~~.

S.M. Lett
Lt Col

The accused was cautioned as follows :–

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence

(4)

A - I do not wish to say anything now.

R. Duncan

The accused does not call any witness

I certify that the foregoing Summary of Evidence consisting of four pages was taken down by me in the presence of the accused and that R.P. 4 (c), (d), (e), (f) and (g) (iii) have been complied with

R Jackson
Lt. 1st Bn.
Queen's Own Rifles of Canada

In the field
5 Oct. 44.

SUMMARY OF EVIDENCE

in the case of

B64227 Rfn Duncan, R A, Support Coy, 1st Bn, Queen's Own Rifles of Canada, C.A.O. charged with using obscene and insubordinate language to his superior officer (A.A. Sec 8 (2)).

First Witness for Prosecution

C65134 A/Cpl Huff, J W, Support Coy, 1st Bn Queen's Own Rifles of Canada, C.A.O. having been duly sworn states:-

I am in charge of No 2 Section, 6 pl, Support Coy, 1st Bn Queen's Own Rifles of Canada. At approx 1645 hrs, 2 Oct 44 the accused B64227 Rfn Duncan R A began to argue and use abusive language to me in that he said "you do not know how to run your fucking section" or words to that effect. I told him to quiet down and forget it but he kept on arguing violently. Finally my Commanding Officer, Lt-col S M Lett told B64227 Rfn Duncan R A that he was under close arrest. The accused was arguing that I should know whether we were to be attached to BnHQ or Support Coy saying that I should know although no information had been given to me. B65609 L/Cpl McCrorie A J, the Regimental Provost then put the accused into custody.

Cross-examined by accused

Q. - You didn't lay any complaint to anybody?

A. - No I didn't. Lt-col S M Lett placed you under close arrest.

Q. - Did you overhear what Lt-col S M Lett said to me?

A. - Yes, he said, "Are you in the habit of speaking to an NCO in that fashion"?.

J W Huff

Second Witness for Prosecution

B138939, Rfn Whitehead J C, Support Coy, 1st Bn Queen's Own Rifles of Canada, C.A.O., having been duly sworn states:-

I am in the same section as the accused, B64227 Rfn Duncan R A. I heard the accused arguing with C65135 A/Cpl Huff J W although I could not hear what was said. When I heard Lt-col S M Lett tell the accused that he was under close arrest. B65609 L/Cpl McCrorie A J put the accused into custody. The above occurred at approx 1645 hrs 2 Oct 44.

J C Whitehead

Second Witness (Continued)

The accused declines to cross-examine this witness.

J C Whitehead

Third Witness for Prosecution

C33194 Rfn Presley N R, Support Coy, 1st Bn Queen's Own Rifles of Canada, C.A.O. having been duly sworn states:-

I am in the same section as the accused. At approximately 1645 hrs, 2 Oct 44 although I was not paying much attention, there was an argument between the accused B64227 Rfn Duncan R A and A/Cpl Huff W J C65134. I did not hear what was said. I then heard Lt-col S M Lett say to B64227 Rfn Duncan R A "You are under close arrest".

N R Presley

The accused declines to cross-examine this witness.

Fourth Witness for Prosecution

B63609 L/Cpl McCrorie A J, BnHQ, 1st Bn Queen's Own Rifles of Canada, C.A.O. having been duly sworn states:-

At approximately 1645 hrs 2 Oct 44, Lt-col S M Lett ordered me to take B64227 Rfn Duncan R A into custody which I did so.

Cross-examined by accused:-

Q. - When you placed me under arrest did I say anything about this being a good way of getting out of doing things I didn't want to do?

A. - No, I don't remember you saying it. You didn't say anything like that to me.

A J McCrorie

Fifth Witness for Prosecution

Lt-col S M Lett, Officer Commanding, 1st Bn Queen's Own Rifles of Canada, C.A.O. Having been duly sworn states:-

I overheard the conversation between the accused B64227 Rfn Duncan R A and C65134 A/Cpl Huff W J. I now recognize the accused. I had previously seen him in what was to be BnHQ. Having heard the conversation I went up to B64227, Rfn Duncan R A and said to him, "Are you in the habit of speaking to a [illegible] in that [illegible], if so, the next time I overhear it you will find yourself on charge". His reply to me was, "You can put me on charge anytime you like sir, it doesn't make any fucking difference to me". I said to him "You are on charge now in that case". I turned to the Adjutant who was standing

there and told him to place B64227 Rfn Duncan R A under arrest. This was done by B52609 L/Cpl McCrorie A J a member of the Regimental Provost Section. I then heard B64227 Rfn Duncan R A speak to B52609 L/Cpl McCrorie A J after he was placed under close arrest. He said, "This is a good way to get out of something you don't want to do" or words to that effect.

S M Latt A/Lt-Col

The accused declines to cross examine this witness.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. - I do not wish to say anything now.

R Duncan

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of four pages was taken down by me in the presence of the accused and that R.P. 4 (a), (b), (c), (f) and (g) have been complied with.

M Jackson,

Lt. 1st Bn

Queen's Own Rifles of Canada

In the Field
5 Oct 44

M.F.M. 6 41
(F. B.122)
(B136 (2965)

No. 264 227 Name Duncan R Sqn., Battery, or Company 5 Corps 010 Date of enlistment 21-6-40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. A S Smith Lt-col Character B

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Toronto	9-10-41	Pte	1	Drunkenness at 0130 hrs 9-10-41	Doc. Evid	Admonished	9-10-41	Capt J. Bradley	
Toronto	8-12-41	"		Disobedience of standing orders	Capt Hamann	8 days Detn.	8-10-41	Col. C.S. Kollinrake	for 8 days pay
				Bringing liquor into barracks					
Field	10-Mar-43	Rfn	2	AA 19 Drunkenness, in that he after being prev. warned for duty was drunk at 0300 hrs 10-3-43	Lt Hiscott CSM Bray Sjt Guiton	Admonished $5.00 fine	15-3-43	J G Spragge Lt-col	
Field	2Mar43	"		AA15(1) AWL during stand to from 1830 hrs 3 Mar to 2005 hrs 3 Mar 43 (1 hr 35 min)	Sjt Fennel Cpl Ward W	10 days CB 10 days Pay	22-3-43	J G Spragge Lt-col	
Field	2Apr43	"	3	AA19 WOAS drunkenness in that he was drunk at 1615 hrs 2-4-43	Sjt Fennel	$10.00 fine	2-4-43	John I Mills, Capt.	
Field	10Dec43	"		A.A. 40 Cond. to Prej. did create a disturbance after lights out.	Doc. Evid	For. 7 days pay	16-12-43	Lt-col A S Smith	
				rewritten from Original sheet 4-Feb-44	Original destroyed.				

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11Apr44	Pte		AA Sec15(.) WOAS A.W.L. from 2300 hrs 11 Apr 44 until 2345 hrs 11 Apr 44. Total time absent 45 mins.	Cpl Mackenzie E R CSM Robson E J	Admonished	12Apr 44	D Fletcher	Lt-col
Field	29-6-44	Pte		(1) Losing by neglect - rifle and ammn AA 24(2). AWL from 0800 hrs 28 Jun 44 until 1200 hrs 28 - 6 - 44. AA 15(1)	Lt Fullerton Sjt Love	forf 27 days pay	29 Jun 44	Lt-col A T Law	total forf 27 days pay

Certified a true copy from the Regimental Records in my custody

(W J WEIR) CAPT
Adjt, 1st Bn The QOR of C
O i/c Regimental Records

C 112

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
364227	Rfn	DUNCAN, Richard	1st Bn The Queen's Own Rifles of C

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number or entries in the conduct sheets, permission being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA 19	DRUNKENNESS 9-Oct-41 ~~three~~	~~three~~ 1st time ~~times~~
For AA 19	DRUNKENNESS 10-Mar-42 ~~three~~	~~three~~ 2nd time ~~times~~
For AA 19	DRUNKENNESS 8-Apr-42 ~~two~~	~~two~~ 3rd time ~~times~~
For Disobedience of Standing Orders	~~times~~	One times.
For ABSENCE without LEAVE AA 15(1)	One times	three times.
for...Conduct etc. AA 40	One times.....	one times.
for...losing by neglect, AA 24 (2)	One times.....	one times.

Number of instances of ~~gratuitary or~~ distinguished conduct, 0

~~or~~

There are no entries in the conduct sheets of the accused 0

2. The accused has not been previously convicted, *or*

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the~~ Army Act, and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed to this statement. 0

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~ 0

4. The accused has been in confinement, awaiting trial on the present charges, for No days in civil custody, and 5 (five) days in military custody, making a total of 5 (five) days, of which No days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 0

6. The date of his ~~enrolment~~ attestation specified in his ~~attestation paper~~ record of service is 21 Jun 40 0

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, ~~no military decoration or military award~~ (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). 0 Wound and clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A, dated N/A, and in his regiment (*or corps or department*) the rank of N/A dated N/A

(**1/5306) W1.34895/1750 20,000 10/42 A.& E.W.Ltd. Gp.698
(28906) W1.34895/1430 12,000 4/44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 164722 Rank Bfn Name [illegible], Richard of 1st [illegible] Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Seventh day of October, 1944

[illegible] Lt-col

Comd 1st [illegible] of [illegible]

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of ..... years, ...

In the rank of ..... years .....

In the rank of ..... years, ...

Date of Promotion

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

1 Bn The Queen's Own Rifles of Canada

France 7 Oct 44

Officer Commanding
1 Q O R of C

Reference my pending trial by Field General Court Martial. I am fully aware that the Prosecuting Officer, Lt. J.L. Pond has had legal training.

R Duncan

(B64227 Rfn Duncan, R)

DDD-91

SGT. DUNCAN R.S.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C 3 556 Sgt Ronald Donald DUNCAN RCCS Sigs 2 Can Inf Div

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Not Guilty	Noted (G Foulkes) Maj Gen Comd - 2 Can Inf Div 1 Feb 44
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ... beginning on (date) ... (1)

(1. Insert sentence being served or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ... days, of which ... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

(Sgd) N/A — Judge Advocate, if any. 28 Jan 44 — Date awarded. (Sgd) Alexander Keegan major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 54–56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(1). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 123, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) ...

Date ...

Commanding ...

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

10 AD 10-91

CF AAG (In lieu of AFA 32)
41-P-A-S-1608 (2804)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Maj Gen Charles Foulkes Comd 2 Can Inf Div dated 27 Jan 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C 3 556	Sgt.	Ronald Stewart	DUNCAN	RCCS, 2 Can Inf Div Sigs

PROCEEDINGS REVIEWED
J Ruttiguliano Capt
1 Feb 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED JAG BRANCH CMHQ Date 11 Feb 44 RCCS 2 Can Inf Div Sigs

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) U.K. on (date(s)) 28 Jan 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 65-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1405 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ... as interpreter? Ans ...

The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans ...

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 88, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.A.A. Dugas	R de Vols
Member	Capt	J.P.G. Kemp	R.H.C.
Member	Lt.	L.A. Hudon	R. de Mais
Judge-Advocate		N/A	
Prosecutor	Capt	J.J. Williams	2 Can Inf Div Sigs
Defending Offr	S/Sgt	S. Hazell	2 Can Corps Tps.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans Yes as Counsel (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Ch 1 p 3.)

A8. The accused ... before arraignment make(s) (no) (a) plea ... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(*1. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) as in case of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. N O .....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the First charge(s).(2) The Court is closed, and considers the submission.(3) ~~The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the~~ ~~The Court is re-opened and the submission is~~ First charge(s), and accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the ~~last~~ charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans.....Do you intend to call witnesses on your behalf?
Ans.....Are they witnesses as to character only? Ans.....
(*1. RP* ~~455~~ *1(c) 2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF 895. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42. 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 42, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(*7*) (*b*), *RP* 45, 120(*A*). *2. AA* 54(*3*), *RP* 45, *117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans.....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(*l*) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 1(1) Ans.....(2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 19 . . 20
(*1. When several accused tried separately see RP* 2(*b*). *One sentence only, comprised of the punishment or punishments laid down in AA* 40...44 *and its proviso, to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 132, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 338, 343-366, *Overseas RO* 309, 2323, *MML p* 86, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 40(*2*), *MML p* 120. *When accused already under sentence of imprisonment or detention see AA* 44(*1*)(*b*), 68(*1*), *KR Con* 564. *2. RP* 30. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, C.3556 Sgt. Ronald Stewart DUNCAN, of Signals, 2 Cdn Inf Div., a soldier of the Canadian Army (Overseas) is charged with:-

Sec 7 15 (1)
Army Act

When on active service - Absenting himself without leave

in that he

at Knepp Castle did absent himself from 2300 hrs 22 Jan 44 until 1457 hrs 23 Jan 44. (Absent 15 hrs 57 mins.)

J.V. Johnson Lt.-Col.,
J.V.Johnson - Commanding,
Sigs 2 Cdn Inf Div.

In the Field
25 Jan 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
27 Jan 44

(C Foulkes) Maj-Gen,
Comd - 2 Cdn Inf Div

Ahl.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C3556	Sgt		Ronald Stewart	DUNCAN	RCCS, Sigs 2 Cdn Inf Div

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(x) named above as the accused, being subject to military law, has ~~been~~ committed the offence(x) set forth in the Charge Sheet(x) attached and on (date) 27 Jan 44 endorsed by me, (~~[illegible]~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(x) should be tried by an ordinary General Court-Martial ; ~~[illegible]~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(x), and to consist of the Offrs appointed or detailed hereunder.

~~[illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~[illegible]~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	JAA Dugas	R de Mais

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	JPD Kemp	R H C
Lt	HL Hudon	R de Mais

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Major	FP Griffin	R H C

~~[illegible]~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in United Kingdom
(Country.)

(Signed personally. RP 105(C)) [signature] (Rank.)

Date 27 Jan 44

Commanding (C Foulkes) Maj-Gen, ~~OBE~~ Comd - 2 Cdn Inf Div
~~Convening Officer.~~

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl R. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so *far as* practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 587.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, *etc.* (*As to admitting in evidence a certified copy in lieu of original see KR Can 586. As to certified copies of regimental books see AA* 142 (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 116(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

HQ 2 Cdn Inf Div.,
28 Jan 44.

This is to certify that I have today examined C. 3556 Sgt. Duncan, R.S. I find him fit to undergo trial by Court Martial.

C. E. Wodehouse Capt Capt.,

Medical Officer,
HQ 2 Cdn Inf Div.

Prosecution opening address.

FIRST WITNESS
FOR THE PROSECUTION

Capt. J.H. Gilbraith, No 1 Coy R.C.C.S. 2nd Cdn Div. Signals. Having been duly sworn states:

"On the 23rd Jan 44, I was Signal Master here at H.Q. 2 Cdn Div. At approximately 1030 hrs I sent Sgt Strachan to look for the accused. Sgt Strachan was unable to find him. Again before 1100 hrs Sgt Strachan was sent to look for the accused, but without success, after 1330 hrs I sent again Sgt Strachan to look for the accused but he was unable to produce him. The first time I saw the accused after that was when he reported to take his duties as superintendant between 1450 and 1500 hrs.

I'm sect. com'der of the accused. By mutual agreement between Sgt Strachan and the accused they each take 24 hrs of duty and have 24 hrs off. As far as the use of their 24 hrs off duty, they're under Div.Signals. From 1200 hrs to 2300 hrs personnel off duty may be out of [illegible] without pass on week days and on Sundays from Reveille till 2300 hrs."

Cross-examine by the defence. The witness further states that "Relief of those Sgts were made at 1200 hrs but by mutual agreement the Sgt on duty normally carried on the work until the relieving Sgt appeared. The superintendant was not normally called for while he was off duty. For a period of approximately one month the accused was held responsible for the man-management of the signal office. In the last four and half months the accused has served under me he has proved to be efficient reliable and willing."

Question by the court.

Q. 1 "Has Sgt Duncan had any means of knowing he would required on the morning of the 23rd Jan 44.?"

A. 1 "Not as far as I know."

Q. 2 "Please tell me if the personel off duty are ordered to leave an address where it would be possible to get in touch with them when going out of unit limes for a short period?"

A. 2 "No, not that I know of."

(R.P. 67 (5) has been complied with.)

SECOND WITNESS
FOR THE PROSECUTION

L.20022 Sgt Strachan, J.K. R.C.C.S. 2nd Cdn Div. having been duly sworn states:

"I recognize the accused.

At 2100 hrs on the 22 Jan 44 I received orders that the accused and some 10 other persons had to be paraded at 1100 hrs the next day. At approximately 2300 hrs the 22rd I looked for the accused in the Sgt quarters and the Sgt mess, he was not in the Sgt quarters or the Sgt mess. At 0720 hrs the 23rd Jan 44 I again looked for the accused and could not find him in the Sgt mess or Sgt quarters. At 0900 hrs I reported the fact to Capt. Gilbraith, I again looked for the accused in the Sgt Quarter and Sgt mess at 1020 hrs and 1345 hrsbut could not fine him. I only saw the accused approximately at 1500 hrs after he reported to Capt. Gilbraith, When I visited the Sgt quarters at 0720 hrs the 23rd the bed of the accused was made up.

The normal tour of duty of superintendance is from 1200 hrs to 1200 hrs the next day on arrangement between the Superintendant. The lunch period inthe Sgt mess is from 1145 hrs to 1300 hrs every day. Usually when passes are approved by section com'der they are signed by the O.C. of the Coy."

Cross-examine by the defence. The witn
states:

"I cannot swear that nobody slept on the ac
the night of the 22nd to 23rd Jan 44. I do not
occasion on which I relieved the accused later th
except one occasion when I relieved him at 2000 hrs. We ha
gement between the accused and myself by which we carr
our duty until relieved. I searched 3rd quarter and 4th
at 2300 hrs 22nd and 0720 hrs 23rd. The first time I saw the
accused after that was approximately 1500 hrs 23rd Jan 44."

(R.P. 63(3) has been complied with.)

plea by the defencing officer that there is no prima facie case on this charge.

Defencing officer puts up a plea that the prosecution has not brought evidence to prove the charge, and the prosecution replied that a Sgt should not be allowed to have special privileges.

Court closes for deliberation

The court feels that there is no sufficient evidence to prove the charge.

Not guilty.

Case is close.

I wish a defending officer.

I desire the services of S/Sgt Haskell (at DADOS 2 Corps Tps) if he is available.

R.S. Duncan

C 3556 Sgt. Duncan, R.S.

In the field.
24 Jan 44.

List of Witnesses - in the Case of C.3556 Sgt. Duncan, R.S.

Prosecutor - Capt. J.J.Williams

Witnesses for the Prosecution - Capt. J.H.Gilbreath
L.20022 Sgt. Strachan, J.M.

Defence - S/Sgt. S. Haskell

Witnesses for the Defence -

Nil

Lt.-Col.,
J.V.Johanson - Commanding,
Sigs 2 Cdn Inf Div.

A Summary of Evidence taken in the case of C.3556 Sgt. Duncan, Ronald Stewart, of Signals 2 Cdn Inf Div., a soldier of the Canadian Army Overseas, while in the Field, taken on oath by Capt. J.J.Williams at the direction of Lt.-Col. J.W.Johanson, C.O. Sigs 2 Cdn Inf Div on 25 Jan 44.

The accused is informed of his rights.

1st Witness for the Prosecution - Capt. J.H.Gilbreath, O.C. "O" Section, Signals 2 Cdn Inf Div., having been duly sworn states:-

"I was Signalmaster at H.Q. 2 Cdn Inf Div on 23 Jan 44. At approximately 1030 hrs Sgt. Strachan, the Signal Office Superintendent, told me that Sgt. Duncan was supposed to be at No. 1 Coy office at 1100 hrs. I sent Sgt. Strachan out to try to find him. Sgt. Strachan reported back that he could not find him in his quarters or in the area. On returning from lunch at 1330 hrs I sent Sgt. Strachan again to try to find Sgt. Duncan and he (Sgt. Strachan) again reported that he could not find Sgt. Duncan. At 1457 hrs Sgt. Duncan reported to me in the Signal Office to take up his duties as Superintendent."

Cross-examined by the Accused

Question 1 - "How long did it take Sgt. Strachan to make this search at approximately 1030 hrs?"

Answer 1 - "Four or five minutes."

Question 2 - "Did you conduct a search at all yourself?"

Answer 2 - "No."

Question 3 - "Are you certain that the time that I reported to you was 1457 hrs?"

Answer 3 - "No, but it was between 1450 hrs and 1500 hrs.

M Gilbreath Witness
J.H.Gilbreath - Capt.

2nd Witness for the Prosecution - L.20022 Sgt. Strachan, J.M., Signals 2 Cdn Inf Div., having been duly sworn states:-

"I was Signal Office Superintendent on the night of 22 Jan 44. At approximately 2100 hrs 22 Jan 44 I received a telephone call from the Coy clerk of No. 1 Coy to say that Sgt. Duncan and a number of other men would be required at No. 1 Coy office at Shermanbury Grange at 1100 hrs 23 Jan 44. At 2300 hrs I went to the Sgt's quarters at H.Q. 2 Cdn Inf Div., and Sgt. Duncan was not there. I also looked in the Sgts' Mess at this time and Sgt. Duncan was not there. I intended to look for Sgt. Duncan after the liberty truck returned from Horsham but due to the fact that a large number of lines went out shortly after midnight and that I was collecting traffic and statistics to be compiled, just about midnight, I did not get to the Sgts' quarters until approximately 0720 hrs on 23 Jan 44. Sgt. Duncan was not in his quarters at 0720 hrs on 23 Jan 44. At approximately 0900 hrs 23 Jan 44 when I informed Capt. Gilbreath that the lines were out I also told him that Sgt. Duncan was supposed to be at No. 1 Coy office at 1100 hrs 23 Jan 44. At 1020 hrs I again looked for Sgt. Duncan in the quarters and Sgts' Mess. Sgt. Duncan was not there. I reported to Capt. Gilbreath that I could not find Sgt. Duncan.

Capt. Gilbreath then told me that the meeting Sgt. Duncan was to attend was to be at 1400 hrs at Div H.Q.

L.20022 Sgt. Strachan continues his evidence.

"At 1345 hrs Sgt. Duncan had not yet appeared and was not in the Sgts' Mess or quarters. I did not see Sgt. Duncan until after he had reported to Capt. Gilbreath."

Cross-examined by the Accused.

Question 1 - "At 2300 hrs did you search or look for me in any place other than the Sgts' quarters or Sgts' Mess?"

Answer 1 - "No."

Question 2 - "So from 2300 hrs until 0720 hrs you made no further search?"

Answer 2 - "No."

Question 3 - "Again at 0720 hrs you merely looked in the Sgts' quarters and no further?"

Answer 3 - "I had just come from the Sgts' wash room and you were not there. I also looked in the Sgts' Mess at this time.

Question 4 - "In all your searches you merely confined your search to the Sgts' quarters and the Sgts' Mess, did you?"

Answer 4 - "That is correct."

Questioned by Officer taking the Summary

Question 1 - "When you looked in the Sgts quarters at 0720 hrs 23 Jan 44 had Sgt. Duncan's bed been slept in?"

Answer 1 - "Not unless it had been made up."

Witness
L.20022 Sgt. Strachan, J.M.

The accused, having been duly cautioned in accordance with R.P. 4(c) says:-

"At this time I feel that I shall reserve my statement until a later date."

C.3556 Sgt. Duncan, R.S.

CERTIFIED THAT R.P. 4 has been complied with.

In the field,
25th day of Jan, 1944.

Capt.,
J.F. Williams
Sigs 2 Cdn Inf Div.

COUNTER NUMBER 561273

HOUR 15.34

OPERATOR'S INITIALS R.D

RELIEVING OPERATOR [illegible]

A.A-86

SPR DUNCAN W.G.

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here.

F/5-4-2
B-25449 Spr. Duncan, William, Grant
5 C.C.C., R.C.E.
Army Form A.3. AA-86

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this NINETEENTH day of MARCH, 19 43

Whereas it appears to me, the undersigned, an officer in Command of "F" GROUP, CANADIAN REINFORCEMENT UNITS CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable. [redacted]

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lt-Colonel	D.L. Redman, V.D.	H.Q., C.R.E.

Members.

Rank.	Name.	Regiment.
CAPTAIN	N.D. KING,	1 C.B.O.R.
CAPTAIN	L.J. IRWIN,	C.T.S.
LIEUTENANT.	WAITING MEMBER H.P. PENWARDEN,	1 C.O.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed Louis Kerne
(LOUIS KERNE) Colonel,
Commanding "F" Group, C.R.U.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-25449 Spr. William, Grant Duncan. 5 C.C.C., R.C.E.	FIRST CHARGE Sec. 15 (1) Army Act.	Guilty	Guilty sentence to undergo Detention for a period of thirty (30) days. 20 Mar 1943 VM	Confirmed Louis Keene Col. 22nd Mar 1943

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (to be recorded on separate sheet if necessary) :—

(Signed) Louis Keene (Signed) [signature]

(LOUIS KEENE) Colonel, Commanding "F" Group, C.R.U. Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 20th day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. ~~The witnesses~~
3. ~~The interpreter~~)
4. *(The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 20th day of March 1943.

[signature]

President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19 .

VM

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 22 day of Mar 1943.

Louis Keene Col.

Confirming Officer.

Commanding "F" Group Cdn. Reinforcement

Promulgated and extracts taken in the case of B 25449 Spr William Grant Duncan

(a) (Dated) 23 March 1943 (Signed) [signature] RCE

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The Accused, No. B-25449 Sapper William Grant Duncan, No. 5 Canadian Construction Company, Royal Canadian Engineers, a soldier of the Canadian Army Overseas, when on active service is charged with:

FIRST CHARGE.
Sec. 15 (1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE,

in that, he,

in the Field, at 1030 hours, 3 March, 1943 absented himself without leave until his surrender at 2045 hours, 16 March, 1943. (Absent 13 Days, 10 Hours and 15 minutes)

(G.A. McClintock) Major, R.C.E.
Commanding,
No. 5 Cdn. Construction Coy.,
Royal Canadian Engineers, C.A.(O).

In the Field,
18 March, 1943

To be tried by F.G.C.M.

Commanding "F" Group
Cdn. Reinforcement Units.

MEDICAL OFFICER'S REPORT

I certify that No. B-25449 Spr. Duncan, W.G.

of No 5 Cdn Const Coy RCE *is in a* fit *state of health,*

and Mentally sound *to undergo Trial by Court Martial.*

W.R. Muirhead Capt Capt., RCAMC
(W.R. Muirhead) *Medical Officer*
No. 5 Cdn. Construction Coy., R.C.E.

Station In the Field

Date 20 March 43

[signature] Lt Col

M.F.B. 246
48 P A 8/5/72

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT NEW MARTINIQUE BARRACKS, BORDON, HANTS
ON THE 20th DAY OF MARCH 1943

The accused B25449 SOR. DUNCAN W.G. Unit 5 C.C.C. RCE

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P.22&23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President LT-COL. D.L. REDMAN VD. Unit H.Q. CHY.

Members CAPT. N.D. KING Unit I.C. B.O.W.

CAPT. L.J. IRWIN Unit C.T.S.

The officers under instruction are duly sworn:-
CAPT. W.P. MOSHER 4 SUB DEPOT IC BOD
CAPT. M.J. PRATT Unit " "

Unit

Prosecutor LIEUT. B.P. HUTTING Unit 5 C.C.C. R.C.E.

Defending officer ~~LIEUT.~~ CAPT. M.J.C. SPRATT Unit " "

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor ~~is sworn and~~ produces ~~[illegible]~~ AFB 296 and MFM 6.
The Court complies with R.P. 46(B)

Pursuant to R.P. 37 THE ACCUSED:-

(a) ~~makes a statement in mitigation of punishment.~~
(b) ~~calls witnesses as to character.~~
(c) ~~calls witnesses in mitigation of punishment.~~
(d) addresses the Court by his Defending Officer.

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE, and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Plea in mitigation of punishment by Defending Officer attached hereto.-

[signature] [illegible]

STATEMENT OF MITIGATION OF SENTENCE

OF

B-25449 Sapper DUNCAN, W.G., 5 C.C.C.

This soldier has a relatively good military crime record, considering his three and a half (3½) years service. His documents show that he has not had a tendency towards absence without leave. In fact the only previous infraction occurred over two years ago.

Therefore it is apparent that some unusual combination of circumstances must be responsible for his present state. I find that the three (3) reasons which combined, led to the present infraction, are;-

(1) An irregular love-affair.
(2) Misplacement in army relative to civil trade qualifications and, therefore, inability to draw trades pay as promised at time of placement with Unit.

(3) No suitable reply to request for transfer.

As regards (1) this soldier was advised a few weeks ago by his Officer Commending, that a civilian girl claimed to be carrying his (Duncan's) unborn child. The Officer Commen ding warned Duncan that he was planning to effect a meeting between the two (i.e. Duncan and the girl). The interview was arranged and, just prior to the hour of meeting, Duncan left camp and was as the Court knows, absent for several days. He now realizes his folly in trying to evade the issue and has made amends to the girl as far as his married status will allow him.

As regards (2) here is a soldier who was a machinist by trade, although he was working as a miner at time of enlistment. Through lowering of category in the field he was returned to Holding Unit and his trades pay discontinued. Later he was transfered to his present Unit with, he says, the promise of machinist's trades pay. This could not be granted due to factors of War Establishment. He was, however, sent to be tested as a fitter, an entirely different trade and posted as "Failed" whereas he never tried the test.

As regards (3) the desire for transfer arose out of No.(2), as he wished to work at his trade instead of which he was employed as a labourer. A further irritation to this soldier arose out of refusal of Unit to grant Privilege Leave, soon after his return from hospital where he had spent two (2) months.

This soldier is inclined by nature, I will say, to brood over real and fancied troubles and injustices, and to act rashly as a result.

I do feel however that he fully realizes the folly of his latest and only serious military crime, and if given an opportunity to do work for which he is best suited, he will prove to be an efficient soldier. I therefore, plead that the Court deal lightly with the accused, as I am convinced that he is resolved not to repeat the crime for which he has been tried today.

(M.J.C. Spratt) Capt., R.C.E.,
2 i/c
No.5 Cdn. Construction Coy.,
R.C.E., C.A.(O).

SUMMARY OF EVIDENCE

A Summary of Evidence in the case of B-25449 Sapper William Grant Duncan, No. 5 Canadian Construction Company, Royal Canadian Engineers, a soldier of the Canadian Army (Overseas).

Evidence taken under oath by order of Major G.A. McClintock, Officer Commanding No. 5 Canadian Construction Company, Royal Canadian Engineers.

FIRST WITNESS: No. B-82654 Corporal Dean, A.H., attached f.a.p. to No. 5 Canadian Construction Company, Royal Canadian Engineers, having been duly sworn states:-

"On the 3rd of March 1943 at 1000 hours, Sapper Duncan was placed in my charge on kitchen fatigue. He had a cup of coffee and said he had to go and draw some kit, as he had just come out of Hospital. He failed to return on duty, and was not seen by me after 1030 hours on that day."

Q. Do you recognize the accused as the man who reported to you?

A. Yes Sir.

Dean A H Cpl.,

The accused declines to question the witness.

SECOND WITNESS: No. A-48596 Lance Corporal Howes, R.A. No. 5 Canadian Construction Company, Royal Canadian Engineers, having been duly sworn states:-

"I was in charge of the guard on the 16th March, 1943 when the accused whom I now recognize reported to me at 2045 hours."

Q. Did he return under escort?

A. He came in of his own free will.

R A Howes L/Cpl.,

The accused declines to question the witness.

The accused is cautioned as follows:-

"Do you wish to make any statement, or to give evidence upon oath? You are not obliged to say anything, or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused reserves his defence.

Certified that R.P. 4 (C), (D), (E), and (F) have been complied with.

Taken down before me in the presence and hearing of the accused at Ontario Camp.

Lieut., R.C.E.
(Officer detailed to take down the Summary of Evidence)

In the Field,
17th March, 1943.

I, the undersigned, request that an officer be present to represent me at my trial.

I request that -

Lieut. R.A. Kirkpatrick, R.C.E.

or

Capt. P. Berger, R.C.E.

be present to represent me at my trial.

D. G. Duncan
B-25449

Date 19 Mar.ch 43

No. B-25449 Name DUNCAN, William

Sqn., Battery, or Company

Corps R.C.E.

Old Sheet Destroyed 13-3-40

Date of enlistment 13-9-39

G.C. Badges N/A

Service or Proficiency Pay N/A

M.F.M. 6 (A.F.B. 177) 175M—7-41 (1215-20) H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet Nil

No. and date of last drunk Nil

Period not reckoning towards freedom from extra fine

Sheet No. 1.

Signature O.C. Company, etc. G.P. Stirratt Major, R.C.E.

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				NO ENTRIES VERIFIED TO DATE 13-3-40		C.B. Ross, Lieut. Adjutant			
OLD SHEET DESTROYED IN ACCORDANCE WITH C.A.R.O.(O) 319						No. 5 Cdn. Construction Coy., R.C.E.			C.B.R.
Field	24-1-41	Spr.		AA15-1) 2200 hrs. 24-1-41 to 2159 hrs 26-1-41(47 hrs 59 min)	Sgt Porter L/Sgt Mallette	7 Days C.B.	27-1-41	Capt Odlum	2 Days Pay FR&I 149-1-a
Field	4-2-41	Spr.		Conduct Predj Good Order & M.D. Losing by neglect 1 anti-gas cape,1 steel helmet,1 pr boots (£2-4s-6d) A.A. 40	L/Sgt.Mallette		5-2-41	Major North	C.B.R.
Field	15-9-41	L/Cpl		AA Sec 40 Not taking tattoo Roll Call when ordered to do so.	Cpl Pearson	Reverts to Per. Rank of Spr.	16-9-41	Lt/Col Barnes	C.B.R.

CERTIFIED TRUE COPY OF THE ORIGINAL IN MY POSSESSION: 18 MAR 43.

E.J. Markus Lieut.

for

(G.A. McClintock) Major, R.C.E., Commanding,
No. 5 Cdn. Construction Coy., R.C.E.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N/A dated , and in his regiment (or corps), the rank of

dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

NIL Date of promotion.

In the rank of NIL years.

In the rank of NIL years.

In the rank of NIL years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number S-25449 Rank SAPPER

Name DUNCAN, W. of NO. 5 CDN. CONST. COY., R.C.E. Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Twentieth day of MARCH 1943 (G.A. McClintock) Major, RCE

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

M.F.B. 355
40/P & B/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-25449	Sapper	Duncan, W.C.	No. 5 Cdn. Construction Coy., R.C.E.

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	times	Sec 15(1) A.A.	One (1)	times
For	times	Sec 40 A.A.	Two (2)	times
For	times			times
For	times			times

~~Number of instances of gallantry or distinguished conduct~~

~~xx~~

There are no entries in the conduct sheets of the accused.

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~xx~~

~~Previous convictions of the accused by a court-martial or punishment by summary award under Air Force Act xxxxxx Section 42 of the Army Act and dispensation with trial under Act 32 are as follows:~~ ~~xxxxx

JJ 23

SGT DUNCAN W.G.

K-42842 Sgt. William Gray DUNCAN
Seaforth of C. - 1 C.I.R.U.

JF-23

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 9th day of JULY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "G" GROUP CANADIAN REINFORCEMENT UNITS C.A.(O), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* [redacted]

*(1. [redacted]

*(2. [redacted]

[redacted]

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
MAJOR	A.S. PETTAPIECE	H.Q. C.B.U.

Members.

Rank.	Name.	Regiment.
A Captain	from	5 C.I.R.U.
A Lieutenant	from	5 C.I.R.U.

*Signed [redacted] Brigadier
Commanding "G" Gp Cdn Rft Units, C.A.(O)
Convening Officer.

Arthur S Pettapiece Mjr

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
K-42842 Sgt. William Gray DUNCAN Seaforth of C. 1 C.I.R.U.	First Charge A.A. Sec 40 ~~Second Charge A.A. Sec 40~~	Not Guilty	Guilty Sentenced to be reduced to the ranks. 12 Jul 43 CHP	Confirmed

SEE CHARGE SHEET ATTACHED

* Question to be asked of accused, if he pleads not guilty (R. of P. 29 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— No.

(Signed) J. Stewart Lough Brigadier (Signed) Arthur J. Pettapiece, Maj.
Commanding 3rd Gp Cdn Rft Units *Convening Officer* (*a*) CA(O) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 12th day of July 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~*(3. The Interpreter)~~
~~*(4. The officers under instruction)~~

*Omit if not applicable.

were duly sworn.

Signed this 12th day of July 1943.

Arthur J. Pettapiece, Maj.
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (f) on page 762 M.M.L. 1929. ~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19—~~

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 12 day of July 1943.

DO 126
13-7

J. Stewart Lough Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of K-42842 Sgt. Duncan, W.G. (Seaforth of C)
Promulgated in Part II Orders 126 dated 13 Jul 43.

(*a*) (Dated) 13 July 43 (Signed) COLONEL COMMANDING 1 C.I.R.U.

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

33617 W1.46179-950 10,000 2-43 A.& E.W.Ltd. Gp.698

CHARGE SHEET

The accused, No. K-42842 Sergeant William Gray DUNCAN of the Sea forth Highlanders of Canada, on the strength of No. 1 Canadian Infantry Reinforcement Unit, as a Reinforcement, a soldier of the Canadian Army (Overseas) is charged with:

FIRST CHARGE
SEC 40
ARMY ACT

When on Active Service, conduct to the prejudice of good order and military discipline,

in that he,

at No. 1 Canadian Infantry Reinforcement Unit, Berossa Barracks, Aldershot, Hants., did strike a Sergeant, in that he, at approximately 2350 hours, 1st day of July 1943, did strike K-47878 Sergeant Quinn, E.W., while the said Sergeant Quinn, was in bed.

~~SECOND CHARGE~~
~~SEC 40~~
~~ARMY ACT~~

~~When on Active Service, conduct to the prejudice of good order and military discipline,~~

~~in that he,~~

~~at No. 1 Canadian Infantry Reinforcement Unit, Berossa Barracks, Aldershot, at approximately 2350 hours 1 July 43 did create a disturbance in a barrack room by striking K-47878 Sergeant Quinn, E.W., while the said Sergeant Quinn, was in bed.~~

Colonel
(C.W. Avery) Commander,
No. 1 Cdn.Inf.Reinf.Unit.

Albuhera Barracks,
Aldershot, Hants.

6th day of July 1943.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(J.R.Stewart Lough) Brigadier,
Commanding,
"G" Group Cdn Rft Units, C.A.(O).

9 July 1943.

Convening Officer.

Medical Officers' Certificate
K.R.(Can) para.557.

I certify that I have this morning examined No..K42842.....

..Sgt....Duncan W.G..... and in my opinion he is fit to
(rank) (name)

undergo trial by Court Martial.

Station

Date...12 Jul 43 (Sgd).....B J Murphy Capt
(Medical Officer)

Arthur S. Pettapiece
Major

2 July 43.
1 C.I.R.U.

A

Re. Sgt. Quinn, Sgt. Duncan.

I am Capt. B.J. Murphy, medical officer at 1 C.I.R.U. At 0020 hrs 2 July 43 I examined Sgt. Quinn in H Wing orderly room. He had a bloody nose and a black eye (right). He had been drinking as evidenced by a strong odor of liquor on his breath.

At 0030 hrs 2 July 43 I examined Sgt. Duncan in H. Wing orderly room. He was sober and there was no evidence of recent drinking. No physical injuries were evident.

B.J. Murphy Capt.

2 July 43 B

I am C.S.M. North H.C. Wing Sgt Major

Approximaty at 2359 hrs 1 July 43

The Orderly Officer sent for me, to put Sgt Duncan under close arrest

I ordered C.S.M. force and Sgt Tannous to escort Sgt Duncan to the Guard room ~~at~~

I heard or saw nothing of these N.C.O's fighting

I am Sir your Obedient Servant

H.C. North
C.S.M.

WR

SUMMARY OF EVIDENCE

In the case of K 42842 Sgt. Duncan, W.G., of the Seaforth Highlanders of Canada, on the strength of No 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas).

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS for the PROSECUTION — Lieut D A Leedham, Westminster Regiment (M), on the strength of No 1 Canadian Infantry Reinforcement Unit, as A Reinforcement, having been duly sworn, states:

I am Lieut D A Leedham, Westminster Regt.(M) on the strength of No 1 Canadian Infantry Reinforcement Unit. On 1 Jul 43 I was Orderly Officer of Holding Wing, No 1 C.I.R.U. At 2355 hrs., K47878, Sgt Quinn, E.W., came to the Orderly Room where I was on duty and stated he wished to lay charges against Sgt Duncan, of the S.H. of Canada. He then made statements which I took down verbatim. I sent for the M.O. and then the Orderly Sgt.

The M.O. spoke to Sgt Quinn and I sent the Orderly Sgt to bring Sgt Duncan to the Orderly Room under escort and advised Sgt Quinn to leave before the arrival of Sgt Duncan. At 0030 hrs 2 Jul 43 Sgt Duncan was brought to the Orderly Room. The M.O. spoke to him. He then admitted to me that he had struck Sgt Quinn and asked for C S M North and another Sgt as witnesses. I sent for these men.

While waiting for the C S M, ~~in~~ I told the accused he would be placed under close arrest. When C S M North arrived I told him to place Sgt Duncan under close arrest. C S M North told the escort to take the accused to the guard room. I thought it advisable to send him to the guard room under guard in view of the threats he made in the hearing of the M.O. and myself.

The accused declined to cross-examine this witness.

D A Leedham Lieut
(D.A. Leedham)

SECOND WITNESS for the PROSECUTION — K47878 Sgt Quinn, E.W., Westminster Regt.(M) on the strength of No 1 Canadian Infantry Reinforcement Unit, having been duly sworn, states:

I am K47878 Sgt Quinn, E.W. Westminster Regiment (M), on the strength of No. 1 C.I.R.U. At approximately 2350 hrs., 1 July 43 I was asleep in my bed in D Block, Barossa Bks., Aldershot. I was suddenly awakened by receiving blows in the face. The lights were out in barracks but, as the blackouts were not drawn there was some light, sufficient to identify the accused, Sgt Duncan, as my assailant. I was considerably dazed by the blows. I remember distinctly hearing somebody shouting in the barracks room. The accused then left. I immediately arose and reported to Holding Wing Orderly Officer, Lieut Leedham. I had gone to bed shortly after 2300 hrs. I had seen Sgt Duncan earlier in the evening at the Sgt's Mess. I saw him at a distance as the mess was full. I did not speak to him. Previous to 2300 hrs I had been in an altercation with and had received blows from the accused, but as I had been drinking I had paid no attention and considered the incident closed.

The accused declines to cross examine the witness.

E W Quinn Sgt
(E.W. Quinn)

SUMMARY OF EVIDENCE

In the case of R42842 Sgt Duncan, W.G., of the Seaforth Highlanders of Canada, on the strength of No 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas).

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

THIRD WITNESS for the PROSECUTION

M15559 Sgt Davies, W.G., Edmonton Regt. on the strength of No 1 Canadian Infantry Reinforcement Unit, as a Reinforcement, having been duly sworn, states:

I am M15559 Sgt Davies, W G., Edmonton Regiment, on the strength of No I C.I.R.U. About 2230 hrs 1 Jul 43 I was walking behind Sgt Quinn towards D Block, Barossa Barracks. I walked in behind him. He stopped to talk to some fellows at that end of the room. While he was talking there, Sgt Duncan came in with two other sgts. Sgt Duncan and Sgt Quinn started to argue. Sgt Duncan offered to go outside but Sgt Quinn wouldn't go with him. Finally, Sgt Duncan left with these two sgts. The whole affair only lasted two or three minutes. I did not see any blows exchanged as I had gone over to my own bed and started to undress. I did not see Sgt Quinn go to bed as I went to sleep. I would say that Sgt Quinn was drunk. I wouldn't say that Sgt Duncan was drunk.

The accused declined to cross-examine this witness.

W G Davies Sgt
(W.G. Davies)

FOURTH WITNESS for the PROSECUTION

F40063 Cpl Doucette, P.A., West Nova Scotia Regt., on the strength of No 1 Canadian Infantry Reinforcement Unit, having been duly sworn, states:

I am F40063 Cpl Doucette,P.A., West Nova Scotia Regt on the strength of No 1 C.I.R.U. I work in the Sgt's Mess bar and on the evening of 1 Jul 431 was very busy. I noticed the accused,Sgt Duncan and Sgt Quinn were arguing. I told them if they wanted to argue to go outside. It was nearly closing time, which is 2300 hrs. I think Sgt Quinn was in the mess the whole evening from approx 1900 hrs to 2300 hrs. I don't remember when Sgt Duncan came in but he wasn't in as long as Sgt Quinn. I served Sgt Quinn drinks that evening. He was drinking gin and cider. I don't know how many drinks as I was very busy. I wouldn't say Sgt Quinn was drunk but he was 'feeling good'. I wouldn't say Sgt Duncan was drunk but he was also 'feeling good'. I don't know what time they left the mess.

The accused declines to cross-examine this witness.

P A Doucette Cpl
P.A. Doucette

FIFTH WITNESS for the PROSECUTION

Capt W Rorke, Calgary Highlanders, No 1 Canadian Infantry Reinforcement Unit, having been duly sworn, states:

I am Capt W Rorke, Calgary Highlanders, No 1 C.I.R.U. I produce a statement purporting to be signed by Capt B J Murphy, which relates to the accused, whom I now recognize. This document is marked Exhibit A and is duly initialled by me for that purpose of identification. I also produce a statement purporting to be signed by C S M North, F.W.C., which relates to the accused. The document is marked Exhibit B and is duly initialled by me for purpose of identification.

The accused declines to cross-examine this witness.

W Rorke Capt
(W Rorke)

SUMMARY OF EVIDENCE

In the case of K43842 Sgt. Duncan, W.G., of the Seaforth Highlanders of Canada, on the strength of No 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas).

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

The accused having been duly cautioned in accordance with Rule of Procedure 4 (e) reserves his defence.

I certify that the foregoing Summary of Evidence consisting of THREE pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c) (d) (e) (f) (g) have been complied with.

R.S. Hayden Lieut
(R.S. Hayden)
Officer detailed to take the Summary.

Albuhera Barracks,
Aldershot, Hants.

5th day of July, 1943.

GGP Form 10

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD AT Barossa Barracks, Adelaide ON THE 12th DAY OF July 43

TRIAL OF:- No. K42842 Sgt. Duncan, W.G. Unit 1 C/R U.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Capt. A.S. Dennis-Smith (Unit) 1 C/R U.

Defending Officer:- (Name) Capt. W.J. Liban (Unit) 1 C/R U.

At 1000 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 - No

The President, members ~~and judge advocate (if any)~~ are duly sworn. AHP

The following constitute the Court:

President Maj. A.S. Pettapiece .....(Unit) H.Q.C.R.U.

Members Capt. J.T. Bryant .....(Unit) 5 C/R U.

Lt. J.C. Frazer .....(Unit) 5 C/R U.

~~The officers under instruction are duly sworn.~~ AHP

~~Q2 Do you object to.....acting as Shorthand Writer? A2 -~~ AHP

~~The shorthand writer is duly sworn.~~ AHP

~~The accused pleading Guilty to the charges in the above~~ AHP

mentioned charge sheet, R.P. 35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court is closed to consider its finding. Court is re-opened.

Name.....(Unit).....sworn, produces AFB 296 and MFM 6 and upon being questioned by the Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3 (To accused) - Do you wish to make any statement in mitigation of punishment? A3 -

Q4 Do you wish to give evidence yourself or to call any witnesses as to character? A4 -

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED ~~FOR THE CONSIDERATION OF THE SENTENCE~~ AHP

The accused is duly arraigned and he pleads "Not Guilty" to the charge.

R.P. 39(A) is complied with.

The Prosecutor proceeds to call witnesses.

1st Witness for Prosecution — K 47878 Sgt. Quinn, E.W. of 1 C.I.R.Y., having been duly sworn, states.

At 2350 hrs on 1 Jul 43, I was asleep in my bed. I was suddenly awakened by someone striking me in the face. The lights were out but there was no blanket to up. It was sufficiently light for me to recognise my assailant who was the accused. My bed is in front of a window. He left the room then. The M.O. examined me later. I had been drinking that night and I had been assaulted by the accused about 2250 hrs, but I did not wish to report the first assault. I remember telling the accused in the Mess before the first assault to leave me alone.

Cross-examination:

I never called the accused any names. The first assault took place ~~[illegible]~~ outside the Sgts Mess and that is why I did not want to report it. I think the accused disliked me because I had occasion to comment unfavourably on his work once to his superior officer.

2nd Witness for Prosecution — Lt. H.A. Ludham, of 1 C.I.R.Y. having been duly sworn, states

On the night of 1 Jul 43 I was present when the M.O. attended to Sgt. Quinn. I later placed the accused under arrest.

Cross-examination The accused was sober.

3rd Witness for Prosecution Capt. B. J. Murphy, R.C.A.M.C. of 1 C.I.R.A., having been duly sworn, states,

I examined Sgt Quinn on the night in question. He had a black eye and was bleeding from his nose. The accused I saw later in the orderly room at 0020 hrs. He was not drunk sober. Sgt. Quinn had been drinking and was a little shaky. The injuries which Sgt Quinn had might have been made by blows from a man's fist.

Cross-examination nil.

4th Witness for Prosecution M15559 Sgt. Davis, W.G. having been duly sworn, states,

On the night in question at about 2230 hrs, I heard Sgt. Quinn and the accused arguing. I heard the accused offering to take Sgt Quinn outside and Sgt Quinn would not go. I did not see the accused again that night. Sgt. Quinn sleeps about 15' away from my bed. Quinn was under the influence of liquor. I figure Sgt. Duncan was sober.

Cross-examination nil. I heard a third Sgt. telling someone to get out of the sleeping quarters later on but I do not know to whom he was speaking.

5th Witness for Prosecution F40063 A Cpl Dowsett, P.A. of 1 C.I.R.A. having been duly sworn, states. I rank in the Sgt's Mess. I heard Sgt. Quinn and the accused having an argument that night in the Mess.

Cross-examination - I think Sgt Quinn was in the Mess for about 1/2 hr that night.

The Prosecution is closed.

R. P. 40 (A) & (B) complied with

Last Witness for Defence. The accused having been duly sworn, states.
Sgt Quinn referred to us as "Canadian bastards" in the Sgts Mess. I told him to take it back and he would it, or we left. I offered him out and then I punched him in the nose later that night in his hut. I went later to his bed and he sat up and I offered him out again. He refused to settle it like a man so I hit him

Cross-examination
I do not think he was drunk but Quinn had been drinking. I was sober. Sgt. Quinn has provoked me before by similar remarks as he made that evening.

~~Re-examination~~

1st Witness for Defence. K42936 Sgt. Fletcher, M. D. of 1 C.I.R.U. having been duly sworn, states.
I know both Sgt Quinn and the accused. I heard the Sgt Quinn shortly after lunch in the Sgts Mess on the day in question use the term "Yankee". I took it to be addressed to some of us generally.

2nd Witness for Defence K42845 L/Sgt. Jackson, R. L. G. of 1 C.I.R.U. having been duly sworn, states that Sgt Quinn on July 1st addressed derogatory remarks to me, at least I thought they were. But nothing arose of it.

4th Witness for Defence — K52229 Sgt. Bain, E. of 1 C.I.R.4 having been duly sworn, states,

I know nothing about this matter except that on the evening of July 1st I was awakened by voices. I recognised the voice of the accused and I told him to get out. He left. This was about 0100 hrs 2 Jul 43.

The Defence is closed

The Defending Officer makes a closing address in which he pleads extreme provocation.

The Prosecutor does not make any final address.

The Court is closed for consideration of finding.

The Court is re-opened and Overseas R.O. 3262 is complied with.

The Prosecutor produces the MFB355 and MFM6 of the accused.

There is no plea in mitigation.

Overseas R.O. 3262 is complied with and the Court is closed for consideration of sentence.

Arthur S. Pettapiece, Major

M.F.M. 6
(A.F. B.122)
40/P & /5136 (2965)

No. K42842 Name DUNCAN, W.G. | Sqn., Battery, or Company | Corps Cdn Inf Corps | Date of enlistment 27-7-40 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk Nil. | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
SHEET No 2 DESTROYED 17 Sep 42 ; LAST ENTRY 15 Nov 41 ; NO CASES OF DRUNKENESS.									
Halifax	28-9 42	Sgt		AA Sec 11 WOAS neglecting to obey standing orders in that he in a letter on 28 Sep 42 did give information of a military nature	Documentary	Severe Reprimand	26 Nov 42	C.C.Ferrie Lt/Col.	
Algonquin	23-11 42	Sgt		AA Sec 40 WOAS an act to the prej of good order and mil. discipline in that he was improperly dressed	Documentary	Reprimand	27 Nov 42	C.C.Ferrie Lt/Col.	

Certified true copy consisting of One Sheet

H.F. Atkinson Lieut
(H.F. Atkinson) Records Officer,
1 Cdn Inf Reinf Unit.
Officer having custody of orignal documents

Arthur S. Bethune, Major

M.F.B. 355
22M—5-41 (372-6)
H.Q. 1772-39-620
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
K-42542	Sgt	Duncan W.G.	1 C.I.R.U.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ ~~Regimental and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A.Sec 11	1 times	1 times
For A.A.Sec 40	1 times	1 times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ A.F.A. 76 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time

~~or~~

The accused at the present time is under sentence for beginning on the ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in ~~Air Force~~ civil custody, and Nil days in military custody, making a total of Nil days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 35 years, 130 days.

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 25 Jul 40

7. The service which the accused is allowed to reckon towards discharge is 2 yrs. 347 days

8. The accused is entitled to reckon above service for the purpose of determining his pension, etc.

~~9. The accused is in possession of or entitled to no air force decoration, or air force reward~~ (or is in possession of or entitled to). State any air force decoration or reward. military military military

10. (If the accused is a ~~warrant officer~~.) The accused before he was made a warrant officer last held Air Force the ~~regimental~~ rank of

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ ~~Permanent Force~~ ~~unit~~ ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

17-9-42 Date of promotion.

In the rank of Cpl 1 year 4 months years. Confirmed

In the rank of Sgt 10 months years. Confirmed.

In the rank of A/Sgt 9 months years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~7th~~ 12th day of July 1943

(Mr Atkinson) Lieut Rec Officer 1 CIRU

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

Arthur S. Pettapiece, Mjr

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Albuhera Barracks, Aldershot, preliminary to my Court-Martial. I further acknowledge that I have been served with a true copy ofthe charge under which I am being brought to Court Martial.

W.J. Duncan.

Dated at Aldershot, this
16.2.43 day of [illegible]

I Hereby request that the Convening Officer appoint an officer to represent me at my trial.

I desire the services of ..... Capt. W.J. Gibson.....
if he is available.

S B-2 8

Pt Danford. H W

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A 86328 Pte Hubert Washington DUNFORD

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	15 (1) AA	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present undergoing sentence (or)~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of 150 days

(Sgd) ..... Judge-Advocate, if any. 19 Jan 1945 Date awarded. (Sgd) [signature] President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

~~I direct that the accused be duly committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) [signature] LT COL.

Date 22 JAN 45 Commanding A/CRA 3 CDN INF DIV. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
A-86328 Pte Hubert Washington Dunford	24 Jan 45	

JUDGEMENT ON CR SER NO 1 A/AG JAN 45 (+ 2 MNTS STRAIC IN CARD.

[signature] Capt. 18 C.E.R. Bn.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 180 5-3-26

RECEIVED 17 MAR 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CP A66 (To items of AP A1) 40-1 & 15-1 1000 4/45

4/38B

Convening Order of 22 Col A.S. Bishop Comd 3 Cdn Inf Div dated 15 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A86328	Pte		HUBERT WASHINGTON	DUNFORD	18 CDN R ARMD 60 Fd Amb Coy RCAMC 18 CDN INF BN

PROCEEDINGS REVIEWED 20 Mar 45 [signature] Lieut

REVIEWING OFFR (Command) BRANCH C.M.H.Q. on (date(s)) 20 June 45

PROCEEDINGS OF TRIAL.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 20|96

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 0915 hours trial commences. MC

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused is (are) in hospital and cannot be brought before the Court by the CMHO.~~ MC

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~Questioned by the Court, the accused (each accused) pleads that he (they) is (are) not the person(s) ~~mentioned~~ named in the charge sheet. A true~~

~~The Prosecutor informs the Court that the accused (each accused) is (are) not the person(s) mentioned in the charge sheet. A true~~ MC

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans N.E. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	BF Hoenage	4 CAA RCA
Member	Lt. Col.	I Malcolm	1 CDN Corps RCEME
Member	Lt. Col.	D.V. Peterson	RCOrps 3 Cdn Inf Div
~~Judge-Advocate~~			
Prosecutor	Capt.	AK Wise	14 Fd Regt RCA
Defending Offr	Major	AR Foster	14 Fd Regt RCA

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv. Offr.)
(2. If Pros a lawyer and Conf Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Div p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~few~~ plea. MC

..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (G)), or as to the jurisdiction of the Court (RP 34, 25(A), 112), or on bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or as to use of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposed, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in full name and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (separately) on all charges in the charge sheet.(1) The accused ~~(each)~~ ~~(no)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(1) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 496 to record proceedings. 2. RP 32, 33. If otherwise, delete and make appropriate record per Notes.)

A10. ~~The Court (is advised and) considers the Instrs on Procedure after Arraignment at top of p 2.~~ The proceedings are continued on Blocord Form 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his pleas of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. N/C.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty, on ..... charge(s). The accused is (are) so informed, and he (they) changes/do not change (their) plea(s) to Guilty on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. F, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B2 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*b*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP* 115. 2. *RP* 40 *as see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans. N/C.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. G and Ex. ..... respectively.(3) N/A by AGREEMENT BETWEEN DA PROSECUTOR
(1. *MFB* 205 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (2). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its powers, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566. *Overseas* 80, 309, 2123, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused - A-86328 Pte Hubert Washington DUNFORD, (RCAMC)
46 Fwd Rft Coy 13 CHRBn., a soldier of the Canadian Army
Overseas - is charged with:

Army Act
Sec 15(1)

WHILE ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, did absent himself without leave from
46 Fwd Rft Coy 13 CHRBn. from 0930 hrs 9 Dec 44 until
apprehended by the C Pro C at 1200 hrs 5 Jan 45 (ABSENT
27 days 2 hrs)

(H.E. MILLS) Capt
O.C. 46 Fwd Rft Coy 13 CHRBn.

In the Field

12 Jan 45

to be tried by F.G.C.M.

(H.B. Griffin) Lt Col.
A/CRA 3 CDN Inf Div

Rec'd this field
15 Jan 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A86328	Pte		Hubert Washington Dunford (RCAMC) 46 Fwd Rft Coy 13 CBR Bn.		

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has (~~have~~) committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) 15 Jan 45 endorsed by me, (~~or by an offr of my staff for me~~) "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	B.F. GOSSAGE	4 LAA Regt RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Lt.	I. MALCOM	7 CIB Wksp RCEME
Lt.	D.G. PETERSON	R C Sigs 3 Cdn Inf Div

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt.	G.E. WHITAKER	14 Cdn Fd Regt RCA

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland. (Country.)

(H.S. Griffin) (Signed personally. RP 105 fn 2.)

Lt Col (Rank.)

Dat 15 Jan 45

Commanding A/CRA 3 Cdn Inf Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 66 (In lieu of AFA 2) 40/P & S/1697 (6142)

(See overleaf for oaths and notes for use on trial.)

THIS IS TO CERTIFY THAT I HAVE MEDICALLY EXAMINED A-86328 Pte DUNFORD, H.W. (RCAMC) ON THIS 19TH DAY OF JAN 1945 AND I FIND HIM FIT TO UNDERGO TRIAL BY FIELD GENERAL COURT MARTIAL.

M Smolsky

.....Capt
Medical Officer

Address in mitigation of punishment

This soldier was trained in a Gen Hospital of the RCAMC till late in Oct when he was transferred to a Reinforcement Unit. From that time till the offence & subsequently the soldier received no information from Canada concerning his wife or family or any one - This had a serious demoralizing effect & caused mental suffering. Came forward into the Nijmegen Salient in late Nov 1944 with no winter underclothing or great coat. He was given blankets but on repeated demands to the 2 M Dept was not able to obtain underwear or greatcoat. Was given to understand that these items would be made available in draft. This man who had recently spent 3 weeks in a General Hospital for a chest ailment - ~~[illegible]~~ This left this soldier with the idea in [illegible] a weak chest & he thought it should be perpetual - He went away for 7 days, returned voluntarily & was punished. The circumstances were not improved. He made further advances to the 2 M Dept with no satisfaction & he again protested in the way he understood. Went AWL -

This soldier is entitled as a volunteer to serve with his corps in the field & I suggest to you that the ends of justice are best met in this way.

SUMMARY OF EVIDENCE EXHIBIT A
in the case of

A-86328 Pte Hubert Washington DUNFORD (RCAMC) charged with

(i) Absenting himself without leave

The CO directs that the Summary of Evidence be taken upon oath.

FIRST WITNESS: K-42845 Sgt JACKSON, R.L.G. 46 Fwd Rft Coy 13 CBRBn. I am K42845 Sgt Jackson, R.L.G. of 46 Fwd Rft Coy 13 CBRBn. On calling the roll at 0930 hrs 9 Dec 44 Pte Dunford H.W. did not answer his name or number and I did not see him in this Coy until he was turned over to the CSM, under escort from 10 CBRBn. at 1500 hrs 11 Jan 45.

R.G. Jackson
K-42845 Sgt Jackson, R.L.G.

The accused declined to cross-examine this witness.

SECOND WITNESS: Lieut William Harold McKelvey Records Officer 46 Fwd Rft Coy 13 CBRBn. having been duly sworn states: I am Lieut William Harold McKelvey Records Officer of 46 Fwd Rft Coy 13 CBRBn. I herewith produce documentary evidence, certificate of apprehension, in the case of A-86328 Pte Dunford, H.W. (Marked as Exhibit "A")

W.H. McKelvey
W.H. McKelvey Lieut

The accused declined to cross-examine this witness.

QUESTION TO THE ACCUSED:

Do you wish to make any statement or to give any evidence upon oath?

Ans. Yes.

Statement by the Accused: I went to the QM Stores every morning for one week to try to get clothes as I hadn't sufficient to keep me warm. The QM told me that I couldn't get any until I went on draft. I am subject to a chest ailment and try to look after myself. I got mixed up with the wrong type of soldier who led me astray.

~~Ques 1. Why didn't you see the company commander?~~
~~Ans. 1. It didn't enter my head to see him.~~

~~Ques 2. How many AWL's have you had since coming to Europe?~~
~~Ans. 2. I have had one.~~

~~Ques 3. How long was it for?~~
~~Ans. 3. It was for 7 days.~~

PTO.....page 2.

QUESTION TO THE ACCUSED: cont'd (2)

Ques 4. Where did you go AWL from?
Ans 4. I went from this Coy.

H. W. Dunford
A-86328 Pte DUNFORD, H.W.

I certify that the above Summary of Evidence consisting of two sheets was taken down by me in the presence of the accused on this 12th day of Jan 1945 and that Rules of Procedure 4(C.D.E.F. and G.) were complied with.

Capt
H.E. MILLS Officer Commanding
who took Summary of Evidence

CERTIFICATE UNDER ARMY ACT. SECTION 163 (1) (1) EXHIBIT "A" (B)

Certified that No. A86328 Rank. PTE. Name. DUNFORD H.W.

of the R.C.A.M.C. Regt, ~~surrendered to~~ No. C.S.

Rank. S.G.T. Name. NEWMAN C. was apprehended by

GHENT DETACH at GHENT BELGIUM of the 2 CON. L. of C. PROV. COY.

day of JAN. 45 at 1200 hrs, on the

He was wearing Military Uniform ~~Civilian Clothes~~ at the time of his ~~Surrender~~ Arrest.

Place. GHENT BELGIUM

Date. 5 JAN 45

RECEIVED 8 JAN 1945 0935 12 Sq. 2 C.R.R. GROUP

GHENT DET. 2 CON. L. of C. PROVOST COY. 21 A. GRP

H.W. Mahaffy LIEUT.

Canadian Provost Corps. GHENT DETACH

2 CON. L. of C. PROV. COY. 21. A. GRP

This is to certify that I have received a copy of the Charge Sheet and of the Summary of Evidence.

H.W. Dunford
A-86328 Pte DUNFORD, H.W.

I request that the convening officer assign an officer to defend me at my trial by Field General Court Martial.

H.W. Dunford
A-86328 Pte DUNFORD, H.W.

87236-8-5-4

EXHIBIT 12

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
A-86328	Pte	DUNFORD, H.W. (RCAMC)	46 Fwd Rft Coy 13 CBRBn.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

No MFM 6 available for a/m.

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For	times	times
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for NO beginning on the day of NA

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days, in civil custody, and 14 days 14 days in military custody, making a total of 14 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 22 yrs

6. The date of his attestation specified in his record of service is 24 Aug 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 4 mos

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 4 mos service.

9. The accused is entitled to reckon 2 yrs 4 mos service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*). Entitled to CVSM & Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated and in his regiment (*or corps or* department) the rank of dated

WAR OFFICE FORM W.O. P. Lat. 751-5.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* _____ Name _____ of _____ Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		N.A.		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 19th day of Jan 45

W H McKelvey Lt
Rec off 46 Fwd Rft Bay

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion

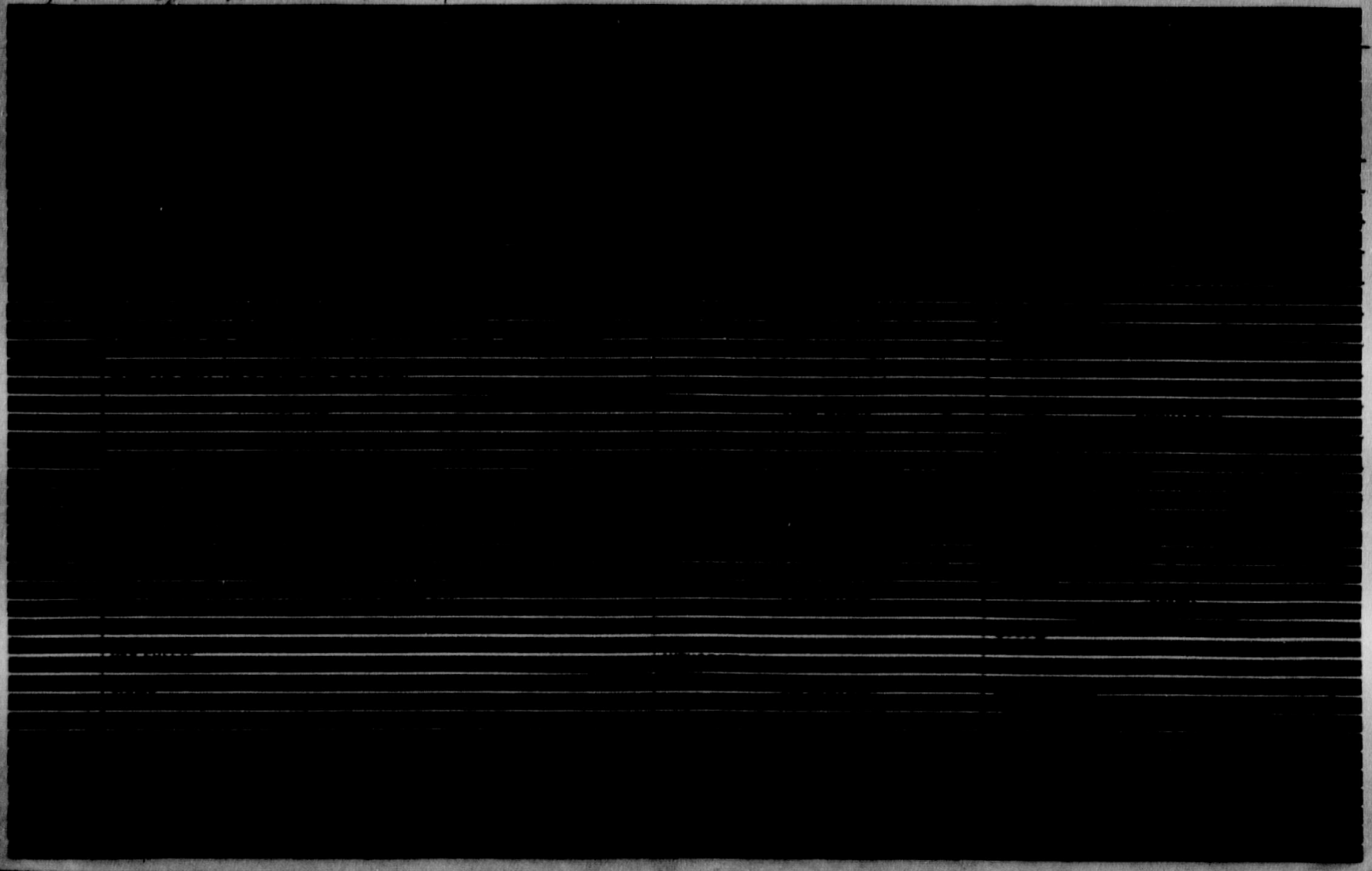
In the rank of _____ years.

In the rank of _____ years.

In the rank of _____ years.

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

5 Y-108 Tpr Dundas, D. M.



SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A.3543 Tpr Donald Moses DUNDAS

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 403 fn 4 para 2, RP 44; special findings see RP 44 and MML p. 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of one hundred and fifty (150) days.

(Sgd) ..... 18 FEB '46 (Sgd) H.C. Woodroffe Lt Col.

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57; RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 13A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

(1. AA 57A. Delete if not used.)

Date 26 Feb 46 (Sgd) R Blackader

Commanding GOC 5 Corps Corps

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (AA 53, KR Can 570, 577.)

Accused.	Date.	Signature of Offr.
A3543 Tpr Donald Moses Dundas	22 Feb 46	J Brown Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AA 129 AS 5V-108

FIELD GENERAL COURT-MARTIAL

CFA56 (In lieu of AFA3) 40-P-A-S/1000 (E2531) 4/38B

Convened by Order of Brig K.G. Blackader CBE DSO MC ED Comd CRU dated 16 Feb 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A.3543	Tpr	Donald Moses	DUNDAS	"B" Wing, 4 Con Repat Depot

PROCEEDINGS REVIEWED
27 Feb 46 C.H. Taitt, Maj
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 18 Feb 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OF JA. The Schedule referred to in Instrs p 2 is at p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1050 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter? Ans .....~~ ~~The interpreter is sworn.~~(1) Do you object to 2LO6409 Sgt O'Neill as shorthand writer? Ans NO SIR The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 31, RP 23, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	C.B. Hoodroffe, CBE ED	HQ CRU
Member	Capt	T.E.J. SKETCHER	A Wing, 4 Repat Depot
Member	Lieut	W. ANDERSON	A Wing, 4 Repat Depot
~~Judge-Advocate~~			
Prosecutor	LIEUT	J.C. TREMBLAY	4 REPAT DEPOT
Defending Offr	CAPT	R.E. DEMPSTER	4 REPAT DEPOT

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See QL p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~no~~ plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See paras 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see EP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO SIR.(5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The C/Art decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having ~~been~~ found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn(3), in which you will not be subject to cross-examination.(4) But a statement which could have been made on oath will not carry with it the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. ..... Do you intend to call witnesses on your behalf ?

Ans. ..... Are they witnesses as to character only ? Ans. .....

(*1. RP 115. 2. RP 40(A), see 80(C). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A45. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(2) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. NO SIR.

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Defending officers plea in mitigation attached.

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~.(2)

(*1. When several accused tried separately see RP 71 (2). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas WO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"B" WING NO. 4 CANADIAN REPATRIATION DEPOT
CANADIAN ARMY ENGLAND

CHARGE SHEET

in the case of

A-3543 Trooper Donald, Moses, DUNDAS, on strength of "B" Wing, No 4 Canadian Repatriation Depot, a soldier of the Canadian Army, Overseas, is charged with: --

A.A. Sec 15(a) WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

at Laurentide Camp, Witley, Surrey, absented himself without leave from 0020 hours, 6th November, 1945 until apprehended by the Canadian Provost Corps in London at 1930 hours, 7th February, 1946.

Total time absent: - 93 days 11 hours 10 minutes.

In the Field
11 Feb 46

(R.B.A. Morton) Colonel
Officer Commanding,
No 4 Canadian Repatriation Depot

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

IN THE FIELD
16 FEBRUARY, 1946

(K.G. Blackader) Brigadier
Commander
Canadian Repatriation Units

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 3543	Tpr		Donald Moses	DUNDAS	"B" Wing, 4 Cdn Repat Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 16 Feb 46 endorsed by me, ~~[illegible]~~ "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[illegible]~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~[illegible]~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~[illegible]~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	C.E. Woodrow, OBE, ED	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed from	"A" Wing, 4 Cdn Repat D
Lieut	tobe detailed from	"A" Wing, 4 Cdn Repat D
	~~[illegible]~~	
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	~~[illegible]~~	
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

Dat 16 FEBRUARY, 1946

K. Blackader
(Signed personally. RP 105 fn 2.)
(K.G. Blackader)
Brigadier
(Rank.)
Commanding Canadian Repatriation Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 98 (Re Reg of AFA 3) 40/P & S/1697 (H.Q.)

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
K.R. (Can) Para 557.

I certify that I have this morning examined A 3543 Tpr
(No) (Rank)

Dundas D. M. of "B" Wing # 4 Cdr Repat Dep
(Unit)

and in my opinion he is fit to undergo trial by Court Martial.

Station Field

Date 18 Feb 46

Sgd [signature] Capt Beame
(Medical Officer)

Exhibit A
Ref

"B" WING NO. 4 CANADIAN REPATRIATION DEPOT

SUMMARY OF EVIDENCE

IN THE CASE OF

A-3543 Trooper Donald, Moses, DUNDAS, on strength of "B" Wing, No 4 Canadian Repatriation Depot., a soldier of the Canadian Army, Overseas.
Taken at "B" Wing, No 4 Canadian Repatriation Depot 11th February, 1946.

By direction of the Commanding Officer, all evidence is taken on Oath.

FIRST WITNESS:
For the Prosecution

Capt R.A. Lane, an Officer of the Canadian Army, Overseas, on strength of "B" Wing, 4 Canadian Repatriation Depot, having been duly sworn states:

"I am Capt R.A. Lane, in charge of Reception and Despatch, "B" Wing, No 4 Canadian Repatriation Depot. I produce herewith certified true copy of Extract of No 4 Canadian Repatriation Depot, Part II Daily Order No 98 dated 28th November, 1945, showing an entry that: A-3543 Tpr DUNDAS, D.M. is AWL wef 0820 hours, 6th November, 1945, still absent at 0820 hours 27th November, 1945 (21 days)."

"I further produce Certificate in Accordance with P.C. 2797 of 10th April, 1942, showing A-3543 Tpr DUNDAS, D.M. as being apprehended in Military Uniform by the Canadian Provost Corps at 1930 hours on the 7th February, 1946."

The accused declines to cross-examine the witness.

(R.A. Lane) Capt.

The witness withdraws

The Certified True Extract of Part II Daily Order No 98 referred to by this witness is shown to the accused, marked and initialled by me as Exhibit "A" for the Prosecution and attached to the Summary.

The Certificate in Accordance with P.C. 2797 of 10 Apr 42 referred to by this witness is likewise shown to the accused, marked and initialled by me as Exhibit "B" for the prosecution and attached to the Summary.

(J.C. Dunn) Capt
Officer detailed to take down Summary of Evidence

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The accused declines to give evidence on Oath or to make a statement.

The accused does not wish to call witnesses for the Defence.

I Certify that the foregoing Summary of Evidence consisting of two (2) pages was taken down by me in writing and in the presence of the accused and hearing of the accused and that Rules of Procedure 4 (C), (D), (E) (F) and (G) were complied with.

(J.C. Dunn) Capt
Officer detailed to take
down Summary of Evidence

In the Field
11th February, 1946.

etb

"A"

NO 4 CANADIAN REPATRIATION DEPOT. C.A.C.

PART II ORDERS

BY

Last Order # 97 dated 27 Nov 45 — Colonel, R.E.A. MORTON, D.S.O. Officer Commanding — This Order No 98 dated 28 Nov 45

5. ABSENT WITHOUT LEAVE

(a) AWL from 0820 hours 6 Nov 45. Still AWL at 0820 hours, 27 Nov 45 (21 days)

A-3543 Tpr DUNDAS, D.M. "B" Wing

Sgd J.G. Craig, Lieut
for (R.E.A. MORTON) Colonel
Officer Commanding,
4 Cdn Repat Depot, CAC

EXTRACT FROM PART II DAILY ORDER NO 98 d/28 Nov 45

CERTIFIED TRUE COPY

(J.C. Dunn) Capt & Adjt,
"B" Wing, 4 Cdn Repat Depot

(J.C. Dunn) Capt.,
Officer detailed to take
down Summary of Evidence

CERTIFICATE IN ACCORDANCE WITH P.C.2767 of 10 Apr 42.

I Certify that No. A-3545 & Rank Tpr. Name Dundas, D.

Unit. No. 4 Repat. Depot 'B' Wing (Place) was arrested at London

at 18.30 (Hour) on 7-Feb.-46 (Date) and that at the time of his arrest, he was wearing (Military Uniform) or (~~Civilian Clothes~~) Signature of Provost Marshal, Assistant Provost Marshal, or other Officer or the Commanding Officer of the portion of His Majesty's Forces or the Officer, Warrant Officer, or non-commissioned Officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable.)

R.J. Stinson CAPT.

D.A.P.M. C.M.H.Q.
(R.J. Stinson)

London
8-Feb.-46

LIST OF EXHIBITS

EXHIBIT "A" — Certified True Copy of Part II Daily Order No 98, dated 26 Nov 45.

EXHIBIT "B" — Certificate in Accordance with P.C. 2797 of 10 Apr 42 (Showing accused apprehended in Uniform)

J.C. Dunn Capt
[illegible] Wing, 4 Can Repat Depot
Officer detailed to take
down Summary of Evidence

LIST OF EXHIBITS

EXHIBIT "A" — Certified True Copy of Part II Daily Order No 98, dated 28 Nov 45.

EXHIBIT "B" — Certificate in Accordance with P.O. 2797 of 10 Apr 42 (Showing accused apprehended in Uniform)

(J.C. Duhn) Capt
[illegible] Wing, 4 Gdn Repat Depot
Officer detailed to take
[illegible]

LIST OF WITNESSES

For the Prosecution

Capt R.A. Lane	"B" Wing, No 4 Canadian Repatriation Depot, Canadian Army, Overseas.

For the Defence

NIL

(J.C. Dunn) Capt
"B" Wing, 4 Cdn Repat Depot
Officer detailed to take down
Summary of Evidence

STATEMENT IN ACCORDANCE WITH RULE OF PROCEDURE 14 (B)

I, A-3543 Trooper Donald, Moses DUNDAS, "B" Wing, No 4 Canadian Repatriation Depot, desire to have an Officer assigned to represent me at my trial by Court Martial.

D M Dundas

A-3543 (D.M. Dundas) Tpr
"B" Wing, 4 Cdn Repat Depot

In the Field
Witley, Surrey,
11 Feb 46.

(J.A. Dunn) Capt
Officer taking down Summary
of Evidence

Exhibit "B" / ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A-3543	Tpr	DUNDAS, D.M.	"B" Wing, 4 Cdn Repat Depot

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 15 (1) 4 times.

For A.A. Sec 40 2 times.

For A.A. Sec 19 1 times.

For ~~A.A. Sec 15 (1)~~ ~~4~~ times.

Date of first entry in Field Conduct Sheet 2 January, 1944

Date of last entry in Field Conduct Sheet 7 September, 1945

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. ~~[illegible]~~ (N)

~~[illegible]~~ (N) ~~[illegible]~~ (N)

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charge for Nil days in civil custody; and ~~for~~ ~~Nil~~ days in military custody, *i.e.*, Nil days in open arrest, ~~Nil~~ days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 26 years 27 days

6. The date of his attestation is 17 Dec 1941

7. ~~[illegible]~~ (N)

8. The accused is in possession of: Canadian Volunteer Service Medal and Clasp.

State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*) ~~[illegible]~~ (N)

Date of Promotion.

~~[illegible]~~ (N)

~~[illegible]~~ (N)

~~[illegible]~~ (N)

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(72072) Wt.30781/5704 M.500 9-44 A.& E.W.Ltd. Gp.A/9

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F.G.C.M.	7 Sep45 Field	AA Sec 15 (1) AWL from 1200 hrs 25 Jun 45 to 0415 hrs 9 Aug 45 (TTA 44 days 16 hrs 15 mins) (Placed under close arrest fr 0415 hrs 9 Aug 45 to 1000 hrs 7 Sep 45 (29 days 5 hrs 45 mins))	60 days Det'n	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 11th day of February, 1946

(J.C. Dunn) Capt & Adjt,
"B" Wing, 4 Can Repat Depot

Exhibit "C"

No. A3543 Name DUNDAS, D.M. Sqn, Battery, or Company Corps C.A.C. Date of enlistment 17 Dec 41 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/PAM/126 (5413

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 1 Signature OC Company, etc G.G. Gray, Capt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if order dispensing with trial	By whom awarded	Remarks
		Sheet	destroyed 17 Jun 42; last entry 4 Apr 42; no cases of drunkenness					G.G. Gray, Capt	
Field	2-1 44	Tpr		AA Sec 15 (1) AWL 1330 hrs 2 Jan 44 until 2000 hrs 3 Jan 45 Absent 1 day 6 hrs 30 mins)	Sgt MacMillan E.B.	28 days F.P. Forfs 28 days pay FR&I (2)	11 Jan 44	Lt-Col MBK Gordon	Forfs 2 days pay FR&I 149 (1) (a)
Field	2-3-44	Tpr		AA Sec 15 (1) AWL 0800 hrs 2/3/44 until 0845 hrs 2/3/44. Absent 45 mins)	Sgt MacMillan E.B.	7 days CB	2 Mar 44	Maj G.S. Mahon	
Field	9/5/45	Cpl		WOAS Sec 40 AA Improperly Dressed WOAS Sec 40 AA Out of Bounds in London	Documentary Reprimand		14/5/45	Maj Blanshard	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if order dispensing with trial	By whom awarded	Remarks
Field	5-10 44	Cpl		AA Sec 15(1) AWL WOAS from 2000 hrs 5-10-44 to 2215 hrs 5-10-44 (2 hrs 15 Mins)	EXT 9 CGH DO 159/44	Severe Reprimand	11-10-44	OC 9 CGH	
Field	7Oct 44	Cpl		AA Sec 19 Drunkenness in that he at about 2110 hrs 7 Oct 44 at 15 Gerrard St, London was Drunk (First Offence)	Documentary	Admonished	9 Oct 44	Col R.J. Colwell	
Field	10 Oct 44	Cpl		AA Sec 15 (1) AWL from 0815 hrs 10 Oct 44 until 2145 hrs 14 Oct 44. Absent 4 days 13 hrs and 30 mins)	Documentary M-63687 Sgt Mitchell G	Severe Reprimand	16 Oct 44	Col R.J. Colwell	Forfs 5 days pay FR&I 149 (1) (a)

No A-3543 Name DUNDAS, D.M. Sqn, Battery, or Company | Corps C.A.C. | Date of enlistment 17 Dec 41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (5412)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 2 | Signature OC Company, etc GG Gray, Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	Tpr (A/Cpl)			Sec 15 (1) A.A. F.G.C.M. AWL from 1200hrs 25 Jun 45 to 0415 hrs 9 Aug 45 (Absent 44 dys 16 hrs 15 mins)	60 days Detn	7 Sep 45 Forf 45 days under FR&I 149 (1) (a)		Brig T.J. Rutherford CBE, ED confirmed findings and sentence on 10 Sep 45	
"	"			Placed under close arrest from 0415 hrs 9 Aug 45 to 1000 hrs 7 Sep 45 (29 days 5 hrs 45 mins)		Forfs 29 days pay under FR&I 149 (1)(c)(i)			
"	"			On Sep 45 awarded 60 days Detn		Forfs 60 days pay under FR&I 149 (1)(b) Total Forf 134 days pay.			

"CERTIFIED TRUE COPY"

[illegible] Mayor
(Records Officer)
4 Cdn Repat Depot

Officer having custody of original

(PTO)

Plea attached at/E 3

PLEA OF MITIGATION FOR A.3543 Tpr DUNDAS, DM

Tpr Dundas enlisted in Dec 1941, and went into action on 'D' Day on the continent. On 29 Sept 44 he was blown out of his tank and was returned to the U.K. because of his emotional instability.

While in the U.K. he obtained permission and married a girl who is suffering from tuberculosis of the spine, heart and lungs. Because of her condition the marriage has never been consumated, nor will his wife be able to go to Canada. Dundas freely admits the ceremony was a direct result of his unsettled mental condition and his inability to make a clearly thought-out decision.

His crime sheet also bears evidence that it is only since he was wounded that he has run into serious difficulties. For prior to his being wounded his record shows only two crimes - one for a day's absence when he took his fiancee to hospital, and one for being late on parade. However since that time he has been guilty of various military offences, all of which tend to show a man who is extremely unsettled and entirely influenced by uncontrollable impulses.

I would like to point out to the court that Dundas is one of the many war casualties and one who is further distracted by the knowledge that his wife is apparently incurable and unable to follow him to Canada.

As a result of his service he suffers an impediment in his speech, but he wishes me to make a plea for him that he might get back to Canada, and among sympathetic relatives and familiar surroundings try to regain a normal useful life.

(R.E. Templeton) Capt

5 T-120.
Spr. Dundas, D.M.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A 3543 Tpr (A/Cpl) Donald Moses DUNDAS, 4 Cdn Repat Dep

Charge. (Insert " alternative " where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 29 days, of which 5 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court:

To undergo detention for a period of Sixty (60) days.

(Sgd) ..... Judge-Advocate, if any. 7 Sep/45 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed

~~I direct that the accused be duly committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 16 Sept 45 (Sgd) [signature] Brig
Commanding 4 Bde LAA
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A3543 Tpr Donald Moses Dundas	17 Sept 45	[signature] Administrative Officer 4 Cdn Repat Depot

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 5 OCT 1945 C.M.H.Q.

RECORDED AT CMHQ IN AB 188, 27-120

FIELD GENERAL COURT-MARTIAL

CPA96 (To lieu of AFA81) 40/P & B/1698 *(44) 4/38B

Convened by Order of Brig T. J. Rutherford, CBE, ED Comd "E" Gp CRU dated 5 Sep 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A 3543	Tpr	A/Cpl	Donald Moses	DUNDAS	4 Repat Dep

PROCEEDINGS REVIEWED
[signature] Capt
REVIEWING OFFICER, JAG BRANCH (CMHQ)

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 7 Sep 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns from ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 13, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(✓) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At ..... hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to [illegible] as interpreter? Ans .....~~

~~The Interpreter is sworn.~~ Do you object to CAPT A.H. SINCLAIR as shorthand writer? Ans NO
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO C.J.H.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L. REDMAN	HQ CRU
Member	CAPT	W.A. JERELL	4 REPAT D
Member	LT	J.C. POITRAS	4 REPAT D
~~Judge-Advocate~~			
Prosecutor	LT	D.A. MORRISON	4 REPAT D
Defending Offr	CAPT	C.W. BENNET	4 REPAT D

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (✓) plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (✓) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence,* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO STM.(5)
(*1. RP 37(B). 2. RP 37(D) fn 4. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 34(3) (c), RP 45, 120(A). 2. AA 34(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO - STM
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(3) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 253 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans NOT - ATT.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 34(4), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A., if any~~.(2)
(*1. Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can XXII, 330, 343-346, Overseas NO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 504. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"B" WING NO. 4 CANADIAN REPATRIATION DEPOT
CANADIAN ARMY ENGLAND

CHARGE SHEET

in the case of

A-3543 A/Corporal Donald Moses, DUNDAS, of "B" Wing, 4 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF
Sec 15 (1) WITHOUT LEAVE
Army Act

in that he

at Laurentide Camp, Witley, Surrey, absented himself without leave from 1200 hours, 25 June 1945, until apprehended by the Civil Police at Chingford, at 0415 hours, 9 August 1945. Total absence 44 days, 16 hours 15 minutes.

(R.E.A. Morton) Colonel
Officer Commanding,
4 Cdn Repat Depot

"To be tried by Field General Court Martial".

(T.S. RUTHERFORD) Brig
Comd
"B" Gp CRU

Fd
5 Sep 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
A 3543	Tpr	A/Cpl	Donald Moses	DUNDAS	4 Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 5 Sep 45 endorsed by me, (or by another authy duly empowered by me), "To be tried by Field General Court-Martial", 3A1

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr) 3A1
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) theatre Offrs to form the Court, (b) a Bde Offr as President, for the reasons I have attached hereto 3A1
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as judge Advocate thereof the Offr mentioned hereunder 3A1
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	D L Redman, VD	HQ CMU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by OO 4 Cdn Repat Dep	4 Repat Dep
Lt	To be detailed by OO 4 Cdn Repat Dep	4 Repat Dep

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

Cdn Active Service in the Fd

in England (Country.)

Date 5 Sep 45

J Rutherford (Signed personally. RP 105 fn 2.)
(J V RUTHERFORD) Brig (Rank.)

Commanding "B" Gp CMU
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FABS 1/In Dpls of AFAI) 40-7-A & I/HP 1401)

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
K.R. (Can) Para 557.

I certify that I have this morning examined 43543 (No) ..... A/cpl (Rank)

...DUNDAS (Name) ..... D.M. ... of ...#4 CRDN. REPAT. DEPOT. (Unit)

and in my opinion he is ~~unfit~~ fit to undergo trial by Court Martial.

Station FIELD.....

Date ...7th SEPT. 45.....

Sgd. [signature] (Medical Officer)

E-3

A-3543 Cpl. Dundas D.M.

Statement in Mitigation of Punishment.

I should like first to out line briefly Cpl. Dundas's military career. He enlisted in Dec. 1941. Until Jan. 1944 his M.F.M. 6 was entirely clear and until this present charge the worst offence was a charge of A.W.L. for a period of 4 days.

He landed with the 27 CAR. in France, on D. Day, as a trouper. Based on the qualities he displayed as a soldier in the field, he was promoted to the rank of Cpl. and commanded his tank crew in action until wounded in Belgium, in Sept. 1944.

Serving with the same Regiment in France, I know personally his conduct in the field to be exemplary.

Since being evacuated to U.K. he, Cpl. Dundas, has been confronted with a series of the most unusual and unfortunate circumstances.

He fell in love with an English girl who was confined to a hospital bed with a Turbircular spine. Knowing that she would be in bed for at least a year, and feeling that he, himself would be returned to N.W.E. on recovering from his wounds, they decided to be married. The marriage took place on 24th Feb. 1945 while she lay in her hospital bed. He incurred at this time an unexpected debt of £25-0-0, the marriage fee for a wedding under these conditions. Her condition was considered so serious by the hospital that a request was made to Canadian Military H.Q. to have Cpl. Dundas, kept in the U.K. as the worry caused by his return to N.W.E. might impair still further her condition. On the basis of this recommendation he was posted to an instructors vacancy in U.K.

On the 23rd. of June, the accused was given a 48 hour pass. The day he was to return to Camp he was told by the Doctor, that X-ray's were to be taken of his wife that day, and the results would be known the following day. The X-rays showed that her condition had worsened and developed into Jumping Tuberculosis, and had reached both her heart and lungs. The accused was greatly distressed and was reluctant to leave his wife in such a condition.

The worry over his wife, and the £25-0-0 debt directed his attention to his personal problems. I feel the accused has had an excellent army record prior to being faced with such problems.

For your consideration Sir.

"B" WING NO. 4 CANADIAN REPATRIATION DEPOT

SUMMARY OF EVIDENCE

IN THE CASE OF

A-3543 A/Cpl Dundas, D.M., of
"B" Wing, 4 Canadian Repatriation Depot
A Soldier of the Canadian Army Overseas
Taken at "B" Wing, 4 Canadian Repatriation Depot,
23 August 1945.

The Commanding Officer directs that all evidence be taken on Oath.

FIRST WITNESS: No. B-60588 SSM Price, H., "B" Wing, 4 Cdn Repat Depot having been duly sworn states:
For the Prosecution

I am B-60588 SSM Price, H., Sgt Major of Reception and Despatch, "B" Wing, 4 Canadian Repatriation Depot. At 1200 hours, Monday, 25th June 1945, Cpl DUNDAS failed to report back from pass. I checked his quarters, couldn't find him, so reported his absence to acting R.S.M. WOLFE.

The accused declines to cross-examine the witness.

B-60588 SSM Price, H.
"B" Wing, 4 Cdn Repat Depot

The witness withdraws.

SECOND WITNESS: No. B-97170 Sgt KERR, G.E., "B" Wing, 4 Cdn Repat Depot, Regimental Police, having been duly sworn states:
For the Prosecution

I am, B-97170 Sgt Kerr, G.E., W.C.O. 1/c of "B" Wing, 4 Cdn Repat Depot Regimental Police. On 15th August 1945 at about 1400 hours, I was on duty in the Unit Guard Room when A-3543 A/Cpl Dundas, D.M. was brought in by the Canadian Provost. He was sober and properly dressed. (See attached, and marked "Exhibit "A"-1 & "A"-2, Army Form "B" -252 and Army Form "O" 1618, stating accused was in uniform when apprehended).

On checking the absentee book, I found the above mentioned to be absent from 1200 hours, 25th June 1945. I then placed the accused under Close Arrest.

The accused declines to cross-examine the witness.

G.E. Kern Sgt
B-97170 (Sgt Kern, G.E.)
"B" Wing, 4 Cdn Repat Depot,
Regimental Police.

The witness withdraws.

I append hereto Army Form "B"-252 - Marked Exhibit "A"-1 and Army Form "O" 1618 - Marked Exhibit "A"-2 and initialled by me.

J.D. Corless Capt
(J.D. Corless) Capt.,
"B" Wing, 4 Cdn Repat Depot
Officer taking down the Summary

THIRD WITNESS:
For the
Prosecution

Lieut J.C. Dunn, acting Adjutant, "B" Wing, 4 Canadian Repatriation Depot, having been duly sworn states:

I am Lieut J.C. Dunn, acting Adjutant "B" Wing, 4 Cdn Repat Depot. I produce certified true copy of extract from Part II Orders by Colonel R.E.A. MORTON, D.S.O., Order No 13 dated 13 July 1945 and marked Exhibit "B" attached shows accused absent from 1200 hours, 25th June 1945.

The accused declines to cross-examine the witness.

R Dunn Lt
(J. C. Dunn) Lieut.,
A/Adjt, "B" Wing,
4 Cdn Repat Depot

The witness withdraws.

I append certified true copy of extract from Part II Order No 13 d/13 Jul 45 and marked Exhibit "B" and initailled by me.

J.D. Corless Capt
(J. D. Corless) Capt.,
Officer taking down Summary

Question to the accused by Officer taking down the Summary of Evidence

Q 1. Do you wish to make any statement or give any evidence upon Oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

Answer by the accused.

A 1. No, Sir.

Certified that Rule of Procedure No. 4 (C.D.E.F.) have been complied with.

Taken down by me at "B" Wing, No. 4 Canadian Repatriation Depot, Laurentide Camp, WITLEY, Surrey, in the presence and hearing of the accused this 23rd day of August, 1945.

(J. D. Corless) Capt.
"B" Wing,
4 Cdn Repat Depot
Officer taking down Summary

E + A
MM

CHARGE Exhibit B1 Exhibit A1

Army Form B 252
(See King's Regulations)

No.4-Cdn.Repatriation Depot. Regiment

Battery
Squadron
Troop or
Company

CHARGE against No. A-3543. Rank Cpl.

Name Dundas,D.M.

Place Chingford. Date of Offence 9-Aug.45.

OFFENCE .W.O.A.S. was A.W.O.L.

Apprehended by civilian police.

Names of Witnesses :—

P.C. 241"J" Cook,Civil Police.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

3 3/44 G.H.Q.P.P. [illegible]

12

Statement of EVIDENCE in the case of,

A-3543.Cpl.Dundas,D.M.
No.4-Cdn.Repatriation Depot.

Sir;-

The a/m soldier was apprehended byCivil Police.

Documentary evidence attached.

REMARKS

Exhibit "A" Jol.

NO. 4 CANADIAN REPATRIATION DEPOT (CAC) Exhibit "B" Jol.

PART II ORDERS

by

Colonel R.E.A. MORTON, D.S.O.

Last Order No 12
Dated 10 Jul 45

Officer Commanding

This Order No. 13
Dated 13 Jul 45

20. ABSENT WITHOUT LEAVE

(a) The u/m OR of "B" Wing is AWL wef time and date shown:

A-3543 A/Cpl DUNDAS, D.M. 1200 hrs 25 Jun 45

Signed (D.G. Sutherland)Capt
for (R.E.A. MORTON) Colonel
No. 4 Cdn Repat Depot (CAC)

" EXTRACT "

CERTIFIED TRUE COPY

(K. Smith) Lt-Col.,
Officer Commanding, "B" Wing,
4 Canadian Repatriation Depot

[illegible] of § 9 3543 Cpl Dundas Donald Moses No A 2 [illegible]
was apprehended at Glengford at (hour) 0415 on the 9th day of August 1945, and was committed to confinement at Bor+Con Exhibit [illegible] on the 14th day of August 1945 as ~~a Deserter (or~~ Absentee without leave) from ~~the~~ ~~Regiment of~~ No 4 Repatriation Camp. Canadian Army Corps.

Age 25 Height 5 feet 11" inches.
Complexion Sallow Hair Dk Brown Eye Brown.
Marks Nil In uniform or plain clothes uniform

Probable date and place of attestation.	1940 Toronto Canada
Probable date of desertion or beginning of absence and from what place.	28th June 1945. Milford Sussex
Name, occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured.	P.C. 241 Cook.
Particulars in the evidence on which the Prisoner is committed, and shewing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.	* Attested on a charge of breaking and entering a dwelling house at 11 Duffield Avenue Glengford between 8 & 9th August 1945 with intent to commit a felony therein

I do hereby Certify that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he † is an absentee without leave the before mentioned Corps.

WM Crowdy
Upshire
Waltham Abbey
14 Aug '45

Signature
Residence
Post Town
of Committing Magistrate.
Date of Signature.

Dm Dundas
George Cook PC 241

Signature of Prisoner.
Signature of Informant.

Or, where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming.

I hereby certify that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the day of for the purpose of obtaining such evidence.

Signature
Residence
Post Town
of Magistrate.
Date of Signature.

§ Care should be taken to insert Regtl. No. and rank.
* It is important for the public Service, and for the interest of the Deserter or Absentee without leave, that this part of the Return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.
† Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs," or "does not belong to," as the case may be

IMMEDIATE. Army Form O. 3618.

PART I.

DESCRIPTIVE RETURN of a Deserter or Absentee without Leave.

INSTRUCTIONS FOR THE GUIDANCE OF MAGISTRATES.

(1) When a man is apprehended by the Civil Power as an absentee without leave, or as a deserter, if the information tendered leaves no doubt in the mind of the Magistrate that the prisoner is a soldier, Part I. of this return should be filled up and forwarded by post by the Clerk to the Justices to the General Officer Commanding-in-Chief the Command or the General Officer Commanding the District in which the arrest was effected. (*See list below.*)

(2) Where the unit, to which a defaulting soldier belongs, is in the neighbourhood of the place in which he is detained in police custody, arrangements for the provision of an escort may be made by the Police direct with the officer commanding the unit. In this case Part I. of this return should be given to the Police to hand to the escort on arrival.

(3) To avoid delay a telegram stating the Number, Rank, Name, Unit and Place from which the soldier is absent should be sent by the Police as soon as the man is committed to the General Officer Commanding to whom this form is to be despatched.

(4) Any recommendation for a reward should be made on Part II. of this return, which, when completed, will be forwarded by the Police to the proper quarter.

(5) The Court fees chargeable for Descriptive Returns should be claimed periodically from the Command Paymaster of the Command in which the Court is situated.

LIST OF COMMANDS AND DISTRICTS.

Aldershot Command	G.O.C. in C., Aldershot Command, Aldershot.
Eastern Command	G.O.C. in C., Eastern Command, 50, Pall Mall, S.W.1.
Irish Command	G.O.C. in C., the Forces in Ireland, Parkgate, Dublin.
Northern Command	G.O.C. in C., Northern Command, York.
Scottish Command	G.O.C. in C., Scottish Command, Edinburgh.
Southern Command	G.O.C. in C., Southern Command, Salisbury.
Western Command	G.O.C. in C., Western Command, Chester.
London District	G.O.C., London District, 11, Carlton House Terrace, S.W.1.
Jersey	G.O.C., Jersey District, Jersey.
Guernsey and Alderney	G.O.C., Guernsey and Alderney District, Guernsey.

The following modifications to the above list will be observed :—

In the case of Canadian soldiers	information regarding their apprehension will be sent to :—
	A.P.M., Canadians, London, 103, Oxford Street, W.1. Telegraph: "Canadian Ox London." Tel.: Museum 3613, 3610.
" Australian (except Southern Command) ...	A.P.M., A.I.F., London, 58, Warwick Square, S.W.1. (Telegraph: "Apuwaustra, London." Telephone: Victoria 4300.)
" " Southern Command ...	A.P.M., A.I.F., Bhurtpore Barracks, Tidworth. (Tel.: "Provost, Salaustra, Tidworth." Tel.: 103 Tidworth.)
" New Zealand	A.P.M., New Zealand Imperial Force 30, Chester Square, London, S.W.1. (Telegraph: "Zeaprimal." Telephone: Victoria 1012.)
" South African	Staff Officer, South Africans, London, 65, Victoria Street, S.W.1. (Telegraph: "Safoco." Telephone: Victoria 4011.)
" Royal Marines	Adjutant-General, R.M., Admiralty, 35, Spring Gardens, London, S.W.1. (Telegraph: Royal Marines, London.) (Telephone: Admiralty 429.)

N.B.—Part I. of this return will be given to the Escorts in the case of Canadian Soldiers, Australian Soldiers within and outside the Metropolitan Area, New Zealand and South African Soldiers and the Royal Marines, and Part II. sent direct to the A.P.M. or Staff Officer concerned as above.

NOTE.—In cases of doubt as to the Command concerned, application should be made to the nearest Assistant-Provost Marshal.

(S 65 78) W1798—P1055 100,000 5/18 HWV(bk M1223)

M.F.B. 355
30M—11-41 (3273)
H.Q. 1772-39-620
A.F.B. 290

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A-3543	A/Corporal	Donald Moses Dundas	"B" Wing 4 Cdn Repat Depot

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For AWL A.A. Sec 15 (1)	2	times	AWL A.A. Sec 15 (1)	4 times
For A.A. Sec 40	1	times	A.A. Sec 40	2 times
For A.A. 19	1	times	A.A. Sec 19	1 times
For		times		times

or,

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

3. The accused is not under sentence at the present time.

or,

4. The accused has been in confinement awaiting trial on the present charges, for 6 days in civil custody, and 23 days in military custody, making a total of 29 days in custody, of which 5 days were spent in hospital.

5. The present age of the accused according to his attestation paper is 25 years 7 months 10 days

6. The date of his attestation verified in his attestation paper 17 December 1941

7.

8.

9. State any decoration or reward. Canadian Volunteer Service Medal and Clasp

10.

EXB

11. ~~[illegible]~~ ~~[illegible]~~ ~~Permanent Force~~ ~~unit~~

~~[illegible]~~ , ~~[illegible]~~ ~~[illegible]~~

~~[illegible]~~ .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force / Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Name ..... of ..... Unit / Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~Twenty Eight~~ Seventh day of ~~August~~ September 1945 [signature] A/ADS B Wing No 4 Repns

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

No A3543 Name Dundas, D.M. Sqn, Battery, or Company — Corps CAC — Date of enlistment 17 Dec 41 — GC Badges — Service or Proficiency Pay — MFM 6 (AFB 122) 40/P&S/156 (3428)

Date of last entry in Company Conduct Sheet: N/A — No and date of last drunk: N/A — Period not reckoning towards freedom from extra line: N/A — Sheet No 1 — Signature OC Company, etc: G.G. Gray, Capt — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	Sheet destroyed			17 Jun 42. Last entry 4 Apr 42; no cases of drunkenness			GG Gray Capt		
Field	2Jan 44	Tpr		A.A.15(1) A.W.L. 1330 hrs 2 Jan 44 until 2000 hrs 3 Jan 45. Abs 1 day 6 hrs 30 mts	Sgt MacMillan E.B.	28 dys FP Forf 28 dys pay F.R.&I (2)	11 Jan44	Lt-Col M.B. K. Gordon	Forf 2dy pay F.R.&I(149) (1) (a)
Field	2 Mar 45	Tpr		A.A. 15(1) AWL 0800 hrs 2/3/44 until 0845 hrs 2/3/44, Absent 45 mts	Sgt MacMillan,EB	7 dys C.B.	2Mar 44	MajorG.B. Mahon	
Field	9/5/45	Cpl		WOAS: Sec 40 AA Improperly dressed					
				WOAS: Sec 40 AA Out of Bounds in Lon	Documentary	Reprimand	15/5/45	Maj Blanshard	
Field	5/10/44	Cpl		AA15(1) AWL WOAS fr 2000 hrs 5/10/44 to 2215 hrs 5/10-/44 (2 hrs 15 mins)	Ext 9 CGH DO 158/44	Severe "	11/10/44	OC 9 CGE	
Field	7/10/	Cpl	(1)	AA Sec19 WOAS Drunkenness,in that he at about 2110 hrs 7 Oct 44 at 15 Gerrard St, Lond was Drunk (First Offence)	Documentary	Admonished	9 Oct 44	Col R.J. Colwell	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10/10 44	Cpl		AA Sec 15 (1) AWL fr 0815 hrs 10 Oct 44 until 2145 hrs 14 Oct 44 (Absent 4 dys, 13 hrs 30 mins)	Documentary M63687 Sgt Mitchell G	Severe Reprimand	16/10/44	Col R.J. Colwell	Forfs 5 dys pay FR&I 149 (1) (a)

CERTIFIED TRUE COPY of original held in my custody.

(J. Smith) Lt-Col.,
Officer Commanding, "B" Wing
4 Canadian Repatriation Depot

STATEMENT IN ACCORDANCE WITH RULE OF PROCEDURE 14 (E)

I, No. A-3543 A/Corporal DUNDAS, Donald Moses, "B" Wing, 4 Canadian Repatriation Depot, desire to have an Officer assigned to represent me at my trial by Court Martial. If he is available, I desire to have the services of:--

Capt C.W. Bennett

D.M. Dundas

(A-3543 A/Cpl Dundas, D.M.)
"B" Wing, 4 Cdn Repat Depot

Witley, Surrey
28 August, 1945

J.D. Corless Capt

(J.D. Corless) Capt
Officer taking down Summary

LIST OF WITNESSES

For the Prosecution

Lieut J.C. Dunn		"B" Wing, 4 Cdn Repat Depot Canadian Army Overseas
B-60588	SSM Price, H.	"B" Wing, 4 Cdn Repat Depot Canadian Army Overseas
B-97170	Sgt Kern, G.E.	"B" Wing, 4 Cdn Repat Depot Canadian Army Overseas

For the Defence

NIL

J.D. Corless Capt

(J.D. Corless) Capt
Officer Taking down Summary

LIST OF EXHIBITS

EXHIBIT "A"-1 Army Form B-252, Canadian Provost Corps, showing accused apprehended by Civil Police, 9th August, 1945.

EXHIBIT "A"-2 Army Form "C" 1618 - showing accused apprehended by Civil Police in uniform.

EXHIBIT "B" Certified true copy of extract from Part II Order by Col R.E.A. MORTON, D.S.O. Order # 13 d/13 Jul 45 shows accused absent from 1200 hours, 25th June 1945.

J.D. Corless Capt

(J.D. Corless) Capt
Officer taking down Summary

No. Pte. C. Dunkeley
Hastings & P. Edward Rgt.

10/ Dunkeley, C./

Correspondence to be PINNED here.

To A Dep

Original

B-60

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this 9th day of May, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [illegible] B

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

* [illegible]

*(1. [illegible]

*(2. [illegible]

*(3. [illegible] P

[illegible]

[illegible]

President.

Rank.	Name.	Regiment.
Major	W.A. Lucas	No.1 RCASC Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	G.C. D'Arcy	No.2 Cdn Arty Hldg Unit
Lieutenant	A.S. Keator	No.1 Cdn Gen Hldg Unit
Lieutenant	I. MacLean	No.1 Cdn Sigs Hldg Unit

*Signed [signature] Brigadier

Commanding Cdn Base Units, Cdn Army.

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
C-4545 PTE. DUNKLEY, C.R. (H & P E reinforcement) No.1 Cdn Inf Hldg Unit.	First Charge A.A. Sec 12 (1a) as per charge sheet	Not Guilty	Not guilty of Desertion but Guilty of A.W.L.	
	Second Charge A.A. Sec 12 (1a) as per charge sheet	Not Guilty	Time of absence 21 days. Not guilty of Desertion but Guilty of A.W.L. Time of absence 6 days.	Confirmed L
			SENTENCE To undergo detention for a period of 9 months.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) L. T. Rye, Brigadier (Signed) W. A. Lanyon Major
Commanding Cdn Base Units, Cdn Army. *Convening Officer* (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 13th day of May 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~ Court Reporter
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 13th day of May 19 41

W. A. Lanyon Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 764 M.M.L. 1917

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ L

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 21st day of May 19 41

L. T. Rye Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of C-4545 Pte. Dunkley, C. R.

(*a*) (Dated) 23 May 1941 (Signed) Lieut.-Col. (L.W.W. Slack) Officer Commanding, No. 1 Cdn. Infantry Holding Unit.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE-SHEET

The accused, No. C-4545 Pte. DUNKLEY, C.R., (The Hastings & Prince Edward Regiment), on the strength of No. 1 Canadian Infantry Holding Unit as a reinforcement, a soldier of the Canadian Army (Overseas), is charged with:-

First charge Sec 12(1a) Army Act

When on active service, deserting His Majesty's service--

in that he

in the Field on the 18th September 1940, absented himself from the Hastings and Prince Edward Regiment until he surrendered himself to the civil power, the Metropolitan Police, in London at 1300 hours on the 9th October 1940, dressed in plain clothes.

Second charge Sec 12(1a) Army Act

When on active service, deserting His Majesty's service--

in that he

when in confinement, at the Military Isolation Hospital, Harrow Road, London, W.9, absented himself without leave on the 11th October 1940 until apprehended by the civil power, the Metropolitan Police, on the 17th October 1940, dressed in plain clothes.

L.W.W. Slack ..... Lt-Col.
(L.W.W. Slack) Cmdg. Officer

Witley, Surrey,
25th April 1941.

To be tried by Field General Court Martial

L. F. Page ..... Brigadier
Commanding Cdn Base Units

Bordon, Hants
This 9th day of May 41.

W. A. Lucas
Stmfor

C 4545 Pte. Dunkley, C. R., H. & P. E. Reinforcement, (No. 1 Cdn Inf Hldg Unit), tried by Field General Court-Martial at Witley, 13 May 41.

The order convening the Court, the charge sheet and the summary of evidence are laid before the Court.

Prosecutor: Lieut. H. M. Howell.
Defending Officer: Lieut. D. M. McLean.

At 1045 hours the Trial commences.

The names of the president and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 - Do you object to be tried by me as president, or by any of the other Officers whose names you have heard read?
A1 - No, sir.

The President and members are duly sworn.

Officers under instruction are duly sworn.

Q2 - Do you object to B 88521 Sgt. James Lonergan, R.C.A., C.M.H.Q., acting as Court Stenographer?
A2 - No, sir.

The Court Stenographer is duly sworn.

The Charge sheet is signed by the President and annexed to the proceedings.

Q3 - Are you guilty or not guilty of the first charge against you which you have heard read?
A3 - Not guilty.
Q4 - Are you guilty or not guilty of the second charge against you which you have heard read?
A4 - Not guilty.

Lieut. David Ivor, No. 1 Cdn Inf Hldg Unit, is sworn.
Q5 - Will you introduce certain documents in connection with the accused.
A5 - As Officer in charge of records No. 1 Cdn Inf Hldg Unit I present the following exhibits: First, the record of a Court of Inquiry in connection with the illegal absence of the accused, showing that he absented himself without leave from the 16th of September 1940. Second A.F. 01617, the descriptive return of a deserter or absentee, dated the 9th of October 1940 and signed by C. Cowell, Inspector of Metropolitan Police; and third a record of a Court of Inquiry with respect to the alleged absent of the accused on the 11th October 1940.
Defending Officer: I have seen those documents.
(Witness continuing): I also submit the 4th exhibit Form W 3017, signed by the Officer commanding the Military Isolation Hospital, dated 9th October 1940; the 5th is a charge sheet M.F.B. 264, signed by Sgt. Ayre, of the Canadian Provost Corps, dated 9th Oct. 1940.
Prosecutor: I might say that the last exhibit is only put in for the purpose of the statement on the back. They made a mistake in saying that he was apprehended and had not surrendered himself.
President: (To Court Stenographer) Will you make a note that the evidence on the back of M.F.B. 264 is what the witness presents in evidence.
Defending Officer: I wish to examine the last two documents. (Defending Officer examines the documents).
Defending Officer: I am satisfied.
WITNESS IS EXCUSED.

Prosecutor: On the first charge , the Declaration of the Court of Inquiry showing the accused illegal absence from the 18th of September, and Army Form O1617. The admission report and the subsequent statement by the N. C. O., Camp Provost Corps are merely to fill in the picture. That's the evidence for the Prosecution on the first charge.

Defending Officer: In fairness to the accused I would like to deal with this charge.

Q6 - Do you wish to give evidence yourself as a witness?
A6 - Yes.
Q7 - Do you intend to call any other witnesses?
A7 - Yes.
Q8 - Are they witnesses as to character?
A8 - No, sir, as to fact.

President (to Defending Officer): Does the accused understand that he can give evidence under oath or make a statement. If he gives evidence on his own defence he is liable to cross-examination and if he only makes a statement he can not be cross-examined. However, more weight may be given to a statement made under oath.
Defending Officer: The accused understands.

The accused is sworn.
Q9 - What date did you go A. W. L.?
A9 - 18th of September 1940.
Q10 - Did you go alone?
A10 - No.
Q11 - Who did you go with?
A11 - Scott.
Q12 - Was it your own idea?
A12 - No.
Q13 - Had you discussed it?
A13 - Yes, Scott just came up and asked me to go with him.
Q14 - Did he tell you of any reason?
A14 - Not at the time.
Q15 - Where did you go?
A15 - London.
Q16 - What did you do?
A16 - Slept in air raid shelters for a week and then went to 15 McLean Street . I went to a party and put on civilian clothes, as my uniform was all dirty.
Q17 - After that where did you go?
A17 - 18 Mornington Srescent.
Q18 - How long did you stay there?
A18 - Until I surrendered myself.
Q19 - Did you intend to return to your unit?
A19 - Yes.
Q20 - Did you make any attempt to get a new uniform?
A20 - I did.
Q21 - How?
A21 - I went around and looked for civilian stores that might sell uniforms but they wouldn't sell me any seeing I was in civvies.
Q22 - Why did you surrender yourself?
A22 - I intended to come back and surrender myself, as I expected they would bring me right down to the unit.

PROSECUTOR CROSS EXAMINES.
Q23 - When did you first get into civilian clothes?
A23 - When I was at 15 McLean Street.
Q24 - You went on this party with Scott?
A24 - Yes.
Q25 - How long before the party did you get the clothes?
A25 - That day I got mine.
Q26 - You say you were there for about a week before you went to McLean Street, is that right?
A26 - Yes.
Q27 - Tell us about this house that was bombed. What did you find when

you got back from the party?
A27 - There was nothing to see. It was all down.
Q28 - Was there anybody else living in the house besides you two?
A28 - There was the landlady and a couple of boarders.
Q29 - Did you carry any identification when you got the civilian clothes?
A29 - No.
Q30 - I was through with the army for the present. My pay book was lost at the regiment.
Q31 - Did you tell the police when you surrendered that you were in the army?
A31 - Yes.
Q32 - Did you explain to them were your identification papers were?
Witness: Do you mean the first time I surrendered?
Prosecutor: You only surrendered on one occasion
A32 - I told them my right name.
Q33 - Did you explain why?
A33 - No.
Q34 - Were you asked?
A34 - They asked me to identify myself, so I told them my right name and regiment.
Q35 - Were you asked why you were in civilian clothes?
A35 - Yes.
Q36 - Did you offer any explanation?
A36 - No.
Q37 - Did you tell them about this bombing?
A37 - They didn't ask me about anything like that?
Q38 - And your story is that you got these civilian clothes the day of the bombing?
A38 - Yes.
Q39 - Is there anybody that can state that you were staying at McLean Street only Scott?
A39 - Not that I know of.
Q40 - You have no way of showing that you were there at all?
A40 - No.
Q41 - (Court): What happened to your identity disk that you should have been wearing at all times?
A41 - I had lost mine in France and they were not made out again.
Q42 - When was that?
A42 - Last June.
Q43 - That was four months previous?
A43 - Yes.
Q44 - Do you know the date on which the street was bombed?
A44 - Yes, approximately early in September but I forget the date exactly.
Q45 - What was the name of the people?
A45 - I forget the name of the people. I was only there about 1½ days.
Q46 - What date did you go there? Can you remember?
A46 - I only rented a room for a week.
Q47 - Where did you buy the suit of clothes?
A47 - A pawn shop.
Q48 - How much did you pay for it?
A48 - 18 shillings.
Q49 - When did you decide to give yourself up?
A49 - I had been going to do it for five or six days before that.
WITNESS IS EXCUSED.

C 4362 Pte. Scott, G. E., is sworn.
Q50 - You went to London about the 18th of September. Did you have anyone go with you?
A50 - Yes, Private Dunkley.
Q51 - When you got to London did you stay together?
A51 - Yes.
Q52 - Where did you go?
A52 - We were up around the West End, sleeping around a few air raid shelters and then we went to 15 McLean Street.
Q53 - While you were there what happened?

A53 - The premises were bombed.
Q54 - What happened when it was bombed?
A54 - We lost our clothes and equipment.
Q55 - Where did you go then?
A55 - We moved down to Mornington Crescent.
Q56 - Did you and the accused discuss returning to your unit?
A56 - We did.
Q57 - And what did he say?
A57 - He said he wanted to go back as soon as possible.
Q58 - Why didn't you go back then?
A58 - We had no unfiroms.

PROSECUTOR CROSS EXAMINES.

Q59 - Were you with the accused during this whole period?
A59 - Yes.
Q60 - You were living at the same place?
A60 - Yes.
Q61 - How long was it you state you were sleeping in these air raid shelters?
A61 - A few nights.
Q62 - Did you and he go to 15 McLean Street together?
A62 - Yes.
Q63 - How long did you tell them you were going to be there?
A63 - I don't remember.
Q64 - Do you know the names of the people?
A64 - It is a foreign name. It is hard to remember.
Q65 - Was he with you when he tried to get a uniform?
A65 - Yes.
Q66 - Was he with you on all occasions when you tried to get a uniform?
A66 - As far as I know I believe he was.
Q67 - Do you know anything about his pay book?
A67 - Not particularly.
Q68 - Did he tell you anything about it?
A68 - Not that I know of now.
Q69 - Did he have his pay book with him at this time?
A69 - I can't remember.
Q70 - Did you see his pay book at any time?
A70 - No, I don't believe I did.
Q71 - Before or after you went A. W. L.?
A71 - We were paid before we went A. W. L. and I suppose I might have seen it then, but I don't remember.
Q72 - What date were you paid?
A72 - The 14th or 15th.
Q73 - Were you with him?
A73 - Yes.
Q74 - And he at no time discussed pay books or any other means of identification with you?
A74 - Not that I remember.
Q75 - (Court) Did you and he buy your civilian suits together?
A75 - Within a few hours.
Q76 - At the same place?
A76 - Yes.
Q77 - Did you both go together? Were you with him when he bought his suit?
A77 - I am not sure.
Q78 - What kind of a place was it?
A78 - We bought them from a fellow who brought them to the house.
Q79 - It wasn't a hock shop?
A79 - No.
Q80 - How much did he pay for his suit?
A80 - I don't remember.
Q81 - How much did you pay for yours?
A81 - 14 shillings.

WITNESS IS EXCUSED.

Prosecutor: On the second charge the prosecution is showing that the accused, by going absent, by means of the Court of Inquiry and the fact that he was in confinement under close arrest, is shown by his admission report. I now call Constable Foster.

Detective Constable Albert Foster, Scotland Yard, is sworn.

Q82 - Do you recognize the accused?
A82 - Yes.
Q83 - Will you tell the court when you first saw this man?
A83 - At about 9:30 on the morning of the 17th of October at Euston Station, London.
Q84 - What happened?
A84 - He was seen, together with a girl, to take a carton of cigarettes from a platform at Euston and jump into a taxi. He was picked up and he gave the name of Roy Hincliffe, aged 18, a laborer of no fixed aboard.
Q85 - How was he dressed?
A85 - In civilian clothes.
Q86 - Did he have any means of identification?
A86 - Nothing at all except that I saw him hand a card to an accomplice and it subsequently proved to be an identification card in the name of Hincheliffe.
Q87 - Had you at the time any reason to suspect that he was in the army?
A87 - Not at all.
Q88 - When did you first discuss with him that he was in the army?
A88 - Some days later.
Q89 - Did you question him at all as to his activities when he was arrested?
A89 - He informed me that he had come down from the North of England and that his parents resided there.
Q90 - When did you next see him?
A90 - At Clerkenwell on the 24th of October.
Q91 - Did you investigate at all to see if he had any military identification.
A91 - There was nothing in his possession which would lead anyone to suspect he was in the army. And it wasn't until he was seen by the C. M. P. was it established that he was from this unit.
Q92 - How was that established?
A92 - From what he told them in my presence.
Q93 - Had he any identification of any kind?
A93 - He had nothing with the exception of the card recevered from the girl.

DEFENDING OFFICER CROSS - EXAMINES.

Q94 - You say that shortly after he arrived at the police station you saw him give this girl a card which you state was in the name of Hincheliffe?
A94 - Yes.
Q95 - Have you got it?
A95 - No, it has since been destroyed.
Q96 - Was there any reason for it to be destroyed?
A96 - There was no reason for it to be kept.
Q97 - Are you sure he gave the card to the girl?
A97 - I am positive.
Q98 - Do you imply by that he used that identity card?
A98 - I have no knowledge of that.
Q99 - Had you ever seen him before?
A99 - No.
Q100 - You didn't know he was living in Mornington Crescemt?
A100 - No.
Q101 - (Prosecutor) Did the accused at any time mention and address of 15 McLean Street?
A101 - No.
Q102 - Was any explanation at all given in your presence as to why he was in civilian clothes?
A102 - No.
Q103 - At the time he was identified by the C. M. P. was any explanation given then?

A103 - No.
Q104 - (Defending Officer) Did you question him about where he got the civilian clothes?
A104 - No.
WITNESS IS EXCUSED.

PROSECUTION CLOSES.

The Accused is recalled.
Q105 - How did you come to be in the police station on the 9th of October?
A105 - I surrendered myself to the civilian police.
Q106 - With what in mind?
A106 - I had in mind coming down to the regiment.
Q107 - Why did you not surrender yourself to the Military Police?
A107 - The police station was the only place I knew of.
Q108 - You had decided beforehand that you would give yourself up?
A108 - Yes.
Q109 - Had you seen any Military Police about?
A109 - Just at nights.
Q110 - What time of day did you give yourself up?
A110 - Around noon. I can't recall the time.
Q110 - You didn't have the civilian police in mind when you went out that day?
A110 - I went out with the intention of telling them that I was absent.
Q111 - When did you first get that idea?
A111 - When I had been gone about 15 days.
Q112 - Was there any particular reason you wanted to give yourself up?
A112 - Only that I wanted to get back to the unit.
Q113 - During the time you were in London what name were you known under?
A113 - Roy Hinchcliffe.
Q114 - When you went to a hotel how did you register?
A114 - By my own name.
Q115 - Why did you give the name of Hinchcliffe to the police?
A115 - I knew I would get time and I didn't want it to get into the papers and then it would go back home, as I have a mother and father and I didn't want them to know.
Q116 - Were did you get the idea of giving the name of Hinchcliffe?
A116 - On the spur of the moment.
Q117 - Did you ever see a National Registration Card?
A117 - No.
Q118 - Did you ever give a card of any kind to a girl by the name of Patricia Leedham?
A118 - No.
Q119 - Did you know her very well?
A119 - She was another fellow's woman.
Q120 - Then you wouldn't be in a position to know what she had on her or carried?
A120 - No.
Q121 - How soon after you had been charged with the civiliam police at the station did you give them your proper name?
A121 - I was taken out to the remand place at Felton and then the next day I went down and told them my right name.
Q122 - Did most of the people you knew in London know you by your own name?
A122 - Some did and some didn't.
Q123 - What about the police case where you had surrendered on the 9th of October, in Tottenham Court Road, did they call you by your own name?
A123 - Yes.
Q124 - What about the C. M. P., did they know you by your right name?
A124 - Yes.

Q125 - While you were in hospital I presume you were sick. What was the matter with you?
A125 - I had V. D. G.
Q126 - Was it painful?
A126 - Yes.
Q127 - Were you unhappy?
A127 - Yes, I was.
Q128 - What sort of treatment did you get at the hospital?
A128 - In three days I got two pills.
Q129 - When you had it previous how was you treated?
A129 - I got some six to eight the first day and when I was able to take it they gave me more.
Q130 - What was your reaction to treatment?
A130 - It seemed to be just as bad as it was before.
Q131 - How did you feel about it?
A131 - I felt rotten.
Q132 - What did you do as a result of what you felt as to the treatment being bad?
A132 - I went away. They weren't giving me the right treatment.
Q133 - What did you do on the third day of your confinement in the hospital?
A133 - I waited until night and then I went down to the air raid shelter and I left the hospital.
Q134 - When you left the hospital did you make any further attempt to go back to your unit?
A134 - I had no other clothes. I went up and got some money from Scott and got some clothes.

PROSECUTOR CROSS-EXAMINES.
Q135 - You say you went into this hospital with V. D. and then went A. W. L. If you were anxious to get back to your field unit why go A. W. L.
A135 - I wanted to get good treatment.
Q136 - How long were you ill before you went to the hospital on Deam Street. What kind of a place is that?
A136 - It is a place were they treat you for V. D.
Q137 - Is it a recognized medical centre.
A137 - It is.
Q138 - Did you surrender to the police because you knew they were looking for you on the 9th of October?
A138 - I didn't know they were looking for me.
Q139 - Did you have any reason to think they might have been looking for you as to your civilian activities?
A139 - Yes.
Q140 - Did you think they were looking for you? (Question by Defend. Officer)
A140 - No.
(Prosecutor) Q141 - In your civilian activities had you done anything to make you believe that the police might be looking for you?
A141 - Yes.
Defending Officer: Q142 - Did you think they were looking for you?
A142 - No.

Mr. Edward De Gras, 18 Mornington Crescent, N. W. London, is sworn.
Q143 - You are the landlord and caretaker of the premises?
A143 - Yes.
Q144 - It is an apartment house?
A144 - Yes.
Q145 - Do you know a man by the name of "oy Dunkley?
A145 - Yes.
Q146 - Do you recognize him in this court room?
A146 - Yes. (*itness points to accused).
Q147 - *ill you tell the court how he registered at your hotel?
A147 - He was introduced by another friend of his. He was in civilian clothes. He was introduced by a man named Browse, and Scott was also along.

Q148 - I asked you to bring with you a registration form?
A148 - Yes, I have it here.
Q149 - Will you give it to the court?
A149 -(Witness hands the form to the Court and it is examined by them and by the Prosecutor).
Q150 - That form was filled out by this man?
A150 - Yes.
Q151 - Did he stay with you for some days?
A151 - Yes for some days, and then he was missing.

QUESTIONS BY PROSECUTOR.
Q152 - This registration form that you have produced, is that the first time he had appeared at 18 Mornington Crescent?
A152 - Yes.
Q153 - Did you know he was a soldier?
A153 - I didn't. He was in civilian clothes.
Q154 - Did he mention being a soldier at all?
A154 - No.
Q155 - Was Scott with him?
A155 - Yes. He also was in civilian clothes.
Q156 - What arrangements did they make. How long were they going to stay there?
A156 - They took the room for a week.
Q157 - Did you have any conversation with him at all?
A157 - None.
Q158 - Did you ever see him in uniform?
A158 - Never. They were missing all of a Sudden.
Q159 - Do you remember when?
A159 - He was missing a week after he came there. Scott I think was a week later. Dunkley went away the first.
Q160 - What did they have in the way of luggage?
A160 - Bags. Scott had a couple of bags. Scott was with a man named Hansell. This man Dunkley had a room of his own.
Q161 - Did the accused have bags?
A161 - A hand bag.
Q162 - When he came there did he tell you how long he would stay?
A162 - No, but we charged him with one week in advance, 10/6 for room, light, electricity and linen. Everything.
WITNESS IS EXCUSED.

COURT IS CLOSED FOR CONSIDERATION OF THE FINDINGS.

COURT IS REOPENED.

Q163 - Do you wish to address the court in mitigation of punishment?
A163 - No, sir.
Q164 - Have you any witnesses as to character?
A164 - No.
Court(To Prosecutor) Have you any evidence to produce as to the character and particulars of service of the accused? Q165 -
PROSECUTOR IS SWORN.
A165 - I have here the A.F.B. 296 and M.F.M. 6 relating to the accused
Q166 - Have you compared the contents of the above statement with the regimental books?
A166 - Yes.
Q167 - Are they true extracts from the regimental books, and is the statement of entries in the conduct sheet a fair and true summary of those entries.
A167 - Yes.
Q168 - (To Defending Officer) Do you wish to question the witness?
A168 - No.
Q169 - Do you wish to address the court.
A169 - Defending Officer makes a brief address.

Court is closed for the consideration of the sentence.

SUMMARY OF EVIDENCE

In the case of C-4545 Pte. Dunkley, C., (H.& P.E.R.) No. 1 Cdn. Inf. Hldg. Unit.

The Commanding Officer directs that the evidence shall be taken under oath.

1st Witness -- Lieut. David Ivor, Officer i/c Records, No. 1 Cdn. Inf. Holding Unit, having been duly sworn, states:

I am Officer in charge of Records, No. 1 Canadian Infantry Holding Unit, and as such produce the following documents in evidence:

1. Record of the declaration of a court of inquiry assembled in the Field on the 11th October 1940, for the purpose of investigation and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipment, Instruments, Regimental Necessaries, or Clothing of No. C-4545 Pte. Dunkley, C.

2. Army Form O.1617, certifying that C-4545 Pte. Dunkley, Roy, surrendered himself to Inspector Howell, Metropolitan Police, Tottenham Court Road Station.

3. M.F.B. 264, showing the apprehension of C-4545 Pte. Dunkley, C.R., at London at about 1400 hours on the 9th October 1940 by the Cdn. Provost Corps, signed by L/Cpl. G.L. Ayre and Sgt. R.M. Groulx, both of the Canadian Provost Corps.

4. Army Form W.3017, showing admission to Military Isolation Hospital, Harrow Road, London, of C-4545 Pte. Dunkley, C., on the 9th October 1940.

5. Record of the Declaration of a Court of Inquiry assembled at The Military Isolation Hospital, Harrow Road, W.9, on the 4th of November 1940, for the purpose of investigating and reporting on the circumstances under which No. C-4545 Pte. Dunkley, C., "C" Coy. H.P.E. Regt., Canadian Forces, broke out of hospital on 11/10/40 and is still absent, and as to deficiencies of kit, Regiments and Hospital, if any, on his disappearance from Hospital and on whom should fall the cost of replacement.

6. Statement by Detective Albert Foster, New Scotland Yard, dated 7th April 1941, re C-4545 Pte. Dunkley, C.R.

7. Special report signed by Capt. V.Harriss Goad, D.A.P.M., Cdn. Provost Corps, London, dated 31st October 1940.

8. Form No. 706 addressed to A.P.M. Canadians, London Area, from The Governor, H.M. Prison, Winchester, showing release of C-4545 Pte. Dunkley, C. (alias Hinscliffe)

9. Army Form B-252, showing release of C-4545 Pte. Dunkley, C.R., from H.M. Prison Winchester, signed by L/Cpl. B. Lee and L/Cpl. J.D. Durrant, both of the Cdn. Provost Corps, and Capt. V. Harriss Goad for A.P.M. Canadians, London Area.

10. Statement of C-30102 Sgt. Groulx, R.N., of the Canadian Provost Corps, dated at London on the 4th April 1941, re C-4545 Pte. Dunkley, C.R.

These documents refer to No. C-4545 Pte. Dunkley, C.R., whom I now recognize.

..David Ivor..... Lieut.

(The accused declines to cross-examine this witness)

The accused is duly cautioned (R.P. 4(e)) and declines to make any statement.

Certified that Rules of Procedure No. 4 (c), (d) and (e), have been fully complied with.

...H.M. Howell Lieut.
Officer taking Summary

Witley, Surrey,
18th April 1941.

C O P Y

METROPOLITAN POLICE.

"D" Division.
Albany Street Station.
2nd November 1940.

Report for the information of the A.P.M., Canadian Military Police, 30 Henrietta Street, London W.C.2. respecting Privates George Scott Regimental No. C-4362 and Roy Clarence Dunkley C-11545, deserters both of 'C' Company, Hastings and Prince Edward Regiment.

CONFIDENTIAL REPORT.

(The information given is supplied on the clear understanding that it will be regarded as confidential, the source from which it is obtained not being disclosed to the persons concerned.)

To Divisional Detective Inspector.

On 31st October 1940 the above two Canadian soldiers, Scott in the name of George Petley and Dunkley in the name of Roy Clarence Hinscliffe, appeared on remand at Clerkenwell Police Court with three other prisoners, Patricia Leedham, J.W.Ansell and Harry Chant, charged as follows:-

LEEDHAM, HINDSCLIFFE, PETLEY, CHANT, ANSELL - All concerned together in stealing on 17th October 1940 at Euston Railway Station one carton containing cigarettes value £27, the property of the London & Midland Scottish Railway Co. Contrary to Sect. 2, Larceny Act, 1916.

CHANT, DAVIES, PETLEY, LEEDHAM - All concerned together in stealing between 1st and 17th October 1940 one carton containing quantity of tobacco from Euston Railway Station value £23 the property of L.M.S.Rly Co. Contrary to Section 2., Larceny Act., 1916.

LEEDHAM, HINSCLIFFE, PETLEY, CHANT, ANSELL - Chant and Petley concerned together in stealing on or about 6th October 1940 at St. Pancras Station one suitcase containing books and clothing value together £20 the property of L.M.S.Rly Co. Contrary to Sect. 2. Larceny Act 1916.

Leedham Hinscliffe and Ansell concerned together in receiving the above mentioned property at 18, Mornington Cresent N.W.1. and 113, Liverpool Road N.1. knowing it to have been stolen. Contrary to Sect. 33. Larceny Act. 1916.

HINSCLIFFE, PETLEY, ANSELL, CHANT - Chant Petley and Hinscliffe concerned together in stealing on or about 15th October 1940 at St. Pancras Railway Station one carton containing slippers value £2. 13s. Od. the property of the L.M.S.Rly Co. Contrary to Sect. 2 Larceny Act 1916.

Ansell: Receiving the above mentioned property at 113, Liverpool Road, N.1. knowing it to have been stolen. Contrary to Sect. 33. Larceny Act, 1916.

Scott and Dunkley pleaded 'Guilty' to all of their charges and in addition Scott admitted seven other similar thefts from the Railway Stations and Dunkley one, whereupon the Magistrate, W.J.H.Brodrick Esq., passed sentence of 6 months imprisonment to run concurrent on their respective charges.

It is apparent that for the past two months these two prisoners having discarded their uniforms, deserted the Army, and with other persons embarked on a period of wholesale stealing from the Railway Stations in the Kings Cross and St. Pancras District, until 17th October 1940, when Dunkley was arrested at Euston Railway Station having stolen from a platform there the property in respect of the first charge.

The same day and as a result of certain information obtained by police, Scott with others was traced to an address 98 Castlehaven Road, N.W.5. where he was arrested for being in possession of property stolen from Euston Railway Station which is the subject of the second charge.

The prisoners appeared at Clerkenwell Police Court and were remanded in custody until 24th October when they were further remanded until 31st October.

During the remand periods other addresses where both Scott and Dunkley had resided were visited, and other property the proceeds of Railway thefts was discovered, also the fact that Scott had been present and concerned with the theft for which Dunkley was arrested, resulting in the further charges. It was also at this stage that it was learned that both these men were deserters from the Canadian Army. Accordingly a telephone message was sent to the Canadian Army Authorities in London advising them of the charges which were being preferred against the two deserters. At the final Hearing Officers representing the prisoner's regiment were in Court and supplied information regarding character, following which the prisoners were sentenced as shown.

Scott, who admits having been previously convicted in Canada will serve his sentence in the name of George Edward Petley in Pentonville Prison, London whilst Dunkley in the name of Roy Clarence Hinscliffe will serve his sentence at Feltham (Boys) Prison, Feltham, Middlesex.

(signed) Alex Foster
Detective Constable "D"

(signed) L. Crowe
D.D.Inspector "D"

(signed) F.H.Durham
Superintendent "D"

4-11-40

Certified True Copy.
David Ivor, Lieut.
Officer i/c Records.

EXHIBIT 1.

RECORD OF THE DECLARATION OF A COURT OF INQUIRY

ON THE ILLEGAL ABSENCE OF A SOLDIER

RECORD of the Declaration of a Court of Inquiry assembled at In The Field on the 11 day of Oct. 19 40, for the purpose of investigation and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipment, Instruments, Regimental Necessaries, or Clothing of No. C4545 Pte. Dunkley, C.

DECLARATION.

The Court declare, that C4545 Pte. Dunkley, C. absented himself without leave from his duty on 18 Sep.40. and is still absent and that on 11 Oct. 40. he was deficient and is still deficient of the following articles: (or was not deficient, as the case may be)

Names of President and Members Capt. D.B. Whytock
Lieut. L.C.B. Sorby
Lieut. A.C. Holland

Signature of Commanding Officer H.D. Graham Lt-Col.

CERTIFIED TRUE COPY

D.B. Whytock Capt

Signature of Officer having custody of the Original Record.

ARTICLE	VALUE
Anklets Web	2/
Boots Ankle	10/
Drawers Shorts	1/
Great Coat	
Denim 1 suit	
Shoes canvas	2/
Button brush	
Tooth Brush	/3
Cap Comforter	
Comb	/1
1 Knife Table	1/6
1 Fork Table	
1 Spoon Table	
1 Mug	
1 Knife Clasp	
Towels hand 2	/1
1 Pack sack	
1 Mess tin	2/

Form AR—E

REGISTRATION FORM

Exhibit 6

(For use in Hotels, Inns, Lodging-houses, etc., under the provisions of Article 7 of the Aliens Order.)

British subjects need fill in only 1, 2, 3, and 4 of Part I, and sign it. Aliens must complete the whole form and sign both Parts.

Top floor

Postal address of Hotel, Inn or Lodging-house, etc. 18 Marrington crescent N.W.1

PART I

TO BE FILLED IN IMMEDIATELY ON ARRIVAL

1. Surname Dunkley
2. Christian Names Roy
3. Nationality British
4. Date of arrival 4-10-40
5. Sex (M. or F.) M
6. Particulars of Registration Certificate or Passport:
   - Registration Certificate/Passport issued at ; No.
7. Arrived here from (give last address in full) 34 Blackmansbury Street London W.1.

Signature of person to whom the above particulars relate Dunkley Roy.

* *Please strike out as necessary.*

(For Part II see overleaf.

I CERTIFY that the man whose personal description is given below surrendered himself to* Inspector Howell.
at Tottenham Court Rd police Station at (hour) 1 pm on the 9th day of October 1940 as being No. C4545
(Rank and Name) Private Ray Dunkley.
~~a deserter (or~~ absentee without leave) from H.P.E. Regt (Canadian)
and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 19 Height 5 Feet 10 Inches
Complexion Fresh Hair Dark Brown Eyes Brown
Marks NIL
In uniform or plain clothes Plain Clothes

Probable Date and Place of Attestation: 5th September 1939 Hadrian Canada

Probable Date of Desertion or beginning of absence, and from what place: about 18th September 1940 Dorking

Signature of Officer of Police in charge of: Howell. Insp Station.

9/10/40. Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.
(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of

No. .....

who surrendered to the Police at ..... on .....

Payable to .....

NIL

Certified that the herein signed witness cannot be readily procured. (R.P.4(g))

H.M. Howell Lieut.
Officer Checking Summary.

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at .....

Date of Signature.

EXHIBIT 5

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at The Military Isolation Hospital, Harrow Road, W.9. on the fourthday of November 1940, for the purpose of investigating and reporting on the circumstances under which No. C/4545 Pte. Dunkley, C., "C" Coy. H.P.E. Regt., Canadian Forces, broke out of hospital on 11/10/40 and is still absent, and as to deficiencies of kit, Regiments and Hospital, if any, on his disappearance from Hospital and on whom should fall the cost of replacement.

DECLARATION.

The Court declare that No. C/4545 Pte. Dunkley, C., "C" Coy., H.P.E. Regiment, Canadian Forces absented himself without leave at the Military Isolation Hospital, Harrow Road, London, W.9., on 11th day of October, 1940, and that he is still absent, and that on the 11th day of October, 1940, he was deficient, and is still deficient of the following articles.

4737394 Cpl. Waite, R.A.M.C., N.C.O., i/c Linen Store states that none of these articles have been returned.

(Signed) H. Waite,
4737394. Cpl. R.A.M.C.

Towels, Turkish	1	one	1/4
Jackets, Serge	1	one	18/3
Shirts, Cotton	1	one	4/3
Trousers, Serge	1	one	13/6
Waistcoats, Serge	1	one	7/9

Names of President and Members

President:- Major E.J. Mannix, R.A.M.C.

Members:- Capt. J. Buckley, R.A.M.C.
Lieut. A. Dady, (Q.M.), R.A.M.C.

Signature of Commanding Officer "H.H. Leeson" M.C.
Lieut-Col., R.C.A.M.C.

CERTIFIED TRUE COPY.

E.J. Mannix Major R.A.M.C.

Signature of Officer having custody of the Original Record.

(12281) Wt.54318/1622 75,000 10/39 A.& E.W.Ltd. Gp.498
(12448) Wt.45725/700 225,000 1/40 " " Forms/B115/44

THIS OFFICE MUST BE NOTIFIED IMMEDIATELY IF UNIT CHANGES ADDRESS.

EXHIBIT 4

Army Form W.3017.

HOSPITAL ADMISSION REPORT.

THE HASTINGS & PRINCE EDWARD REGT. ORDERLY ROOM C.A.S.F.

NOTE:—(I) An Admission Report (in duplicate for officers) will be rendered by O.C. central hospitals, etc., at home for every sick or wounded officer, nurse and soldier admitted or transferred to a central hospital or to one of its auxiliaries during the previous 24 hours as soon as possible after admission.

In the case of patients admitted direct to an auxiliary hospital without having passed through the central hospital, the report will be completed by the auxiliary hospital and forwarded as soon as possible after admission to the O.C. the central hospital who will transmit it to the War Office or appropriate Record Office as the case may be.

(II) This report will be despatched, by post, as follows:—

For officers and nurses .. Original to War Office (for Personnel Branch) Duplicate to War Office, Casualty Section.

For other ranks .. To Officer i/c Records concerned.

(III) On receipt of this report, the personnel branches at the War Office and Officers i/c Records respectively will post the officers or other ranks to units (training units unless otherwise ordered) with effect from the date of admission to hospital, etc., and Os.C. units will take them on the strength accordingly.

Officers i/c records, on receiving intimation of the admission to a military hospital of other ranks from overseas whose documents are in their charge, will immediately forward the medical history sheets to the hospital without waiting for an application from the O.C. hospital.

Neither medical history sheets nor other documents will be sent to civil hospitals.

Personal No. (Officers) / Army No. (Other ranks) } C/4545

Rank and Name PTE DUNKLEY C.

Unit H.P.E. REGT (CANADIAN) C COY.

Theatre of war or station abroad from which arriving, or Home Station at which serving DORKING

Date of admission 9.10.40

Name of Hospital, ~~or~~ Military Isolation, Harrow Road W9

Disability UNSTABLE

Date 9.10. 1940.

Lieut. Colonel R.A.M.C.
Officer Stamp of Central Hospital
O.C. Military Isolation Hospital

(393/2569) Wt. 29847-1034 300M H & S Ltd. 9/39 Gp. 393 Forms/W.3017/2.

I certify that the hereon signed witness cannot be readily procured. (R.P.4(g)).

..... Lieut.
Officer taking Summary

STATEMENT OF EVIDENCE IN THE CASE OF Exhibit 5

C-4545 Pte, Dunkley C.R.
Hastings & Prince Edward Regt.

Sir;

At London on the 9-10-40 at about 1400 hrs. I was on duty at C.P.C.H.Q. when I received instructions to proceed to Tottenham Crt.Rd.Police Stn.

After arrival I saw the a/m soldier, he was dressed in civilian clothes. I asked him for a pass he could not produce one. He was A.W.L. I placed him under arrest and escorted him to C.P.C.H.Q. where he was turned over to Sgt. Groulx of the C.P.C. Police who escorted him to isolation Hospital because the a/m soldier has Gonorrhea.

London
9-10-40

G.L. Ayre
Canadian Provost Corps L/Cpl.

Sir;

I have read over and corroborate the above statement.

London
9-10-40

R.M. Grant
Canadian Provost Corps Sgt.

I certify that the hereon signed witnesses cannot be readily procured. (R.P. 4 (g)).

H.W. Burrell Lieut.
Officer taking Summary.

CRIME.

HASTINGS & PRINCE EDWARD REGT.

SQUADRON, BATTERY OR COMPANY.

CHARGE against No. C-4545 Pte.Dunkley C.R.

Place	Date of Offence.	OFFENCE.	Name of Witness.	Punishment Awarded.	By whom Awarded.
London Surrendered	9-10-40	W.O.A.S. absent without leave from.....until ~~apprehended~~ by the Metropolitan Police at about 1300 hrs. ~~9-10-40~~ 9-10-40. (2) Was dressed in civilian clothes.	L/Cpl.Ayre G.L. Sgt.Groulx R.N. Can.Prov. Corps.		

D.A.P.M.
CANADIAN MILITARY POLICE
LONDON AREA.

Contents of this side of sheet not applicable.
David Ross Lieut
Officer i/c Records.

Service years
Number of good conduct badges
Date of last entry in company conduct book
Character
Date of last entry for an act of drunkenness
Number of cases of drunkenness within the last 12 months

Commanding.

M F B 164

MEDICAL OFFICER'S CERTIFICATE

I certify that this day I have examined No. C-4545

Pte. DUNKLEY, C.R. , and find him fit to stand trial by

Court-Martial.

H.O. Johnston Capt RCAMC

.....
Medical Officer,
No. 1 Cdn. Inf. Holding Unit.

Witley, Surrey,
13th May. 1941.

No. C-4545 Name Dunkley, C. Regt. or Corps B. Corps H.& P.E.Regt Date of enlistment G.C. Badges Nil Service or Proficiency Pay Nil M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character Bad

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Picton	6th/10	Pte		Leaving Fatigue party without permission Absent from Barracks.	Cpl.Alcombrack Sgt. Yearwood.	5 Days C.B.	7th/Oct	OC.B.Coy	
Aldershot	21/3/40	Pte		Failing to have bed properly made up		3 days C.B.	23/3/40		
Aldershot	9/7/40	"		Absenting himself without leave from 1700 hrs 9 July to 1200 hrs. 15 July 40.	Cpl Young, O. " Davis	120 hrs. detention	19/7/40	Lt-Col. Salmon	Forfeits 11 days pay
	18/8/40	"		A.W.L. from 2300 hrs. 18 Aug.40 to 1700 hrs. 24 Aug.40	Maj Crowe	14 days detention	28/8/40	Maj.Edgar	Forfeits 9 days pay

CERTIFIED TRUE COPY:-

2nd April, 1941.

David Ivor, Lieut.

David Ivor, Lieut.,
Officer i/c Records,
No. 1 Cdn. Inf. Hldg. Unit.

(P.T.O.)

Willie E. HAB 179

CHARGE

Army Form B 252
(See King's Regulations)

Hastings and P.E. Regt. Regiment
#1 Inf. Holding Unit . Battery / Squadron / Troop or Company

CHARGE against No. C-4545 Rank Pte.

Name Dunkley, C.R.

Place London Date of Offence 1-3-41.

OFFENCE W.O.A.S. (1) Absent without leave from....until apprehended and turned over to the Canadian Provost Corps, by the Governor of H.M. Prison Winchester at about 07.30 hrs. on the 1-3-41. (2) Improperly dressed i/e wearing civilian clothes.

Names of Witnesses :—

L/Cpl. Lee, Canadian Provost Corps.

L/Cpl. Durrant, Canadian Provost Corps.

A.P.M. CANADIANS LONDON AREA

Signature of O.C. Battery, Squadron, Troop or Company Remanded O.C.

Punishment Awarded remanded, for evidence in writing

By whom Awarded

Adjutant

P.T.O.

Statement of **EVIDENCE** in the case of

C-4545 Pte. Dunkley, C.R.
#1 Inf. Holding Unit.

Sir,

At London on the 1-3-41 at about 03.00 hrs. I was on duty at C.P.C.H.Q. when I was detailed in company with L/Cpl. Durrant to go to H.M. Prison Winchester to escort back the a/m soldier. Upon arrival there I saw the a/m soldier. He was dressed in civilian clothes. I asked him how long he'd been A.W.L. he admitted that he was A.W.L. He was turned over to me and I escorted him back to C.P.C.H.Q. where I turned him over to the N.C.O. i/c cells to be detained.

London
1-3-41. .....L/Cpl.
Canadian Provost Corps.

Sir,

I have read over and corroborate the above statement.

London
1-3-41. ...L/Cpl.
Canadian Provost Corps.

REMARKS

I hereby certify that the hereon signed witnesses cannot be readily obtained. (R.[illegible]. 4(g)).

.. Lieut.
Officer taking Summary

EXHIBIT 5

CHARGE

Army Form B 252
(See King's Regulations)

Hastings and P.E. Regt. — Regiment

1 Inf. Holding Unit, — Battery / Squadron / Troop or Company

CHARGE against No. C-4362 Rank Pte.

Name Scott, G.E.

Place London Date of Offence 1-3-41.

OFFENCE W.C.A.S. Absent without leave from ....until released into the custody of the Canadian Provost Corps, by the Governor of H.M. Prison Pentonville at about 10.00 hrs. on the 1-3-41.

MAJOR

A.P.M. CANADIANS LONDON AREA

Names of Witnesses (1)

L/Sgt. Detachment. Canadian Provost Corps.

L/Cpl. Keenie, Canadian Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant

Statement of **EVIDENCE** in the case of

C-4362 Pte. Scott, G.E.
1 Inf. Holding Unit.

Sir,

At London on the 1-3-41 at about 09.15 hrs. I was on duty at C.P.C.H.Q. when I was detailed to go to H.M. Prison Pentonville to escort back the a/m soldier. Upon arrival there I saw the a/m soldier. I asked him for his pass he admitted that he was A.W.L. deserter from his Regt. He was turned over to me by the Governor and I escorted him to C.P.C.H.Q. where I turned him over to the N.C.O. i/c cells to be detained.
The a/m soldier was admitted to Pentonville Prison under the name of George Earle Petley.

London
1-3-41. S. Marchment ..... L/Cpl.
Canadian Provost Corps.

Sir,

I was N.C.O. I-c cells when the a/m was b brought in here.

London
1-3-41. R. Keene ..... L/Cpl.
Canadian Provost Corps.

REMARKS

I hereby certify that the herson signed witnesses cannot be readily obtained. (R.P. 4(g)).

..... Lieut.
Officer taking Summary

Entered in Book. EXHIBIT 3

All communications should be addressed to the Governor of the Prison, and not to any official by name.

From The Governor,

H.M. Prison,

H.M. PRISON
18 FEB 1941
WINCHESTER

To The ~~Officer Commanding~~,

APM Canadian, London Area,
30, Henrietta Street,
London, WC2.

Regt'l. No. C 11545 Regt. or Battery, &c. Hastings & P.E. Regt. C.E.F.

Rank Pte Name R. C. Dunkley (alias Hinscliffe) please quote.

1. The above-named man will be due for release at 9 A.M. on 1/3/41.

2. If he is required to join his Unit for further service I shall be glad to be informed as soon as possible and supplied with a railway warrant and instructions as to his reporting for duty on discharge.

3. If he is to be discharged from the service a suit of plain clothes will be required.

I certify that the hereon signed witness cannot be readily obtained (R.P.4(g)).

[signature] Lieut.
Officer taking Summary

[signature] Capt.

[signature]
Governor

SPECIAL INVESTIGATION DEPT.
CANADIAN PROVOST CORPS,
LONDON AREA.
FEB 20 1941

In the case of C 4545 Pte Dunkley C.R.

Statement of C 30102 Sgt Groulx R.N.

I saw the accused Pte Dunkley dressed in civilian clothes after he was brought here to C.P.C.H.Q. after his being brought down under escort from H.M.Prison Winchester, on the 1st March 1941.

London
4-4-41

.....Sgt
Canadian Provost Corps.

I hereby certify that the hereon signed witness cannot be readily procured. (R.P. 4(g)).

.....Lieut.
Officer taking Summary

EXHIBIT 6

METROPOLITAN POLICE. No. 995.

STATEMENT OF WITNESS.

New Scotland Yard *Station.* CO *Division.*

7th April, 1941.

Name Albert FOSTER,

Address New Scotland Yard, S.W.1.

Age Occupation Detective.

Statement At about 9-30am, 17th October, 1940, I arrested Private Roy Clarence Dunkley, Regimental No. C.11545, of 'C' Company, Hastings Prince Edward Regiment, together with a girl named Patricia Leedham, for stealing a carton of cigarettes from Euston Railway Station.

Dunkley was dressed in civilian clothes and when taken to Albany Street Police Station to be charged, he gave his name as Roy Clarence Hinscliffe, age 18, a labourer, of no fixed abode.

Shortly after his arrival at the Police Station, I saw him hand the girl Leedham something which proved to be a National Registration Card in the name of Hinscliffe. This card, which was then torn and mutilated, has since been destroyed.

Both appeared at Clerkenwell Police Court the same day and remanded in custody until 24th October, 1940.

Later the same day, at about 3-0pm, I arrested Private George Scott, Regimental No. C. 4288, also of 'C' Company, Hastings Prince Edward Regiment, at 98, Castlehaven Road, Kentish Town, London, where I found a quantity of property stolen from Euston Railway Station. At the same time, two other men were also arrested, John Robert Davies and Rosslyn Brooks, alias Harry Chant, a deserter from the Royal Welch Regiment, and all three were taken to Albany Street Police Station.

At the Police Station, Scott, who was wearing civilian clothes, gave his name as George Earl Petley, age 22, a labourer, of no fixed abode.

They appeared at Clerkenwell Police Court on the 18th October, 1940, and remanded in custody to appear with Dunkley and Leedham on 24th October, 1940, as it was then found that Leedham and Brooks occupied the rooms at 98, Castlehaven Road.

On the remand date, the five accused were again remanded in custody until 31st October, 1940.

In the meantime, another man, John William Ansell, was arrested in possession of certain property, and appeared with the other five prisoners on the 31st October, on a number of criminal charges.

The particulars and result of these charges were fully set out in a Confidential Report, dated 2nd November, 1940, addressed to the A.P.M., Canadian Military Police, 30, Henrietta Street, W.C.2.

Signature

Signature witnessed by

Both these two soldiers, Dunkley, alias Hinscliffe, and Scott, alias Petley, admitted to me that they had deserted their Regiment some two months prior to their arrest, and Scott stated at all stages that he did not want to return to the Army.

Dunkley was convicted and served his sentence in the name of Roy Clarence Hinscliffe, whilst Scott served his in the name of George Earl Petley.

(Signed) A.G. Foster,
Detective.

I certify that the hereon signed witness cannot be readily procured. (R.P. 4 (g)).

H. [illegible] Lieut.
Officer taking Summary

STATEMENT as to CHARACTER & PARTICULARS of SERVICE of ACCUSED

No. C-4545 Pte. DUNKLEY, C.R., No. 1 Cdn. Infantry Holding Unit

1. The following is a fair and true summary of the entries in the regimental conduct sheet of the accused, exclusive of convictions by a court-martial or a civil court, and of cases in which trial has been dispensed with:

	Within last 12 months	Since Enlistment
Absence without leave	3 times	3 times
Leaving fatigue party without permission	nil	1 time
Absent from barracks	nil	1 time

Number of instances of gallantry or distinguished conduct: Nil.

2. The accused is not under sentence at the present time.

3. The accused has not been previously convicted by a Court-Martial ~~or a civil court~~. He has been previously convicted by Civil Court.

4. The accused has been in confinement, awaiting trial on the present charges, for no days in civil custody, and 73 days in military custody, making a total of 73 days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his attestation paper is 20 years.

6. The date of his attestation specified in his attestation paper is 6th September 1939.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 20 months.

8. The accused is entitled to deferred pay or gratuity in respect of 20 months' service.

9. The accused is entitled to reckon 20 months' service for the purpose of determining his pension, etc.

10. The accused is in possession of or entitled to no military decoration or military reward.

SCHEDULE

of convictions by a court-martial or a civil court and of cases in which trial has been dispensed with of the accused.

Convicted on 31st October 1940 at Clerkenwell Police Court on three charges of theft and one charge of receiving stolen goods. Sentenced to 6 months' imprisonment with hard labour on each charge, the sentences to run concurrently. Charged and convicted under the name of Roy Clarence Hinscliffe.

Released and deported at Milan, Michigan, on the 21st June 1938, for illegal entry (Immigration Law) in the name of Clarence R. Dunkley.

Remanded for sentence, Toronto, Ontario, 12th August 1938, for theft of camera and motor rug, in the name of Clarence Dunkley.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

David Ivor, Lieut.

David Ivor, Lieut.,
Officer i/c Records,
No. 1 Cdn. Inf. Hldg. Unit.

Witley, Surrey,
13th May 1941.

5 A-89

Pt Dunkerley T. H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B119098 Pte Thomas Harry DUNKERLEY

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st CHARGE	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~(Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B.296.)~~ ~~beginning on (date)~~ (1)

Time in confinement awaiting present trial—a total of 12 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for 45 days.

(Sgd) ..... Judge-Advocate, if any.

25 Apr 45 Date Awarded.

(Sgd) H.D.G. Currie Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION ON CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be entered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed

~~I direct that the accused be not committed to prison or Detention Barracks until further orders.~~ ~~(See RP 53A (Delete if not used.))~~

(Sgd) H.D.G. Elder Brig.

Date 2 May 45 Commanding DDMS FIRST CDN ARMY Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

B119098 Pte Lindsay 3 May 45 Robert Leonard Capt FIRST CDN ARMY HQ DEF COY (RMP)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5-1-89

RECEIVED 25 MAY 1945 JAG BR. C.M.H.Q.

CFAMS (To take place of AFAS) 40/F & B/1098 (6/44) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig H.D.G. ELDER DDMS ~~Comd~~ FIRST CDN ARMY dated 23 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B119098	Pte	Thomas Harry	DUNKERLEY	1 Fd Coy RCE (Fd)

PROCEEDINGS REVIEWED

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in ~~Rd~~ in (country) HOLLAND on (date(s)) 25 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, J.A. if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~X~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 10.30 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by CO(2).~~
(1. KR Con 557. 2. AA 46(E), RP 60 fn 1. For effect see KR Con 563(1). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~an interpreter~~ ? Ans
~~The Interpreter is sworn.(1) Do you object to~~ ~~a shorthand writer~~ ? Ans
~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none required.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?
Ans NO (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~J.A., Interp, and shthd writer~~ (~~Interp~~), are sworn.(1) The following are the names, ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	H.D.G. CURRIE, RCE	1 HQ FIRST CDN ARMY
Member	CAPT	J.P. ROWLAND, RCASC	1 Cdn Army Car Coy RCASC
Member	LT	G.M.H. HODGES, CIC	FIRST CDN ARMY HQ DEF COY (RMP)
Judge-Advocate			
Prosecutor	CAPT	R. SCHWOB, (CIC)	FIRST CDN ARMY HQ DEF COY (RMP) FIRST CDN ARMY.
Defending Offr	CAPT	W. POLLEN,	

Questions by President: Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes (1)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
Q. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See DI p 21.

A8. The accused B119098 Pte Thomas Harry DUNKERLEY ~~are~~ arraignment make(s) (no) ~~X~~ plea (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (G)), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~adjourned and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 67(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and examination of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will nos be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans YES - (see page 1, ante) (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 39(*B*) *fn* 5 *para* 2, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~FIVE~~ 3, 7 charge(s). The accused is (are) so informed, ~~and he (they)~~ ~~(changes) his (their) plea(s) to~~ ~~Not Guilty on ..... charge(s).~~ Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B , initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CS* A95. *Evidence for accused as to his character should, if on his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 80(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex C respectively.(3)
(1. *MFB* 355 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES - (see page 2, ante) (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishments or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-52, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 3019, 2323, *MML p* 80, 757-759. *As to sentences assigned for civil offences (in the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(7) (*b*), 68(7), *KR Can* 564. 2. *RP* 50. *As to recourse from contract by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

25 Apr 45

This is to certify that I have today, 25 Apr 45, examined B-119098 Pte Dunkerley, T H, and find him fit, ~~unfit~~ to stand trial by Field General Court Martial.

(Medical Officer)
Main HQ First Cdn Army

Ex A

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B119098	Pte	Thomas Harry	DUNKERLEY	First Cdn Army HQ Def Coy (RMR)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 23 Apr 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed ~~attached hereto~~ or detailed hereunder.

4. ~~I am unable to appoint (a) time Offrs from the Corps, but a Fd Offr as President, for the reasons I have stated.~~

5. ~~I also appoint as Judge Advocate thereat the offr mentioned hereunder.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.) (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	H D G Currie RCE	HQ First Cdn Army

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	J P Rowland RCASC	1 Cdn Army Car Coy RCASC
Lieutenant	G M H Hodges CIC	First Cdn Army HQ Def Coy (RMR)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	R S Brown Gen List	1 Cdn CW Lab

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Active Service in the Fd		

HOLLAND
(Country.)

23 Apr 45

(Signed personally. RP 105 fn 2.)

Brig
(Rank.)

Commanding DDMS, First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

CPA30 (To date of APA) 40 P & S (1947 14031)

(See overleaf for instns and notes for use on trial.)

CHARGE SHEET

THE ACCUSED, B.119098 PRIVATE THOMAS HARRY DUNKERLEY, FIRST CANADIAN ARMY HEADQUARTERS DEFENCE COMPANY (RMR) A SOLDIER OF THE CANADIAN ARMY, PLACED ON ACTIVE SERVICE, IS CHARGED WITH:-

FIRST CHARGE
Section 15(I)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he

in the field, in Holland, when confined to barracks, absented himself without leave from 1845 hrs. 9 Apr 45 to 2230 hrs 9 Apr 45 (Absent 4 hrs 45 min)

IN THE FIELD
14 APR 45

(A.H. Lowe) Major,
Comd First Cdn Army
HQ Def Coy (RMR)

TO BE TRIED BY FIELD
GENERAL COURT MARTIAL

23 Apr 45. H.W. Selder. Brig.

DDMS FIRST CDN ARMY

STATEMENT BY ACCUSED ON PLEA OF GUILTY 25 APR 45

Statement by B119098 DUNKERLY T.H ~~under oath~~

~~I~~ states:-

When we left Breda and moved to Tilburg I met a young lady in a cafe, her father owned this cafe. I kept company with this young lady for a month and we then became engaged. I found out that she was a Catholic and that her Brother was going into a seminary up to this time her Father and Mother agreed to us being engaged, when her brother went into the seminary this affected the engagement. Her Mother wanted me to marry her daughter but the Father was very much against it, since I was not a R.C. and the war was still on, it was agreed that if I changed my religion and if the War was over by this fall, I could get married but the Father did not agree as he said his daughter had to be 18 yrs. old and this started a family argument.

I spent my last leave there and I tried to get everything cleared up. The Mother, girl and Brother tried to persuade the father to change his mind but he said that she would have to wait until she was 21 yrs old. He wanted me to go back to Canada & then return to Holland. I tried to explain to him that it was out of the question to do so, and we could not be married by proxy as this could not be done in Canada and that was where he definately decided that she would have to wait until she was 21 yrs old. I wanted to be married before I went back to Canada and her Mother also was in favour of me getting married. I am 19 yrs old and will be 20 in July 45. At this point everyone decided that on Monday or Tuesday they would go and ask the Priest for his opinion that was on Friday night. On Saturday morning the Priest said he would come up on Monday evening and would settle everything then. I returned to Camp I was awarded 14 days C.B. on a previous charge, so I had no alternative but to return to Tilburg and settle the matter. The girls name is Ludwocia De Kok and she will be 18 yrs old in Nov of this year.

Address by Defending Officer in mitigation of punishment

In the case of 8119098 Pte Thomas Harry DUNKERLEY

Argument for the Defence

1. From the HFM6 it is easy to see why this case must come to Court Martial — otherwise the problem of OC of the Defence Company in keeping discipline in a static unit at a AQ becomes almost impossible. While that is so there are many features to this case which call for a considerable use of the Court's discretion in fixing the sentence.

2. First from the yard of the accused and the personal traitor he has been in during the last two months at his age these things are of prime personal importance and are enough to drive a stronger man to do a great deal more. While this does not constitute an excuse, it does take away any question of a deliberate infringement of discipline and consequently calls for lenient treatment.

3. Second the point should be made that he accused while he has a crimsheet of small affairs of this type, who will get into trouble due to his character — which the Court has had opportunity to gauge during his statement and with summary. While this is again no excuse it does ask for a careful consideration as to what sentence should be passed: it is submitted that a lenient attitude should be taken in view of the effect of a hard one on this man's value as a soldier.

4. There are not many cases of soldiers in our army actually being serious enough, above the young leaves of the country we pass through, while that is a bad one of the point it is an indication of his character.

Summary of Evidence
in the case

Ex B; 4 Nov

Off. B119098 Pte Dunkerley F.H. First Cdn Army HQ. Def Coy (RMR) changed with absence without leave whilst on C.B. from 1845 hrs 9 Apr 45 to ~~0630~~ 2400 hrs 9 Apr 45 AA Sec 15(1)

By direction of the commanding officer the evidence is taken on oath.

First Witness D76936 Sgt Byrne J. F. First Cdn Army HQ Def Coy (RMR) having been duly sworn states:— 2, D76936 Sgt Byrne J. F. am acting CSM of the coy. The accused was a defaulter and was C.B. and at 1845 hrs 9 Apr 45 I checked our camp area and found the accused nowhere in the vicinity I checked again at 2230 hrs. He was still absent. I told Cpl Massey F.R.R. to place him under open arrest when he came in and note the time.

Cross examined by accused—

Q. Why was it in the morning when wakened by Cpl Massey that I was not told that I was under close arrest?

A. Apparently Cpl Massey was under the impression that you didn't have to be told as you had been AWL

Q What do you consider camp area?

A Your camp area is the billet and extends to the ~~car park~~ limits of the Def Coy car park.

Q Has anyone ever been told what

constitutes the limits of the camp area?
A Any soldier with six months service in the army should know.
Q What if you have been in the Def. Cay for a considerable time and you still don't know the extent of the cay area?
A. I suggest then you see a doctor.

Sgt J. Byrne

Second Witness H 67273 Cpl Massey T.R.R. First Cdn Army H.Q. Def. Cay (RMR) having been duly sworn states: I H 67273 Cpl Massey T.R.R. was ordered by Sgt Byrne to note the time of the return of the accused. At 2330 hrs 9 Apr 45 Pte Dunkerly had not yet returned so I retired to bed. At 0630 hrs 10 Apr 45 I saw that the accused was in his bed and I awakened him.

The accused declines to cross examine the witness.

Cpl T.R.R. Massey.

First witness called by the Defence R107001 Cpl Wade B.A. having been duly sworn states I cannot think of any evidence which I can give to throw any light on this matter

Cross examined by the accused.

Q. What time did you see me on the spot?

A. I saw you at 0700 hrs.

~~Q~~ ~~A~~ ~~Q~~ ~~A~~ ~~Q~~ ~~A~~

B 119098

Cdn Army H.

with absence [illegible] summary of Evidence

C.B. from 1845 hrs. 9 Apr 45 [illegible] F.H. First [illegible] changed

~~10~~ 9th Apr 45 AA Sec 15 (1) whilst on 2400 hrs

By direction of the commanding officer the evidence is taken on oath.

First witness D76936 Sgt Byrne J.T.

First Cdn Army HQ Def. Coy (RMR) having been duly sworn states: 2. D76936 Sgt Byrne J.T. am acting CSM of the Coy. On 6 Apr 45 I was present in the orderly room when the accused was awarded 14 day C.B. for an offence.

The accused declines to cross examine the witness.

J Byrne

Second Witness: Mr A. L. KOK living at 14 Market Tilburg

I certify that in my opinion the attendance of this witness is not reading procurable and a written statement of his evidence [illegible] signed by him has been read to the accused and is attached hereto as Exhibit A.

Robert Schwab

Additional Summary of Evidence in the case of

B 119098 Pte Dunkerley F.H. First Cdn Army H.Q. Def Coy (RMR) charged with absence without leave whilst on C.B. from 1845 hrs 9 Apr 45 to ~~2600~~ 2400 hrs ~~10~~ 9th Apr 45 AA Sec 15 (1)

By direction of the commanding officer the evidence is taken on oath.

First witness D76936 Sgt Byrne J.T. First Cdn Army HQ. Def Coy (RMR) having been duly sworn states: 2. D76936 Sgt Byrne J.T. is acting CSM of the coy. On 6 Apr 45 I was present in the orderly room when the accused was awarded 14 day C.B. for an offence.

The accused declines to cross-examine the witness.

J Byrne

Second witness: Mr A. L. KOK living at 14 Market Tilburg

I certify that in my opinion the attendance of this witness is not readily procurable and a written statement of his evidence purported to be signed by him has been read to the accused and is attached hereto as Exhibit A.

Robert Schwab

I do not require the attendance of Mr. A de Kok for the purpose of cross-examination

T. B. Dunberg

The accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A No Sir.

The accused does not call any witness.

I certify that the foregoing Additional Summary of Evidence consisting of two pages was taken down by me in the presence & hearing of the accused and that R.P. 4(C), (D), (E), (F) & (G) have been complied with.

Robert Schwab Capt
Officer detailed to
take additional Summary
of Evidence

In the field
12 Apr 45

Exhibit A.
Additional Summary

12 April 45

I am A. de Kok living at Marks 14 Ellenry
I know Pte Dunkerley he visited me on
the evening of 9 April he came about 8 oclock
and left about 12 oclock

A. Howard
De Kok

Sam Ken Mr. A. de Kok

Markt 14

Tilburg

LIST OF WITNESSES

FOR THE PROSECUTION

D76936	Sjt	Byrne J T	- First Cdn Army HQ Def Coy (RMR)
H67273	Cpl	Massey TRR	- First Cdn Army HQ Def Coy (RMR)
Mr. A de Kok			- 14 Market TILBURG HOLLAND

FOR THE DEFENCE

M107001	L cpl	Wade B A	- First Cdn Army HQ Def Coy (RMR)

LIST OF EXHIBITS

Exhibit "A" - Statement of Mr. A de Kok, 14 Market TILBURG HOLLAND

The accused wishes to have Capt. W. Pollon, Int Branch, Main HQ First Cdn Army defend him at the Field General Court Martial.

(A.H. Lowe) Major,
Comd First Cdn Army
HQ Def Coy (RMR)

EXD

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B119098	Pte	Thomas Harry DUNKERLEY	FIRST CDN ARMY HQ DEF COY (RCR)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15(1)	5	times.
For AA Sec 40	2	times.
For AA Sec 11	1	times.
For		times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for an off under AA Sec11 beginning on the ninth day of Apr 45 (14 days CB)

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and ~~xxx~~since 11 Apr 45 days in military custody, *i.e.*, 11 Apr 45 to 2200 hrs 12 Apr 45 days in open arrest, since 2200 hrs 12 Apr 45 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 19 yrs 8 mos

6. The date of his attestation ~~xxxxxxxxxxxxxxxxx~~ is 11 Nov 43

7. The service which the accused is allowed to reckon is 1 yr 5 mos

†State the military operation (if any) here by accused.

8. The accused is in possession of† nil

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of B/A	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27852) W1 24930/3404 2M(OR) 7/44 A.&E.W.Ltd. Gp.698 Forms/B.296/Ward

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this Fourteenth day of April 45

(Robert Schwab) Capt
OIC REGIMENTAL RECORDS

No B119098 Name Dunkerley T H Sqn, Battery, or Company Corps CIC Date of enlistment 11 Nov 43 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Ex C Sheet No 1 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Original sheet destroyed 14 Jun 44					
Field	19 Jun 44	Pte		AA Sec 15(1) AWL from 1200 hrs 19 Jun 44 to 1645 hrs 21 Jun 44 Absent 2 days 4 hrs 45 min		Admonished	22 Jun 44	Capt Oliver	AF 3 days pay FR&I 149(1)(a
Field	10 Jul 44	Tpr		AA Sec 15(1) AWL from 2200 hrs 10 Jul 44 to 1300 hrs 13 Jul 44 Absent 2 days 15 hrs	Documentary	3 days C B	13 Jul 44	Lt H B Dalen	AF 3 days pay FR&I 149(1)(a
Field	15 Aug 44	Tpr		AA Sec 15(1) AWL from 0615 hrs to 0640 hrs 15 Aug 44 Absent 25 min	SSM McAllister J	5 days FP 5 days pay	15 Aug 44	Lt col HC Griffith	
Field	30 Jan 45	Pte		AA Sec 40 Neg to prejudice: failed to get haircut after being warned to do so	D76407 Sjt Craddock W B72941 Sjt Shipley CB	4 days CB (OVER)	30 Jan	Capt R Schwob A/Comd	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11 Mar 45	Pte		AA Sec 40 Conduct to prejudice: appeared on Guard mount with dirty rifle	D76407 Sjt Croaddock W	4 days CB	12 Mar 45	Major A H Lowe	
Field	22 Mar 45	Pte		AA Sec 15(1) AWL from 0830 hrs 22 Mar 45 to 0910 hrs 22 Mar 45 Absent 40 min	C21738 L Sjt Boucher JW	4 days CB	23 Mar 45	Major A H Lowe	
Field	2 Apr 45	Pte		AA Sec 15(1) AWL from 2200 hrs 2 Apr 45 to 0100 hrs 3 Apr 45 Absent 3 hrs	H67273 Cpl Massey TRR	7 days CB	6 Apr 45	Capt R Schwob	
Field	6 Apr 45	Pte		AA Sec 11 Neglecting to obey Guard Orders	D76936 Sjt Byrne J T	14 days CB concurrent with award of 6 Apr 45	9 Apr 45	Major A H Lowe	

CERTIFIED TRUE COPY

(Robert Schwob) Capt
OIC Regimental Records

4P-4

Cpl Dunlavey J

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M-20789 Cpl Jack DUNLAVEY 1 CASCRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A.15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under ~~sentence~~ for ~~beginning on (date)~~ (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To forfeit all Ordinary Pay for a period of Forty-Five (45) days.

(Sgd) Judge-Advocate, if any. 10 Jan 45 Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) NIL
(1. AA 57A. Delete if not used.)

(Sgd) R.K. Connelly Brig

Date 13 Jan 45 Commanding 1 Bde Gp CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
M-20789 Cpl Dunlavey, J. D.O. 14 & 17 Jan 45.	16 Jan 45	(R.J. Dufresne) Lt-col A/Cond No 1 Holding Wing 1 Cdn ASC Rft Unit

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Cdn. A.S.C. Reinf. Unit.

RECORDED AT CMHQ IN AB 160 4 Pa 4

PROCEEDINGS REVIEWED 25 JAN 1945 JAG BRANCH CMHQ

FIELD GENERAL COURT-MARTIAL

CFAAO 17(in lieu of AFAAO 40/P & R/1698 (8144a) 4/38B

Convened by Order of Brig A.B. Connelly Comd "B" Gp CRU dated 8 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-20789	Cpl	Jack	DUNLAVEY	1 CASCRU

PROCEEDINGS REVIEWED
Military Legal Staff
27 Jan 45
JAG'S OFFICE CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 10 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1215 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO~~ (2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~the~~ ~~interpreter~~? Ans

~~The Interpreter is sworn.~~(1) Do you object to P 22126 CPT & H SINCLAIR as shorthand writer? Ans NO
The shorthand writer is sworn.(2)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO, SIR
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-col	D.L. Redman VD.	HQ CRU
Member	CAPT	D.A. DRUMMOND	1 CARU
Member	A/T	J.H. KEARNS	1 CARU
~~Judge-Advocate~~			
Prosecutor	A/T	E.F. CAMACHE	1 CASCRU
Defending Offr	CAPT	A.G. HUDSON	"

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 23)

A8. The accused ~~pleads~~ (no) (~~a~~) plea before arraignment make(s) (no) (~~a~~) plea.(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13C, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is cleared and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto,* or, (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO, SIR.(5)
(*1. RP 37(B). 2. RP 37(D) fn 4. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) pleas(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(E). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (C).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(b).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(B).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (c), RP 42, 120(A). 2. AA 54(2), RP 42, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO, SIR.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(*1. MFB 255 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. (NOT AT PRESENT)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 15.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A., if any.~~(2)
(*1. When several accused tried conjointly see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 336, 563-566, Overseas RO 309, 1323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

H.Q. CRU.

10 Jan 45

IN REPLY PLEASE QUOTE
B.G.H.Q. 5-6-2/809

Comd
"B" Sp.

F.C.C.M. – 10 Jan 45
M. 26789 Cpl. Donlevy J.
1 CA SCRU.

Would you kindly note what the Dy Offr has said respecting the m/n.

2. The accused made a very good impression on the Court and says he wants a job where he can work all day and he looks like an NCO who could and would do a job

3. He is quite fit except that he cannot use his left arm for any heavy work.

4. There might be many admin jobs in the new 14 CITB he could fill. I respectfully draw this situation to your attention.

[signature]

Lt-Col
Pres of the Court

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-20789		Cpl	Jack	DUNLAVEY	1 CASCRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 8 Jan 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-col	D.L. Redman VD.	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by OC	1 CARU
Lieutenant	to be detailed by OC	1 CARU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(A.B. Connelly) (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Dat 8 Jan 45

Commanding "B" Gp Cdn Rft Units.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/F & S/1697 (6142)

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certif.
K.R. (Can) para 557

I certify that I have this morning examined No: M 20789.....

Cpl.....Dunlavey, J.....and in my opinion he is ~~unfit~~ fit to
(rank) (name)

undergo trial by Court Martial.

Station: Blenheim Bks

Date: 10 Jan 45

M Finkelstein Capt
(Medical Officer)
1 Cdn A.S.C. Rft Unit

PLEA IN MITIGATION OF SENTENCE

Cpl. Dunlavey hesitates to address the Court as this is his first experience with anything of this kind, and he is, frankly, nervous about speaking before the Court. However, having had Cpl. Dunlavey as a Section N.C.O. in 1940 and 1941 he has asked me to present his case.

The bare facts are as follows:

Enlisted 9 Sep 39 with I Cdn Div Amn Coy
Arrived Overseas 30 Dec 39.
Went into Sicily with 1 Cdn Div Tps Coy
Was wounded on the beach during the landings
in Italy and evacuated to 15 Cdn Gen Hosp
Philipville, and later to Basingstoke Hosp
for plastic surgery.

Why was this man sent up for 7 & M for 3 days' absence?

During April 1944 Cpl. Dunlavey was sent to 1 CASCHU from hospital and for a short time was employed on issuing petrol and oils. Whilst so employed he was perfectly contended, as he was occupied. But when this job finished due to a change in the system, and he was left with nothing to do he became very dissatisfied.

On several occasions he asked to be sent to Italy, France or even to a job with a Base Unit in this country or Canada. Presumably no jobs were open with Base Units and his category did not permit his return to a Field Unit.

Cpl. Dunlavey was interviewed regarding 30 day leave to Canada, but was never given an opportunity to fill out and sign an application. There is every reason to believe that had his application been submitted with the first lot called for, that he would not have gone a.w.l., and there is every chance that his length of service would have entitled him to this leave.

Cpl. Dunlavey states that he did not receive his present category as a result of a re-board, but merely on xxx as the result of an examination by one M.O. at Basingstoke Hosp. Perhaps the Court might be willing to recommend that this matter be investigated, with a view to raising his category, or if the injuries to his right arm are such as to permanently incapacitate him, lowering the category so that he might return home.

This offence is strictly a case of boredom, a disease which it is probably difficult to eliminate in a R.U., but I would ask the Court to consider the prospect which faced this man of an interminable period in a R.U. with no job to do, and apparently no hope of getting to either the Field, a Base Unit or back home. There is nothing worse for a man who has been active all his life xx than to be faced with endless days of idleness through no fault of his own. Cpl. Dunlavey stopped a bullet from a German plane on the beach in Italy and from xxxx xxxxx the time his medical treatment was finished the Army seemed to have no idea what to do with him. From April to December is a long time to be unemployed, living in uninteresting surroundings with no prospects of seeing a family which had been left behind five years previously.

I would ask the Court to deal leniently with this man, and, if it is within their scope, to make recommendations that an effort be made to get him home to Canada on leave, or suitably employed in this country.

E-3
My [illegible] Capt

SUMMARY OF EVIDENCE

IN THE CASE OF M.20789 Corporal Jack DUNLAVEY, RCASC, on strength of 1 Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st WITNESS (For the prosecution) Lieut. J.A.F. Bolduc, RCASC, on strength of 1 Cdn ASC Rft Unit, having been duly sworn states:-

I am Lieut, J.A.F. Bolduc, RCASC, on strength 1 Cdn ASC Rft Unit and I produce the following documents relating to the accused, whom I now recognize.

(a) Certified True Copy of an Extract from 1 Cdn ASC Rft Unit Part II Daily Orders, Daily Order No. 303 dated 23 December 1944, certifying that M.20789 Cpl. Dunlavey, J. absented himself without leave from 1 Cdn ASC Rft Unit at 2359 hours 20 December 1944. Marked Exhibit "A"

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS

J.A.F. Bolduc

(J.A.F. Bolduc) Lieut. RCASC

2nd WITNESS (For the prosecution) K.25840 Cpl. Hunter, W.E., RCASC, on strength of 1 Cdn ASC Rft Unit, having been duly sworn states:-

I am K.25840 Cpl. Hunter, W.E., a member of the regimental police at 1 Cdn ASC Rft Unit. At 0700 hours 3 January 1945 the accused M.20789 Cpl. Dunlavey, J, whom I now recognize, reported to me when I was on duty in charge of No. 1 Guard Room at 1 Cdn ASC Rft Unit. He informed me he had been absent. He was properly dressed and was sober. I placed him under close arrest immediately.

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS

W E Hunter

(K.25840 Cpl. Hunter, W.E.)

The accused was cautioned as follows. "Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

THE ACCUSED, M.20789 Corporal DUNLAVEY, J., RCASC, on strength of 1 Cdn ASC Rft Unit states:-

I enlisted 9 September 1939 and arrived overseas in December 1939. I went to Sicily and Italy and was wounded on the 3 September 1943. I returned to the United Kingdom on 3 January 1944. I came out of the hospital sometime in March 1944 and came back to 1 Cdn ASC Rft Unit with Category U3. This made me a base category, so I figured that this being so, and

having been away from my family for so long, I should be sent back to Canada in a base job there. If that wasn't possible I wanted to get out of the holding unit to Italy or France or a base unit in England. The Medical Officer would not agree to send me back to Italy or France. I haven't been given any work to speak of since I've been with the unit.

(M.20789 Cpl. Dunlavey, J.)

I hereby certify that the foregoing Summary of Evidence consisting of Two (2) pages was taken down by me in writing In The Field on this 4th day of January 1945 in the presence and hearing of the accused and that R.P. 4 (c) (d) (e) and (f) have been complied with.

(E.J.F. Gamache) Lieut. RCASC,
Officer detailed to take
the Summary of Evidence.

IN THE FIELD
4 January 1945.

Exhibit A

LAST DO NO 302 22 Dec 44

1 CDN A.S.C. REINFORCEMENT UNIT
CANADIAN ARMY OVERSEAS
DAILY ORDERS PART II
BY
COLONEL H.P. BONNICK, COMMANDING.

THIS DO NO 303 23 Dec 44

SECTION "B"

12. ABSENT WITHOUT LEAVE

(a) The u/m personnel are AWL from times and dates shown:

M.20789 Cpl Dunlavey, J. 2359 hrs 20 Dec 44.

Certified True Copy

(F.A. Cresswicke) Capt.,
Records Officer,
1 CdnA.S.C. Rft Unit.

Sgd E.G. Session, Lt.,
for (H.P. Bonnick) Colonel,
Commanding,
1 Cdn A C Rft Unit.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M.20789	Corporal	Jack DUNLAVEY	1 Cdn ASC Rft Unit

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.W.L. A.A. 15 (1) 3 times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

[illegible]

[illegible]

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for 6 days in military custody, *i.e.*, Nil days in open arrest, 6 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 39

6. The date of his attestation / calling up for military service 9 September 1939

7. The service which the accused is allowed to reckon is nil

8. The accused is in possession of‡ CVSM and clasp and 1939/43 Star wef 15 Jan 44.

‡State the military decorations or any held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of Corporal 5 July 1943.

In the war substantive rank of n/a

In the acting rank of n/a

EXB

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*28070) WL20721/2701 22,000 2/44 A.& S.W.Ltd. Gp.696

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		----- NIL -----		

Officer having custody of regimental books

E H Symmons, Capt.
(Offr IC Rgtl Books)
1 Cdn ASC Rft Unit
Canadian Army Overseas
10 January, 1945.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 10th day of January 1945

No M-20789 Name DUNLAVEY, J. | Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 9 Sep 39 | GC Badges | Service or Proficiency Pay | MFM 6 (A.F.B. 122) 40/P&R/156 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Jun 41	A/Cpl		AWL 2 1/2 hours AA Sec 15 (1)	Documentary	Reprimanded	1 Jun 41		
Field	2 Jan 43	Sgt		AWL from 2359 hrs 31 Dec 42 to 1700 hrs 1 Jan 43	Documentary	Severe Reprimand	2 Jan 43		Forf 1 days pay FR&I 149 (1) (a)
Field	1 Jun 44	Cpl		AWL from 1200 hrs 1 Jun 44 to 1830 hrs 1 Jun 44	Documentary	Admonished	1 Jun 44		Forf 1 dys py FR&I 149 (1)
				AWARDED 1939 -1943 STAR		D.O. 185 d 7 Aug 44.			
				CERTIFIED TRUE COPY FROM MFM 4 IN MY POSSESSION					

Capt
Officer i/c Records
1 Cdn ASC Rft Unit
10 January 1945

(PTO)

IN THE CASE OF

M.20789 Cpl. DUNLAVEY, J. RCASC

LIST OF WITNESSES FOR THE PROSECUTION

Lieut. J.A.F. Bolduc	1 Cdn ASC Rft Unit
K.25840 Cpl. Hunter, W.E.	1 Cdn ASC Rft Unit

LIST OF WITNESSES FOR THE DEFENCE

N I L

LIST OF EXHIBITS

"A" Certified True Copy of an Extract from 1 Cdn ASC Rft Unit Part II Daily Orders, Daily Order No. 303 dated 23 December 1944, certifying that M.20789 Cpl. Dunlavey, J. absented himself without leave from 1 Cdn ASC Rft Unit at 2359 hours 20 Dec 44.
Marked Exhibit "A".

TO WHOM IT MAY CONCERN

This is to certify that I, the accused, M.20789 Cpl. Dunlavey, J., have received one (1) copy of Charge Sheet and Summary of Evidence in connection with my forthcoming Trial by Field General Court Martial.

J Dunlavey

(M.20789 Cpl. Dunlavey, J.)

I, the accused, M.20789 Cpl. Dunlavey, J., desire the services of Capt. A.C. Hudson to defend me at my forthcoming Trial by Field General Court Martial.

J Dunlavey

(M.20789 Cpl. Dunlavey, J.)

KKK-98 (case #3)

PTE DUNLAY J.R.

See YY-87 for 1st case

" HHH-103 " 2nd "

3 D

(20)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-28734 Pte Dunlop, J.R. RCOC attd 4 Cdn Armd Div Sigs

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	GUILTY	
2nd	NOT GUILTY	NOT GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 463 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for 90 days Field Punishment beginning on (date) 31 Mar 44 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for one year.

(Sgd) Gordon N. Jermyn 14 Apr 44 (Sgd) W. D. Thrasher
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

- Confirmed -

I ~~direct that the accused be not committed to prison or detention barracks until further order~~. (1)
(1. AA 57A. Delete if not used.)

(Sgd) H. Brennan Lt Col
Date 15 Apr 44 Commanding CRASC 4 Canadian Div
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C 28734 Pte DUNLOP J.R.	18 Apr 44	A. H. Letourneau Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AS 160 KKK-98

FIELD GENERAL COURT-MARTIAL

CP Amn (to item of AFAH) 40/AFB B/1866 (10/43) 4/388

Convened by Order of Lt Col H. L. Brennan Cond R CASC 4 Can Armd Div dated 12 Apr 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-28734	Pte.	John Richard	Dunlop	RCOC attd 4 Cdn Armd Div Sigs.

PROCEEDINGS REVIEWED 28 May 44
R. Beaudoin Capt
REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS REVIEWED Date 18 Jun 44 D.J.A. Corps HQ 2 Echelon 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 14 Apr 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 6/44

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any~~ ~~as~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~as~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~as~~ amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~as~~) brought before the Court. At 1120 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~as~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court instead of being dealt with summarily by the CO.~~ (2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 562(c). Delete, if not applicable.)

A5. President to accused: ~~You are~~ ~~Are you~~ ~~Is accused~~ the accused? (1) Do you object to M-11936 S/Sgt Rhett F.W. as shorthand writer? Ans No Sir. The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No Sir. (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj.	H. Hawes	22 Cdn Armd Regt
Member	Capt.	G. D. Sherwood	22 Cdn Armd Regt
Member	Capt	H. H. Clarke	29 Cdn Armd Recce Regt
Judge-Advocate	Capt	G. N. Jermyn	HQ 2 Cdn Corps
Prosecutor	Capt	J. W. Rintoul	4 Cdn Armd Div Sigs
Defending Offr	Lt	D. H. Thomson	4 Cdn Armd Div Sigs

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 32.)

A8. The accused ~~as~~ before arraignment make(s) (no) ~~as~~ plea. (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~as~~ arraigned ~~on the~~ on all charges in the charge sheet.(1) The accused does ~~as~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~as~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B. E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing of witnesses see RP* 83-85; *withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 2. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No Sir.(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~a~~) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st and 2nd charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 1st and 2nd charge(s), ~~not allowed on the charge(s)~~ and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty on the latter charge(s)~~.
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. I do not wish to do either. Do you intend to call witnesses on your behalf? Ans. No Sir. Are they witnesses as to character only? Ans. N/A.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(B).*)

D8. The President announces the finding ~~is as~~ of Not Guilty, and states to the accused that the finding ~~is~~ of the Court on the 1 of charge ~~is~~ being subject to confirmation, will be promulgated later.(1) ~~On the 2 proceed to consider the sentence. The Court is closed to consider sentence.~~
(*1. AA 54(2) (d), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No Sir.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement ~~is~~ as to Character and Particulars of Service(1), and certified true copy ~~is~~ of Conduct Sheet ~~is~~, purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier ~~is~~ having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement ~~is~~ and Conduct Sheet ~~is~~ and in mitigation of punishment?(1) Ans. You can through my Defending Officer.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (2). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-56, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2113, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(3)(b), 48(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

CHARGE SHEET

The accused, C28734 Pte John Richard DUNLAY, RCOC att 4 Cdn Armd Div Sigs, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 18(4)
Army Act

WHEN ON ACTIVE SERVICE STEALING PUBLIC PROPERTY

in that he,

In the Field, between the dates 6 Nov 43 and 6 Mar 44 did steal approx 450 razor blades, public property on charge to QM Stores, 4 Cdn Armd Div Sigs.

Second Charge

Alternate Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,

In the Field, on or about 3 Mar 44 was improperly in possession of approx 450 razor blades, public property on charge to QM Stores, 4 Cdn Armd Div Sigs.

In the Field
10 Apr 44

(W.P. Shirreff) Lt Col
Comd 4 Cdn Armd Div Sigs

HQ 4 Cdn Armd Div

To be tried by FGCM

(M.L. BRENNAN) Lieut Col
C,RCASC 4 Cdn Armd Div

In the Field
12 Apr 44

Pres.

1762

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA43)
40-[illegible]97 (5/60)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 28734	Pte		John Richard	DUNLAY	4 Cdn Armd Div Sigs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 Apr 44 endorsed by me, ~~him, by an offr of my staff for that purpose~~ to be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable for delay the trial for reference to a superior qualified offr~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I have applied (or applied for three Offrs to form the Court) to a Fd Offr as President, for the reasons I have stated in writing.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	H. HAWES		22 Cdn Armd Regt

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	G.D. SHERWOOD		22 Cdn Armd Regt
Capt	to be detailed by OC 29 Cdn Armd Recce Regt		

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	to be detailed by OC Alq Regt		

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	O.H. JERMYN		Hq 2 Cdn Corps

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) Lieut Col (Rank.)

(M.L. BRENNAN)

Date 12 Apr 44

Commanding C,RCASC 4 Cdn Armd Div

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Unit 4th Canadian Armd

Squadron, Battery or Company Div Sigs

MORNING SICK REPORT

MEDICAL INSPECTION REPORT *

Station Brookhouse

Date April 14th 1944

A.F. B 256.

Army No.	Rank	Surname and Initials (M under name if married)	Completed years of Age	Completed years of Service	Religion	If for duty†	Whether a defaulter	Disease	Disposal Medical Officer's Remarks and Signature
29734	Pte	DUNLAY J.R.	30	4				I certify that I have examined this man this morning and he is fit for trial by General Field Court Martial.	
									Dunlay Cook Lieut DAMS
								M.I. Room	Sussex District H.Q.

* Strike out whichever is not applicable. † State nature of duty for which warned. In the case of men for medical inspection the reason such as "for trial by court martial" or "joining the Station," should be stated against their names. (P.T.O.)

D-3 First Witness for the Prosecution

Mr. W.J. Mace, Ardingly, having been duly sworn is examined by the Prosecution

Q.1. Will you identify yourself to the court giving your occupation and address?
A.1 I am William James Mace, my occupation is Confectioner, Tobacconist and Hairdresser, of High Street, Ardingly.
Q.2 Will you give your evidence in this case?
A.2 On the 3rd of March approximately 9:30 I heard a rap at my back door and on opening the door I found a soldier standing there and he said to me could you do with some razor blades and I said yes I could possibly handle a few. He came in and the soldier started taking out blades from his pockets and from inside his tunic. He laid them down on the table and as he was taking them out I said there were more there than I could handle. After he had got them all out I counted them up and I think there was six and a half dozen packets of fives. I did not notice what make of blade they were at the time and I agreed to pay him £3-15-0 for them which I did, I paid him £3-0-0 in notes and 15s in half crowns. That is all that happened on that night, I did not ask him where he got the blades, I thought they were his own property and I gave him a fair wholesale price for them. I don't think I have anything further to say.
Q.3 The following day someone called on you, what did he do?
A.3 He came in my shop but he took nothing away not that day.
Q.4 What happened the following day?
A.4 Police Constable Chatfield called again and collected the blades.
Q.5 On the 6th of April 1944 were you present at an indentification parade and asked if you could identify from a number of soldier, pick out the one who sold you the blades?
A.5 Yes I attended that parade.
Q.6 Did you immediately pick out the soldier?
A.6 No.
Q.7 Did you subsequently pick out the soldier?
A.7 Yes
Q.8 What made you feel that the man you finally picked out was the man who was in your home on the 3rd of March?
A.8 Chiefly by the tone of his voice, also his height and his complexion, I did not have a good view of the soldier on the night of the 3rd because he was not in my house more than four or five minutes and he was standing in the shade of the electric light.
Q.9 Do you see that soldier in the court room today?
A.9 Yes, the soldier sitting on my right.
Q.10 What is his name?
A.10 I don't know, he was an entire stranger to me, I did not see him from that date until the day of the parade.

Cross examined by the Defence

Q.11 You said this soldier was in your house approximately four or five minutes and did not stand in the light?
A.11 Yes
Q.12 Four days later you could not identify him on the parade yet now you are sure this is the soldier who was in your house?
A.12 Yes
Q.13 Did you question the soldier as to how he had obtained the blades?
A.13 No sir.
Q.14 Was there anything about them that would lead you to believe they were government property?
A.14 No
Q.15 Was there anything on them at all?
A.15 Yes the manufacturers name.

In the opinion of the court and the judge advocate it is not necessary to comply with the previsions of R.P.

THE WITNESS WITHDRAWS

Second witness for the Prosecution

Police Constable 195 Chatfield of Ardingly having been duly sworn is examined by the Prosecution

Q.1 Will you identify yourself to the court?
A.1 Charlie Chatfield, Police Constable 195 Sussex Police stationed at Ardingly.
Q.2 Will you give the court the evidence you have in this case?
A.2 On the 3rd of March last I received information that a soldier was attempting to sell razor blades. On the 4th of March I made inquiries and on the 5th of March I seized 450 razor blades, Minora blades from the local Hairdresser. These are the blades now produced.

Box containing 90 packets of Minora razor blades handed to the court, accepted by the President and marked Exhibit A.

On the 6th of March I visited a military unit stationed at Brookhouse, Ardingly to see the accused Cpl Dunlay in coy with Police Sgt Avis. I was unable to see him on that day. On the 17th of March I again visited Brookhouse and saw the accused. He was interrogated by Sgt Avis and in reply made a statement.
Q.3 In the interrogation of the accused was any offer held out to him that by admitting his guilt he would get off easier?
A.3 None whatever.
Q.4 Was any reference made that his evidence would be used in the prosecution of any civilian for either receiving or buying the military property in question and he would get off lighter?
A.4 The accused said something in the course of the interrogation and I am in civil law permitted to say what I like to him and to question him and the moment he says something it is my duty to caution him. He said something and I immediately cautioned him.
Q.5 Did you hold out to him that you were investigation the case and wished his evidence to prosecute some civilian?
A.5 None at all.
Q.6 What were the words of the caution?
A.6 I told him he would be reported for the offence and I asked him if he wished to make any answer to the charge. I told him he was not bound to answer the charge but whatever he said would be taken down in writing and given in evidence, then he said something.
Q.7 Was what he said entirely voluntary?
A.7 Yes sir.

Cross examined by the Defence

Q.8 Did you caution the accused before he made the statement or later?
A.8 He made a statement to me and immediately after he made that statement I cautioned him and he made an additional statement.
Q.9 Did he fully understand the caution?
A.9 Yes, I believe he did, it was quite clear.
Q.10 Was anyone else with you at the time?
A.10 Sgt Avis
Q.11 The statement was given quite voluntarily?
A.11 Yes, it is not suggested that I threatened him?
Q.12 No

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

The accused C 28734 Pte Dunlay, J.R. 4 Cdn Armd Div Sigs is called by the Defence in respect to the statement which is alleged to have been made to the Constable and having been duly sworn is examined by the Defence.

Q.1 Were you cautioned by ~~xhx~~ Constable Chatfield that anything you said would be taken down and used in evidence

A.1 No sir, not before he took it down.
Q.2 You were not cautioned at all before?
A.2 No sir.
Q.3 Was anything said or anything done to lead this statement from you or did you volunteer it?
A.3 No they came in and they had the razor blades they knew I sold them and they said they knew where there was a lot more stuff and knew where I sold it and what I got for it.
Q.4 Did they use this evidence particularly in attempting to get you to admit taking them?
A.4 They did, they said Mr. Mace would go over the road for it.
Q.5 You were cautioned that any statement which you might make would be used in evidence after you had made and signed a statement with regard to the razor blades.
A.5 Yes, I was told after.
Q.6 After being cautioned did you make any statement?
A.6 No sir, not after being cautioned.

Cross examinted by the Prosecution

Q.7 When the Police Constable came to question you on the 17th of March was there anyone else with him?
A.7 Yes sir, there was a Sgt Police with him sir.
Q.8 By whom was the questioning done?
A.8 It was done by both of them sir.
Q.9 Did they threaten you in any way?
A.9 They did in a way sir, I knew they were lying when they came in the room, they said they knew what I had done.
Q.10 You answered their questions?
A.10 I did sir, yes
Q.11 You were cautioned?
A.11 I was cautioned later sir.
Q.12 After what?
A.12 After I made a statement, definitely.
Q.13 Did you not make two statements?
A.13 No I did not sir he came down to get me to sign them later in the guard room sir, the police constable did sir.
Q.14 You were cautioned with words to the effect that anything you said would be taken down in writing?
A.14 I was cautioned and they said everything I had said was taken down in writing and would be used in evidence. The Police Sgt also said that he had all day if I wanted to stay there in the room.
Q.15 You are quite certain you did not make any statement?
A.15 I signed two statements and I was definitely warned after.
Q.16 You just said you signed two statements?
A.16 Yes sir, I signed my name twice, up here and down in the guard room.
Q.17 What did you sign in the guard room?
A.17 Something about tax
Q.18 What statement did yousign up here?
A.18 I signed two up here sir.
Q.19 You signed something while you were here and being questioned?
A.19 Yes sir

Questioned by the court

Q.20 You signed something in the guard room?
A.20 Yes sir, something about tax on the blades.
Q.21 You were cautioned here that anything you might say might be used in evidence and it was after that you signed something in the guard room.
A.21 I signed something about a tax sir.
Q.22 Up here it was a statement you made you signed?
A.22 That is right sir.
Q.23 That was after you were cautioned?
A.23 After I was cautioned I signed one down there the words he said were something about the tax on the blades.
Q.24 You were questioned by Constable Chatfield and Sgt Avis?
A.24 Yes sir.

Q.25 You were then warned?
A.25 I was sir.
Q.26 After that warning did you say anything?
A.26 No I cannot say as I did sir.
Q.27 Are you sure you did not say anything?
A.27 Not to that effect, there was a little bit of talk but nothing about that.
Q.28 After you were warned did you say anything that might be taken as a statement?
A.28 No sir, definitely not sir.
Q.29 During the questioning was there any threat made as towhat would happen if you did not make a statement?
A.29 Yes
Q.30 What was the threat?
A.30 They said if I told them the whole lot they would make it easier for me and after that they took it down, I did not know he was taking it down but he did.
Q.32 Was there any promise made to you that you would gain any benefit by making a statement?
A.32 Yes by getting off lighter if I said a whole lot, but spilling on the guys up there, yes sir.
Q.33 Who made this promise?
A.33 The Police Sgt sir.

In the opinion of the court and the judge advocate it is not necessary to comply with the previsions of R.P. 83(b)

THE WITNESS WITHDRAWS

Second witness for the Prosecution, Police constable Chatfield is recalled and questioned by the court

Q.13 Did either you or Sgt Avis tell the accused that if he made a statement he would in any way benefit by it by getting off lighter or anythimgto that effect?
A.13 Definitely not, it would be a great risk if I did after 30 years as a civilian policeman.
Q.14 You were present, can you answer for Sgt Avis in that regard?
A.14 I would prefer that Sgt Avis would answer that sir.
Q.15 You were there?
A.15 I was there definitely sir.
Q.16 Did either you or Sgt Avis say to the accused anything of this nature "that you could or would, that you had all day to question him as long as you wished?
A.16 I have no notes of that but in the interests of law I presume I can question a man as long as I like, I am no saying that it was not said but I have no notes of that.
Q.17 After the questioning the accused was cautioned, did he make a statement after that again?
A.17 He said something after he was cautioned and I made a note of it

The Defence declines to cross examine

The court is closed to consider as to the admissability of the statement alleged to have been made to P.C. Chatfield.

The court is re-opened and the court rules that the statement given after the caution is admissable.

Examined by the Prosecution

Q.18 Will you give the statement that the accused made to you after being cautioned?
A.18 The time was 1125 on the 17th of March he was charged with and cautioned, charged with stealing 500 razor blades, two pairs of W.D. boots, two sets of underclothing, three or four pairs of socks and one leather jerkin. He replied, I admit stealing the razor

blades and disposing of them, but the other things were my own property, it is not my own property it is issued to me and charged to me. That is signed J.R. Dunlay in my book.

Q.19 Do you recognize among the persons present the man whome you interviewed and who made that statement?

A.19 Yes the accused this man Cpl Dunlay as he was.

Cross examined by the Defence

Q.20 Could you identify these blades as being government property?

A.20 I would identify them as blades not on sale in this country or to the best of my knowledge.

Q.21 You could not identify them as government property?

A.21 I would say not as government property, they are a Canadian blade and I have never known them on sale in this country.

Questioned by the court

Q.22 In your statement before all this discussion whom did you say he sold them to?

A.22 To the barber William James Mace of High Street, we have only one barber.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Third Witness for the Prosecution

Sgt Avis, Police Sgt No. 21 stationed at Lindfield having been duly sworn is examined by the Prosecution

Q.1 Will you identify yourself to the court?

A.1 George Avis, Police Sgt No. 21 Stationed at Lindfield, Sussex Police force.

Q.2 Will you tell the court whether or not you were present with Constable Chatfield in a certain questioning?

A.2 I was present with Police Constable Chatfield in Ardingly on the 17th last month when I interviewed the accused.

Q.3 Do you recognize the accused among those present in this room?

A.3 I do (Identifies the accused)

Q.4 Did the accused make any statement to yourself and Constable Chatfield?

A.4 He made a statement after the caution was administered to Constable Chatfield.

Q.5 In your presence?

A.5 Yes sir.

Q.6 Did the constable take it down in writing?

A.6 That was taken down in writing and signed bythe accused.

Q.7 Can you tell the nature of the statement?

A.7 The statement confirmed what he had already said to me in the course of interrogation that he had taken a box of razor blades consisting of 100 packets each containing five blades from the Q.M. stores of this camp. After he made that statement to me he was cautioned and the statement he made after to Constable Chatfield I made no note of the words but it was what he had told me during the interrogation

Cross examined by the Defence

Q.8 Could you identify these blades as being government property?

A.8 No sir.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

~~EXAMINED~~ THE WITNESS WITHDRWAS

Fourth Witness for the Prosecution

B 32103 RQMS Collett, C.G., 4 Cdn Armd Div Sigs having been duly sworn is examined by the Prosecution

Q.1 Can you identify these blades before the court, can you tell me anything about them?
A.1 They are exactly the same type sir, as being issued by the Cdn government, the same as we have in the clothing stores.
Q.2 Will you tell the court in your own words any evidence you have in this case?
A.2 When the Police Constable came to the unit on the 6th of March they said a Cdn soldier had been attempting to sell blades in Ardingly. I had a stock taking made of the stores and checked it with the one of the previous January and checking that against the MFB 513 found there was a discrepancy of something over 120 packets of blades.
Q.3 Do you recognize the accused?
A.3 Yes sir, Pte Dunlay J.H. formerly Cpl.
Q.4 In what capacity was he associated with the unit?
A.4 He was the shoe repairer.
Q.5 Did he have access to the stores in question?
A.5 The blades are kept on a shelf in the stores and he could get in there.
Q.6 Why did he have access to the stores?
A.6 The system of boot repairs consisted of them taking them to the stores and the storeman would take them to the repairer and in the case where the boot repairer wanted to check on anything his entry to the stores would not be questioned by the storeman.

Cross examined by the Defence

Q.7 Can you identify these blades as having been in the stores?
A.7 No sir, there are no markes on them to differentiate between others sold back in Canada.
Q.8 What other people besides yourself and the storeman had access to the stores.
A.8 Any person in my troop, 4 tp, his entry would not be questioned sir.

Questioned by the court

Q.9 What type of blade was missed?
A.9 The only type we had in stores were Minora, we did have Gillett some time ago but not recently.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Motion by the Defence that there is no Prima facie case

I motion sir that they have not proved a prima facie case in that the ownership of the blades is not been proven. They are a type of blade common in Canada and could have been obtained by other means and it is only circumstantial that a quantity of blades is missing from the Q.M. stores. Other people also had access to the Q.M. stores.

Reply by the Prosecution

In reply to the Defence I might say that the prosecution has established that Pte then Cpl Dunlay among others had access to the Q.M. stores. The blades are not common blades in England and I feel that answeres the questions that the Defence has raised at this time

By the Judge Advocate

The question for the court at this time is whether or not the Prosecution has established a Prima facie case. Put shortly the question is not whether or not the accused is guilty as charged, but whether the prosecution has adduced evidence upon which the accused could be found guilty of the charge.

See D 4

D-6. Closing address of the Prosecution

In the evidence given by the various witnesses for the Prosecution I feel it has been firmly established that the blades produced to the court were the same type as those held in the Q.M. stores of 4 Cdn Armd Div Sigs, were in fact part of the blades held by that stores at one time and were the blades which the accused in his statement to the police constable and Sgt admitted stealing. The evidence adduced by the Defence in cross examination does not, I feel cause any reasonable doubt, and that the accused stole the razor blades which were public property. I submit that the evidence I have adduced is sufficient to prove the accused guilty of the first charge as read to him by the court.

Closing address of the Defence

I submit that the ownership of the property in question has not been clearly proven. The blades are a common type in use in Canada and a type in common use in the Canadian Army in England. The fact that some other type or similar type is missing from the Q.M. stores of 4 Cdn Armd Div Sigs does not prove that the blades submitted as evidence were taken from the Q.M. stores. The first witness Mr. Mace was unable to indentify the accused immediately as being the soldier who sold him the blades. The soldier was talking to him for a matter of four or five minutes and a time period of three or four days elapsed before he identified him. I feel that it has not been proven that the accused was actually the soldier who sold the blades.

The Judge Advocate sums up

The court is the sole judge of the facts and of the credibility of the witnesses. I think I need not review the whole evidence but if in this summing up I should mention any of the evidence the court must not take such mention as an indication of my opinion either as to the credibility of the witnesses or the weight to be given to the evidence. The accused is charge with (reads charge) and as a second alternative charge(reads charge). I would point out to the court that the accused cannot be found guilty of both these charges. He may be found guilty of the first or of the second or he may be found not guilty of both. The accused is charge with stealing 450 razor blades public property. The definition of theft is set out in page 118 MML (reads). It is necessary for the prosecution to establish in order that the court may find the accused guilty of the first charge, that the accused without any right, took 450 razor blades which were public property and that at the time he took them he intended to permanently deprive the owner of the blades. The questions to be answered by the court are, did the accused take the razor blades, are these the razor blades which the accused took, and coupled with that, are these blades public property. The difference between the first and second charge is merely this, that to find the accused guilty of stealing the court must find, as to the fact that he intended when he took the blades not to return them, whereas, to find the accused guilty of the second charge, the court need not find such intent. To find the accused guilty of the second charge the court must be satisfied that on the 3rd of March the accused was in possession of razor blades which were public property and that there was something improper in that possession. The court must always keep in mind two cardinal principles

of English law, first, that every man is presumed to be innocent until he is proved to be guilty, and second, that he who alleges a fact must prove it whether the allegation is couched in affirmative or negative terms, and lastly, I would remind the court that the burden is always on the prosecution to establish the guilty of the accused beyond reasonable doubt. To warrant an acquittal on the grounds that the Prosecution has not established its' case beyond reasonable doubt, that doubt must not be light or capricious, it must be such a doubt as a calm view of the whole evidence and reasonable understanding would suggest to an honest heart.

Is there anything else you wish me to say Mr. Defending Officer

No sir.

And you Mr. Prosecutor

No sir.

Terms of sept
J. A.

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Mitigation by the Defending Officer

I would like to bring to the attention of the court the conduct sheet of the accused. He has only one crime that is one of absence without leave and no other record of previous crimes whatsoever.

I, C28734 Pte Dunlay, J.R. desire to have an officer assigned to represent me at my trial by Court Martial.

I desire the services of Lt D.H.Thomson if he is available.

C28734 Pte Dunlay, J.R.

LIST OF EXHIBITS

In the case of C28734 Pte Dunlay, J.R.

"A" - Box of Razor Blades.

(G.G. Thomson) Capt
Adjt Sigs 4 Cdn Armd Div

Signed In the Field
10 Apr 44

SUMMARY OF EVIDENCE

In the case of C28734 Pte (formerly Cpl) Dunlay, J R , R C O C att 4 Cdn Armd Div Sigs. A soldier of the Canadian Army placed on Active Service charged with:-

1. Stealing public property, or Alternately
2. Improper possession of public property.

The Commanding Officer directs that evidence be taken on oath .

The accused has his rights with reference to the taking of a Summary of Evidence explained to him.

First Witness

Mr William James Mace, tobacconist and barber, Ardingly, Sussex being duly sworn states:

"At approx 9.30 in the evening of 3 Mar 44 there was a knock at my back door. On opening the door there was a soldier there who asked me if I could do with a few blades. I did not know him but asked him in and said that I could do with a few and asked him how many he had. He removed packages from his coat and from inside his tunic. We counted the packages and there were 450 blades that is 90 packages each containing 5 blades. I said there were more than I could handle but agreed to purchase the lot at 10d per package and paid the soldier £ 3.15.0 in cash. I did not ask the soldier how he had obtained these blades. On the following day P.C. Chatfield called at my shop and asked me if a Canadian Soldier had offered me 200 blades. I said "Yes" and told him I had purchased 450 blades. He suggested that he take charge of the blades which he did. "

Q. "At an identification parade held on 6 Apr 44 were you immediately able to positively identify the accused person as the Canadian Soldier who sold you the blades."

A. "No."

Cross examined by the accused.

Q. "Are you sure that I am the soldier who sold you the blades in question?"

A. "Yes. I remember the features of the man, his approx height and also the tone of his voice."

W. J. Mace.

(W J Mace)

Second Witness

P C 196 Constable Chatfield, Sussex Police Force stationed at Ardingly Sussex being duly sworn states:-

"On the 3 Mar 44 I received information of a Canadian Soldier attempting to dispose of razor blades . On the 4 Mar 44 I made inquiries and ascertained that a quantity of blades had been purchased by the local hairdresser Mr William Mace. On the 5 Mar 44 I seized the blades which I now produce. On the 6 Mar 44 I visited Brookhouse accompanied by Police Sjt Avis for the purpose of interviewing Cpl Dunlay of the RCOC att RCCS. I was unable to see him. On the 17 Mar 44 I again visited Brookhouse accompanied by Police Sjt Avis and interviewed Cpl Dunlay. He was interogated by Sjt Avis and was eventually cautioned and told that he would be reported for stealing 500 razor blades and other articles. He replied " I admit stealing the razor blades and disposing of the other things which were my own property. It is notmy own property, it is issued to me and charged to me." This statement he signed in my notebook .

Second Witness (Contd)

Q. "Can you give me the words of the caution you used?"

A. " Yes I warned him anything you say will be taken down in writing and might be used in evidence. You need not say anything unless you wish to."

Q. "Do you recognize the accused person here as Cpl Dunlay and the soldier you questioned on the 17 Mar 44? "

A. "Yes, definitely."

Cross examined by the accused.

Q. "Why did you personally come to visit me on 6 Mar 44? "

A. "From information received and as the result of my inquiries."

C. Chatfield PC 195

(C Chatfield) P C 195

Third Witness

Police Sjt Avis Sussex Police Force stationed at Lindfield Sussex being duly sworn states:-

"On the 17 Mar 44 I interviewed the accused in company with PC Chatfield of Ardingly. I told him the nature of my inquiry and questioned him. [redacted] He was then cautioned in my presence by PC Chatfield and he made a reply of which I did not make a note but was to the effect confirming what he had already said."

Q. "Do you recognize the accused person as Cpl Dunlay and the soldier you questioned on the 17 Mar 44? "

A. "I do."

Cross examined by the accused.

Q. "Do you have down in writing my statement that I sold 40 packets of blades to Mr Mace".

A. "No."

(Avis) Pol Sjt 21

Fourth Witness

B32103 RQMS Collett, C G 4 Cdn Armd Div Sigs being duly sworn states:

"On or about 18 Jan 44 I had the storeman in charge of clothing stores make a complete stock check of all clothing and equipment in stores at that time. This check included razor blades . When informed by the civilian police that razor blades had been offered for sale by a Canadian Soldier I had a check of the stock of razor blades made. This was on 6 Mar 44. I checked the quantity then in stores against our issues as recorded on our copies of MFC 513 and compared this figure with that given by the clothing storeman. There was a deficiency of approx 120 packets of razor blades."

Q. "Did Pte (then Cpl) Dunlay have access to clothing stores?"

A. "As a member of "Q" Tp and doing the shoe repair for the unit his right to clothing stores was not unduly questioned."

Fourth Witness (Contd)

Q. "Can you name the type of blades that you have in Q M Stores?"

A. " Yes, MINORA blades."

P C Chatfield on request produced the blades which he holds.

Q. "Do you recognise these blades as being of the same kind as the ones held in clothing stores?"

A. "Yes Sir."

Cross examined by the accused.

Q. "Did you not arrange for shoes to be brought to the shoe shop for repairs rather than have me call at clothing stores for them?"

A. "This arrangement was made at some date subsequent to 18 Jan 44 but did not prevent you from entering clothing stores."

C G Collett

Question to the accused: (C G Collett) RQMS

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

A. "I have nothing to say."

I certify that Rules of Procedure 4(C) (D) (E) and (F) have been complied with.

Taken down by me in the presence of the accused in the Field this 10 day of Apr 1944.

J W Rintoul

(J W Rintoul) Capt
4 Cdn Armd Div Sigs
Officer taking Summary of Evidence

Exhibit "C"

No C 28734 Name Dunlay, J.R. Sqn, Battery, or Company Corps R.C.C.S. Date of enlistment 13 Dec 40 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet Nil No and date of last drunk Nil Period not reckoning towards freedom from extra fine Nil Sheet No One Signature OC Company, etc for Character J.D. Pitman Lt.Col.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	6 Mar 20 Mar	44 Cpl 44 Cpl		AA Sec 15(1), AWL for 9 days 11 hrs and 10 mins and AWL for 17 hrs and 15 mins	Documentary Sgt MacLeod, AH	Reduced to the Ranks and to suffer fp for 90 days and to forf all ordinary pay for 90 days and placed under stop of pay to make good 5s.10d. cost of apprehension and ret.	Finding and Sentence of FGCM confirmed by MAJ GEN on 31 Mar 44.		4 Cdn Armd Div

Certified True Copy from the Regimental Books in my Custody

R.J. Letourneau

(R.J. Letourneau) Capt.,
Sigs 4 Cdn Armd Div
10 Apr 44.

(PTO)

Exhibit "B"

M.F.B. 355
H.Q. 1772-39-620
10M-8-40 (M19)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C28734	Pte	Dunlay, J.R.	RCOC Att Sigs 4 Cdn Armd Div

1. The following is a fair and true summary of the entries in the Field [redacted] Conduct sheets [redacted] of the accused, exclusive of convictions by a Court-Martial or a Civil Court, [redacted] of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For Under AA Sec 15(1)	one time	times
For	times	times
For	times	times
For	times	times

[redacted]

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has been previously convicted by Field General Court Martial under AA Sec 15 (1) Absence without leave

Previous convictions of the accused by a court-martial [redacted]

3. [redacted]

The accused at the present time is under sentence for 90 days FP beginning on the 31st day of March 44

4. The accused has been in confinement awaiting trial on the present charges, [redacted] 21 days in military custody, [redacted]

5. The present age of the accused according to his attestation paper is 30

6. The date of his attestation specified in his attestation paper 13 Dec 40

7. [redacted]

8. [redacted]

9. The accused is in possession of and entitled to one military reward [redacted] State any military reward. Volunteer Service Medal

10. [redacted]

11. ~~(In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit ~~dated~~ ~~, and in his regiment (or corps), the rank of~~ ~~dated~~

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

22 Dec 41 Date of promotion.

In the rank of Cpl 2 years.

In the rank of ..... years.

In the rank of ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number C28734 Rank Pte (formerly Cpl)

Name Dunlay, J.R. of RCOC att 4 Cdn Armd Div Sigs Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
Field General Court Martial	In the Field 31 ~~Jan~~ Mar 44	AWL AA Sec 15(1)	Reduced to Pte 90 ds FP 90 ds Forf of Pay	n.a.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day of Apr 44 [signature] Capt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

COUNTER NUMBER 56145 3

HOUR 15.50

OPERATOR'S INITIALS HMB

RELIEVING OPERATOR

YY-87

CPL DUNLAY JR

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C23734 Cpl. John Richard Dunlop

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Not Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; Findings on alternative charges see MML p 482 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of Kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

(Sgd) W.A. Dunn Wozr — Rome 30, 1943 — (Sgd) J.W. Claywood Brigadier — President (RP 45, 50)

Judge-Advocate, if any. — Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals requisite to confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Noted

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) F.F. Worthington

Date ..... Commanding ..... Lt Col 10th Inf Bde

Confirming Officer.

DEC 20 1943

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FY-87

FIELD GENERAL COURT-MARTIAL (CPA96 (In lieu of AFA2) 40 P.M.O.1608 (2804))

Convened by Order of Brig H.E. Hodgson A/Comd 4 Cdn Armd Div dated 29 Nov 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 208, 328, 330.)

Number.	(a) Pmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C23734	Cpl.	John Richard	Dunlop	ACC 4 Cdn Fd Amb Div Sigs

PROCEEDINGS REVIEWED

W.A. Dunn Lieut.

13 Mar 44

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 30 Nov 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereinin. See back of Convening Order, CF A95, for notes and instrs on how to record addresses, evidence, etc, which instrs are hereinafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1359 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to be tried by me as President or by any of the Members of the Court?~~ ~~Do you object to the Interpreter?~~ Are ~~you subject to the Interpreter?~~ Ans ~~The Interpreter is sworn.~~(1) [Do you object to W/4343/Sgt Elliott] as shorthand writer? Ans No. The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(E). If objection, see procedure AA 51, RP 15, 71, 76, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.W. Claywood 15 Cdn Fd Regt RCA
Member	Capt	J.A. Clarkson 4 IAD 4 Cdn Armd Div
Member	Capt	H.A. Dawson 4 Cdn Armd Bde Coy RCASC
Judge-Advocate	Major	W.A.D. Dunn HQ 4 Cdn Armd Div
Prosecutor	Capt	R.J. Letourneau 4 Cdn Armd Div Sigs
Defending Offr	Lt	J.C. Rintoul 4 Cdn Armd Div Sigs

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and (D) 2 were not followed. See D1 p 3.)

A8. The accused Cpl John Richard Dunlop before arraignment makes(s) (~~are~~) no X plea. (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13, RP 37), or the case of several accused charged jointly as the strictest judgment (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded over Notes. For forms of record see references in fns to RP cited. Insert in A8 read and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 113. See para 1 of Insets p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~adjourned and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ~~4~~ 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*B*) (*D*) *and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *see of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 1. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 2, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No thanks .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~not~~) (no) opening address.(1) WRT
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is reopened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s); and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans No thanks Do you intend to call witnesses on your behalf ?
Ans If necessary Are they witnesses as to character only ? Ans No thanks
(1. *RP* ~~115~~ 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, B6(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened. WRT
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the findings of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)~~

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(1. *AA* 54(3) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, (*c*). *This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form* B *or* C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFR* 255 *or AFB* 294. 2. *MFR fn* 6. 3. *RP* 46, *KR Can* 538. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2) NJD WRT
(1. *When several accused tried separately see RP* ~~120~~. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 1323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), (*d*)(*i*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused C 28734 Cpl John Richard DUNLAY, RCOC att 4 Cdn Armd Div Sigs, a soldier of the Canadian Army Overseas is charged with, when on active service:-

First Charge
Sec 37
Army Act

STRIKING A SOLDIER

in that he
in the Field on 16 Nov 43 being a non commissioned officer did strike a soldier namely B 110204 Sgmn Beaver, T.

W P Shirreff 28 Nov

(W.P. Shirreff) Lt-Col
Comd 4 Cdn Armd Div Sigs

In the Field
29 Nov 43.

J. Wolfgward
Major
President
Wox Gunn wage
Judge advocate

HQ 4 Cdn Armd Div

To be tried by F.G.C.M.

M.E. Rodger

(M.E. RODGER) Brig
A/Comd 4 Cdn Armd Div.

In the Field
29 Nov 43

FIELD GENERAL COURT-MARTIAL

CFA 35 (Ir. Rvn of AFA3)
801/FA3/1697 (2668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 28734	Cpl		John Richard	DUNLAY	RCOC att 4 Cdn Armd Div Sigs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 29 Nov 43 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". 12R

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial, ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~ 12R
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto~~. 12R
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	J.W. AYLWARD	15 Cdn Fd Regt RCA	

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	J.A. CLENDINAN	No. 4 LAD 4 Cdn Armd Div	
Capt	H.A. DAWSON,	4 Cdn Armd Bde Coy RCASC	

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	J.S.L. KING	HQ RCE 4 Cdn Armd Div.	

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Major	WAD GUNN	HQ 4 CDN ARMD DIV	

On Active Service in the Fd

In England (Country.)

Date 29 Nov 43

J. Rodger (Signed personally RP 105 fn 2)
(N.E. RODGER) Brig (Rank.)
A/ Commanding 4 Cdn Armd Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2692.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr *(RP 95(C))*, any objections *(RP 95(B))*, and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte ... (with belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. *(RP 95 fn 1.)* If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. *(RP 122.)* If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. *(RP 86(C), 87(C), 92(C) (D).)*

(ii) All option of accused, statement by accused *(not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10).)*, or evidence by accused, as to facts or his character or both. *(See RP 41 fn 3, 46 fn 1; 80.)*

(iii) Evidence of witnesses for accused as to facts or his character or both. *(See RP 46 fn 1.)*

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court *(RP 86(B))*, or to prove previous convictions when accused has called witnesses as to character. *(RP 86(C).)*

(v) Closing address (on matters other than in mitigation of punishment) by Defending Offr or accused. *(See RP 40 fns 8-12, 87(C), 92(C) (D).)* But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. *(When accused charged jointly see RP 61.)*

(vi) Closing address by Prosecutor. *(See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 562(a).)*

(vii) Summing up by JA, if any. *(RP 42.)*

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). *(KR Can 547.)*

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. *(As to admitting in evidence a certified copy in lieu of original see KR Can 586. As to certified copies of regimental books see AA 163 (1) (g) (h).)*

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. *(RP 95(D).)* A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. *(AA 53(3), RP 113(C), MML p 759.)*

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

M.O's CERTIFICATE

I CERTIFY that C 28734 Cpl DUNLAY, J.R., RCOC att 4 Cdn Armd Div Sigs is FIT/~~UNFIT~~ to undergo trial by Court Martial.

30
~~X~~ Nov 1943

Medical Officer.

First Witness for the Prosecution

B 110204 Sgmn Beaver, T. 4 Can Armd Div Sigs being duly sworn is examined by the Prosecution

Q.1 Give your name, number, and unit to the court?
A.1 B 110204 Sgmn T Beaver, 4 Can Armd Div Sigs.
Q.2 Do you recognize the accused on your right?
A.2 Yes sir. (Identifies the accused)
Q.3 Will you give in your own words what you know concerning this case?
A.3 On the night of Nov 16th at approximately 1130 Cpl Dunlay came into the hut with an axe which belonged on the truck which was used on schemes and which I had in the hut for the purpose of cutting wood. That day it was not in the hut and he came in with it and woke me up and said here is your axe. I told him to set it down by the side of the bed so he would not, so I took it. He brought this axe and said Beaver here is your axe and I told him set it down and he set it down on the bed and I picked it up and set it on the bed. Then he went away and came back right away and pulled the covers off me. He told me to take a bath, I don't know why he said that. I told him to go away and quit bothering me then he came back and pulled them off again and I jerked them back up and that is when he struck me across the face. He was going to start again and Sgmn McGrath who had come in a few minutes before and he told him to leave me alone. That is my evidence sir.
Q.4 Does Cpl Dunlay live in the same hut as you?
A.4 He did at that time sir, he does not now he stays in his shop.
Q.5 Did Cpl Dunlay appear to be normal or appear to have anything wrong with him at the time.
A.5 He seemed allright only he was in a bad mood that was all.
Q.6 Just how did he strike you in the face?
A.6 He pulled the covers off and I jerked them back and when I jerked them back he hit me.

Cross examined by the Defence

Q.7 The first time Cpl Dunlay came up to your bed how did he wake you?
A.7 He put his hand down and said Beaver.
Q.8 Did he pull the blankets off you that time?
A.8 No sir.
Q.9 Did he lay the axe down immediately?
A.9 When I told him to lay it down he would not so he dropped it on the bed and I put it over on the other side.
Q.10 Did he pull the blankets off you before you put the axe on the other side of the bed?
A.10 No sir.
Q.11 Did he reach towards you as though to pull the blankets off just before you reached for the axe?
A.11 I don't think he had any intention at that time to pull them off.
Q.12 You say he told you to take a bath?
A.12 Yes sir.
Q.13 He did not add in the morning?
A.13 I don't know, I know he told me totake a bath.
Q.14 Did he not tell you to take a bath in the morning?
A.14 He told me to take a bath and change my underwear, my underwear was dirty, I had spilled cocoa all over my clothes.
Q.15 Did you not understand him to take a bath later or to get up and take a bath?
A.15 He told me to take a bath.
Q.16 You don't know when?
A.16 No.
Q.17 Did he slap you with the open hand or closed?
A.17 Open hand.
Q.18 Right or left?
A.18 Right hand.
Q.19 In the hut where you live how many beds are there in the hut?
A.19 I could not tell you offhand, about 15 or 20.

WDT

Q.20 Looking at the hut from where you normally enter, where is your bed?
A.20 My bed is on the left hand side as you enter three beds from the far end.
Q.21 Where is Sgmn McGrath's bed?
A.21 He was this way second bed from me towards the door on the left hand side.
Q.22 Where is Billington's bed?
A.22 The opposite side of the room about a bed over on the other side, he sleeps on an angle with McGrath.
Q.23 Where is Dunlay's bed?
A.23 Just as you come in the hut on the right hand side.
Q.24 Where is McGonigle's bed?
A.24 On the left hand side further down.
Q.25 Right next to you?
A.25 Yes sir.
Q.26 How many lights are in this hut?
A.26 Three sir.
Q.27 Are they bright lights?
A.27 They are the same size as that. (Refers to lights in the room)
Q.28 Were they all on?
A.28 Yes sir.
Q.29 You say McGrath came in and told Dunlay to leave you alone and go to bed, where was he standing?
A.29 He was sitting on his bed he had just come in from a run.
Q.30 You say he is only two beds away?
A.30 Yes sir, towards the door.

Questioned by the court

Q.31 After you said you had been slapped across the face you made mention about asking Cpl Dunlay to go away and said he was starting in again?
A.31 Sir, he came over to me again and that is when Sgmn McGrath told him to leave me alone, and he said O.K. Mac, O.K. Mac.
Q.32 Did he make any motion to strike you that second time?
A.32 No sir.
Q.33 In the hut McGrath's bed is the second bed from you towards the door?
A.33 Yes sir.
Q.34 Billington sleeps across the hut from you, is his bed closer to the back of the hut than McGrath or closer to the door?
A.34 The witness draws a diagram of the sleeping arrangements in the hut, which is tendered to the court, marked Exhibit A and signed by the President.
Q.35 Who was next to you on the other side?
A.35 Sgmn Kurt sir.

Kurt Re examined by the Defence

Q.36 You are sure that there was not an empty bed there, one of the men being on leave, there is not an empty bed and then Kurts'?
A.36 Kurt and McGrath are right next to me I know that.
Q.37 What did you say to Cpl Dunlay the next morning when you were going on parade?
A.37 I was hut orderly and we all got up late the orderly Sgt did not wake us up and he told me to go on parade and I told him I was hut orderly and I was going to clean the hut and he said I am ordering you out on parade. He blamed me for the trouble and I never even started it, I got sore but I did go on parade.
Q.38 Did you say you started something, now I will get you?
A.38 No I did not, I told him I would report him to the R.Q.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Kurt

Second Witness for the Prosecution

D 116395 Sgmn McGrath, D.L., 4 Can Armd Div Sigs being duly sworn is examined by the Prosecution

Q.1 Will you give your number, rank, name to the court?
A.1 D 116395 Sgmn McGrath, D.L.
Q.2 Do you know the accused?
A.2 I do sir, (Identifies the accused)
Q.3 On the 16th of Nov did you live in the same hut as Cpl,Dunlay and Sgmn Beaver?
A.3 I did sir.
Q.4 What were you doing about 11 o'clock that night?
A.4 On was on a trip to Haywards Heath.
Q.5 What time did you get back?
A.5 Approximately 2330 hrs sir.
Q.6 Did you go to your hut?
A.6 Yes sir.
Q.7 Can you give us in your own words what you saw?
A.7 I proceeded into the hut and there was an argument going on between Dunlay and Beaver and I did not think anything of it until Cpl Dunlay pulled the blankets off Beaver and struck him across the face and then I said leave him alone which he did.
Q.8 Were the lights fairly bright in the hut?
A.8 They were on sir.
Q.9 Could you see clearly?
A.9 Yes sir, very well.
Q.10 Did Cpl,Dunlay appear to be normal or seem to have anything wrong with him at the time?
A.10 I did not notice that sir.

Cross examined by the Defence

Q.11 In the hut how many beds are there?
A.11 Approximately 13.
Q.12 There are 13 to 14?
A.12 Yes sir, 6 on one side and 7 on the other.
Q.13 Where is your bed as you come in?
A.13 The second bed on the left as you come in.
Q.14 Is there a bed next to you towards Beaver?
A.14 Yes sir, Kurts.
Q.15 Are there any other beds between Kurt and Beaver?
A.15 Yes, I believe the man is on leave.
Q.16 Where is McGonigle's bed?
A.16 On the other side of Beaver.
Q.17 Where is Billington's bed?
A.17 Opposite Kurt's.
Q.18 Where is Cpl Dunlay's bed?
A.18 In the corner as you come in the door on the right.
Q.19 How many lights are in the hut?
A.19 Three lights sir.
Q.20 What size?
A.20 I have no idea sir.
Q.21 Are they as big as that? (Refers to lights in room)
A.21 I think they are bigger than that.
Q.22 When you came in the door you went no further than you own bed?
A.22 No sir.
Q.23 How did you know an argument was going on?
A.23 I could hear it sir.
Q.24 How do you know it was an argument were they arguing with you?
A.24 They were not arguing with me.
A.25 You came in and found Cpl Dunlay beside Beaver's bed and assumed it was an argument?
A.25 It was an argument I heard then, they were talking about a bath I know.
Q.26 Was Cpl Dunlay's back to you?
A.26 He was standing like this, with his left side towards me.
Q.27 Where were you standing when you told Dunlay to leave him alone
A.27 I was standing on the side near the door.
Q.28 You were standing not sitting?
A.28 No sir.

Q.29 Did you see Dunlay pull the blankets off?
A.29 I did.
Q.30 Was that as you came in the door?
A.30 No sir.
Q.31 When was it?
A.31 It was a few minutes after I came in.
Q.32 You were still standing beside your bed?
A.32 Yes sir, I was reaching down for a cigarette and when I straightened up just then Dunlay pulled the blankets off and struck Beaver.
Q.33 Did you see Beaver reach down to pull them up?
A.33 I did sir, that is when he did it.
Q.34 Was his hand open or closed?
A.34 I could not say for sure.
Q.35 Did he swipe at him this way?
A.35 It seemed to be this way.
Q.36 Struck him like this?
A.36 Yes sir, with his hand.

Questioned by the court

Q.37 What hand did you say this man was struck with?
A.37 Right hand sir.
Q.38 What is the distance in feet from where you are to where Beaver was lying in bed?
A.38 About 8 ft sir.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Third Witness for the Prosecution

B 32390 Sgmn Billington, S., 4 Cdn Armd Div Sigs, being duly sworn is examined by the Prosecution.

Q.1 Will you give your name and number to the court?
A.1 B 32390 Sgmn Billington, S.,
Q.2 On the 16th of Nov did you live inthe same hut as Cpl Dunlay and Sgmn Beaver?
A.2 Yes sir.
Q.3 Would you please tell the court what happened in the hut that night?
A.3 At approximately 2330 hrs Nov 16 Dunlay came into the hut and started an argument with Beaver about an axe. He took the axe over to Beaver's bed, Beaver was sleeping at the time, and he said Beaver, here is your axe. Beaver woke up and said I don't want it. Cpl Dunlay said here it is anyway and put it on his bed. Beaver put the axe on the other side of thebed, then Cpl Dunlay snatched the blankets off and said Beaver you must take a bath and Beaver said I don't need a bath, I had one two or three days ago, and he pulled the clothes back on. Dunlay tore theclothes off again and told him to take a bath again. Beaver said again he did not need one and Dunlay tore the clothe off again and Beaver pulled them back and Dunlay struck him in the face. During this time McGrath came into the hut from a run to Haywards Heath and saw this going on and he told Dunlay to lay off which he did.

Cross examined by the Defence

Q.4 As you enter the hut where is you bed?
A.4 On the right hand side.
Q.5 How far up?
A.5 I would say about 6 or 7 yds.
Q.6 Which bed is it?
A.6 Mine is the second bed as you come in.
Q.7 Where is Dunlay's bed?
A.7 He is next to mine.

Lost

Q.8 Where is Beaver's bed?
A.8 It is on the other side at the far end.
Q.9 Where does McGrath sleep?
A.9 On the other side directly opposite me.
Q.10 How many beds are there between Beaver and McGrath?
A.10 There is Kurts and an empty one sir, the fellow is away on leave.
Q.11 How many beds are there altogether?
A.11 10 or 11 sir.
Q.12 Supposing Beavers bed was on the same side how far away would it be?
A.12 About 5 or 6 yds, they are rather close together.
Q.13 How far from Beaver's bed is the end of the hut?
A.13 There would be about 2 yds.
Q.14 Cpl Dunlay entered the hut first when?
A.14 Approximately 2230 hrs.
Q.15 Did you in company with Dunlay and McGonigle leave the hut after that time?
A.15 Yes sir.
Q.16 What time did you come back?
A.16 I came back about 15 mins after that.
Q.17 Were the other two with you?
A.17 No sir.
Q.18 You were in the hut when they came in again?
A.18 Yes sir.
Q.19 What time was that?
A.19 That would be 2315 somewheres about that.
Q.20 You started out by saying 2330?
A.20 That was the time the actual striking took place.
Q.21 Were you in bed?
A.21 Yes sir.
Q.22 Was Dunlay's back to you?
A.22 At an angle sir.
Q.23 How many lights are there in the hut?
A.23 Three sir.
Q.24 Were they all on?
A.24 I believe they were.
Q.25 Are they as bright as that?(Refers to lights in room)
A.25 I think so sir.
Q.26 You say there was an argument what went on?
A.26 I just heard him say here is that axe you were looking for.
Q.27 How did he wake Beaver?
A.27 He walked up to the bed and shook him.
Q.28 Did he pull the blankets off him?
A.28 Not right then sir.
Q.29 How many times did he pull them off?
A.29 I believe three times sir.
Q.30 The first time he pulled them off did he say take a bath and change your underwear?
A.30 The first time he said take a bath and the second he told him to change his underwear.
Q.31 Were you watching all that went on?
A.31 Yes sir.
Q.32 Are you prepared to swear that all this happened?
A.32 Yes sir, definitely.
Q.33 Where was McGrath when he told him to leave him alone?
A.33 Standing beside his bed.
Q.34 How far would he be from Beaver?
A.34 The same distance as me sir, I would say 6 or 7 yds, but I could not swear I have never measured it.
Q.35 You state Dunlay struck Beaver was his hand closed or open?
A.35 I would say it was open sir.
Q.36 Which hand was it?
A.36 The right hand.
Q.37 What manner was he struck?
A.37 He hung on to the clothes with his left hand and struck him with his right.

Wrot

Re examined by the Prosecution

Q.38 You were giving the distance in yds, I want you to think carefully about that and instead of in yds give it in ft? From where you are standing how many ft would it be to the President of the court?
A.38 About 10 ft sir.
Q.39 Would you say Beaver's bed would be that distance?
A.39 Since you put it that way, that would be near the mark.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

First Witness for the Defence

C 31838 Sgmn McGonigle, G.H., 4 Can Armd Div Sigs being duly sworn is examined by the Defence

Q.1 Will you identify yourself to the court?
A.1 C 31838 Sgmn McGonigle, G.H.
Q.2 Will you tell us in your own words what happened on the night of 16th Nov from when you first entered the hut?
A.2 We came in to go to bed and Cpl Dunlay came down with the axe to Beaver's bed and pulled the blankets down from him and said heres your axe Beaver, and Beaver did not take the axe so he put it on the bed and turned around to walk away and then came back and took the blankets off again and said take the axe, so Beaver took the axe and put it away. He came back the third time and took the blankets off him and told him to take a bath in the morning. Just then McGrath came in and said you had better leave him alone and Cpl Dunlay turned around and went to his bed.
Q.3 How many beds are there in the hut?
A.3 14 Sir.
Q.4 Where is your bed?
A.4 In the far corner left hand side as you come in.
Q.5 Where is Beaver's bed?
A.5 Right next to me.
Q.6 Where is Dunlay's bed?
A.6 The Right hand side as you come in.
Q.7 Where is Billington's?
A.7 The third on the right.
Q.8 Where is McGrath's?
A.8 The first one that is used on the left.
Q.9 Who is next to McGonigle?
A.9 Kurt
Q.10 Were you in a position to see what went on?
A.10 Yes sir, there was about three feet between the two beds.
Q.11 Where was McGrath when he told Dunlay to leave Beaver alone?
A.11 He was up on his bed he had just come in.
Q.12 How many times in all were the blankets pulled off?
A.12 Three sir.
Q.13 How many lights were in this hut?
A.13 Three sir.
Q.14 Are they as bright as that light?
A.14 One of them is, the others are 25 watt.
Q.15 How do you know?
A.15 I put them in.

cross examined by the Prosecution

Q.16 Where was Dunlay standing when he was pulling these blankets off Beaver?
A.16 He was standing at the side of the bed

Lady

Q.17 What side?
A.17 Left hand side sir.
Q.18 Cpl Dunlay was more or less facing you?
A.18 He was facing me sir.
Q.19 Just to bring this out clearly suppose this is your bed and this is Beaver's, whereabouts was Dunlay?
A.19 He was standing just like that sir turned the blankets down and said heres your axe.
Q.20 Supposing you are Dunlay standing here beside Beaver's bed where was McGrath?
A.20 He would be up at the other end of the hut, he was not there when it started.

Questioned by the court

Q.21 What position were you in when the covers were pulled off?
A.21 I was lying in bed on my back.
Q.22 Were you watching the accused and Beaver all the time?
A.22 Yes I was watching.
Q.23 Was there any time you were not watching?
A.23 No sir.
Q.24 From the time the Cpl came up with the axe until he went back to his own bed you did not take your eyes of them?
A.24 No sir.
Q.25 On this night you were in the hut from what time?
A.25 I could not say exactly, around 11 o'clock.
Q.26 Was anyone else in the hut?
A.26 Yes sir, Billington, Kurt, and Mavor.
Q.27 Anyone else?
A.27 Sgmn Lansing.
Q.28 Anyone else?
A.28 That is all sir.
Q.29 The Cpl was not there?
A.29 Yes he came in with me sir.
Q.30 Were all these people in the hut when this took place?
A.30 Yes sir.
Q.31 Were they paying attention to it?
A.31 I don't think they were sir.
Q.32 Were they awake?
A.32 I could not say sir.
Q.33 How long have you known the accused?
A.33 I have known him about two years.
Q.34 What were you doing with him that night?
A.34 We went out and played a couple of games of darts and had a couple of glasses of beer.
Q.35 You are apparently a friend of his?
A.35 No I am no particular friend of his.
Q.36 Were you in the habit of going out with him quite frequently?
A.36 Yes sir.
Q.37 How long had you been in the habit of doing that?
A.37 Since about 6 Sep since I came back to the outfit.
Q.38 Were you in the habit of going out with the Cpl before you went away?
A.38 Yes sir.
Q.39 Did you know him before you joined the army?
A.39 No sir.

In the opinion of the court and the judge advocate it is not necessary to comply withthe provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Closing address of the Defence

The evidence you have heard from the witnesses for the prosecution is confusing as regards distances from Beaver's bed and they all claim to have seen Dunlay strike Beaver. Beaver definitely stated that McGonigle's bed was next to his, yet other witnesses state there was a bed between. There is confusion in the number of times the blankets were removed and whether he was wakened by having them pulled off or whether he was merely shock. I submit that in view of the distances and the lighting in this

hut that neither McGrath nor Billington were in a position to see whether a blow was struck or not. It is fairly admitted generally that a number of people dislike Cpl Dunlay and I submit that Billington and McGrath were only too ready to assume that a blow had been struck. I feel that the contradictions inthe evidence and lighting and the distance between the persons concerned would tend to give more weight to the evidence of the defence witness who was in the best position to see what went on and the accused is not guilty of the charge.

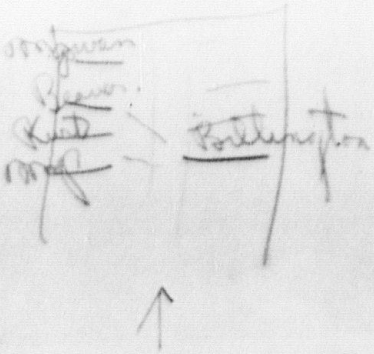
Closing address of the Prosecution

Sir, two witnesses for the Prosecution have stated they saw the blow struck. There were three lights inthe hut andthat should be sufficient light to see by. They were able to see quite clearly anything that happened only three beds away. The witness for the defence has clearly shown that he was a friend of the accused and they went out together often. I submit that this may have influenced the evidence of that witness and that the evidence of the witnesses for the Prosecution considerably outweighs such evidence.

In the Opinion of the President and the Judge advocate it is not necessary for the J.A. to sum up.

Dunlay

Exhibit A
Wey Lenard
major
President.
was Gunn wagon
judge advocate



SUMMARY OF EVIDENCE

In the Case of

Regt'l No. C 28734, CPL DUNLAY, J.R., RCOC, att 4 Cdn Armd Div Sigs.

A soldier of the Canadian Army Overseas, placed on Active Service.

C H A R G E S :-

1. Striking a Soldier.

The Comd Officer directs that the evidence be taken on Oath.

FIRST WITNESS B 110204 Signn BEAVER, T., having been duly sworn states:

At approx 1130 o'clock Tue night the 16 Nov 43, Cpl Dunlay came in with an axe which belonged to the cooking truck and which I had signed back to the Stores but which I had borrowed and brought to cut wood for the hut. He woke me up and said "Beaver, here's your axe". I told him to set it down on the floor. He dropped it on the bed so I picked it up and put it on the other side of the bed. Then he went away and came back again right away and he pulled the covers off me. Then he said to me, "Go and take a bath". Well, I told him to go to bed and pulled the covers back up, then he pulled them off again and I jerked them back up. Then he slapped me across the face. He started to pull the blankets off again and Signn McGrath who had just come in told him to leave me alone. Then he left me alone and that was all.

Cross examined by the accused.

Q. 1. Beaver, are you sure I dropped the axe on the bed?

Answer: I am positive that you did.

Q. 2. Another thing, Beaver, why did you give me so much lip the next morning when I told you to go on parade?

Answer: Well, we have a duty roster in the hut which has the men's names who do the hut cleaning for the day and you told me to go on parade and I said that I was Hut Orderly and you said to me that I was the cause of all the trouble the night before and I grew indignant over that, and you said you would clean the hut if I went on parade, so I went on parade and when I got back there were no signs of the hut being started to be cleaned up. There was no one around, so I reported to R.Q. Collett.

Q. 3. Why did you say as you went out the hut at about 8.15 Wed morning to parade "You started something, now I'll get you"?

Answer: I don't remember saying that.

B 110204 T. Beaver Signn

SECOND WITNESS D 116395 Signn McGRATH, D.L., having been duly sworn states:

Upon my return from the recreational run to Haywards Heath at approx 2330 hrs the 16 Nov, I proceeded to my hut, and noticed an argument going on between Cpl Dunlay a nd Signn Beaver. Then Cpl Dunlay pulled the blankets off of Signn Beaver and struck him in the face. Then I told Cpl Dunlay to leave him alone.

Cross examined by the accused.

Q. 1. You don't remember what the argument was about?

Answer: I wasn't in the hut for the argument.

Q. 2. Why are you so sure that I hit Beaver?

Answer: Because I saw it.

D 116395 D.L. McGrath Signn

THIRD WITNESS B 32390 Sigmn BILLINGTON, S., having been duly sworn states:

At approx 2300 hrs, I forget which day, Cpl Dunlay came in the hut at this time. An argument came up between Sigmn Beaver and Cpl Dunlay about an axe. From then the argument went on for about ten minutes about the axe. Then that quietened down. Cpl Dunlay told Sigmn Beaver to take a bath. Then he snatched the blankets off him. He did that three times and each time Beaver pulled them back up. He told Cpl Dunlay that he had taken a bath two days before that and Cpl Dunlay Struck him in the face. At that time Sigmn McGrath came in the hut from the recreational run to Haywards Heath, and he told Cpl Dunlay to lay off Sigmn Beaver, which Cpl Dunlay did.

Cross examined by the accused.

Q. 1. Did you actually see me hit Beaver?

Answer: Yes.

Q. 2. Do you remember what the argument was about, about the axe?

Answer: Yes. Well, you picked up the axe, took it over to Sigmn Beaver's bed, and said "Here Beaver, here's your axe that you've been worrying about." Beaver then said, "I don't want it" and laid it on the opposite side of the bed. That's as far as I bring back to mind.

S Billington

B 32390 S. Billington Sigmn

Question to the Accused.

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by the Accused.

I have nothing to say.

I certify that Rules of Procedure 4 (C), (D), (E) and (F) have been Complied with.

Taken down by me in the presence of the accused in the field, this 22nd day of November 1943.

R.C. Letourneau

(R.C. Letourneau) Capt.
4 Cdn Armd Div Sigs.

HHH-103 (Case #2)
CPL DUNLAY J R
See YY-87 for 1st case

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on [illegible] (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ~~/~~ days, of which ~~Nil~~ days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : To be reduced to the ranks and to suffer field punishment for 90 days and to forfeit all ordinary pay for a period of 90 days and to be put under stoppages of pay until he has made good the sum of £20-5-10 in respect of cost of clothing and returns

(Sgd) R.R. Lawley Capt 31 March 44 (Sgd) J.R. Wilkinson Major
Judge-Advocate, if any. Date awarded. President. (RP 42, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(2), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761; KR Can 567, 577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be cast, committed to [illegible] and further orders~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) [illegible] Maj-Gen
Date 31 Mar 44 Commanding (G. KITCHING) 4 Cdn Armd Div
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C28734 CPL. DUNLAY J.R.	10 Apr 44	A/Pettesmead Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF CMHQ HHH-103

CPA86 7th Sheet of AFA81 40/P & S/1608 (40/B)

FIELD GENERAL COURT-MARTIAL 4/38B

Convened by Order of Col C.D. Gosling Comd ADMS 4 Cdn Armd Div dated 30 March 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C28734	Cpl		John Richard	Dunlay	4 Cdn Armd Div Sigs

PROCEEDINGS REVIEWED
R. Deane Wills
2.00 p.m. 14 Apr 44
REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 31 March 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER. NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 2000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused is (are) unfit by reason of illness to be dealt with summarily by the CO.~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. ~~President has accused : Do you object to an interpreter ? Ans~~
~~The Interpreter is sworn.(1) Do you object to a shorthand writer ? Ans~~
~~The shorthand writer is sworn.~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	J.R. Wilkinson	11 Cdn Armd Div Sigs
Member	Lieut	W.D. Dawson	49 LAD RCOC
Member	Capt	I.R. Scarrett	11 Cdn Armd Div
Judge-Advocate	Capt	R.R. Lawley	11 Cdn Armd Div
Prosecutor	Lieut	O. Daoust	4 Cdn Armd Div Sigs
Defending Offr	Capt	J. Rintoul	4 Cdn Armd Div Sigs

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) ~~(or)~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 51(3), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 76, 77), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 30, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*); *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. no s/c (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. S, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by completing with paras D6 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 40(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 para 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114*, *115*.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, but you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. .....

Do you intend to call witnesses on your behalf? Ans. .....

Are they witnesses as to character only? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. no s/c.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. ..... and Ex. ..... respectively.(3)
(*1. MFB 351 or AFB 296. 2. MiFAM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes, through my defending officer. No evidence to be (2)
(*1. RP 37(C), 46(2). 2. Address, if any, recorded per Notes. Court should question accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(*1. When several accused tried conjointly see RP 71 (D). One sentence only, compounded of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 1-38, 182, RP 46-50, 69, 118, 119(A); KR Can 3008, 3350, 563-566. Overseas RO 309, 2323, MML p 86, 737-738. As to sentences assessed for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), (d)(i), KR Can 5644. 2. RP 50. As to minute from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

22 Dec 41 ..... Date of promotion.

In the rank of Corporal 2 years. 101 days

In the rank of ..... years. RJ Letourneau Capt

In the rank of ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Name ..... of ..... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

" Certified true copy from the Regimental Books in my Custody"

RJ Letourneau

(R.J. Letrourneau) Capt.
Officer i/c Regimental Books.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ..... day of .....

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked)(..... signed by the president, and annexed to the proceedings.

[signature]

M.F.B. 355
H.Q. 1772-39-620
10M-8-40 (M19)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	(or unit)
C-28734	CPL	DUNLAY J. B.	4 Cdn Armd Div. Sigs.

1. The following is a fair and true summary of the entries in the FIELD Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	NIL	times	NIL	times
For		times		times
For		times		times
For		times		times

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for 19 days in military custody, making a total of 19 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his attestation paper is 30 yrs.

6. The date of his attestation specified in his attestation paper 13 DEC 40

7.

8.

9. The accused is in possession of or entitled to no military decoration, or military reward (

10. (I

No C-28734 Name Dunlay J.R. Sqn, Battery, or Company R.C.O.C. Corps # 3 Detachment Date of enlistment 13-12-40 GC Badges Service or Proficiency Pay

MFM 6
(AFB 122)
40/PAS/150 (3438)

Date of last entry in Company Conduct Sheet NIL No and date of last drunk NIL Period not reckoning towards freedom from extra fine NIL Sheet No ONE Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				NIL ENTRIES.					
				" Certified true copy from the Regimental Books in my Custody"					
				R.J. Letourneau					
				(R.J. Letourneau) Capt. Officer i/c Regimental Books					

(PTO)

CHARGE SHEET

The accused C 28734 Cpl John Richard DUNLAY, 4 Cdn Armd Div Sigs, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he
in the field at 1100 hrs 6 Mar 44 absented himself from 4 Cdn Armd Div Sigs until apprehended by the Military Police, London, at about 2210 hrs 15 Mar 44 dressed in civilian clothes. Costs of apprehension and return £0-5-10.
(Total time absent 9 days 11 hrs 10 mins)

Second Charge
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he
in the field at approximately 1945 hrs 20 Mar 44 when in close arrest, absented himself from 4 Cdn Armd Div Sigs until apprehended by K 905 Sgt McLeod, A.H., at Lamberhurst, Sussex at approximately 1300 hrs 21 Mar 44.
(Total time absent 17 hrs 15 mins)

(W.P. Shirreff) Lt Col
OC 4 Cdn Armd Div Sigs

In the Field
15 Mar 44

Hq 4 Cdn Armd Div

To be tried by F.G.C.M.

(C. D. GOSSAGE) Colonel
ADMS 4 Cdn Armd Div

In the Field
30 March 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAS/1697 (2662)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 28734	Cpl		John Richard	DUNLAY	4 Cdn Armd Div Sigs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 30 Mar 44 endorsed by me, ~~or by an offr of my staff for me~~, "to be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~).
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for (c) no reserve I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.R. WILKINSON	HQ 4 Cdn Armd Div

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Lieut	W.D. DAWSON	49 LAD RCOC
A Capt or Lieut to be detailed by OC 4 Cdn Armd Div Sigs		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	L.R. SCARRATT	HQ 4 Cdn Armd Div

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	R.K. LAISHLEY	HQ 4 Cdn Armd Div

On Active Service in the Fd

in England
(Country.)

(Signed personally. RP 105(3)(a)) (C.D. GOSSAGE) Colonel (Rank.)
ADMS 4 Cdn Armd Div
Commanding Convening Officer.

Date 30 Mar 44

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 85(C)*), any objections (*RP 86(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 86(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl B. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jun 67 I ordered the accused to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 86(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 46-62 will apply *so far as* practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 46 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 83.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and sub form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(9), RP 113(C), MML p 799.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined - - - - - - - - - - - - - -

No ..C 28734 Cpl. J.R. Dunlay.....

of ....4 Chr Armd Div Signals.....

and in my opinion he is fit ~~unfit~~ to undergo trial by Court-Martial.

Station ..Field.....

Date ..31 Mar 44.....

K C Grant Capt

Medical Officer

Plea in Mitigation of Sentence
by Defending Officer

"M"

The accused has admitted two cases of absence without leave.

Since enlistment he has had a clean conduct sheet.

Since Dec 1940 he has been employed as shoemaker. This is rather a thankless trade in the army.

As a result Cpl Dunlop has worked himself into a state which is commonly known as being browned off. This does not condone his action but it is some explanation.

In addition Cpl Dunlop had during the last 9 months suffered the loss of his mother and brother in a joint drowning accident and also the sudden death of his father.

During his first confinement in the guard room he had considerable time to think things over. He had an English girl friend who he felt he should see for personal reasons. He also felt that he could obtain no help from the army for his personal trouble

Because of the considerable mental strain of the accused I ask that the court take this into consideration when awarding punishment. He has also to wear low shoes due to some trouble with his feet. Cpl. Brinlay is married and assigns $44.00 per month. He has two children

Statement of **EVIDENCE** in the case of:
C.28754 Cpl. Dunlay, J.R.
4 C.A.D. Signals

Sir,

At London at about 2210 hrs, 15 Mar. 44, acting on information received I proceeded to Y.M.C.A. Westminister, where I apprehended the a/m soldier as an absentee from his unit.

I placed him under arrest and he was conduct to No. 6 (Area) Provost Coy., Cdn. Provost Corps Detention Office where he was handed over to the N.C.O. i/c of Cells, to be detained.

B.89202 Fishman L/Cpl.

London
15 Mar. 44. (B.89202 A. Fishman)

REMARKS

Exhibit "A"

CHARGE

Army Form B 252
(See King's Regulations)

4 C.A.D. Signals. Regiment / Battery / Squadron / Troop or Company

CHARGE against No. C.28734 Rank Cpl.

Name Dunlay, J.R.

Place London Date of Offence 15 Mar 44.

OFFENCE W.O.A.S. was A.W.L. from..?.. until apprehended by the Cdn. Provost Corps at Y.M.C.A. Westminister, London, at about 2210 hrs, 15 Mar. 44.

[illegible]

[illegible] P.M.
LONDON AREA

Names of Witnesses:—

1. Cpl. Fishman, A. Cdn. Provost Corps. 6 Coy.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Exhibit "B"

Expense Voucher Re---: Ref: K.R. & O. (Can) 539

Reg. No. C27234 Rank Cpl Name Dunlop, J. R. Unit 4 Div. Sup. R.C.C.S.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars (½ Portion)	Amount		
16 Mar. 44	Escorts return fare from LONDON To Bayward Heath		2	11
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Bayward Heath		2	11
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		5	10

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

LIEUT. J. STINSON

Officer Issuing Railway Warrant and Expense monies

No. 6 Provost Company, Canadian Provost Corps, London.

ADJUTANT OFFICER - D.P.M's BR. C. M. H. Q.

CMHQ 1000-50
40/P & B/483

"S"

SUMMARY OF EVIDENCE

In the case of C-28734 Cpl Dunlay J.R. 4 Cdn Armoured Div. Sigs.

FIRST WITNESS

I, K 905 Sgt. A.H. MacLeod, being duly sworn states; on the 6 Mar 44 I was Regimental Orderly Sergeant, 4 Cdn Armd. Div. Sigs. when I was instructed, by R.Q.M.S. Collett J.C. that I would warned Cpl. J.R. Dunlay to be in the Quartermaster's Office at 1030 hours. I proceeded to do so, and contacted Cpl. J.R. Dunlay and brought him up, and he was used as a witness for a trial. The trial lasted for approximateively 15 minutes, this bringing the time to approx. 1045 hours. When the case had been dealt with, I told Cpl J.R. Dunlay to go into the Q.M.'s Office to see the Quartermaster, and I then went back to the Administration Office, where the trial had been held. Cpl. J.R. Dunlay poked his head in the door and said " The Q.M. is not here" I then said " Go into the Q.M.'s office and wait until the return of the Quartermaster. This statement was said in the presence of Capt. R.J. Letourneau, administration officer. When I had finished with Capt. R.J. Letourneau, I went into the Q.M.'s Office, and the R.Q.M.S. who had just came in, asked me, where Cpl J.R. Dunlay was. I said I had ordered him to wait there, and see out to look for him. But he was nowhere to be found. Inquiries were made as to the whereabouts of Cpl. J.R. Dunalay, after he had left the Q.M.'s Office, with negative results, he was nowhere to be found.

Statement read back to the Witness; .....
Sgt. A.H. MacLeod

The accused cross-examines the witness.

The accused; Did you not tell me that the Adjutant wanted to see me, Sgt. MacLeod ?

Witness; At no time in the course of the converation did I mention the Adjutant.

The accused; Who gave you the authority to put me on the SOS on monday morning ?

Witness; Verbal authority from R.Q.M.S. Collett J.C.

Question to the Accused. Have you any other questions to ask ?
The accused; No sir.

Question to the Accused:
Do you wish to make any statement or to give evidence upon oath? You are not obliged to do so, to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be given upon oath, and willbe taken in writing, and may be given in evidence.

Answer by the Accused:
Yes sir, Sgt. A.H. MacLeod did not order me to remain in the Q.M.'s Office. He told me that the Q.M. wished to see me, and whem I went to the Q.M.'s office , the Q.M. was not there, I returned to Sgt. A.H. MacLeod and told him that the Q.M. was not there. Then Sgt. MacLeod told me that the Q.M. would be back shortly, he did not tell me anything else. He definitely did not ordered me to stay in the Q.M.'S Office.

.....
Cpl. J.R. Dunlay

I certify that Rules of Procedure 4(c) (d) (e) and (f) have been complied with.

Officer Commanding Lt.

SECOND WITNESS

I. Capt. R. J. Letourneau, being duly sworn states;
On monday morning of the 6 mar 44, the adjutant, Sgt. MacLeod and myself were discussing a case of orders that I had held earlier in the morning. I remember Cpl J. R. Dunlay opening the door and looking in into the office. He spoke to Sgt. MacLeod saying "the Q.M. is'nt in" Sgt MacLeod answered" Well wait" ~~XX XXXX~~ "he should be back in a few minutes" or words to that effect.

Q.1 Did you see Cpl J.R. Dunlay later on ?
A.1 No.

Q.2 Since that time, when Cpl J.R. Dunlay spoke to Sgt. MacLeod, through the door of your office. When did you see Cpl. J.R. Dunlay for the first time ?
A.2 The next time I saw him, he was under escort, yesterday morning, 17 Mar 44.

Question to the Accused:
Do you wish to cross-examine the witness?
Accused; Yes sir.

Accused; Sir, are you sure that sentence is correct, " Well wait, he should be back in a few minutes" ?
Witness; Yes Cpl. J.R. Dunlay, I'm sure he said " Wait" but for the rest he might have said, for in a few minutes, in a moment, or in a while.
No other questions.

Statement read back to the accused;

R J Letourneau

THIRD WITNESS

I, B 32103, RQMS Collett, C.G., having been duly sworn, state:-

I am Regimental Quartermaster Sergeant in 4 Cdn Armd DivSignals. In the course of my duties I have occasion to be in or about the vicinity of the unit shoemaker shop where Cpl Dunlay is employed and where he is billeted. I did not see Cpl Dunlay between Monday morning 6 Mar 44 until Friday 17 Mar 44 when he was in the unit lines under close arrest.

C G Collett RQMS

19 Mar 44

FOURTH WITNESS

I, D116395 Sigmn McGrath D L having been duly sworn, state:

I am a driver in the Quartermaster Stores, 4 Cdn Armd Div Sigs. In the course of my duties I have occasion to be in or about the vicinity of the unit shoemaker shop where Cpl Dunlay is employed and where he is billeted. I did not see Cpl Dunlay between Monday morning 6 March 44 until Friday 17 March 44, when he was in the unit lines under close arrest.

D. L. McGrath Sgmn

19 March 44

FITH WITNESS

I, K905, Sgt. MacLeod, A.H. having been duly sworn, state:-

I am Sgt in Quartermaster Stores, 4 Cdn Armd Div Signals. In the course of my duties I have occasion to be in or about the vicinity of the unit shoemaker shop where Cpl. Dunlay is employed and where he is billeted. I did not see Cpl Dunl y between Monday morning 6 Mar 44 until Friday 17 Mar 44 w en he was in the unit lines under close arrest.

A H MacLeod

19 Mar 44

SIXTH WITNESS

I, H96408 Signm Brown J S, having been duly sworn, state:

I am a clerk in the Quartermaster Stores, 4 Cdn Armd Div Sigs. In the course of my duties I have occasion to be in or about the vicinity of the unit shoemaker shop where Cpl Dunlay is employed and where he is billeted. I did not see Cpl Dunlay between Monday morning 6 March 44 until Friday 17 Mar 44, when he was in the unit lines under close arrest

J S Brown

19 March 44

SEVENTH WITNESS

I, K75625 Sgt MacNeill D H having been duly sworn, state:

I am M.T. Sgt in the quartermaster Stores, 4 Cdn Armd Div Sigs. In the course of my duties I have occasion to be in or about the vicinity of the unit shoemaker shop where Cpl Dunlay is employed and where he is billeted. I did not see Cpl Dunlay between Monday morning 6 March 44 until Friday 17 March 44, when he was in the unit lines under close arrest.

D H MacNeill Sgt

19 March 44

Eighth Witness

B 82902 L/Cpl Fishman, A., 6 Cdn Provost Corps

A written statement of this witness's evidence purporting to be signed by him is produced, read to the accused, marked Exhibit A and attached to the summary.

I certify that due to the loss of time and expense involved, the attendance of this witness, is in my opinion, cannot readily be procured.

.....
(Olivier D'Aoust) Lieut
Officer taking summary of Evidence.

I do not demand the attendance of this witness for cross examination.

.....
(J. R. Dunlay) L/Cpl C-28734
(ACCUSED)

DOCUMENTARY EVIDENCE

The following documentary evidence is produced by the officer taking the summary:-

Certificate of cost of return purporting to be signed by Lieut. R. J. Stinson, Admn Officer D.P.M.'s Hr. C.M.H.Q., is produced, read to the accused, marked Exhibit " B ", and attached to the Summary.

Question to the Accused:
Do you wish to make any statement or to give evidence upon oath? You are not obliged to do so, to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be given upon oath, and will be taken down in writing, and ma y be given in evidence.

Answer by the Accused.
No question sir.

I certify that rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

.....
(Olivier D'Aoust) Lieut
Officer taking Summary of Evidence.

ADDED SUMMARY OF EVIDENCE 23 MAR 44

In the case of C-28734 CPL DUNLAY J.R. 4 Cdn Armoured Div. Sigs.

EIGHT WITNESS

I, B-32017, CPL BACON H.W. being duly sworn states; As a result of a [illegible]
~~On the night of Mar 20th at approx 1948 hours, Sigmn Cross W. came to me and informed me that Sigmn Dunlay J.R. had escaped. Correction, Cpl Dunlay had escaped.~~ As I was the Guard Commander, I immediately ordered a search of the Grounds, and I notified the R.S.M. But Cpl J.R. Dunlay was nowhere to be found.
~~The way that Cpl Dunlay escaped is as follow. Sigmn Cross W. took Cpl Dunlay to the lavatory in the guard room at approx 1945 hours, and waited outside for about five minutes, he then opened the door, and found that Cpl Dunlay J.R. had escaped through the window from the second floor.~~

Read Sigmn Cross at about 1945 hrs 20 Mar 44

H.W. Bacon
.....
(H.W. Bacon) Cpl

The accused declines to cross-examine the witness.
Statement read back.

NINTH WITNESS

I, K-905 Sgt. MacLeod A.H. being duly sworn states:
I was Regimental Orderly Sergeant on the night of 20 Mar 44, when I was informed by the R.S.M. that Cpl. Dunlay J.R. had escaped. I immediately made a survey of the vehicles in the Unit lines to see if any vehicles were missing None were missing and then I checked the Guard at the Main Gate, to see what vehicle had gone out. I found that Pte Ripley's vehicle was the only one not accounted for, it was approx 2110 hours. I telephone to Maj. C.F.Griffin, in whose charge the vehicle is, and he informed me that he had not signed any work ticket nor had the vehicle with him. I reported this matter to the R.S.M. and was told to detail two guards on the Main Gate and to wake him up the moment Pte Ripley return. Pte Ripley did not return until 0855 hours 21 Mar 44, I contacted Pte. Ripley and pa raded him to the R.S.M.

A.H. MacLeod
.....
(A.H. MacLeod) Sgt.

~~The accused declines to cross-examine the witness.~~
Statement read back.

The accused wishes to cross-examine the witness.

The accused: Sgt. MacLeod how did you know that Pte Ripley's vehicle was unaccounted for before you telephone Maj. C.F. Griffin ?
The witness: I took the signing out sheet from the Main Gate sir, and contacted all persons responsible for the vehicles with the exception of Maj. C.F. Griffin, and then I. telephone him.

Statement read back;

A.H. MacLeod
.....
(A.H. MacLeod) Sgt.

TENTH WITNESS

I. D-24039 R.S.M. F. Dempsey, being duly sworn states:
On the morning of the 21 mar 44, I had occasion to check Pte. Ripley F.A. when he returned in the Unit Lines at approx 0855 hours after having been absent without leave from approx 2045 hours 20 mar 44. ~~He informed me at that time that he had picked up C-28734 Cpl Dunlay J.R. the previous evening and had driven him to Lamberhurst, Sussex. Pte Ripley F.A. again corroborated the statement on 22 mar 44, when questioned in the Unit Guard Room. He also informed Lt.Col W.F. Shirreff when he was before him, on charge for using W.D. vehicle for private purposes, that he had driven C-28734 Cpl Dunlay J.R. to Lamberhurst, Sussex. That is all sir.~~

Lamberhurst
Lamberhurst

The ~~witness~~ accused declines to cross-examine the witness.
Statement read back.

F. Dempsey
.....
(F. Dempsey) R.S.M.

ELEVENTH WITNESS

I, K-905 Sgt. A.H. MacLeod being duly sworn states:
At 1000 hours on the morning of the 21 mar 44, at the hearing from Pte. F.A. Ripley that he had driven Cpl. J.R. Dunlay to Lamberhurst, Sussex, the R.S.M. detailed myself and two ~~others~~ armed guards to accompany me to Lamberhurst and apprehend Cpl. J.R. Dunlay. When I arrived at ~~the~~ SCOTNEY PARK, Lamberhurst I approach the house where Cpl. J.R. Dunlay was supposed to be. The armed guards went on either sides of the house and I went into the front. On knocking at the door, Mrs. Hill opened the door. I asked her if Cpl. Dunlay J.R. was in. She said that he was'nt there and upon telling her what I had come for she said wait a minute I will get him, he is in the front room. She came back immediately and said he had gone out through the window. I asked her then if Cpl. J.R. Dunlay had seen us coming, she said no, that one of the girls who were in the house at the time had seen us coming and said " Dick, here come some of your friends". She said then, that Cpl J.R. Dunlay replied, " Tell them I am not in, I don't wa nt to see anybody" or words to that effect. I immediately searched the surroundings, and buildings, and fields, a nd could find no trace of Cpl. J.R. Dunlay. I then used the phone in a nearby lumber office, and phone R.S.M. Dempsey, and informed him of what had happened. He told me to continue my search and he would sent up a Provost detachment. I continued my search, and looked in into a shed adjoining the south side of the house a nd in the corner there was a long bin approx 2½ feet deep, 2 feet wide and 6 feet long. There I found Cpl. J.R. Dunlay laying on the bottom. He had his coat in his hand and no hat on. He was wearing his battle-dress pants, and his blouse was in his hands. The distance from the Unit Lines to Lamberhurst is approx 26 miles. I found him about 1300 hrs 21 mar 44 [illegible]

The accused declines to cross-examine the witness.
Statement read back.

[signature]
(A.H. MacLeod) Sgt.

TWELTH WITNESS

I, B-3217 Sigmn. W.W. Cross, being duly sworn states:
On the 20 Mar 44 I was on duty, as guard for the prisonner, in the Unit Guard House, when at approx 1945 hours, Cpl J.R. Dunlay asked me to take him to the lavatory. I then let him go in and stood guard outside the door. About five minutes later I opened the door and looked in to find that Cpl Dunlay had gone and that the window wa s opened. I looked out the window and seeing no trace of him, I reported to the N.C.Oi/c of the Guard, that he had escaped.

The accused declines to cross-examine the witness.
Statement read back.

To the Accused: Do you wish to make any statement or to give evidence ~~upon oath~~? You are not obliged to do so, to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence

[signature]
(W.W. Cross) Sigmn

Accused: No statement sir. I certify that rules of procedure 4 (c) (d) (e) and (f) have been complied with.

[signature]
(Olivier D'Acust) Lieut
Officer taking Summary of Evidence

QQQ-1

PTE DONLEAVY J.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C.53871 Pte. James Raymond DUNLEAVY

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

"D McG A"

~~If sentence suspended, give date~~ ~~(appropriate time)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 36 days, of which 10 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for two (2) years.

(Sgd) ~~Judge Advocate (if any)~~. 19 Jun 44 (Sgd) "D McG Archibald" President. (~~R.C.S.M.~~) Major.

Date awarded.

"D McG A"

(See back of Convening Order as to assembly and disposal of record after trial)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(1), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 31(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Mitigation of confirmation or non-confirmation may be shortened before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence but remit 6 months imprisonment.

~~I direct that the accused be released [or] [be detained under the provisions of section ... of the Act until further order]~~ "EWH"

(1. AA 57A. Delete if not used.)

(Sgd) "E.W. Haldenby" Brig. COMMANDER

Date 19 June 44

Commanding 1 Cdn Base Kft Group

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 573a, 577.)

Accused.	Date.	Signature of Offr.
C.53871 Pte. Dunleavy, J.R. K4 RCASC	21 June 44	"J.M. Denning" Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY

(D.M. Owen) Lt.

2 Spare copy - 2000-1

CF 696 (In lieu of AFAC 40-P 16 & B/1808 (49/10))

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Brig. E.W. Haldenby Comd 1 CdnRGp dated 6 Jun 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
L.53871	Pte.	James, Raymond	DUNLEAVY	7 Bn. 2 CBRD.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 19 JUN 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A96. For paths and hints as how to record addresses, evidence, etc. which insets are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accessed is (~~are~~) amenable to military law, and each charge discloses an offence.(3) "D McG A"

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2) "D McG A"

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to be tried by me as President or by any of the Members of the Court?~~ Ans "D McG A"

"D McG A" ~~If objection, state objection briefly. Do you object to be tried by any of the Members of the Court?~~ Ans ~~(If objection, state objection briefly.)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(8). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

"D McG A" A7. The President, Members, ~~Judge Advocate~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D. McG Archibald	8 Bn. 2 CBRD
Member	Capt.	J.R. McElroy	2 Cdn Re Centre
Member	Lt.	E.J. Skelly	2 Cdn Re Centre
~~Judge Advocate~~			
Prosecutor	Lieut.	J.G. Goode	7 Bn. 2 CBRD
Defending Offr	Capt.	R.E. Neelands	7 Bn. 2 CBRD

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 2.)

A8. The accused before arraignment makes ~~(no)~~ ~~a plea~~ (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2)), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or opposite, the evidence, if any, and finding are recorded [see Notes. For forms of record see references in fns to Bar] cited. Insert in AB rank and name of the accused making the plea.)

"D McG A"

A9. The accused is (~~are~~) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and see separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~ordered each~~ commences the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2b

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President, ~~or JA if a NW~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans. No Sir (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

MD McG B2 ~~If the Court considers the accused's statement(s) (2) The Court decides not to advise accused to change his plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is/is not informed and he (they) persist(s) in his (their) plea(s) of Guilty to the ..... charge(s). Part I of the Schedule is awarded accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 75(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Can* 535. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*), (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para. if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)

NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. ..... Do you intend to call witnesses on your behalf ?

Ans. ..... Are they witnesses as to character only ? Ans. .....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* 485. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1; 60(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 42, 117(*e*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (*b*), *RP* 45, 120(*A*). 2. AA 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Forms B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. Yes (statement attached)

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. F and Ex. H respectively.(3)

(1. *MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. NO (2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(3), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 47, 48 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 128, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas MO* 309. 2203. *RP* 48. *As to sentences assigned for civil offences by the law of England see AA* 47(2), *MLWC p* 130. *When accused MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 47(2), *MLWC p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see insert on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"MacG Archibald"

CHARGE SHEET "E.W.D."

The accused, C 53871, Private James, Raymond, DUNLEAVY, RCASC, 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE
Sections 15(1)
Army Act

in that he

in the field in Italy absented himself without leave from approximately 1400 hours on the 2nd day of March, 1944, until apprehended wearing an American Uniform, by the Military Police at Benevento at approximately 1800 hours on the 26th day of April, 1944. Total time absent approximately 55 days and 4 hours.

SECOND CHARGE WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE
Section 15 (1)
Army Act

in that he

in the field, Italy, absented himself whilst in close arrest from approximately 0615 hours on the 7th day of May, 1944 until apprehended by the Military Police, at approximately 1800 hours on the 25th day of May, 1944, in Sorrento, Total time absent 18 days, 11 hours and 45 minutes.

"JD Macbeth"

(J D Macbeth) Lt-Col,
Officer Commanding,
7 CBRBn, 2 CBRD, CMF.

In the field
this 5th day of Jun, 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"EW Haldenby"
(E.W. Haldenby) Brigadier
Commander
1 Cdn Base Bft Group
Cdn Army - C M F

6 Jun 44

"D. McG Archibald" Maj

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
C53871	Pte.		James Raymond	DUNLEAVY	7 Bn 2 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~s~~ named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 6 Jun 44 endorsed by me, ~~or by an offr of my staff (or class)~~," To be tried by Field General Court-Martial ". "EWH"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial (or reference to a superior qualified offr)~~ - "EWH"

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person~~s~~, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Pl Offr as President, for the reasons I have attached hereto~~ "EWH"

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint an Judge Advocate (from the Offr mentioned) hereunder.~~ - "EWH"

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D.M. Archibald	8 Bn 2 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J.R. McElroy	2 Cdn Reallocation Centre
Lt.	E.J. Skelly	2 Cdn Reallocation Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	To be detailed by OC 1 Bn 1 CBRD	

~~JUDGE-ADVOCATE~~ "EWH"

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (*Country.*)

Date 6 JUN 44

"E.W. Haldenby" Brig. (Rank.)
COMMANDER
(*Signed personally. RP 105 fn 2.*)
1 CDN BASE RPT GROUP
Commanding
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for wording and notes for use on trial.*)

4/38A (CF A26 (1) (m) of AFA)
DC 7 & 8-1607 (4611)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 110 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part 1 of Schedule on p 4 after announcement of sentence awarded. (*AA 53(3), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

"DMGArchibald"

7 CANADIAN BASE REINFORCEMENT BATTALION

Certified that I have examined C 53871 Pte DUNLEAVY, James Raymond, Royal Canadian Army Service Corps, this date and in my opinion is FIT/ to undergo trial by Field General Court Martial.

"Undecipherable" Capt.
(Medical Officer) 7 Cdn Base Rft Bn

In the Field
This 19th day of June 1944.

"DMcGArchibald" "X"

Summary of Evidence in the case of C53871, Private James Raymond, DUNLEAVY, RCASC, 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas.
The Commanding Officer directs that the Summary of Evidence shall be taken upon oath.

FIRST WITNESS for the prosecution — Lieutenant Alan, Hamilton, GILPIN, RCCS, Records Officer, 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, an officer of the Canadian Army Overseas, having been duly sworn, states:-

"I am Lieutenant Alan, Hamilton, GILPIN, Records Officer of 7 Cdn Base Rft Bn, 2 CBRD. I produce herewith Record of Declaration of a Court of Inquiry insofar as it pertains to the accused, Private Dunleavy, J R. I also produce this Certificate of apprehension under Section 163(1) (jj) of the Army Act, purporting to be signed by ??? Captain, OC., 111 Provost Company, insofar as it pertains to the accused, Private Dunleavy, J R. I also produce this Certificate of arrest (in accordance with Army Act Section 163 (1) (jj), inso far as it pertains to the accused, Private Dunleavy J R."

The foregoing statement is read back to this witness in the presence and hearing of the accused.

The accused declines to cross examine this witness:

"AH Gilpin"
(A H Gilpin) Lieutenant

The Record of the Declaration of a Court of Inquiry referred to by the witness, produced, read over to the accused, marked Exhibit A, signed by me and attached hereto.

The Certificate of Apprehension referred to by the witness, produced, read over to the accused, marked Exhibit B, signed by me and attached hereto.

The Certificate of arrest referred to by the witness, produced, read over to the accused, marked Exhibit C, signed by me and attached hereto.

"JM Tierney"
(J M Tierney) Capt & Adjt,
Officer taking
the Summary of Evidence.

SECOND WITNESS for the prosecution — M 106478, Lance Corporal Jacob KLASSEN, Canadian Infantry Corps, 7 Canadian Base Reinforcement Battalion, 2 Cdn Base Rft Depot, a soldier of the Canadian Army Overseas, having been duly sworn states

"I am Lance Corporal Klassen J, an NCO of the Regimental Police of 7 CBRBn, 2 CBRD. At approximately 0615 hours on the 7th day of May 44 the accused, Private Dunleavy, whom I now recognize, absented himself without leave whilst in Close Arrest awaiting Court Martial. He did not return that day, nor did he return on any day following until he was brought into the Guard Room at approximately 1830 hours on 26 May 44, under escort."

The foregoing statement is read back to this witness in the presence and hearing of the accused.

The accused declines to cross-examine this witness:

"J. Klassen"

(J. Klassen) Lance Corporal.

WARNING TO THE ACCUSED - You may make a statement or give evidence on oath but you do not have to make a statement or give evidence on oath unless you wish, but if you do, it may be taken down in writing and given in evidence.

The accused declines to make a statement or to give evidence on oath and reserves his defence.

I CERTIFY that the foregoing Summary of Evidence consisting of two pages was taken down by me in writing in the presence and hearing of the accused this day of 1944 and that Rules for Procedure 4 (C) (D) (E) and (F) have been complied with.

"JM Tierney".

(J M Tierney) Capt & Adjt.

Officer Detailed

To take the Summary of Evidence.

Plea in Mitigation of Sentence

in the case of

C.53871 Pte Dunleavy.

Pte Dunleavy enlisted in the army in Jan 1940, he was sent overseas in jul 1940. During his period of service in England his record was comparatively good, the few crimes that he committed were of a minor nature, being charges of A.W.L. for relatively short periods.

Since his arrival in Italy the accused has become very despondent due to separation from his wife in England. This condition was accentuated by the death of his first child since he left his wife. His attitude towards soldiering was considerably lowered when his application for compassionate leave to U.K. was refused.

Has the accused been sent to a fighting unit as he hoped to be, it is felt that he would never have committed the offence for which he is now charged.

For the above reasons it is suggested that the court exercise leniency when considering the sentence to be imposed in this case.

Statement in Mitigation of C53871 Pte Dunleavy J.R.

I had a bit of bad luck in Sicily. I lost my 10-day old daughter at the time I lost my paybook in Sicily. I had no money to sent a telegram back to my wife and went to the paymaster and tried to draw some money, and he refused to pay me because I had no paybook. I also applied for compassionate leave, and was refused. Not being able to get word back to my wife that I knew what had happened, I applied to go to front line three times, and they refused to let me go. Then I went Absent.

F
"DMcGA"

No C53871 Name DUNLEAVY J R Sqn, Battery, or Company | Corps RCASC | Date of enlistment 21 Jan 1940 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/126 (3438)

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No | Signature OC Company, etc Captain G H Christian | Character

CERTIFIED TRUE COPY
AWARDED GOOD CONDUCT BADGE (1) 30 Jun 1942

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25 Sep 1942	Pte		AWL from 2359 hrs 25 Sep42 to1450hrs 28 Sep 42 TTA 62 hrs51mins AA Sec15(1)CSMCampbell D)	Cpl MacDonald LJ)	Admonished	7-10-42	Lt-Col MS Dunn	Forfs 3 da pay
Field	28 Sep 1942	Pte		AA 40 Produced a document to Cdn PC purporting to be a genuine leave pass well knowing it to be false. FORFEITS GOOD CONDUCT BADGE wef 7 Oct 42.	Documentary.	Admonished	7-10-42	Lt-Col MS Dunn	
Field	22 Nov 1943	Pte		AA Sec 15(1)AWL from 0830 hrs22Nov 43 till 0730 hrs 23 Nov43 TTA23hrs.	Sgt Evans HL Sgt Wilson JA	28 days FP	23 Nov43	Major KK Thomson	
Field	28 Feb 1944.	Pte		AA Sec 15(1)AWL from 1745 hrs 28 Feb 44 to 0210 hrs 29 Feb 44 TTA 8 hrs 10 min	From documents	Forf10dys pay	29 Feb 44	FromDocs	Forf 1 dyspay & 10 dys pay

CERTIFIED TO BE A TRUE COPY FROM REGIMENTAL BOOKS IN MY CUSTODY "JM Tierney" Capt & Adjt.

(PTO)

RECORDED AT CMHQ IN AB 160 900-1

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C53871 Pte James Raymond Dunleavy

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		Guilty.	Guilty.	
2nd		Guilty.	Guilty.	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 36 days, of which 10 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for two (2) years.

19 Jun 44 (Sgd) [illegible] Lieut. President. (RP 45, 50.)

(Sgd) [illegible] Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 30(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence but remit 6 months imprisonment

~~I direct that the accused be not committed to prison or detention barracks until further order.~~(*) (1. AA 57A. Delete if not used.)

Date 19 June 44 (Sgd) [illegible] Brig. Commanding COMMANDER 1 CDN BASE ~~Sub-Area~~ ~~District~~

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr
C53871 Pte Dunleavy, J.R.	21 June 44	[illegible] Capt

24 RCASC.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

CPA98 (In lieu of AFA3) 40-P & S-1608 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig. E. W. Haldenby Comd 1 CDN Bde dated 6 Jun 44

RECEIVED 6 JUL 1944 JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) uppmt, A/rank or A/uppmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C53871	Pte	James Raymond	Dunleavy	7 Bn 2 CIB

PROCEEDINGS REVIEWED 6 Jul 44 [illegible] Capt REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

23 JUN 1944 2 CDN BDE

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 19 Jun 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~were~~ amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn i. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~an interpreter? Ans.~~

~~The interpreter is sworn.~~(1) ~~Do you object to~~ ~~a shorthand writer? Ans.~~

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans Nil.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any~~ and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E. Mack Cunliffe	7 Bn 2 CIB
Member	Capt	J. R. Mc Elroy	2 Cdn Res. Centre
Member	Lt.	E. J. Brearley	2 Cdn Res. Centre
~~Judge-Advocate~~			
Prosecutor	Lieut.	J. C. Goode	7 Bn 2 CIB
Defending Offr	Capt	K. E. Meekins	7 Bn 2 CIB

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans No. (*)

(1. RP 26, 27, 109, 111. List of offrs under instr will be retained separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 59 (B) and fn 2 were not followed. See D1 p 31.)

A8. The accused ~~before arraignment makes~~ (no) (~~a~~) plea (*)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~were~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form No 2.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Forms C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(3) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. Nil. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty as to charge(s). The accused is (are) so informed, and he (they) changes (change) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such pleas and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 71 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(2) But a statement which could have been made properly will not carry with the Court the same weight as sworn testimony.(3) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 155. 2. RP 40(B), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Yes. (Statement attached)
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 255 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Nil. (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71(D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(4), KR Can 306, 330, 563-566. Overseas AO 309, 2323, MML p 661, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, C 88871, Private James, Raymond, DUNLEAVY, RCASC, 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
Section 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field in Italy absented himself without leave from approximately 1400 hours on the 2nd day of March, 1944, until apprehended wearing an American Uniform, by the Military Police at Benevento at approximately 1800 hours on the 26th day of April, 1944. Total time absent approximately 55 days and 4 hours.

SECOND CHARGE
Section 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, Italy, absented himself whilst in close arrest from approximately 0615 hours on the 7th day of May, 1944 until apprehended by the Military Police, at approximately 1800 hours on the 25th day of May, 1944, in Sorrento. Total time absent 18 days, 11 hours and 45 minutes.

(J D Macbeth) Lt-Col
Officer Commanding,
7 CBRBn, 2 CBRD, CMF.

In the field
this 5th day of Jun, 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

6 Jun 44

(E. W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Group
Cdn Army - C M F

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PA3/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C53871	Pte		James Raymond	DUNLEAVY	7 Bn 2 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 6 ~~JUN 44~~ endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial". Cwd

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~) Cwd

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ Cwd

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ Cwd

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	D.M. Archibald	8 Bn 2 CBRD
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	J.R. McElroy	2 Cdn Reallocation Centre
Lt	E.J. Skelly	2 Cdn Reallocation Centre
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Capt or Lt	To be detailed by OC 1 Bn 1 CBRD	
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~ Cwd

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY
(Country.)

C W Hardenby Brig.
COMMANDER
1 CDN BASE RFT GROUP
(Signed [illegible]) (Rank.)

Date 6 JUN 44

Commanding
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jun 45 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 46 fn 1(b)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (k).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 750.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

7 CANADIAN BASE REINFORCEMENT BATTALION

Certified that I have examined C 53871 Pte DUNLEAVY, James Raymond, Royal Canadian Army Service Corps, this date and in my opinion is FIT/[redacted] to undergo trial by Field General Court Martial.

.....
(Medical Officer) 7 Cdn Base Rft Bn

In the Field
This 19th day of June 1944.

"X"

Summary of Evidence in the case of C65871, Private James Raymond, DUNLEAVY, RCASC, 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the Summary of Evidence shall be taken upon oath.

FIRST WITNESS for the prosecution

Lieutenant Alan, Hamilton, GILPIN, RCOS, Records Officer, 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, an officer of the Canadian Army Overseas, having been duly sworn, states:-

"I am Lieutenant Alan, Hamilton, GILPIN, Records Officer of 7 Cdn Base Rft Bn, 2 CBRD. I produce herewith Record of Declaration of a Court of Inquiry insofar as it pertains to the accused, Private Dunleavy, J R. I also produce this Certificate of apprehension under Section 168 (1) (JJ) of the Army Act, purporting to be signed by ??? Captain, OC., 111 Provost Company, insofar as it pertains to the accused, Private Dunleavy, J R. I also produce this Certificate of arrest (in accordance with Army Act Section 168 (1) (JJ), insofar as it pertains to the accused, Private Dunleavy J R."

The foregoing statement is read back to this witness in the presence and hearing of the accused.

The accused declines to cross-examine this witness:

.....

(A H Gilpin) Lieutenant

The Record of the Declaration of a Court of Inquiry referred to by the witness, produced, read over to the accused, marked Exhibit A, signed by me and attached hereto.

The Certificate of Apprehension referred to by the witness, produced, read over to the accused, marked Exhibit B, signed by me and attached hereto.

The Certificate of arrest referred to by the witness, produced, read over to the accused, marked Exhibit C, signed by me and attached hereto.

.....

(C M Tierney) Capt & Adjt,
Officer taking
the Summary of Evidence.

SECOND WITNESS for the prosecution

M 106478, Lance Corporal Jacob KLASSEN, Canadian Infantry Corps, 7 Canadian Base Reinforcement Battalion, 2 Cdn Base Rft Depot, a soldier of the Canadian Army Overseas, having been duly sworn states

"I am Lance Corporal Klassen J, an NCO of the Regimental Police of 7 CBRBn, 2 CBRD. At approximately 0815 hours on the 7th day of May 44 the accused, Private Dunleavy, whom I now recognize, absented himself without leave whilst in Close Arrest awaiting Court Martial. He did not return that day, nor did he return on any day following until he was brought into the Guard Room at approximately 1930 hours on 26 May 44, under escort."

The foregoing statement is read back to this witness in the presence and hearing of the accused.

The accused declines to cross-examine this witness:

.....

(J Klassen) Lance Corporal.

WARNING TO THE ACCUSED - You may make a statement or give evidence on oath but you do not have to make a statement or give evidence on oath unless you wish, but if you do, it may be taken down in writing and given in evidence.

The accused declines to make a statement or to give evidence on oath and reserves his defence.

I CERTIFY that the foregoing Summary of Evidence consisting of XXX two pages was taken down by me in writing in the presence and hearing of the accused this day of 1944 and that Rules for Procedure 4 (C) (D) (E) and (F) have been complied with.

.....

(J M Tierney) Capt & Adjt.

Officer Detailed

To take the Summary of Evidence.

Officer under Instruction.

Lieut C. Thealston 1 Bn 1 C B D W.

Wheatley

A.F.B. 115(Substitute)

Record of the Declaration of a Court of Inquiry assembled at No.14 Cdn General Hospital on the 28th day of Marck 1944, for the purpose of investigatin and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. C 53871 Pte. DUNLEAVY, J.R. (Patient) of RCASC, 2 C.I.B. Coy.

The Court declare that No. C 53871 Pte. DUNLEAVY, J.R. (Patient) of R.C.A.S.C., 2 C.I.B. Coy., illegally absented himself without leave from No.14 Cdn General Hospital ar Caserta on the 2nd of March 1944 and that on 28th of March 1944/~~t~~he was still absent. there was no record of clothing and equipment with this man.

(Sgd) D. W. Sparling _____ President
(D.W. Sparling)Major

(Sgd) A. C. Coombes _____ Memeber
(A.C.Coombes) Captain

(Sgd) F. L. Skinner _____ Member
(F.L. Skinner) Captain

Certified true copy of N.B. 68.

(William Cohen)Major

This is Exhibit A referred to by the witness in the case of C 53871 Private Dunleavy J R, RCASC, in the Summary of Evidence taken before me this day of , 1944.

.....

(J M Tierney) Capt & Adjt,
officer detailed
to take the Summary of Evidence.



A

Certificate under Section 163 (i)(jj) Army Act.

I certify that No C.53871...Rank.PTE..Name..DUNLEAVY..J.R....

of the CANADIAN ROYAL ARMY SERVICE CORPS rested at...BENEVENTO.....

on.26.APRIL.44 at about..1800...hrs.wearing AMERICAN ARMY UNIFORM.

Signature of Provost Marshal
APM, or other officer into
whose custody the a/nmd
prisoner was taken on arrest.

Captain.
OC., 111 Provost Company

(See reverse side)

This is exhibit B referred to by the witness in the Summary of Evidence in the case of C 53871, Private Dunleavy R J, taken befor e me this 9th day of May, 1944.

.....

(J M Tierney) Capt & Adjutant,
Officer taking Summary of Evidence.

This is Exhibit C referred to by the witness in the Summary of Evidence in the case of C 53871 Private Dunleavy J R, taken before me this 27th day of May, 1944.

.....

(J M Tierney) Capt & Adjt,

officer taking

the Summary of Evidence.

CERTIFICATE OF ARREST.

Certificate in accordance with the Army Act Section 165 (i) (ii).

I, LIEUT. J. W. GORDON. certify that :-

No C/53871 Rank PTE. Name DUNLEAVY. J.R.

Unit Holding bay. R.C.A.S.C. was arrested at SORRENTO.

at 18.00 hours on the 25th MAY. 1944

Signature of P.M., APM., or other officer into whose custody the above named was taken on arrest.

[signature]
Commanding,
510 Ind. Mch. Dro. Coy.

Date 25 May. 1944.

138/174.7MDS/2M-4/44

Plea in Mitigation of Sentence

in the case of

C.53871 Pte Dunleavy,

Pte Dunleavy enlisted in the army in Jan 1940, he was sent overseas in Jul 1940. During his period of service in England his record was comparatively good, the few crimes that he committed were of a minor nature, being charges of A.W.L. for relatively short periods.

Since his arrival in Italy the accused has become very despondent due to separation from his wife in England. This condition was accentuated by the death of his first child since he left his wife. His attitude towards soldiering was considerably lowered when his application for compassionate leave to U.K. was refused.

Had the accused been sent to a fighting unit as he hoped to be, it is felt that he would never have committed the offence for which he is now charged.

For the above reasons it is suggested that the court exercise leniency when considering the sentence to be imposed in this case.

LIST OF EXHIBITS

Exhibit A :- Record of a Court of Enquiry enquiring into the absence without leave of C 52871 Pte Dunleavy J R of RCASC, 2 C I B Coy.

Exhibit B :- Certificate of Apprehension under Section 163 (1) (jj) of the Army Act, pertaining to the accused, Private Dunleavy J R.

Exhibit C :- Certificate of Arrest (AA Sec 163 (1) (jj) purporting to be signed by Lt J W Gordeon, Commanding 510 Independent Provost Coy.

LIST OF WITNESSES
FOR THE PROSECUTION

First Witness: - **Lieutenant Alan, Hamilton, GILPIN (ROCS) on the strength of 7 Cdn Base Rft Bn, 2 C B R D, CMF.**

Second Witness - M 106478, Lance Corporal Jacob KLASSEN, CIC, on the strength of 7 Cdn Base Rft Bn, 2 CBRD, CMF.

LIST OF WITNESSES
FOR THE DEFENCE

NIL

7 CANADIAN BASE REINFORCEMENT BATTALION

Received this 27 day of May , 1944

(a) One copy of Charge Sheet

(b) One copy of Summary of Evidence.

I have no preference for any particular officer to act as my defense and will accept whoever is delegated.

Signed by accused .....

Witnessed by: .....

H
Gl. 66.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C 53871	Private	Dunleavy J R	7 Cdn Base Rft Bn, 2 CBRD, CMP.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 627, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA Sec 15 (1)	two times	3 times.
For N/A	times	AA Sec 40 one time
For NIL	times	NIL times.
For NIL	times	NIL times.
For NIL	times	NIL times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. [redacted]

N/A beginning on the N/A day of N/A

4. The accused has been in confinement, awaiting trial on the present charges, for A/C days in civil custody, and 35 days in military custody, making a total of 35 days, of which 10 days were spent in hospital.

5. The present age of the accused according to his record of service [redacted] is 28 years.

6. The date of his [redacted] attestation specified in his record of service [redacted] is 21 Jan 1940.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon [redacted] service for the purpose of determining his rank on the

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated N/A and in his regiment (*or corps or department*) the rank of N/A dated N/A

(47554) W.O.(Y)6/1877 30,000 10/42 A.A.E.W.Ltd Gp.698
(53967) W.O.(Y)6/1877 25,000 3/43

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C 53871 Rank Pte Name Dunleavy J of 7 CBRBn, 2CBRD Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
N/A	N/A	N/A	N/A	N/A

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~27th~~ 18th day of ~~May 1944~~ June 44

[signature]

IN THE SECRETARY OF STATE FOR THE COLONIES, THE PARAGRAPHS

Date of Promotion

In the rank of N/A years, N/A

In the rank of N/A years N/A

In the rank of N/A years, N/A

(Instruction—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

F. [illegible]

No C53871 Name DUNLEAVY J R | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 21 Jan 1940 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc Captain G H Christiansen Character

CERTIFIED TRUE COPY

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				AWARDED GOOD CONDUCT BADGE (1) 30 Jun 1942					
Field	25 Sep 1942	Pte		AWL from 2359 hrs 25 Sep 42 to 1450 hrs 28 Sep 42 TTA 62 hrs 51 mins AA Sec15(1)	Cpl MacDonald LJ) CSM Campbell DA)	Admonished	7-10-42	Lt-Col MS Dunn	Forf 3 da pa FR&I 149 1 (A)
Field	28 Sep 1942	Pte		AA 40 Produced a document to Cdn PC purporting to be a genuine leave pass well knowing it to be false.	Documentary.	Admonished	7-10-42	Lt-Col MS Dunn	
				FORFEITS GOOD CONDUCT BADGE wef 7 Oct 42.					
Field	22 Nov 1943	Pte		AA Sec 15 (1) AWL from 0830 hrs 22 Nov 43 till 0730 hrs 23 Nov 43 TTA 23 hrs.	Sgt Evans HL Sgt Wilson JA	28 days FP	23 Nov 43	Major K K Thomson	28 da pa & 1 da p Tot 29days pay.
Field	28 Feb 1944	Pte		AA Sec 15 (1) AWL from 1745 hrs 28 Feb 44 to 0210 hrs 29 Feb 44 TTA 8 hrs 10 min	From Documents	Forf 10 days pay	29 Feb 44	From Docs	Forf 1 da pa FR&I 149 1 (a)&10 days pay FR&I 149 (2)

CERTIFIED TO BE A TRUE COPY FROM REGIMENTAL BOOKS IN MY CUSTODY

[signature] Capt & Adj

~~(A E Gilpin) Lt.~~, ~~Records Offr.~~

(PTO)

5Q-97

Pte Dunleavy L. E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C 77 Pte Leland Earl DUNLEAVY ROASC 9 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15 (1)	Not Guilty	Not Guilty	No prima facie case
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 77; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting proceedings—a total of ..... days, of which ..... days were spent in hospital. (1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: Nil

(Sgd) ..... Judge Advocate, if any.

18 July 45 Date awarded.

(Sgd) D. Wansbrough Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Quashed

I direct that the accused be not committed to prison or detention barracks until further orders. (1)

(1. AA 57A. Delete if not used.)

Date 19 July (Sgd) D. Wansbrough Maj.

Commanding 13 CBRGT Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 11 AUG 1945 JAG BRANCH G.H.Q.

RECORDED AT CHIO IN AB 160. 56 97

CFA86 (To field of 4 pgs) 40/P AI 8/1808 (1944)

4/38B

FIELD GENERAL COURT-MARTIAL

Convening Offr Brig J S H LIND DSO Comd 3 CBRG dated 13 Jul 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 77	Pte	Leland Earl	DUNLEAVY	ROASC 9 CBR Bn

PROCEEDINGS REVIEWED with my letter dated 13 July 45. J. Rutherford Capt.

REVIEWING OFFICER, JAG BRANCH, G.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date(s)) 18 July 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns/RDs. For guidance on procedure where a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereon. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is subject to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 5. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Are you subject to~~ an interpreter? Ans ~~The Interpreter is sworn.(1) Do you object to the shorthand writer is sworn.(1)~~ an shorthand writer? Ans

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 108. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 31, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	W.F. WANSBROUGH	A/Lt/C 2 C.H.R. Bn.
Member	CAPT.	P.J. HOULIN	ACA Cdn. C.M. Centre
Member	CAPT.	G.K. BISSETT	CAY/O Cdn. C.M. Centre
~~Judge Advocate, if any~~			
Prosecutor	CAPT.	K.A. McKENZIE	Cdn C.M. Centre.
Defending Offr	CAPT.	L.A. KITZ	Cdn C.M. Centre

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See RP 89 p 2.)

A8. The accused C 77 Pte Leland Earl DUNLEAVY before arraignment makes(s) (no) (or) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is arraigned (separately) on all charges in the charge sheet.(1) The accused does (not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A84 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

3 CBRG Vol 2 p. 51

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 85 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 37(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(C).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B1 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. N o T H.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s). And that accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)*
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and question them as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans..... Do you intend to call witnesses on your behalf? Ans..... Are they witnesses as to character only? Ans.....
(*1. RP 115. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A91. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 80(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 45, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the findings(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later; and

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative commencement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans.....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)
(*1. MFB 235 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove an oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 43, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 181, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 109, 2323, MML p 50, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), (d)(i), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see inside of back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, C-27 Private Leland Earl DUNLEAVY, 27 Coy, 9 Bn, 3 CBRD, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
A.A. SEC 15(1)

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, in Belgium, absented himself without leave from 1600 hours, 28 May 45, until surrendering himself at 9 CBRBn at approximately 1400 hours 9 Jul 45. (Total time absent 42 days, 4 hours).

Henry Carson
(Henry Carson) Lt-Col
Commanding
9 Bn, 3 CBRD.

In the Field
12 Jul 45.

To be Tried by Field General Court-Martial

(J S H LIND) Brigadier
Commanding
3 Cdn Base Rft Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 77	Pte		Leland Earl	DUNLEAVY	RCASC 9 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~s~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~s~~ set forth in the Charge Sheet~~s~~ attached and on (*date*) 2nd July 45 endorsed by me, ~~or by an offr of my staff for me~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence~~s~~ should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~s~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W F HANSBROUGH	2 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)		(Unit.)
Captain	P J POULIN	RCA	Cdn CM Centre
Captain	G K BISSETT	CH of O	Cdn CM Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 13 Jul 45

(Signed personally. RP 105 (C.2.))

(J S E LIND)

Commanding 3 Cdn Base Rft Gp

Brigadier (Rank.)

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAAS (To Dep of AFAS) 60/P & S/1897 7-6-45)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Con) 269.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-43 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor. Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Con 565(46).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 105, 107, 114.

(iii) Medical Certificate(s). (*KR Con 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*As to admissibility in evidence a certified copy in lieu of original see KR Con 560. As to certified copies of reference books see AA 146 (1) (g) (A).*)

(v) Exhibits numbered Ex A, Ex B, etc.

(vi) Summary of Evidence, if not already an exhibit.

3. Any exhibit or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 98(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 114(C), MML p 709.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE

(KR(Cmn) Para 567)
(CMHQ CL 173)

I certify that I have this day examined C-77 (No.)

Pte. DUNLEAVY, L.E. and in my opinion he is
(Rank) (Name)

fit to undergo trial by Court-Martial.

Station Field.

Date, 16 Jul 45

H.W.Bottomley(Capt),
S.M.O. 3 CBRD.
(Unit)

CASE OF Exhibit F

E-77. Pte. DUNLEAVY. Leland Earl. 27 Coy. 9 Cdn. Inf. Bde. 3 CIB HG.

Prosecution makes opening address.
Prosecution states that important witness is not available. (Witness as to termination of absence)
Documentary evidence.
Part II order extract forms.
99/34/X-RCASC/1 (ASE) 10 July 45.
Part II order no 158. dated July 45.
showing beginning of absence as 1000 hrs 28 May 45.
Signed and entered as exhibit 'A'

Prosecution closes.

Defence submits that there is no prima facie against the accused.

Court closes to consider submission.

Submission is allowed.

Prosecutor - Opening Address Ex B

In the trial by Court Martial of C/J Plt L. E. Dunleavy.

I am advised that 9 C.B.R.Bn has been given ample advice & warning as to the date & place of this trial.

An essential witness for the prosecution D 10100 B.S.M. Wright D. J., who appears on the Summary of Evidence, has not been produced by 9 C.B.R.Bn. On the contrary, I am advised that he has been dispatched to Holland within the last few days, & is not available as a witness for this case.

The only evidence I have as to the A.W.L. is a Part II order establishing it's commencement. As this does not appear in the body of the summary, & as it is not listed as an exhibit, presumably the Defence is entitled to notice of it & production.

However as I have no case in any event I will ask the defence to waive his rights of notice as to it's production.

Kenneth A. McKenzie, Capt.
Prosecuting Officer.

Submission

W. H. Ex C

There is no apprehension; no prima facie case.

[illegible] Capt.

R.P. 76 - Certificate see back hereof

PART II ORDER EXTRACT FORM

TO: officer Commanding
9Bn 3 CBRG

~~80/98~~ 99/34/X-RCASC/1(A5e)

10 JUL 45 19

EXTRACT FROM: Unit X 4 List (9Bn) RCASC

Part II Order No. 158 dated JUL 45

ABSENT WITHOUT LEAVE
AWL from 1000 hrs 25 MAY 45

C77 PTE DUNLEAVY LE

The following documents are { attached. Please acknowledge receipt on attached duplicate.
required. Please forward same.

Certified to be a true extract from the Regimental books and documents in my custody.

H Masten Capt
Officer IC Records (E)
Can. Sec. 2 Ech. HQ. 21 A Gp

Originating Clerk's Initials .....

..... for
Officer in Charge
Canadian Section, G.H.Q., 2nd Echelon

ECH—6
40/P & S/1276 (2671)

I certify the accused was on 13 July 45. served with duplicate original hereof endorsed as follows

R.R 76 "Take Notice that at your trial by F.G.C.M. the ~~[illegible]~~ Pt II Order extract hereon will be produced as evidence"

Sgd.
[illegible]
Asst. Adj'g
I.C.B.R Bn

SUMMARY OF EVIDENCE

In the case of C-77 Private Leland Earl DUNLE
on strength of 27 Coy, 9 Bn., 3 C.B.R.G. Canad
Army Overseas.

By direction of the Commanding Officer the eviden
is taken on oath.

FIRST WITNESS

D-10100 BSM Wright D.J. 9 Bn., 3 C.B.R.G., having been duly sworn states:

"Sir, at approximately 1400 hours on the 9 Jul 45 Pte Dunleavy reported into my office as an absentee. I took down his particulars and had him escorted to the guard room."

(D-10100 BSM Wright D.J.)

This statement was read back to the witness.

The accused declined to cross-examine the witness.

The Accused was cautioned as follows:

Do you wish to make a statement, or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

C-77 Pte Dunleavy L.E. of 27 Coy., 9 Bn., 3 C.B.R.G. having been duly sworn states:

"To facilitate the Court Martial I wish to state that I was absent without leave from 1000 hours the 28 May 45 to approximately 1400 hours 9 Jul 45."

(C-77 Pte Dunleavy L.E.)

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused, and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

(F.M. Auld) Lt, RCEME
Officer detailed to take the Summary of Evidence

In the Field
11 Jul 45

LIST OF WITNESSES

In the case of C-77 Private Leland Earl DUNLEAVY of 9 Bn - 3 C.B.R.G.

FOR PROSECUTION:

D-10100 BSM Wright D.J. - 9 Bn 3 C.B.R.G.

FOR DEFENCE:

NIL

LIST OF EXHIBITS

In the case of C-77 Private Leland Earl DUNLEAVY of 9 Bn 3 C.B.R.G.

- NIL -

7 F - Lynn Drake A.D.

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here.

Army Form A.3.

97F.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 12th day of February, 1942.

Whereas it appears to me, the undersigned, an officer in Command of Canadian Corps Area (Surrey), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

[illegible]

for the following reasons, namely :—]

PROCEEDINGS REVIEWED.

G.M. Graham Capt
Presiding Officer (D.R.S.) Comm
16 Mar 42

President.

Rank.	Name.	Regiment.
Major	S.A.Macdonald	7 Cdn A Fd Regt

Members.

Rank.	Name.	Regiment.
Lieut	M.R.Cooke	1 Cdn Bridge Coy
Lieut	K.E.B.Wildman	1 Cdn Rd Const Coy

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (R.J.Leach) Brigadier
C.C.M.A. Cdn Corps

Commanding

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B 33283. Sgmn. DUNLOP, A.D. Special Detachment 1 Cdn Corps Signals	A.A. sec. 15 (1) A.A. sec. 22 A.A. sec. 40 See charge sheet attached.	Guilty Guilty Guilty	120 Days Detention and stoppage of pay to the amount of Six Shillings nine pence £0-6-9 being the expense incurred in his apprehension and return to his unit	I confirm finding and sentence [signature]

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) [signature] (R.J.Leach) Brigadier C.C.M.A. Cdn Corps. (Signed) [signature] Major 7th Cdn Army Fd Rep C.A.

Commanding ..... Convening Officer (e) ..... President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 17th day of February 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 17th day of February 1942

[signature] Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this [signature] day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison until further orders.~~) [initials]

Signed this 21st day of February 1942

[signature] Brigadier
C.C.M.A. Cdn Corps
Confirming Officer.

Promulgated and extracts taken in the case of B-33283 Sgmn. Dunlop, A.D.

(a) (Dated) 24 Feb 42 (Signed) [signature] (H.D.Rice)Major, O.C.Spec.Detachment, 1 Cdn Corps Signals.

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

FORM of PROCEDURE of a FIELD GENERAL COURT MARTIAL

President

Major S.A. Macdonald, 7 Cdn. A. Fd. Regt.

Members

Lieut. M.R. Cooke, 1 Cdn Bridge Coy.
Lieut. K.E.B. Wildman, 1 Cdn Road Const Coy.

Officer Under Instruction

Lieut. C.F. Bruce, 2 Dn. R.C.S.

Trial of B33282 Signm. DUNLOP, A.D., Spec. Det. 1 Cdn. Corps Signals.

The Order convening the Court the Charge Sheet and the Summary of Evidence are laid before the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The Medical Certificate is produced by the Prosecuting Officer, read by the President, marked , and annexed to the proceedings.

The accused is brought before the Court.

Prosecuting Officer: Capt. D.N. Macleod, Spec. Det. 1 Cdn. Corps Sigs.

Defending Officer: Capt. A.J. Genik, Spec. Det. 1 Cdn. Corps Sigs.

At 1015 hours the Trial commences.

The Order convening the Court is read and marked, signed by the President and attached to the proceedings.

The names of the President, members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q.1 Do you object to being tried by me as President or any of the officers whose names you have heard read over?
A.1 No Sir.
Q.2 Do you object to Cpl. E.P. Haines acting as shorthand writer?
A.2 No Sir.

The President and members are duly sworn.

The Officer under instruction is duly sworn.

The shorthand writer is duly sworn.

The Charge Sheet is read by the President, marked and annexed to the proceedings.

The accused is arraigned upon the charge

Q.3 Are you guilty or not guilty of the first charge against you which you have heard read?
A.3 Guilty Sir.
Q.4 Are you guilty or not guilty of the second charge against you which you have heard read?
A.4 Guilty Sir.

Q.3 Are you guilty or not guilty of the third charge against you which you have heard read?
A.3 Guilty Sir.

The accused, having pleaded guilty to the charge, the provisions of Rule of Procedure 35(B) are hereby complied with.

The accused B332883 Signm. Dunlop, A.D., Spec. Det. 1 Cdn Corps Sigs. is found guilty of the first, second and third charge.

The Summary of Evidence is read, marked , signed by the President and annexed to the proceedings.

Question to the accused

Q.4 Do you wish to make any statement in mitigation of punishment?
A.4 No Sir.

The Defending Officer makes a statement in mitigation of punishment

"Mr. President, Sir. The Court has heard the accused admit his guilt on all three charges. I would like to recommend him to the mercy of the Court for the following reasons: You see before you a young energetic lad, he is just 21 years of age, and has a record of 2 years, 4 months service and I am looking at his conduct sheets. He is not a habitual offender. The charges are of minor nature and over the period of two years the number of those charges are small. This man has been employed in the capacity of a batman. A batman's job, especially in the role the Army is playing at the present time, is the type of job a young man would get fed up with. He had made requests to his officer that he would like to be a dispatch rider. He had been a driver at one time. He felt that by breaking from barracks that his punishment would be of such a nature that it would cause him to be struck off the strength of his unit to the Holding Unit where his chances of being remustered either as a driver or dispatch rider would be much better. Now, while I am not attempting to condone the offences of breaking out of jail I would like to ask that the Court be as lenient as possible, with the hope that this young energetic soldier, which I am sure you will admit from his appearance is a man who if kept on the right path will be of great use to the Army. I say he is a young energetic man which is easy to see under the circumstances. I haven't much further to add except that I recommend the accused to the mercy of the Court and hope that in considering the sentence to be awarded that these several points be considered."

The Prosecuting Officer declines to cross examine.

Question to the accused

Q.5 Do you wish to give evidence yourself or call any witnesses as to character.
A.5 No Sir.

Capt. D.N. MacLeod is duly sworn.

Q.6 Have you any evidence to produce as to the character and particulars of service of the accused?
A.6 I produce A.F.B.206 Statement as to Character and Particulars of Service of the accused: also a certified true copy of the accused's N.P.N.S.

The above statement is read, marked , signed by the President and annexed to the proceedings.

Question to Witness

Q.7 Is the accused the person named in the statement which you have heard read?
A.7 Yes he is.
Q.8 Have you compared the contents of the above statement with the regimental books?
A.8 I have.
Q.9 Are they true extracts from the Regimental books and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A.9 They are.

The accused declines to cross examine the witness.

Question to the accused

Q.10. Do you wish to address the Court?
A.10 No Sir.

The Court is closed for consideration of the sentence.

D.A.G. Macdonald Major

MEDICAL OFFICERS CERTIFICATE.

I certify that B-33283 Sigmn. Dunlop, A.D., Special Detachment, 1 Canadian Corps Signals is FIT to undergo trial by Court-Martial.

FEB 17 1942
.....,1942.

.....
(Medical Officer)

CHARGE SHEET.

The accused, No. B 33283 Sgmn. DUNLOP, A.D. of the Special Detachment, No. 1 Canadian Corps Signals, a soldier in the Canadian Army (Overseas) is charged with;-

First charge
A.A. sec. 22

WHEN ON ACTIVE SERVICE, WHILE IN CONFINEMENT, ESCAPING,

in that he

at the No. 1 Canadian Corps Field Punishment Camp at about 0720 hours 19 Jan 42, while in detention under sentence of field punishment, escaped.

Second charge
A.A. sec. 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

at No. 1 Canadian Corps Field Punishment Camp at approximately 0720 hours 19 Jan 42, while in detention under sentence of field punishment, absented himself without leave from about 0720 hours 19 Jan 42, until he was apprehended by the Military Police at READING at about 1015 hours 23 Jan 42, thereby incurring costs of apprehension in the sum of £ 0-6-9. (Absent 4 days 2 hours and 55 minutes)

Third charge
A.A. sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at about 1015 hours 23 Jan 42 and previous thereto at READING improperly wore the rank chevrons of a Corporal to which he was not entitled.

H.D.Rice

(H.D.Rice) (Major)
O.C., Special Detachment
1 Cdn Corps Signals.

In the field,
31 Jan 42.

To be tried by
Field General Court Martial.

(R.J.Leach) Brigadier,
C.C.M.A. Cdn Corps.

Field 12 Feb 42.

SUMMARY OF EVIDENCE IN THE CASE OF B 33283 Sgmn. DUNLOP, A.D., SPECIAL DETACHMENT, 1 CANADIAN CORPS SIGNALS.

By the direction of the Commanding Officer, the evidence in this summary is given under Oath.

1st Witness for the Prosecution

No. H. 32014 S/Sgt. GILLINGS, J.H. of No. 1 Canadian Corps Field Punishment Camp, having been duly sworn, states;-

"At 0720 hours on 19 Jan 42, acting on information, I searched the tent in which the accused, B 33283 Sgmn. DUNLOP, A.D., whom I recognize, was quartered, and found that he and two others were absent. I searched the compound, and as I could not find the accused, I reported his absence to C.S.M. HURRELL. C.S.M. HURRELL instructed me to search the camp area again. I did so, but the accused was not in the camp area. I have not seen the accused from that time until today."

J. H. Gillings S/Sgt
(H.32014) (S/Sgt. GILLINGS, J.H.)

Accused declines to cross examine this witness.

2nd Witness for the Prosecution

No. A. 34002 C.S.M. HURRELL, P., of No. 1 Canadian Corps Field Punishment Camp, having been duly sworn states;-

"On the morning of 19 Jan 42, at approximately 0730 hours, S/Sgt. GILLINGS reported to me, in my quarters, that the accused was missing. I instructed him to make another check of the camp area. This was carried out. I also carried out a check myself. I had the roll called for the second time. The accused was missing. I did not see the accused again until the present time."

P. Hurrell C.S.M.
(A.32004) (C.S.M. HURRELL, P.)

Accused declines to cross examine this witness.

3rd Witness for the Prosecution

No. B. 34630 Sgt. BEVERIDGE, J., of the Special Detachment, No. 1 Canadian Corps Signals, having been duly sworn, states;-

"I am No. B. 34630 Sgt. BEVERIDGE, J., on the strength of the Special Detachment, No. 1 Canadian Corps Signals as Orderly Room Sergeant, and as such have custody of the document I now produce. I produce in evidence a statement of expenses, now marked exhibit "C", incurred in the apprehension of the accused, No. B. 33283 Sgmn. DUNLOP, A.D., whom I recognize, which purports to be signed by Lieut. L.A.WHITTINGTON for O.C., No. 6 Provost Company. This document shows that expenses of £ 0-6-9 were incurred in returning the accused to his unit."

J. Beveridge
(B.34630) (Sgt. BEVERIDGE, J.)

The accused declines to cross examine this witness.

SUMMARY OF EVIDENCE IN THE CASE OF B 33283 Sgmn. DUNLOP, A.D., SPECIAL DETACHMENT, 1 CANADIAN CORPS SIGNALS.

IT IS HEREBY CERTIFIED under the provisions of R.P. 4 (g) that, owing to the expense and loss of time involved, the attendance of H. 12021 Cpl. FORSEY, W.J. and B. 73546 Cpl. HAYES, S.G., both of No. 6 Provost Company, cannot in my opinion readily be procured, and a statement of their evidence, marked "Exhibit 'A' and 'B'" respectively, have been read to the accused, and are appended to this summary. The accused does not demand the attendance of these witnesses for cross examination.

The accused, having been duly cautioned in accordance with R.P. 4 (e), reserves his defence.

CERTIFIED THAT R.P. 4 (c) (d) (e) (f) and (g) have been complied with.

Taken down before me in the presence and hearing of the accused this 31st. day of January, A.D. 1942.

E. S. Jewett

(E.S.Jewett) (Captain)
Special Detachment, No. 1 Cdn. Corps Signals.

LIST OF WITNESSES IN THE CASE OF B. 33283
Sgmn. DUNLOP, A.D., No. 1 CANADIAN CORPS
SIGNALS (SPECIAL DETACHMENT)

FOR THE PROSECUTION.

1.	H.32014 S/Sgt. Gillies, J.H.	Canadian Corps Field Punishment Camp.
2.	A.34002 C.S.M. Hurrell, P.	Canadian Corps Field Punishment Camp.
3.	H.12021 Col. Forsey, W.J.	No. 6 Canadian Provost Company.
4.	B.73546 Cpl. Hayes, S.G.	No. 6 Canadian Provost Company.
5.	B.34630 Sgt. Beveridge, J.	Special Detachment, No. 1 Canadian Corps Signals.

FOR THE DEFENCE.

Nil.

LIST OF EXHIBITS IN THE CASE OF B.33283
Sgmn. DUNLOP, A.D., No. 1 CANADIAN CORPS
SIGNALS (SPECIAL DETACHMENT)

"A" Statement of H.12021 Cpl. Forsey, W.J.

"B" Statement of B.73546 Cpl. Hayes, S.G.

"C" Statement of costs of apprehension.

Exhibit "A"

Statement of **EVIDENCE** in the case of
B-33283 Sigmn.Dunlop A.D.
1st Cdn.Corps Sigs.Details

Sir:
At London at about 1000 hrs. on the 24 Jan.42. I was on duty at No.6 Cdn.Prov.Coy.H.Q. when acting on instructions received I proceeded to the Reading Civil Police Station where I saw the a/m soldier.He had been arrested by the C.M.P. as being A.W.L. at the Y.M.C.A. Reading at about 1015 hrs.on the 23 Jan.42. He was wearing the rank of a Cpl.on his battle dress blouse.,to which he was not entitled.I took him into custody and escorted him to No.6 Cdn.Prov.Coy.H.Q.where I handed him over to the N.C.O. i/c cells to be detained.

London
24 Jan.42.

W J Jorsey ----------Cpl.
H-13081 (W.J.Jorsey)

Exhibit "B"

Sir:
I was N.C.O. i/c cells when the a/m soldier was brought in to be detained.He was wearing Cpl. stripes when he was handed over to me.

London
24 Jan.42.

S G Hayes ----------Cpl.
B-73545 (S.G.Hayes)

REMARKS

The m/n has no complaints

Lieut.

CHARGE

Army Form B 252
(See King's Regulations)

1st Cdn. Corps Sigs. Details — Regiment

Battery / Squadron / Troop or Company

CHARGE against No. B-33283 Rank Sigmn.

Name Dunlop A.D.

Place Reading Date of Offence 23 Jan. 42.

OFFENCE W.O.A.S. was A.W.L. from 0720 HRS. 19 JAN 42 until apprehended by the C.M.P. at the Y.M.C.A. Reading at about 1015 hrs. on the 23 Jan. 42.
(ABSENT 4 DAYS, 3 HOURS, 55 MINUTES)

(2) Improperly Dressed i.e. wearing badges of rank to which he was not entitled.

L.A. Whittington Lieut.
O. i/c Detention Room
No. 6 Provost Company.

Names of Witnesses :—

Cpl. Forsey Canadian Provost Corps

Cpl. Hayes Canadian Provost Corps

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

O. i/c Detention Room
No. 6 Provost Company.

P.T.O

Exhibit "C"

Ref: K.R.& O.(Can.)539

Regt. No. B-33283

Rank Cpl.

Name Dunlop A.D.

Regt. 1st.Cdn.Corps Sigs.

Unit:

The following expenses were incurred in apprehending and returning the H/M soldier to ~~Canada~~ London from Reading

DATE	PARTICULARS	AMOUNT		
24 Jan.42	Escort return fare from London to Reading (½ Portion)	0.	2.	10.
	Prisoners single fare to London from Reading	0.	2.	10.
	Prisoners Single fare from London to			
	Escorts expense for ~~xxd~~ meals, ~~xxxxxxx~~ and meals for the prisoner. (½ Portion)	0.	1.	1.
	TOTAL ---------- £		6.	9.

I certify that the above statement of expenses is correct and that the amounts are fair and just.

R.C. Whittington Lieut.
for O.C. No 6 Prov. Coy.
Canadian Provost Corps.

Sir:

I desire to have one of the two following Officers assigned for my defence by the Convening Authority.

Major R.H.Widdifield, 1 Cdn Corps Signals.
Capt. A.J.Genik, Special Detachment, 1 Cdn Corps Signals.

A.D.Dunlop
(B-33283 Sigmn. Dunlop, A.D.)

2 February, 1942.

Sir;

Capt.A.J.Genik,Special Detachment,1 Cdn.Corps Signals, is available to defend the accused.

E.S.Jewett
E.S.Jewett,Capt.

ARMY FORM A 196.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-33283	Sigmn.	Dunlop, A.D.	Spec.Det., 1 Cdn.Corps Signals

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, precedence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For (AA10(4)Breaking Out of Bks.	1 times	1 times.
For (AA15(1) A.W.L.	3 times	3 times.
For (AA15(2) Failing to appear at place of parade	0 times	2 times.
For (AA40)Neglected to perform a duty	times	2 times.
For (AA40)Conduct to the prej.etc in that he laughed on Coy. Parade	1 times	1 times.

Number of instances of gallantry or distinguished conduct, Nil.

or

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted. ~~by~~

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. ~~The accused is not under sentence at the present time. X The accused at the present time is under sentence for~~ ~~imprisonment~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for ~~Days~~ days in civil custody, and ~~Days~~ 25 days in military custody, making a total of ~~Days~~ 25 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ record of service is Twenty-one

6. The date of his ~~attestation~~ specified in his record of service is 22 Sep 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 years 4 months 9 days

8. The accused is entitled to deferred pay or gratuity in respect of 2 years 4 months 9 days service.

9. The accused is entitled to reckon 2 years 4 months 9 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~save in pursuance of a warrant to wear any military decoration or award~~.

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A~~

~~12. (In the case of an officer.) The accused holds in the army the rank of N/A dated and in his regiment (or corps or department) the rank of dated~~

(*1954) Wt.30344/662 75,000 3/54 A. & E.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B 33283 Rank Sigmn. Name Dunlop, A.D. of 1 Cdn. Corps Sigs. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or * order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~[illegible]~~ 20 17 day of ~~January~~ Feb. 1942

H.D. Rice
(H.D. Rice) Major,
O.C. Special Detachment,
1 Cdn. Corps Signals.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of	years.	
In the rank of	years.	
In the rank of	years.	

(Instruction.—If any matter on any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

No. B-33283 Name DUNLOP, A.D. Sqn., Batty., or Company: Special Detachment, 1 Cdn Corps Signals. Date of enlistment: 22-9-39 Sheet No. 1

Date of last entry in Company Conduct Sheet: | No. and date of last drunk: | G.C. Badges: | Long Service and G.C. Pay: | Signature O.C. Company, etc.: W.W.Lockhart, Major.

Place	Date of offence 1940.	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of entry disposing with trial	By whom awarded	Remarks
Ermyn Lodge	27AUG	Sigmn		Failing to appear at place of pde.	Sgt. McGowan	3 days C.B.	28 AUG 40	Capt.W.P.Sheriff	
" "	29AUG	"		Failed to appear on def. pde.	"	7 days C.B.	30 AUG 40	" "	"
Field	1941. 2 FEB	"		Conduct to the prej etc., Failed to perform a duty.	Cpl.Clive.	7 days C.B.	17FEB41	Maj. Rice.	
Field	24 JUL	"		WOAS,AWL from 2300 hrs 24 Jul 41 to 0530 hrs 25 Jul 41.(6 hrs 30 mins.)A.A. 15 (1).	L/Cpl.Smith Cpl.Archibald	7 days C.B.	26JUL41	Major, Widdifield	Forfeits 1 da pay FR&I 149 (1)(a).
Delville Bks Cove,Hants.	23AUG	"		A.A.40;Laughed while on coy parade.	L/Cpl.Wilson	5 days C.B.		Lieut. Galbraith.	
Field	22DEC	"		1st Charge. A.A.40 Failed to carry out duties when specifically ordered to do so. 2nd Charge. A.A.15(1)AWL from 1400-1700 22 Dec 41.(Absent 3 hours)	Capt.Jewett	14 days C.B.	24 DEC 41	Maj.Rice	

Place	Date of Offence 1941.	Rank	Corps of Offender	Offence	Name of Witnesses	Punishment Awarded	Date of award or of order directing trial	By whom awarded	Remarks
				1st Charge.					
Field	24 DEC	Sigmn		A.A.15(1)AWL from 1900/24Dec 41 to 1515/2Jan42.(Absent 8 days 20 hrs 15 minutes).	Cpl.Gibbs CSM.Tracey				Forfeits 9 days pay FR&I 148(1)(a) and
				2nd Charge.		27 days F.P.	2 Jan 42	Maj.Rice.	27 days pay FR&I 149(1)(b) Total forfeiture 36 days pay.
				A.A.16(4)WOAS,Breaking out of barracks whilst a defaulter.	Cpl.Gibbs				

CERTIFIED A TRUE COPY:- E.S. Jewett

(E.S.Jewett) Captain,
Admin. Officer,
Special Detachment,
1 Cdn Corps Signals.

CC-98

CPL DUNLOP G.F.

F/5-4-2
P-10858 Cpl Dunlop, George, Francis
5 C.C.C., R.C.E.
CC-98

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this EIGHTH day of APRIL, 19 43

Whereas it appears to me, the undersigned, an officer in Command of "F" GROUP, CANADIAN REINFORCEMENT UNITS CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[illegible]~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~* I am unable to appoint~~

~~* 1 Three Officers to form the Court.~~

~~* 2 A Field Officer to President.~~

~~for the following Names, ranks~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

*Omit if not applicable.

Proceedings Reviewed

Reviewing Officer

3 Aug 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
LT-COLONEL	D.L. REDMAN, V.D.	H.Q., C.R.U.

Members.

Rank.	Name.	Regiment.
CAPTAIN	J. RICHARDS	1 C.O.R.U.
CAPTAIN	H.C. MOGOUN	1 C.O.R.U.
	WAITING MEMBER	
LIEUTENANT	E.L. SANDERSON	H.Q., C.C.N.

*Signed (LOUIS KEENE) Colonel,
Commanding "F" GROUP, C.R.U.
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
P-10858 Cpl George, Francis Dunlop 5 C.C.C., R.C.E.	FIRST CHARGE Sec 40 Army Act.	Twenty Twenty	Sentence To be reduced to the Ranks and to undergo detention for a period of One Hundred and Fifty (150) days. (See charge sheet attached) 8th Apl 1943 [illegible]	~~[illegible]~~ confirmed Louis Keene Col.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(*Signed*) Louis Keene (*Signed*) [illegible]

(LOUIS KEENE) Colonel,
Commanding "F" Group, C.R.U.
Convening Officer (e) *President*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B.

Certificate of President as to proceedings.

I certify that the above Court assembled on the 8th day of April, 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. ~~[illegible]~~
3. ~~[illegible]~~
4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 8th day of April 1943.

[signature]
President of the Court Martial.

C.

Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

D.

Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 12 day of April 1943.

[signature]
Confirming Officer.

Promulgated and extracts taken in the case of P10558 Cpl Dunlop G F

(a) (Dated) 14th April 1943 (Signed) [signature] RCC

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] A.&E.W.Ltd. Gp.688

CHARGE SHEET

The accused, No. A-P.10858, Corporal

DUNLOP, George Francis, No 5 Canadian Construction Company, Royal Canadian Engineers, a soldier of the Canadian Army, Overseas, is charged with:--

1st CHARGE
A.A. Sec. 40

Conduct to the Prejudice of Good Order and Military Discipline,

in that he,

at Portsmouth, Hants, on the night of 13/14 March, 1943, improperly and without authority did take from its vehicle park in Portsmouth and operate Canadian Government Vehicle CL 695559 between Portsmouth and the vicinity of No. 15 Canadian General Hospital, Bramshott, Hants.

Ontario Camp,
Bramshott, Hants,
30 March, 1943.

M J C Spratt
Captain,
(M.J.C. Spratt) A/Officer Commanding,
No 5 Cdn Construction Coy., R.C.E.

To be tried by F.G.C.M.

APR 8 1943

Louis Keene Col
(LOUIS KEENE) Colonel
Commander "F" Group,
Cdn. Reinforcement Unit.

[illegible] Col

MEDICAL OFFICER'S REPORT

I certify that No. F-10858 Cpl. Dunlop, C.F.
No. 5 Cdn. Const.
of Coy., R.C.E. is in a fit state of health,
and able to undergo Trial by Court Martial.

W.R. Muirhead Capt.
Medical Officer, RCAMC,
(W.R. Muirhead)
No. 5 Cdn. Const. Coy., R.C.E.

Station In the field

Date 8 April 43.

M.F.B. 246
407 A 8/579

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT ONTARIO CAMP, LUDSHOTT, HANTS.
ON THE 8th DAY OF APRIL 1943

The accused. P10858 CPL. DUNLOP. G.F. .....Unit. 5 C.C.C. R.C.E. .....

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P.22&23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President LT.-COL. D.L. REDMAN, V.D. ..Unit. H.Q. C.R.U. .....

Members CAPTAIN F. RICHARDS .....Unit. I.C.O.R.U. .....

CAPTAIN H.C. McCOUN .....Unit. I.C.O.R.U. .....

The officers under instruction are duly sworn:-

LIEUT. D.C. WESTAWAY .....Unit. 7 C.C.C. R.C.E. .....

LIEUT. J.C. PADDEN .....Unit. 1ST. BN. R.C.E. ...

Prosecutor CAPT. M.J.C. SPRATT .....Unit. 5 C.C.C. R.C.E. .....

Defending officer MAJOR H.E. MICHELON Unit. 9 CON. FIELD SQN. R.C.E.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355 ~~[illegible]~~ and MFM 6.
The Court complies with R.P. 46(B)

Pursuant to R.P. 37 THE ACCUSED:-

(a) makes a statement in mitigation of punishment.
(b) ~~calls witnesses as to character.~~
(c) ~~calls witnesses in mitigation of punishment.~~
(d) addresses the Court by his Defending Officer.

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE, and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

STATEMENT BY THE ACCUSED:-

I have only done an odd day or so transport work with this unit, when they needed help. I had driven for them before. I never had a driver's license in this country, but I did drive here with everyone's knowledge. I have done some repair work around the lines. I figured this driver Sprackliin had a little too much to drink that night at the Surrey Arms, and I just took over. The reason I took the vehicle out again is that I had a pass till two o'clock, and I had to be back for church parade, and that was the only way to get back. Scoles, Simmonds and Spr. Clapp were with me. They did not suggest that I should drive them back, but I realized that they had to be back. They just happened to be there when I took the truck.

(over)

We all rode in the front seat of the Dennis Lorry. I was a little crowded with four in front. I do not recall having any accident on thr road from Portsmouth to Bramshott. I decided next day to take the truck back where it belonged. The work ticket was in the car, I saw it next morning. I did not report to anyone when I took the vehicle back. After taking the vehicle back I came back for church parade, and then went to Portsmouth again.

PLEA IN MITIGATION OF PUNISHMENT BY THE DEFENDING OFFICER

On behalf of the accused is mitigation, I would say that from the summary of evidence, the evidence surrounding the use of this vehicle shows the looseness in administration. As the accused says, he had driven without a license within the knowledge of his superiors. He had been working in transport, and decided that he and his pals had to get back, and took the vehicle and drove back to camp. I think the evidence of his having worked aro nd the transport lines would make it seem more in his own line of work. I think the Administration in this case was a little more loose than in most cases. I suggest that the court consider this, in view of this man's occupation. He drove the vehicle under observation from his superior officer from the Surrey Arms to the billets, without any objection being made. I think the court has the rest of the evidence before them.

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

SUMMARY OF EVIDENCE IN THE CASE OF

P-10858 CORPORAL DUNLOP, George Francis, of No. 5 CANADIAN

CONSTRUCTION COMPANY, R.C.E.

I N D E X

	WITNESS	NAME	PAGE
Prosecution	First	H-16836 Cpl. McCaffrey, C.J. No 9 Coy., Cdn Provost Corps.	1
	Second	L-55201 Cpl. Golling, P.J. No 9 Coy., Cdn Provost Corps.	1
	Third	B-7006 L/Cpl. Miller, E.L.C. No 9 Coy., Cdn Provost Corps.	2
	Fourth	A-48604 Sgt. Sinclair, J.R. No 6 Cdn Construction Coy., R.C.E.	2,3 and 4
	Fifth	M-66009 Spr. Spracklin, E.S. No 1 Cdn Mechanical Equipment Coy., R.C.E.	5,6 and 7
	Sixth	K-92489 Spr. Simmons, W.H. No 1 Cdn Mechanical Equipment Coy., R.C.E.	7
	Seventh	A-48665 Spr. Flewelling, J.L. No 5 Cdn Construction Coy., R.C.E.	8
	Eighth	A-54592 Spr. Clapp, R.E. No 5 Cdn Construction Coy., R.C.E.	9
Defence			
	First	P-10858 Cpl. Dunlop, G.F. No 5 Cdn Construction Coy., R.C.E.	10
	Certification	Lieut. R. Wallance, R.C.E. No 5 Cdn Construction Coy., R.C.E.	11

Appendices

Exhibit "A" Statement of Cpl. Dunlop, G.F. to Cpl. McCaffrey, C.J.

Exhibit "B" Statement of Spr. Spracklin, E.S. to Cpl. McCaffrey, C.J.

Exhibit "C" Report by Cpl. McCaffrey, C.J. to Officer Commanding, No 9 Coy, Cdn Provost Corps.

Exhibit "D" Statement of Sgt. Sinclair, J.R. to Cpl. Golling, P.J.

Exhibit "E" Report by L/Cpl. Miller, E.L.C. to Officer Commanding, No 9 Coy., Cdn Provost Corps.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No. P-10858, Corporal DUNLOP, George Francis, of No. 5 Canadian Construction Company, a soldier of the Canadian Army, Overseas.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS for the Prosecution.

No. H-16836, Cpl. McCaffrey, C.J. No 9 Coy., Canadian Provost Corps, a soldier of the Canadian Army, Overseas, having been duly sworn states;

On the 14th of March 1943 I was instructed by the Officer Commanding, No. 9 Coy., Cdn Provost Corps, to investigate the fatal accident that had taken place on the Liphook - Bramshott road. I interviewed several soldiers, the last one being Cpl. Dunlop. After cautioning Cpl. Dunlop, he gave me the signed statement which I now submit. (To be marked Exibit "A"). After receiving this statement from Cpl. Dunlop, I proceeded to Portsmouth and received the signed statement that I am now producing from Spr. Spraklin, E.S. (To be marked Exibit "B"). After interviewing these soldiers, I made a summary of my findings and reported same to my Commanding Officer, a copy of which I now produce to this Court. (To be marked Exibit "C").

The accused declines to cross-examine this witness.

C. J. McCaffrey

SECOND WITNESS for the Prosecution.

No. L-55201, Cpl. Gelling, P.J., No. 9 Coy., Canadian Provost Corps, a soldier of the Canadian Army, Overseas, having been duly sworn states;

On the 16th of March, 1943 I was accompanying Cpl. McCaffrey in the investigation of an accident occurred on the night of 13/14 March, 1943. I questioned Sgt. Sinclair and received a signed statement from him which I now submit to this court. (To be marked Exibit "D"). This statement was taken down on the 17th of March, 1943.
The accused declines to cross-examine this witness.

P. J. Gelling

THIRD WITNESS for the Prosecution.

No. B-7006 L/Cpl. Miller, E.L.C., No. 9 Coy., Canadian Provost Corps, a soldier of the Canadian Army, Overseas, having been duly sworn states;

On the morning of 14th of March, 1943, I was detailed to investigate an accident which had occurred on the Liphook - Bramshott (Hants) road. On the completion of my investigation, I submitted a report to my Commanding Officer, a copy of which I now produce for this court. (To be marked Exibit "E").

The accused declines to cross-examine this witness.

E. Miller

FOURTH WITNESS for the Prosecution.

No. A-48604 Sgt. Sinclair, J.R., No. 5 Canadian Construction Company, a soldier of the Canadian Army, Overseas, having been duly sworn states;

From Jan. 5th until March 17th, 1943, I was stationed in Portsmouth in command of a detachment of H.Q., Canadian Constructional Engineers. On the night of 13th March, 1943, on returning from Bramshott to Portsmouth, I arrived at the Surrey Arms on Surrey Street in Portsmouth at approximately 2015 hours. While at the Surrey Arms I was in the company of Cpl. Dunlop, Spr. Spraklin, Spr. Nye. About 2115 hours, Spr. Spraklin, Cpl. Dunlop and Spr. Nye left the Surrey Arms and informed me they were going to the Gladstone. Approximately at 2200 hours, they returned to the Surrey Arms and from there we proceeded to the barracks.arriving there about 2215 hours. When we arrived at the barracks we went into the barrack room where I was billeted and stayed there approximately 15 minutes. I then went into an adjoining barrack room occupied by the detachment until approximately 2330 hours. While there, we were playing crap. When I returned to my own quarters, I don't recall seeing Cpl. Dunlop and I went to bed. On Sunday morning, the 14th of March, 1943 at approximately 1100 hours I seen Cpl. Dunlop and Spr. Clapp arrive at the barracks. The next time I paid any particular attention that they were there was when Cpl. Dunlop was repairing the left front fender of lorry CL 695559. Iwas talking to him and he mentioned that he had done that driving home and I mentioned that I thought that Spraklin had drove. At the time it didn't seem as though Cpl. Dunlop wanted much conversation so I let it drop at that. At approximately 1330 hours Spr. Spraklin and I were going out. Cpl. Dunlop and Spr. Clapp was not coming with us so we left the barracks at approximately 1330 hours and I never seen Cpl. Dunlop until I returned to Bramshott on the 17th of March, 1943.

Q. Did you ride in truck CL 695559 from Surrey Arms to Barracks?

A. Yes.sir.

Q. Who drove the truck?

A. As far as I know, Spr. Spraklin.

FOURTH WITNESS for the Prosecution. (Continued)

Q. Why are you in doubt as to who drove the truck?

A. I am in doubt because I had been drinking.

Q. Would you say that you were too drunk to notice who was driving?

A. No, sir.

Q. Where did you ride in the truck?

A. I rode on the rear.

Q. How many persons would you say that were riding in this truck on this journey?

A. I think there were five.

Q. What were your words to Cpl. Dunlop when you first saw him on Sunday morning?

A. When I saw him repairing the fender I asked him what he was doing and he said that he was taking the dent out of the fender. I asked him how it happened and he said when he was driving home and I told him that I thought that Spr. Spraklin had drove home.

Q. Where you referring to the trip from Surrey Arms to quarters?

A. Yes sir.

Q. Do you now beleive that Cpl. Dunlop was referring to another trip?

A. He could have been but at the time I didn't think there was any other trip.

Q. When Cpl. Dunlop appeared unwilling to continue the conversation, why did you let the matter drop?

A. Well at the time I thought we would be out together in the afternoon and I had intended to try and find out more about it.but I never met Cpl. Dunlop after that.

Q. As detachment Commander, did you not feel that it was your duty to obtain all details about the damaged fender?

A. I didn't think so as I told the driver, Spr. Spraklin, to go and see the fender.

Q. Did Spraklin later report to you?

A. No, sir.

Q. Did you notice when Cpl. Dunlop left the crap game?

A. No, sir.

Q. Did you hear a vehicle start up while the game was in progress?

A. No, sir.

FOURTH WITNESS for the Prosecution. (Continued)

Q. Did you assist in making up work ticket covering movement of vehicle CL695559 for 13th of March, 1943?

A. No, sir, I just signed it authorizing the trip to Bramshott and return.

Q. Did you check the speedometer mileage Saturday night or Sunday morning?

A. No, sir.

Q. Is it not part of your duty to check speedometer against the indicated trip mileages?

A. No, sir.

Q. Who was suppose to finally approve the work ticket?

A. L/Sgt. Finster.of No. 1 Canadian Mechanical Equipment Company.

Q. To the best of your knowledge, did Cpl. Dunlop return to Bramshott on the night of 13/14 March, 1943 in vehicle No. CL 695559?

A. To the best of my knowledge, he never, at this time, he did.

Q. Did he have any authority for this trip?

A. No, sir, not from me.

Q. Was there sufficient petrol to make a return trip to Bramshott?

A. I have nothing to do with the operation of the vehicles.

Q. While at Bramshott on the afternoon of 13th March, 1943, did you have any discussion with Cpl. Dunlop and Spr. Spreklin as to obtaining additional petrol?

A. No, sir.

Q. Do you know if any petrol was obtained while at Bramshott?

A. I don't know, sir.

Q. Do you know if anyone accompanied Cpl. Dunlop on this second trip to Bramshott?

A. I don't know, sir.but I do know that Spr. Clapp, and Spr. Scoles were at the barracks at an hour too late for a return train to Bramshott and did not stay at the barracks that night.and Spr. Clapp returned to the barracks with Cpl. Dunlop on Sunday morning.

Q. Did anyone advise you on Sunday morning that Cpl. Dunlop had slept for a few hours in your barracks and had taken an early morning train to Bramshott?

A. No, sir but I was told about it on Monday evening, the 15 March, 1943 by Spr. Flewelling.

The accused declines to cross-examine this witness.

FIFTH WITNESS for the Prosecution.

No. M-66009 Spr. Spracklin, E.S., No. 1 Canadian Mechanical Equipment Coy., a soldier of the Canadian Army Overseas, having been duly sworn states;

On the 13th of March, 1943 I was driver of Vehicle CL 695559 working with a detachment of H.Q., Canadian Construction Engineers at Portsmouth. I was detailed by Sgt. Sinclair to proceed to Bramshott after lunch, 13th of March, 1943. We first went to the pub and from there we went up to the laundry and from there we came on through to Bramshott, stopping at the Bridge Cafe and coming into H.Q. at Bramshott after. We stayed here until appromimately 1815 hours and returned to Portsmouth stopping at the Pub in Liphook and leaving this pub at approximately 1915 hours and proceeded back to Portsmouth. We arrived in Portsmouth at about 2015 hours, stopping at the pub and staying there until closing time. Then we went back to barracks arriving there at approximately 2215 hours. I was accompanied by Cpl. Dunlop, Sgt. Sinclair and Spr. Nye throughout this whole trip. We parked the truck and went to barracks, Sgt. Sinclair and I going into another room which is opposite our own room and I don't remember Cpl. Dunlpp in that room, Sgt. Sinclair and I started shooting crap with several others. I left this room at about 0030 hours and went to my own room and went to bed.

On awakening in the morning at about 1030 hours, I saw Cpl. Dunlop sitting on the bed and he asked me if I had a hammer. Not thinking anything more of it I told him that it was under the seat in the truck. I layed in bed until approximately 1130 hours, getting up and getting ready for dinner and going out to dinner at approximately 1230 hours. I then saw Cpl. Dunlop straightening out the fender. Going over to him I asked him what happened and what he was doing. He said that he was straightening out the fender. Thinking nothing more of it I went into dinner. Coming out from dinner Cpl. Dunlop had the fender straightened. Going into the barracks I asked him if he was going up town and he said that he may see us up there later on. Sgt. Sinclair and I went up and didn't see Dunlop anymore that day.

When I arrived home on Sunday night, I was notified that the Civilian Police had been in. They returned at about 2300 hours. They asked me a few questions in regards to my truck which I answered to the best of ability, not knowing anything about the accident. They warned me not to move the truck in the morning.

Q. Who drove your truck from Portsmouth to Bramshott and return on the afternoon of 13th March, 1943?

A. I did, sir as far as the Surrey Arms Pub Porstmouth on the return trip. Cpl. Dunlop drove the truck from the Surrey Arms back to Barracks.

Q. Why did you not drive from the Surrey Arms to the quarters?

A. In my condition, I figured it would be safer for Cpl. Dunlop to drive back.

Q. Did you pick up petrol at Bramshott?

A. No, sir.

Q. Do you know if anyone else picked up petrol at Bramshott?

A. Not to my knowledge, sir.

Q. Was there any discussion regarding the picking up of petrol at Bramshott camp or Hospital?

FIFTH WITNESS for the Prosecution. (Continued)

A. I said that I should get some gas and I think that Cpl. Dunlop said that he would put some in.

Q. Can you say ~~######~~ definitely whether or not petrol was put in at Bramshott?

A. Cpl. Dunlop said that there was enough gas in the truck to take us back home as he had put some in.

Q. How were your passengers seated on the trip from Portsmouth to Bramshott and return?

A. They were all in the cab.

Q. After you returned to Clarence Barracks on 13 Mar 43, did anyone mention that your truck had been moved?

A. While I was in the crap game, Sapper Flewelling, I believe, said to me that he saw my truck leaving barracks.

Q. What did you do when he told you that?

A. I didn't do anything.

Q. Did you tell Sgt. Sinclair that your truck was gone?

A. I don't remember.

Q. Was there any discussion the next morning about this truck having been taken the night before?

A. No, sir.

Q. Not even when Cpl. Dunlop talked to you about the fender?

A. Well, Cpl. Dunlop said that he had run into something but he didn't say when or how.

Q. What information can you give us of any unauthorized journey by your vehicle on the night of 13/14 March, 1943?

A. From what I've heard, Cpl. Dunlop made a trip from Portsmouth to Bordon and Bramshott.

Q. Who told you that such a trip had taken place?

A. Spr. Simmons told me.

Q. Did he say if he rode in the vehicle on that trip?

A. Yes, he did.

Q. Did anybody else tell you about the trip?

A. No, he is the only one.

Q. Is it possible to adjust or disconnect the speedometer so that mileage would not show?

A. Yes, you can disconnect it.

Q. Would it have been possible for Cpl. Dunlop to disconnect the speedometer?

A. Yes, sir.

Q. Is this method of concealing mileage commonly known to personnel employed around M.T. Vehicles?

A. I can't say.

FIFTH WITNESS for the Prosecution. (Continued)

Q. Is there anything you can add to the evidence you have already given?

A. I know of nothing more.

The accused declines to cross-examine.

SIXTH WITNESS for the Prosecution.

No. K-92489 Spr. Simmons, W.H., No. 1 Canadian Mechanical Equipment Coy., a soldier of the Canadian Army Overseas, having been duly sworn states;

On the 13th of March 1943 I went into the Surrey Arms with Spr. Scoles and Spr. Clapp. There we met Cpl. Dunlop and Sgt. Sinclair and Spr. Spracklin. At closing time we left there and we ended up in the barracks going there by truck. We were in Clarence Barracks about 15 minutes where Spr. Scoles had an argument with Spr. Spracklin. While we were there, there was some argument as to how we were to return to camp. It ended by Spr. Scoles and myself getting into the truck also Spr. Clapp. Cpl. Dunlop was driving. As we were leaving the camp gate I very distinctly heard someone yell "Dennis" and from there on it is very vague until I came to and the truck stopped at Bordon. Spr. Scoles and I got out of the truck and I said "Goodnight". Only Spr. Clapp answered. We started for our barracks and the truck pulled away towards Lindford. I then went in and went to bed.

Q. Did anyone other than Cpl. Dunlop drive the truck on this trip?

A. I can't say, I was very vague.

Q. Do you know what truck you came home in?

A. It was a Dennis, that's all I know.

Q. Who drove the truck from Surrey Arms to Barracks?

A. Cpl. Dunlop drove and Sgt. Sinclair sat in the front with him.

The accused declines to cross-examine this witness.

SEVENTH WITNESS for the Prosecution.

No. A-48665, Spr. Flewelling, J.L., No. 5 Canadian Construction Company, a soldier of the Canadian Army, Overseas, having been duly sworn states;

As I was coming home from the dance on the night of March 13th, 1943, I was on Kings Terrace, Portsmouth which is by the main entrance of the Victoria Barracks. I saw the truck CL 695559 come out of the gate and proceed north on Kings Terrace. This was about 2240 hours.as I looked at my watch when I reached my destination. I returned to Barracks at 2300 hours. I did not go to bed until about 0130 hours and was still awake when Cpl. Dunlop entered the room. The time then would be about 0230 hours.

Q. When you came into the barracks, did you report seeing the truck to anyone?

A. No, sir.

Q. Did you hear the sound of a truck stopping outside your barrack door on the night of 13/14 March, 1943?

A. Yes sir, I did, about two minutes before Cpl. Dunlop entered the room.

Q. Could you distinguish anyone in the lorry when it left the barracks?

A. No, sir.

Q. How can you be certain that the lorry you saw was CL 695559?

A. All the W.D. Numbers of the vehicle in that detachment vary only in the last two figures and so are designated only by the last three figures of the numbers. It was a moonlight night and I could see and read clearly the last two figures ofthe W.D. number.

Q. On Sunday morning, did you hear any conversation relating to a damaged truck?

A. Yes, I did,but I don't remember who was talking.

Q. Did you hear Sgt. Sinclair talk to Cpl..Dunlop about a damaged truck?

A. No, sir.

The accused declines to cross-examine this witness.

J. L. Flewelling

RM

EIGHTH WITNESS for the Prosecution.

No. A-54592 Spr. Clapp, R.E., No. 5 Canadian Construction Company, a soldier of the Canadian Army, Overseas, having been duly sworn states;

I came off duty at 1500 hs 1530 hours 13th March, 1943 and proceeded to Portsmouth with Spr. Scoles. When I arrived in Portsmouth it was about 1800 hours. We went for a short walk and then proceeded to a pub. We drank for sometime and then went to the Surrey Arms pub. There we met Sgt. Sinclair, Cpl. Dunlop. (Sgts Coldicott and Williams were there for a short while). Sprs Nye, Spracklin, and Simmons were also there. I don't know what time when we left there or where we went after but I woke up next morning in my own hut in Bramshott.

I attended church parade and was detailed off parade to arrange benches in the Mess Hall. I went to my sleeping hut before going to the Mess Hall and met Cpl. Dunlop there. He asked me if I were going to Portsmouth and I said "Yes". I then went to the Mess Hall as detailed. After Church Service, I went to the Seven Thorns Hotel and on the way met Cpl. Dunlop and we continued together. After eating at the Seven Thorns, we went to Liphook and took the train to Portsmouth and went to the Clarence Barracks where the detachment is stationed. I went into the barracks and talked to the boys. Cpl. Dunlop got a hammer and went outside. Later, Cpl. Dunlop came back in and went to a show. After the show we had something to eat and then took the train back to Liphook and returned to our quarters at Bramshott, Hants.

Q. To the best of your knowledge, how did you return to barracks on the night 13/14 March, 1943?

A. I cannot say.

Q. Could you have come by train?

A. I don't beleive so but I can't say.

Q. Do you beleive that you came home in an Army Lorry on the night of 13/14 March?

A. I can't swear to it but I think it very probable. I was too drunk to come home without assistance.

Q. Did you know that Cpl. Dunlop repaired a fender on a Lorry in Portsmouth on 14 March, 43?

A. I didn't see him but he mentioned he was going to. I didn't think that strange as he has often helped me with repairs to vehicles.

Q. Has any subsequent event led you to beleive that a Lorry was used without proper authority for the return trip to Bramshott on the night of 13/14 March, 1943?

A. Only what I have learned from being questioned on events from that night.

The accused declines to cross-examine this witness.

The accused was cautioned as follows:--

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused elected to give evidence as follows:---

FIRST WITNESS for the Defence.

No. F-10858 Cpl. Dunlop, George Francis, No. 5 Canadian Construction Company, a soldier of the Canadian Army, Overseas, having been duly sworn states:--

I left Liphook station at approximately 1230 hours, 13 March, 1943 and went to Portsmouth by train. Upon arrival in Portsmouth I went to Clarence Barracks, arriving there at approximately 1315 hours same date. I wanted to see Sgt. Sinclair, but he was not there, so I started out to look from him. I finally found Sgt. Sinclair in a pub at approximately 1330 hours. We stayed in this Pub until it closed. Sgt. Sinclair then said he had to go to Bramshott on business, so I decided to come with him, in a Dennis Lorry. The driver was Spr. Spracklin. We landed in Bramshott and stayed there until 1800 hours.

We left Bramshott and went to Liphook and stayed in Liphook at the Railway Hotel for one hour. We then left for Portsmouth, arriving there at approximately 2000 hours. We then went to the Surrey Arms where we stayed most of the time until closing time.

We then went back to Clarence Barracks. I did not stay there long as we had sort of a friendly argument.

I left at approximately 2245 hours. I went to where the W.D. vehicles are parked and took one and headed for Bramshott via Petersfield, Liphook, arriving at Bramshott around midnight. I parked the W.D. vehicle in front of my billet and went inside and lay on the bed with my clothes on. I woke up about two or three hours later, went outside to have a leak and saw the truck there and decided to take it back to Clarence Barracks, Portsmouth.

I arrived at Portsmouth, Clarence Barracks and parked the truck in the Unit Lines, and went into the hut where the men stay and dozed off in front of the fire. One of fellows woke me up and said "You had better go to bed." So I went to bed. I got up at 0715 hours and came back to Bramshott on the first train and arrived in Bramshott at 0915 hours, 14 March, 1943.

I left Bramshott and returned to Portsmouth and arrived there at 1230 hours. I got talking to the driver of the W.D. vehicle I had taken, and he said to me, "What have you been doing with the truck?" I replied "Nothing, why?" Spracklin, the driver, replied, "The fender is dented." So I said if I had done it I'd straighten it out. So I got a hammer and went to work on the fender.

G. F. Dunlop

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of eleven (11) pages was taken down in my presence and in the presence of the accused and the appended Exibits "A", "B", "C", "D", and "E" were submitted to me in the presence of the accused and that Rules of Procedure 4 (C), (D), (E), and (F) have been complied with. The Court Stenographer was duly sworn according to Rules of Procedure App. II, Page 762.

R.F. Vallance
(R.F. Vallance) Lieut.,
No. 5 Cdn Construction Coy., R.C.E.

Bramshott, Hants.
30th of March, 1943.

Defending and Prosecuting Officers for R.C.C.M.

The u/m officers are available for the respective duties as shown hereunder;

FOR THE PROSECUTION

Captain M.J.C. Spratt, R.C.E., - No 5 Cdn Constr Coy., R.C.E.

FOR THE DEFENCE

The accused does not request any particular officer for the defence.

The following are available.

Lieut. B.P. Nutting, R.C.E. - No 5 Cdn Constr Coy., R.C.E.

Lieut. W.E. Rayner, R.C.E. - No.5 Cdn Constr Coy., R.C.E.

M.J.C. Spratt Captain,
(M.J.C. Spratt) A/Officer Commanding,
No 5 Cdn Construction Coy., R.C.E.

Copy of Exhibit A.

CANADIAN PROVOST CORPS

COPY
Original held by 9 Provost Coy. 17th March 1943.

STATEMENT OF Regt. No. P 10858 Cpl. DUNLOP, George Francis of No. 5 Cdn Construction Coy., R.C.E.

'I have been warned that I am not obliged to say anything unless I wish to do so, but that anything I now say will be taken down in writing and may be given in evidence'

"To show that I understand the above warning, I make this statement voluntarily and sign my name herewith'.

Signed: P.10858 Cpl. Dunlop, G.F.

STATES:

"I left Liphook station at approx 1230 hrs, 13 Mar 43 and went to Portsmouth by train. Upon arrival in Portsmouth I went to Clarence Bks; arriving there at approx 1315 hours same date. I wanted to see Sgt. Sinclair, but he was not there, so I started out to look for hi m. I finally found Sgt. Sinclair in a pub at approx 1330 hours. We stayed in this Pub until it closed. Sgt. Sinclair then said he had to go to Bramshot on business, so I decided to come with him, in a Dennis Lorry. The driver was Spr. Spracklin. We landed in Bramshot and stayed there until 1800 hrs."

"We left Bramshot and went to Liphook and stayed in Liphook at the Railway Hotel for one hour. We then left for Portsmouth, arriving there at approx 2000 hours. We then went to the Surrey Arms where we stayed most of the time until closing time;"

"We then went back to Clarence Bks. I did not stay there long as we had sort of a friendly argument."

"I left at approx 2245 hours. I went to where the W.D. vehicles are parked and took one and headed for Bramshot via Petersfield, Liphook, arriving at Bramshot around midnight. I parked the W.D. vehicle in front of my billet and went inside and lay on the bed with my clothes on. I woke up about two or three hours later, went outside to have a leak and saw the truck there and decided to take it back to Clarence Bks, Portsmouth."

"I arrived at Portsmouth, Clarence Bks and parked the truck in the Unit Lines, and went into the hut where the men stay and dozed off in front of the fire. One of the fellows woke me up and said, "You had better go to bed." So I went to bed. I got up at 0715 hours and came back to Bramshot on the first train and arrived in Bramshot at 0915 hours, 14 March 43."

"I left Bramshott and returned to Portsmouth and arrived there at 1230 hours. I got talking to the driver of the W.D. vehicle I had taken, and he said to me, "What have you been doing with the truck?" I replied "Nothing, why." Spracklin, the driver, replied, "The fender is dented." So I said if I had done it I'd straighten it out. So I got a hammer and went to work on the fender."

Signed; P.10858 Cpl. Dunlop, G.F.

Witness:
C.J. McCaffrey
P.J. Golling
J.C. Spratt, Capt.

#5

5

CANADIAN PROVOST CORPS

COPY
Original held by 9 Provost Coy

18th March 1943

STATEMENT OF No. M.66009 Spr SPRACKLIN, E.S.

of No. 1 C.M.Equipment Coy., RCE.

STATES:

"I left the job in Fratton Yards, Portsmouth, in company with Sgt. Sinclair and Spr Nye at approx 1200 hrs 13 Mar 43. We drove over to the Gladstone Pub and had a beer. While we were in the s/m pub, Cpl. Dunlop came in after we had a few beers we all left for Bramshot. Dunlop came with us. We arrived in Bramshot at approx 1600 hrs. We stayed in Bramshot until 1815 hrs, then left for Portsmouth. We stopped in a pub at Liphook, had three pints each then proceeded on our way. We arrived in Portsmouth and stopped at the Surrey Arms at 2015 hrs, 13 Mar 43. I parked the truck behind an air raid shelter near the Gladstone and we all went in to have a drink at the Surrey Arms. After we had been in the Surrey Arms for approx one hour, I decided to go over to the Gladstone. Nye and Cpl. Dunlop came with me. We stayed in the Gladstone until it closed. I picked up the truck went to the Surrey Arms and got Sgt Sinclair and we all returned to Clarence Bks arriving there at approx 2215 hours. I saw that my truck #695559 Dennis 60 cwt was parked in the usual place on the square. Dunlop drove the truck from the Surrey Arms to Clarence Bks. We all came inside and some of us started to shoot "crap".

"After I had been in approx ½ to ¾ of an hour Spr Flewelling came to me and saidxxxxxx,"I saw your truck on the street." I said, 'Are you sure?' He said, 'Yes.' Then I said, 'Go out and have a look.' This he did; and he came back and told me it was gone.

"I felt drowsy and sleepy and went to bed.

"Next morning, 14 Mar 43 at approx 1100 hrs, I was awakened by Cpl. Dunlop who asked me if I had a hammer. I replied that I had and told him that there was one under my seat in the truck. While I was still in bed, one of the boys came to me and told me that Cpl Dunlop was hammering out a fender on the lorry. I got up and dressed and started over to dinner. While passing the lines where the trucks are parked, I saw Cpl. Dunlop hammering out the left hand fender on my lorry. I went over to him and asked him what he was doing. He stated that he was straightening out the fender. I asked him what had happened to it and he replied that he had run into something. I went on to dinner. On my way out from dinner Cpl Dunlop was just finishing the job.

"Under no consideration would I have given Cpl Dunlop or anyone else permission to use my lorry."

Signed: Spr. E.S. Spracklin.

Witness:

C.J. McCaffrey.

Exhibit 'C'
R. Wallace Lieut
29 Mar 43

9 Provost Coy C.R.U. a/m

Pinewood, Wormley 19th March 1943.

FATAL ACCIDENT ON LIPHOOK - BRAMSHOT RD.,
Bar. Germain, M.J., No. 5 Cdn Const Coy., RCE

Officer Commanding,
No. 9 Cdn Provost Coy.

Sir:

1. On instructions received from O.C. 9 Provost Coy and from information in report of L/Cpl. Miller, 9 Provost Coy., I carried out further investigation re the a/m case.

PRC 5.4.Inv.33

2. I proceeded to Liphook in company with Cpl. Golling and contacted Sgt. Gould of the Civil Police at 2200 hrs., 15 March 1943 who had reported the accident to No. 9 Provost Coy on 13 March 43.

Sgt. Gould informed me that a lorry and its driver, who was thought to be involved in the a/m accident, had been questioned by Sgt Gould but refused to give a statement.

3. I interviewed the u/m soldiers of No. 5 Cdn Const Coy., RCE, namely: P.10858 Cpl. Dunlop, G.F., A.48671 Spr Larmond, A., H.36543 Spr Turner, L.B., H.48604 Sgt. Sinclair, J.H., and received the attached statements 1, 2, 3 & 4 respectively.

4. From information gained from these soldiers, I learned that Cpl. Dunlop was driving this vehicle on the evening when the accident occurred and was not the driver i/c of the vehicle and that he had taken the vehicle without the proper authority on the night of the accident. I was informed that the regular driver in charge of the vehicle in question was m.66009 Spr Spracklin, E.E., 1 C.R.E. Coy., RCE at Clarence Hks, Portsmouth. I proceeded to Portsmouth and obtained statement 5 attached from Spr Spracklin.

Report of L/C Miller on 1st March 1943.

5. I attended an inquest held on a/m Spr Germain, at the 15 Cdn Gen Hospital at Bramshot at 1515 hours, 17 Mar 43 and the verdict returned by the coroner was accidental death.

Respectfully submitted,

[signature]

H.10836 Cpl. McCaffrey, [illegible],
No. 9 Cdn Provost Company.

Exhibit "D"

CANADIAN PROVOST CORPS

16 Mar 43.

COPY
Original held by 9 Provost Coy

STATEMENT OF H 4B604 Sgt. Sinclair, J. R.
5 Can Construction Coy., R.C.E.

STATES:

I and Spr. Spracklin and Spr. Nye in Lorry CL 695559 were going along Commercial Road, Portsmouth at approx 1415 hrs 13 Mar 43 en route to Bramshott where we met Cpl. Dunlop in the vicinity of Surrey Street. We picked him up and proceeded to Bramshott, arriving there at approx 1600 hours. We stayed for tea at Bramshott leaving at approx 1615 hrs. We stopped at the Railway Hotel, Liphook and had one beer and then left for Portsmouth, the next stop we made was at the corner of Surrey St and I went into the Surrey Arms at approx 2015 hrs. I stayed at the pub approx 15 minutes when Cpl. Dunlop, Spr. Nye and Spr. Spracklin came into the pub. They left the pub at approx 2100 hours saying they were going to the Gladstone Arms, returning at 2200 hrs when the pub was closing. We then proceeded to Barracks in the lorry.

I went to sleep at approx 2330 hrs and did not see Cpl. Dunlop until approx 1100 hours the following day, 14 Mar 43. Spr. Spracklin was in bed when I went to sleep. I noticed Cpl. Dunlop was at 1130 hours reparing dents to the left wing of the 30 cwt lorry, CL 695559. When I asked him what he was doing he replied that he was taking the dents out of the fender. I then asked him how the dents had got there and he said he was crowded off the road when he was coming home. I then asked him how could hebe crowded off the road when he was not driving. Then he replied that he did drive, so I left it at that as he did not seem to want conversation. I went back to the Barrack Room and there found Spr. Spracklin who was getting dressed and asked him if he knew why Cpl. Dunlop was repairing the fender, and he replied he did not. I then told Spr. Spracklin of the conversation I had had with Cpl. Dunlop and he said that Cpl. Dunlop had not driven his lorry on the night of 13 Mar 43 to his knowledge.

(Signed) J.R. Sinclair, Sgt.

WITNESS:

Cpl. Golling, P.J.
9 Provost Coy.

Exhibit E.
[illegible]

9 Provost Coy C.R.U. a/m

Pinewood, Wormley 14 March 1943.

FATAL ACCIDENT ON LIPHOOK - BRAMSHOT RD
Spr. Germain, No. 5 Cdn Construction Coy., RCE.

Officer Commanding,
No. 9 Cdn Provost Coy.

Sir:

1. On instructions received from REM Golton, 9 Provost Coy
9PC 5.4.Inv.33 I proceeded to the Bar acks of No. 5 Constructions Coy RCE to investigate the a/m accidnnt.

2. At No. 5 Const Coy, I was informed that Spr. Germain of that Coy had been hit and fatally injured by a car or lorry at approx 0030 hrs, 14 Mar 43 on the Liphook- Bramshot Rd (RR 285521, sheet 124). At the time of the accident he was accompanied by Spr Turner, L.B., H.36543, and A.46671 Spr. Larmond, A. of No. 5 Const Coy RCE.

3. I questioned these two witnesses, but was unable to get any definite information from them that would x identify the vehicle that caused the accident. They did inform me that it appeared to be travelling at a rapid speed and did not stop after the accident.

4. After further questioning I ascertained that whilst Sprs Turner and Larmond had been walking on the sidewalk, Spr Germain had been walking beside them on the road. They were on the left side with their backs to the traffic.

When asked if they had been drinking, Spr Larmond denied that he had been; but Spr Turner admitted that he did have a few drinks, but was not drunk.

5. From the lack of information and observation of these men during the time of the accident I strongly suspect that they may have been somewhat under the influence of alcohol.

6. I visited the scene of the accident in the company of Lieut Bereskin, No. 5 Cdn Construction Coy RCE who is in charge of the Court of Inquiry of this case.

At this place I found several pieces of paint that had apparently been chipped off xx a W.D. Vehicle, but not a sufficient quantity to justify the belief that they may have been from the vehicle that killed Spr. Germain. There was also a skid mark made by a dual-wheeled vehicle.

7. We then proceeded back to No. 5 Construction Coy where I met Sgt Gould of the Liphook Police who was aslo investigating the case. He had previously visited the scene of the accident and had also picked up some of the chipped paint, of sufficient quantity to ascertain that it had come from a W.D. vehicle. This vehicle may have been one on strength of an Engineer Coy as the chips were light blue, white and khaki paint. Part of these chips of paint showed the letter "4" from a formation sign.

Sgt. Gould informed me that he had questioned several people earlier in the day and ascertained that a W.D. vehicle probably a 3 ton lorry without tarpolin or supports had been seen in the vicinity at the time of the accident.

I suggested that this may have been the same vehcile that had been reported stolen from 34 Cdn Corps Troops RC&SC the previous evening. I gave Sgt. Gould what particulars I had on this vehicle.

"Exhibit E
[illegible]
[illegible]

9 Provost Coy C.R.U. a/m

Pinewood, Wormley 14 March 1943

FATAL ACCIDENT ON LIPHOOK - BRAMSHOT RD
Spr. Germain, No. 5 Cdn Construction Coy., RCE

PAGE 2.

9PC 5.4.Inv.33 8. We visited several car parks and camps in the vicinity but did not find any vehicle that could have been the one we wanted.

9. Sgt. Gould informed me that he was in communication with the D.A.P.M. and would submit a report to his office.

As all forms of enquiry seemed to be exhausted for the moment, I reported back to my own barracks.

Respectfully submitted,

E. C. Miller

B.7006 L/Cpl. Miller, E.L.C.,
No. 9 Cdn Provost Coy.

see pge 1

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
P-10858	CORPORAL	DUNLOP, G.F.	No. 5 Cdn Constr Coy., R.C.E.

1. The following is a fair and true summary of the entries in the ~~Service and General Regimental and Squadron, Battery Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	A.A., Sec. 40 1 times	A.A., SEc. 40 1 times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct are Nil.

~~NIL~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~NIL~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~NIL~~

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 24 days in ~~Air Force~~ military custody, making a total of 24 days in custody, of which NIL. days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 24 years 8 months

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper is 29 Sep. 1939.

7. The service which the accused is allowed to reckon towards discharge is 3 years 6 months

8. The accused is entitled to reckon 3 years 6 months service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward ~~or is in possession of or entitled to: State any air force decoration or reward.~~ military military military

10. ~~If the accused is a warrant officer: The accused before he was made a warrant officer last held the regimental rank of~~ ~~Air Force~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

Nil dated ....., and in his regiment (or corps), the rank of

..... dated .....,

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

21 Nov. 1939. Date of promotion.

In the rank of L/Cpl. 15 months years. A/Sgt. 3 months

In the rank of Cpl. 1 month years. A/L/Sgt. 4 months

In the rank of A/L/Sgt 10 days years. Cpl. 1 year 4 months.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number P-10858 Rank Cpl. Name DUNLOP., G.F. of No 5 Cdn Constr Coy., RCE Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		Nil.		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Eighth day of April 1943 [signature] Capt., No 5 Cdn Constr Coy., RCE.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

[signature]

M.F.M. 6
(A F B 172)
175M—[illegible]
H.Q. [illegible]

No. P.10858 Name DUNLOP George Francis

Sqn., Battery, or Company: Old Sheet Destroyed 29-3-40; Old Sheed Destroyed 29-9-41; No 5 Cdn Construction Coy.

Corps

Date of enlistment: 29-8-39

G.C. Badges: N/A

Service or Proficiency Pay: M/A

Date of last entry in Company Conduct Sheet: Nil

No. and date of last drunk: Nil

Period not reckoning towards freedom from extra fine

Sheet No. 1

Signature O.C. Company, etc.: (Signed) G.P. Stirrett, Major.

Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Completed six months service free of any entry. Old sheet destroyed in accordance with C.A.R.O.(O) 319. Verified to date 29-8-41						(Signed)	C.B. Ross) Lt., Adjutant, No 1 Cdn Construction Coy., RCE.		
Completed two years service free of any entry; No entries.						(Signed)	G.W. Jacobs, Lt., Adjutant, No 5 Cdn Construction Coy., RCE.		(E.J.M.)
Awarded Good Conduct Badge Pt II Order No 47 d/26 Oct 42.					w.e.f. 28 Aug. 41.				
Field	28-10-42	Cpl.		AA 40 WOAS, conduct to the Prej of good Order and Mil Discp. in that he at Bramshott did take and drive a W.D. Vehicle from Bramshott camp to Liphook for his own personal use.	L/S Smart D Lieut. E.J. Markus	Severe Reprimand.	4-11-42	Major G.A. McClintock	(E.J.M.)
Deprived of One Good Conduct Badge - Part II Order No. 50, dated 25 Nover 42, w.e.f 4 Nov 42.									(E.J.M.)

P.T.O

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED A TRUE COPY OF THE ORIGINAL HELD IN MY POSSESSION.

30 March, 1943.

E.J. Markus Lieut.,
(E.J. Markus) Adjutant,
No. 5 Cdn Construction Coy., R.C.E.

5 V-102

Pte Dunlop, K. W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 19	~~Guilty~~	~~Guilty~~	
2nd AA Sec 15(1)	~~Guilty~~	~~Guilty~~	
3rd AA Sec 40	~~Guilty~~	~~Guilty~~	
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under sentence for 28 Days Field Punishment beginning on (date) 6 Oct 45 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a Period of Sixty days.

(Sgd) ..... Judge-Advocate, if any. 30 Oct 45 Date awarded. (Sgd) ~~.....~~ President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....

Date 1.12.45. Commanding 30 CORPS FIELD REGT RA Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
L/104563 PTE KENNETH MUNROE DUNLOP	2 NOV 45	D D Darling Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5V-102

FIELD GENERAL COURT-MARTIAL

CPA66 (In lieu of AFA 40/P & R/1866 (40))

RECEIVED 26 NOV 45 JAG BRANCH

Convened by Order of Lt Col P Savard Comd RCASC Inf Coy dated 28 Oct 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L/104563	PTE	KENNETH MUNROE	DUNLOP	36 Cdn Armd Div Company RCASC

PROCEEDINGS REVIEWED 26 Nov 45 JUDGE ADVOCATE'S BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 30 Oct 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 38/55.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused : ~~Do~~ you object to ..... as interpreter ? Ans ~~.....~~

~~The Interpreter is sworn.(1)~~ Do you object to ..... as shorthand writer ? Ans .....

~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans N.O.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	GG MACKENZIE	10 CAR (FORT GARRY)
Member	CAPT	L H DOUGLAS	RCAMC 2 Cdn ADTU
Member	CAPT	F G HADDON	HQ 1 Cdn Army Tank Bde
Judge-Advocate			
Prosecutor	CAPT	H HARROD	36 Cdn Armd Div RCASC
Defending Offr	CAPT	S CHRISTIE	36 Cdn Armd Div RCASC

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (1)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dr p 3.)

A8. The accused L/104563 PTE KENNETH MUNROE DUNLOP before arraignment makes(s) (no) ~~No~~ plea .....(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried jointly see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *securing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans no.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement(1). ~~The Court decides (not) to advise accused to change his plea (these pleas) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s).~~ Part I of the Schedule is amended accordingly.(2)
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex X, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such pleas and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any pleas is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 80(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans .....
Do you intend to call witnesses on your behalf?
Ans .....
Are they witnesses as to character only? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CA 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part II of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2), RP 45, 120(6).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans no.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. *AFB 335 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans yes.
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 4, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 343-366, Overseas RO 309, 2323, MML p 66, 7527-7538. As to sentences assigned for civil offences by the law of England see AA 4(1)(f), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 5064.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

30 Oct 45

I certify that I have medically examined L 104363 Pte Dunlop K M and consider him to be in a fit state of health to undergo trial by a Field General Court Martial

Date

30 Oct-45.

Medical Officer

W A C Dickson Capt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Debert	11Mar44	Pte	(1)	AWL from 0630 hrs until 0630 hrs 12 Mar 44 (TTA 1 dy 2 hrs)AA Sec 15(1)	Cpl O'marra	28 dys Detn.	15Mar 44	Lt-Col WE Gillespie	Forf 2 dys pay 149(1)(a). Forf 28 dys pay FR&I 149(1)(b)
Field	28 Jun 44	Pte		AA Sec 15(1) AWL 4 hrs	L/Sjt Quinney	14 dys forf of pay	29 Jun 44	Major W.J. Hefferman	
Field	2 Oct 44	Pte		AA Sec 40		21 dys forf of pay under FR&I 149(2) 11 dys forf of pay FR&I 149(1)(a)(i). Total forf 32 dys pay.	13 Oct 44	F.G.C.M.	Findings and Sentence Confirmed by CMASC 2 Cdn Tps 13 Oct 44

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15 Sep 45	Pte		AA Sec 40 Conduct to the prej	Documentary	Forf 10 days pay FR&I 149(2)	28-9-45	Major J.A Morgan	
Field	4 Oct 45	Pte		AA Sec 15(1) AWL from 2315 hrs 4 Oct 45 to 2315 hrs 5 Oct 45 (TTA 1 day)	L/Cpl Richards Cpl Hunter	28 days F.P. 28 dys Pay FR&I 149 (2)			

This is a certified true copy from the books and documents in my custody.

(D.D. DARLING) Capt.,
A/Officer Commanding
36 Cdn A Tps Coup Coy RCASC

No. L-104363 Name DUNLOP K.H. Sqn., Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 15Jan43 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 40/P.A.S/156 (2637)

Date of last entry in Company Conduct Sheet: N/A | No. and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed on completion of six months service 15 Jul 43.					
Red Deer	6Aug43	Pte		A.W.L. from 2000 hrs 6 Aug 43 until 0300 hrs 9 Aug 43(absent 2 dys& 7 hrs) AA Sec 15(1).	Documentary	3 days C.B.	9 Aug 43	Capt A.H. Mitchell	Forf 3 dys pay FR&I 149(1)(a)
Red Deer	9Sep43	Pte	(1)	A.W.L. from 2200 hrs 9 Sep 43 until 1330 hrs 29 Sep 43 (absent 19 dys 15 hrs 20 mins)AA Sec 15(1)	Documentary	25 dys Detn.	30 Sep 43	Col. J.J. Burton-Williams	Forf 20 dys pay FR&I 149 (1)(a). Forf25 dys pay FR&I 149 (1)(b).
			(2)	Losing by neglect his clothing equipment and regimentel nedessaries AA Sec 24(2)	Documentary				
Debert	27Dec43	Pte		AWL.0600 hrs 27 Dec 43 to 0300 hrs 30 Dec 43 (Absent 2 dys 18 hrs 30 mins) Open arrest	Documentary	Forf 5 dys pay	30Dec43	Capt JD. Cockburn	Forf 3 dys pay FR&I 149(1)(a) Forf 5 dys pay

(P.T.O.)

No. L-104363 Name DUNLOP K.H. Sqn., Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 13 Jan 43 | GO Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P.A.S/156 (2637)

Date of last entry in Company Conduct Sheet: N/A | No. and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No 2 | Signature OC Company, etc: J.M. Gibbons | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4 Mar 45	Pte		AWL from 1300 hrs 4 Mar 45 until 0900 hrs 5 Mar 45 (absent 20hrs) AA Sec 15(1)	B-96914 Sgt Franklin J.O.	5 dys pay	7 Mar 45	Lt-Col M.P.Peiler	Forf 1 days pay FR&I 149 (1)(a). Forf 5 days pay FR&I 149(2)
Granted Field	9 days 13 Aug 45	P.L. Pte	to UK with money allowance in lieu of rations nil	AWL from 1700 hrs 13 Aug 45 to 1015 hrs 14 Aug 45 (TTA 17 hrs 15 mins)	M/101425 L/Cpl Wasylik, J.	18 dys pay	May 45 17 Aug 45	Maj J.A. Morgan	1 day under FR&I 149(1)(a) 17 days under FR&I 149(2).

(P.T.O.)

A.

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
L104363	Pte	DUNLOP K M	36 CDN A TPS COMP COY RCASC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For	AA Sec 15(1) ~~2~~ 3 times	9 times
For	AA Sec 40 1 times	~~2~~ 1 times
For	AA Sec 24 (2) times	1 times
For	---------- times	---------- times
For	---------- times	---------- times

~~Number of instances of gallantry or distinguished conduct~~

or

~~There are no entries in the conduct sheets of the accused~~

2. ~~The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. ~~The accused is not under sentence at the present time, or~~ The accused at the present time is under sentence for 28 days Field Punishment beginning on the day of 6 Oct 45

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 5 days in military custody, making a total of Five (5) days, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service / ~~attestation paper~~ is 20 yrs 11 Mos.

6. The date of his ~~[illegible]~~ / attestation specified in his record of service / ~~attestation paper~~ is 13 Jan 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 285 dys

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 285 dys service.

9. The accused is entitled to reckon 2 yrs 285 service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, ~~no military decoration or military award (or is in possession of or entitled to~~ (state any military decoration or reward). 1939/45 STAR , FRANCE & GERMANY STAR, DEFENCE MEDAL

11. (If the accused is a warrant officer) The accused before he was made a warrant officer last held the regimental rank

12. (In the case of an [illegible] in the army the rank of , dated

and in his regiment (or corps) or [illegible] dated

2

A.

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
L104363	Pte	DUNLOP K M	36 CDN A TPS COMP COY RCASC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—As a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 627, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness 15 r entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment.
For AA Sec 15(1)	3 times	9 times
For AA Sec 40	1 times	1 times
For AA Sec 24 (2)	times	1 times
For	times	times
For	times	times

Number of mentions, of gallantry or distinguished conduct.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted.

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. / The accused at the present time is under sentence for 28 days Field Punishment beginning on the day of 6 Oct 45

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 5 days in military custody, making a total of Five (5) days, of which NIL days were spent in hospital.

5. The present age of the accused according to his * record of service is 20 yrs 11 Mos.

6. The date of his attestation specified in his * record of service is 13 Jan 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 285 dys

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 285 dys service.

9. The accused is entitled to reckon 2 yrs 285 service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, (state any military decoration or reward). 1939/45 STAR, FRANCE & GERMANY STAR, DEFENCE MEDAL

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or corps or department*) the rank of , dated

(E 1) 20M. 5/44. P. Lot. 751.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused 36 CDN A TPS

No. L104368 *Rank* Pte *Name* DUNLOP, K.M. of COMP COY RCASC Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
Field-General Court Martial	Field	AA Sec 40	21 days forf of pay (FR&I 149(2)) 11 days forf of pay (FR&I 149(1)(c)(i)) TOTAL FORFEITURE OF 32 days pay	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 24th day of October 1945

D.D. Darling Capt

(D.D. DARLING) Capt
A/OC 36 Cdn A Tpt Comp Coy RCASC

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(INSTRUCTION—*Every matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph conserved amended accordingly.*)

NO.11 CDN PROVOST COMPANY

THIS IS TO CERTIFY:

REG NO L.104363 RANK PTE NAME DUNLOP, K.M.

UNIT NO 36 CANADIAN ARMY TROOPS COMPOSITE COMPANY R.C.A.S.C.

WAS APPREHENDED AT 1845 HOURS 19 OCTOBER 45 DATE

AT APELDOORN, Holland PLACE. AT THE TIME OF APPREHENSION

WAS DRESSED IN MILITARY UNIFORM - ~~XXXXXXXXXXXXXXXX~~

EXHIBIT 'A'

H.E. McLean Lieut

~~N.E. Lyons~~, (H.E. McLean)
Officer Commanding,
No.11 Provost Company.

STATEMENT OF ACCUSED

I desire to have the Convening Officer appoint an officer to represent me at my forthcoming trial by Field-General Court Martial.

.....K.M. Dunlop.....
(L104363 Pte DUNLOP, K.M.)

LIST OF EXHIBITS

EXHIBIT "A" - Certificate of Apprehension

LIST OF WITNESSES FOR THE PROSECUTION

F51652 L/Cpl EVELEIGH C E
36 CDN A TPS COMP COY RCASC

H100512 L/Cpl RICHARDS J P
36 CDN A TPS COMP COY RCASC

H87787 Pte McKEE A G
36 CDN A TPS COMP COY RCASC

A99263 Cpl BENNETT J P
36 CDN A TPS COMP COY RCASC

0 - 0 - 0 - 0

LIST OF WITNESSES FOR THE DEFENCE

N I L

0 - 0 - 0 - 0

LIST OF WITNESSES FOR THE PROSECUTION

P51652 L/Cpl EVELEIGH C E
36 CDN A TPS COMP COY RCASC

H100512 L/Cpl RICHARDS J P
36 CDN A TPS COMP COY RCASC

H87787 Pte McKEE A G
36 CDN A TPS COMP COY RCASC

A99263 Cpl BENNETT J P
36 CDN A TPS COMP COY RCASC

0 - 0 - 0 - 0

LIST OF WITNESSES FOR THE DEFENCE

N I L

0 - 0 - 0 - 0

Summary of Evidence
in the case of
L 104363 Pte DUNLOP, K.M
36 Cdn Army Tps Comp Coy RCASC

By direction of the Commanding Officer, the evidence is taken on oath

First Witness F51652 L/Cpl EVELEIGH C.E. 36 Cdn Army Tps Comp Coy RCASC having been duly sworn, states

I am F51652 L/Cpl EVELEIGH C.E., HQ L/Cpl of 36 Cdn Army Tps Comp Coy RCASC. On the 19 Oct 45 at approx 1645 hrs I was detailed by Cpl BENNETT, HQ Cpl, to ~~guard~~ take charge, with L/Cpl RICHARDS, of the accused whom I recognize, relieving L/Cpl RICHARDS after supper. At approx 1715 hrs I went to the HQ Platoon Orderly Room and relieved L/Cpl RICHARDS. Pte DUNLOP was asleep on the couch. I stayed in the room with him for approx half an hour. Then as he was still asleep I went to the lavatory in the same building. I was away 4 or 5 minutes, and on my way back to the Orderly Room I was met by Pte VARLEY, driver of the lorry detailed for recreational transport that evening. He told me his lorry was gone. I ran outside and someone shouted that Dunlop had taken the lorry.

I went to Cpl BENNETT'S room in the big building nearby and reported to him that Pte DUNLOP had taken the recreational lorry. Cpl BENNETT then took charge of the situation and I went to detail another driver and lorry for recreational run.

Q. What condition was Pte DUNLOP in while he was in your charge?

A. He was sleeping the whole time.

Q. Why were you detailed to take charge of Pte DUNLOP.

A. I was duty NCO from 1700 hrs and Pte DUNLOP was undergoing Field Punishment. It was the duty NCOs job to see that DUNLOP was employed on tasks around the kitchen as necessary.

Cross-examined by the accused.

Q. When Cpl BENNETT detailed you to take charge of me, did he advise you that I was under the influence of liquor?

A. No. Cpl BENNETT said nothing about liquor.

C.E. Eveleigh

Second Witness H 100512 L/Cpl RICHARDS, V. P. 36 Bdn Army Tps Coy Coy RCASC, having been duly sworn, states:

I am H 100512 L/Cpl RICHARDS, V.P. Regtl Police Cpl, 36 Bdn Army Tps Coy Coy RCASC. I was Guard Commander for the week and at about 1500 hrs on the 19 Oct 45, the Cook Sgt called me from the gate, told me that Pte DUNLOP, whom I recognize and who was undergoing Field Punishment, had been drinking and detailed me to look after him. I took Pte DUNLOP to the HQ Pl orderly room and helped him onto the couch where he fell asleep. I remained with DUNLOP until L/Cpl EVELEIGH relieved me at 1715 hrs. About 1730 I went back to the Pl orderly room where DUNLOP was still asleep and L/Cpl EVELEIGH I was going to the gate to check the guard. I walked to the gate and was talking to the guard, Pte HICKEE when we saw a lorry coming towards the gate from HQ at an excessive rate of speed. I asked HICKEE what time it was. He ~~looked at his watch and~~ said 'A quarter to six'. I told him to check the oncoming lorry for a work ticket. He tried to wave it down but it failed to slow down. I tried to wave it down but the lorry went right on through the gate.

I recognized Pte DUNLOP driving the lorry and I also recognized the vehicle as CL4273291 which had been standing by to go to APELDOORN. I came to HQ and reported to the C.S.M. following his instructions I detailed a driver and lorry to take myself, Cpl BENNETT and two others and try to catch DUNLOP. We went to APELDOORN to the Rest Park. We enquired if 4273291 had checked in and just then I saw Pte DUNLOP standing with two Provost NCO's just inside the gate of the Rest Park. The Provost said they were waiting for their Offr and DUNLOP would have to remain until he came, so we waited. In a short time a Major and a lieut of the Provost drove up. The Major went up to DUNLOP and said 'this is the man' and they took DUNLOP, Cpl BENNETT and myself in a jeep to Provost HQ where they detained DUNLOP after getting his particulars from BENNETT and myself. We then returned to Unit Lines and reported to the C.S.M.

Q Can you describe in detail DUNLOP's condition when you took charge of him at 1500 hrs?

A His breath smelled as if he had been drinking and he was unsteady on his feet.

Q Can you describe his condition when you saw him again in the APELDOORN Oek Park?

A He was still unsteady on his feet.

Q Have you any idea where he might obtain liquor while undergoing F.P.?

A No idea at all, sir. He has done 19 days of his F.P. without causing any trouble.

The accused declines to cross-examine this witness.

Capt. Richards J.P.

Third Witness H 87787 Pte McKEE A.G. 36 Pde Army Tps Comp Coy R.C.A.S.C. having been duly sworn states:

I am H 87787 Pte McKEE A.G. of HQ Pl, 36 Pde Army Tps Comp Coy R.C.A.S.C. On 19 Oct 45 I was on guard at the gate leading to Coy HQ from 1700 hrs to 1900 hrs. At about 1745 hrs I was standing at the gate with Lt/Cpl RICHARDS when I noticed a lorry coming towards the gate from HQ. I signalled the lorry to stop but it didn't and as it drove through the gate I recognized Pte DUNLOP, the accused, as being the driver. Lt/Cpl RICHARDS went to HQ and I remained on my post.

Q. How would you describe the way in which the lorry was being driven?

A. I didn't notice anything out of the way at all, sir.

The accused declines to cross-examine this witness

A. G. McKee

Fourth Witness A99263 Cpl BENNETT J.P. 36 Cdn Army Tps Comp Coy RCASC, having been duly sworn, states

I am A99263 Cpl BENNETT J.P. A/ADMIN SGT, HQ. 36 Cdn Army Tps Comp Coy RCASC. On the 19 Oct 45 at approx 1600 hrs, ~~I was informed that Pte DUNLOP, who I recognize, was under the influence of liquor~~. I went down to check and found L/Cpl RICHARDS and DUNLOP near the main HQ building talking together. DUNLOP appeared unsteady on his feet but was causing no trouble at that time. I reported to the CSM who told me to put someone with RICHARDS to take care of DUNLOP. I told L/Cpl EVELEIGH to report to L/Cpl RICHARDS. I did not see Pte DUNLOP again until around 1645 hrs. At that time he was asleep in HQ Pl Orderly Room. I returned at approximately 1715 hrs and he was still asleep. At about 1745 hrs L/Cpl EVELEIGH reported to me that DUNLOP was missing and the recreational

lorry had gone. I reported this to the C.S.M. then checked for the recreational lorry CL4273291 and found it missing. With L/Cpl RICHARDS and other I took a lorry and went to APELDOORN, checking at the Veh Park where I was told CL4273291 was in the Park and saw DUNLOP held by Provost. Before getting the ticket for the veh. I had spoken to DUNLOP who told me that he was waiting for a veh to take him back to camp. He appeared to me to be sober. About that time Provost Officers arrived, released CL4273291 which I turned over to one of my men, and L/Cpl RICHARDS and I accompanied DUNLOP and the Provost Officers to Provost HQ where I gave them DUNLOP's particulars and returned to lines.

Q. Have you any idea where DUNLOP might procure liquor?

A. No sir. DUNLOP was undergoing Field Punishment and working during the day in the HQ kitchen.

Cross examined by the accused.

Q. At the veh park in APELDOORN did I tell you that I did not remember driving in a truck?

A. Yes, you did.

Q. What did I say?

A. You told me that somebody else had driven the veh in and had got out when it stopped.

E P Bennett

The Certificate of Apprehension, produced as documentary evidence, was read to the accused, marked Exhibit A, signed by me and attached hereto.

H Harrod Capt

The accused was cautioned as follows:
'Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution, the accused declined to make a statement or give evidence.

H H Dixon Capt

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of eight pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d) and (e) have been complied with.

Brummen
23 Oct 45

H Harrod Capt
36 Cdn Army Tpo Comp Coy RCASC

CHARGE SHEET

The accused, L104363 Pte Kenneth Munroe DUNLOP, 36 Cdn A Tps Comp Coy RCASC; a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
A A Sec 19

WHEN ON ACTIVE SERVICE: DRUNKENNESS

In that he, in the Field, in Holland, on 19 Oct 45, when in lawful custody undergoing Field Punishment, was drunk.

SECOND CHARGE
A A Sec 15(1)

WHEN ON ACTIVE SERVICE: ABSENTED HIMSELF WITHOUT LEAVE

In that he

In the Field, in Holland, absented himself without leave, when in lawful custody undergoing Field Punishment, from 1745 hrs 19 Oct 45 until apprehended in APELDOORN, Holland, at 1845 hrs 19 Oct 45 (Absent 1 Hour)

THIRD CHARGE
A A Sec 40

WHEN ON ACTIVE SERVICE: CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

In the Field, in Holland, at about 1745 hrs on 19 Oct 45, improperly used MD Veh No. CL-4273291 by driving it out of the Camp Area without authority.

In the Field
21 Oct 45

D L Dunlop Capt
(D.L. DUNLOP) Capt.,
A/Officer Commanding
36 Cdn A Tps Comp Coy RCASC

To be tried by Field General Court Martial.

In the Field
28 Oct 45

D Howard Lt Col

PLEA IN MITIGATION.

L- 104363 PTE KENNETH MUNROE DUNLOP.

The accused has pleaded "Guilty" to all charges but I would like to say to the Court that had Pte Dunlop not been drunk the second & third charges would not have arisen. A.A. Sec 48 covers the crime of "Drunkenness" & I respectfully ask the Court to give careful consideration to this sec before passing sentence.

[illegible] Capt.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(6).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L 104363	Pte		Kenneth Munroe	DUNLOP	36 Gdn A Tps Comp Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (*date*) 30 Oct 45 endorsed by me, "~~[illegible]~~ to be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior convening officer~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~[illegible]~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	G.G. MacKENZIE		10 Cdn Armd Regt

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by OC First Cdn Army Leave Centre		
Capt or Lt	To be detailed by ADMS HQ A Tps Area First Cdn Army		

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	To be detailed by OC 1 Cdn Mech Eqpt Coy		

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
	---------- NIL ----------		

On Active Service in the Fd

in Holland (Country.)

(Signed personally. RP 102 fn 2.)

Lt Col (Rank.)

Date 26 Oct 45

Commanding HQ RCASC First Cdn A Tps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAES (To Issue of AFAS 40-7 & 8/1697 (1401))

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(AO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so *far as* practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP* 60(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 19)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 40(*E*), *KR Can* 563(*a*).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Con* 567.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Con* 566). *As to certified copies of regimental books see AA* 163 (1) (*g*) (*b*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 52(*b*), *RP* 113(*C*), *MML p* 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

80-0

Pte DUNLOP, T S.

O. H. M. S.

M. F. B. 270

80-0

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this THIRD day of SEPTEMBER, 19 42

Whereas it appears to me, the undersigned, an officer in Command of 6th Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

In my opinion military exigencies, namely the dispersion of units, and difficulties of communication and other difficulties render it inexpedient to observe the provisions of those rules inconsistent with Appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

PROCEEDINGS REVIEWED

President.

Rank.	Name.	Regiment.
Major	G.R. Matthews	S Sask R

Members.

Rank.	Name.	Regiment.
Capt.	C. Gauthier	Fus M R
Lieut	H.R. McGill	Camerons of C
Waiting Member		
Lieut	R.S. Snider	Camerons of C

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed G.R. Matthews Brig

Commanding 6 Cdn Inf Bde

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
H-19074 Private Dunlop, Thomas, Stobo Camerons of C.	1st Charge W.O.A.S. absence without leave in that he in the field did absent himself from his quarters from 0600 hrs 20 Jul 42 until he returned to Camp at approximately 1210 hrs, 24 Aug 42 (Absent 35 days, 6 hrs 10 minutes). A.A. Sec 15(1)	guilty	guilty.	
	2nd Charge Losing by neglect his equipment in that he at Fittleworth West Sussex on or about the 24 Aug 42 was deficient of articles and equipment to the amount of £1-8-6. A.A. Sec 24 (2).	guilty	guilty Sentenced to forty-nine days data and put under stoppages of pay for £1-8-6	I Confirm

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) G. W. Whitehead Brig (Signed) G. R. Matthews Major

Commanding for 6 Cdn Inf Bde. Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 4 day of Sept 42, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. The officers under instruction) & Court Stenographer.

were duly sworn.

* Omit if not applicable.

Signed this 4 day of Sept 1942.

G. R. Matthews Major
President of the Court Martial

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

* See footnote (b) on page 762 M.M.L. 1929.

~~Signed this day of 19~~

~~President of the Court Martial~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 6 day of Sep 1942

G. W. Whitehead Brig
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 7 Sep 42 (Signed) T. S. Bergman Lieut & Adj Camerons of Canada

Promulgated and extracts taken in the case of

(Dated) 7 Sept 42 (Signed) D. J. Leach capt. for S.C. 6 C.I.B.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

H-19074 Private Dunlop, Thomas Stobo, of the Queen's Own Cameron Highlanders of Canada Regiment, Canadian Army Overseas, is charged with:-

First Charge
A.A. Sec. 15 (6) WHILST ON ACTIVE SERVICE, ABSENCE WITHOUT LEAVE,

in that he

In the Field, did absent himself from his quarters from 0600 hours, 20 Jul 42 until he returned to Camp at approximately 1210 hours, 24 Aug 42. Absent 35 days, 6 hours, 10 minutes.

Second Charge
A.A.Sec.24(2) LOSING BY NEGLECT HIS EQUIPMENT, in that he

at Fittleworth, West Sussex, on or about the 24th day of August, 1942 was deficient of articles and equipment to the amount of £1-8s-6d.

To be tried by Field General Court Martial.

D.D.Cunningham A/Lt.-Col.
(D.D.Cunningham)
Comd. Camerons of Canada, Cdn.Army(O.S.)

MEDICAL OFFICER'S REPORT

I certify that No. H 19074 Dunlop T.S. Pte

of D.O.C.H. is in a fit state of health,

and fit to undergo Trial by Court Martial.

H Marcinkowski Capt
Medical Officer

Station In the field

Date 4-9-42

G.H. Matthews Major

M.F.B. 246

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

G. A. Matthews Maj'r Pres.

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at Fres. M. R. on the 4 day of Sept. 1942 by order of Brig. G. Whitehead (pr) Commanding 6 Cdn Inf Bde dated the 3 day of Sept. 1942

Maj'r G. A. Matthews President. S. Sask. R.

Members.

Capt. C. Gauthier Fres. M. R.
Lieut H. R. McGill Com of Can

, Judge Advocate.

Trial of* H-19074 Pte Dunlop, Thomas Stoba, G.I.C.H.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that ——— is not available to serve owing to

———, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Lieut N. S. Bergman G.O.C.H.

Counsel‡ or defending officer† Lieut J. J. D. Gagnon G.O.C.H.

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused.

No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
16M—9-39 (21322)
H.Q. 1772—39-228

B

G. R. Mathews Major
Pres

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

D-109378 Pte De Gagne, M. Fus. M. R.
is sworn as short hand writer.

Charge-Sheet

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.

Guilty Sir

Answer.

Are you guilty or not guilty of the second charge against you, which you have heard read?

Question.

Guilty Sir

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read?

Question.

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read?

Question.

Answer.

The accused having pleaded Guilty to both charges the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Instruction.

CC

[illegible]

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

(Q.O.C.H)

The accused H-19074 Pte Dunlop, Thomas Stobo

is found guilty of both charges.

*The summary (or abstract) of evidence is read, marked , signed by the President, and attached to the proceedings.

Question to the accused.

Do you wish to make any statement in mitigation of punishment?

Answer.

The accused in mitigation of punishment says:—

Accused was sworn and states he was on

[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Ab initio course. Returned to unit and found only rear party there. Unit away on special training. Obtained leave. Was working in a Tomato greenhouse. Not receiving pay. Felt work was important & decided to remain till he was sure regiment were back.

Counsel for accused pleads court give consideration to accused's previous good record & value to regiment during his 3 years service. [illegible]

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer.

Evidence as to character.

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before Sentence*

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Lieut N. S. Bergman is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* A.T.B. 246 M.T.M. 6 produced

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes Sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* I have Sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes Sir

[Construction.—If by reason of the nature of the service of the accused in a departmental corps or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused.

Accused does not wish to Cross-examine

Question to the accused.

Do you wish to address the Court? *Answer.* No Sir

The Court is closed for the consideration of the sentence.

F

Sentence

The Court sentence the accused H. 19074 Pte Dunlop T.S. Sentence.

sentenced to forty nine days detention and placed under stoppage of pay for £ 1-8-6 for deficiencies in kit

[illegible] Matthews Major
Pres.

Abstract of Evidence in the case of H19074 Private Dunlop, Thomas Stobo, of the Queen's Own Cameron Highlanders of Canada Regiment, Canadian Army, Overseas.

A copy of the Declaration of the Court of Inquiry which investigated and recorded the absence without leave from his duty and deficiency of kit and equipment of the accused will be tendered in evidence to prove his absence.

Lieut. N.S. Bergman will give evidence that the accused reported back to the Battalion Orderly Room at approximately 1210 hours, 24th August, 1942, sober and properly dressed.

RECORD of the Declaration of a Court of Inquiry assembled at Fittleworth, W.Sussex on the 14th day of August, 1942. for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No. H19074 Private Dunlop, T.S., Bn.HQ. Queen's Own Cameron Highlanders of Canada, Canadian Army, Overseas.

DECLARATION

The Court declare, that No. H19074 Pte. Dunlop, T.S., Bn.HQ. Queen's Own Cameron Highlanders of Canada Regiment, Canadian Army (O.S.) illegally absented himself without leave at Denne Park, Horsham, Sussex on the 20th day of July 1942 and that he is still so absent, and that on the 14th day of August, 1942 he was deficient, and that he is still deficient of the following articles:-

1 Sheets ground		10	9
1 Tins Mess rectangular		1	8
1 Bootlaces fabric, prs			0½
1 Boots ankle W/laces prs	1	1	6
1 Boots lumbermans rubber		4	8
1 Brasses cleaning			2
1 Brushes clothes		1	1
1 Brushes hair		1	1
1 Brushes shoe blacking			8
1 Brushes shoe polishing			9
1 Brushes shaving		1	4
1 Brushes tooth			4½
1 Comb hair			2
1 Holdalls			9
1 Gloves knitted drab prs		2	7½
1 Jackets sweater(Cdn issue)		8	6
1 Knives clasp		5	2½
1 Razors		1	10½
1 Shirts angola drab		9	2
1 shoes ~~rubber~~ canvas rubber soles prs.		8	10
1 Badges cap(Q.O.C.H.of C.)			5
1 Respirator A/G complete		18	8½
1 Respirator A/G haversack Mk VII		7	9
1 Respirator A/G sling		1	3
1 Cloth disinfecting f/piece			0½
1 Outfit Anti-dimming Mk V			2½
5 Eyeshields A/G Mk II			11 ¼
~~Names of President and Members~~		£5-10s-10¼d	TOTAL

Names of President and Members:

PRESIDENT: Capt. D.F. Storey

MEMBERS: Lieut. N.R. Calder
Lieut. J.S. Mulholland

Signature of Commanding Officer "D.G.Cunningham" A/Lt.-Col.
COMD. CAMERONS OF CANADA.

Certified true copy L.P.Beech Lieut.
~~(Sgd. Bergman)~~
Signature of Chief Living Authority of original record.
A/Adjt. Camerons of Canada, Cdn.Army (O.S.)

M.F.H. 375
IM-9-33 (M913)
H.Q. 1772-39-257

No. H19074 Name Dunlop, T.S. Sqn., Battery, or Company Bn. HQ Corps Camerons of Canada Date of enlistment 4-9-39 G.C. Badges Service or Proficiency Pay

M.F.M. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
In the Field	26-12-41	L/Cpl	Nil	A.W.L. from 0600 hrs 26 Dec 41 to 2200 hrs 30 Dec 41 (4 days, 16 hrs) A.A. Sec.15	H-19330 Sjt. J.L. Henderson	Reduced to permanent grade of Pte.	31 Dec41	Major A. Thomson	Forfeits 5 days pay

CERTIFIED A TRUE COPY _____ Lieut.
(N.S. Bergman)
A/Adjt. Camerons of Canada.

PTO

(Substitute for A.F.B. 296)
or N.F.B. 365

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. H-19074 NAME Pte. Dunlop, T.S. UNIT Camerons of Canada, Cdn. Army (O.S.)

AGE 22 MARRIED OR SINGLE Single NO. OF DEPENDENTS One

DATE OF ATTESTATION 4 Sep 39

NO. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL 0 MILITARY 11 HOSPITAL 0 TOTAL 11

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

A CERTIFIED TRUE COPY OF M.F.M. 6 MUST ACCOMPANY THIS FORM

(Officer i/c Records)

N.S. Bergman Unit
(N.S. Bergman) Lieut.
A/Adjt. Camerons of Canada, Cdn. Army (O.S.)

Dated at In the Field
This 4th day of September 1942
(To be dated and signed as of date of trial)

G.D. Matthews Major

I hereby acknowledge receipt of a copy of the Summary of Evidence and Charge Sheet.

Thomas Stokes Dunlop
H19074 Dunlop, T.S.

I request that an Officer be appointed to represent me at my trial.

I request the services of Lieut W.S. Bergman if he is available.

Thomas Stokes Dunlop
H19074 Dunlop, T.S.

4C-54

PTE DUNLOP K.M.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L-104363 Pte Dunlop K M 34 Can C Tps Comp Coy RCASC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 8.)

At present ~~under sentence for~~ ~~2nd~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To forfeit all ordinary pay for a period of 21 days.

(Sgd) Godfrey H. Jennyns — 13 Oct 44 — Judge-Advocate, if any. Date awarded.

(Sgd) K E Morris Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) DH

(1. AA 57A. Delete if not used.)

(Sgd) D H Smith Lt-Col

Date 13 Oct 44 Commanding 6 Cdn RCASC 2 Cdn Corps Tps Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
L 104363 Pte Dunlop, K M.	15 Oct 44	L H Hafferman Major 06 34 Cdn C Tps Comp Coy RCASC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4C-54

CPA86 (To lieu of APA2) 40/P & S/1698 (6623)

FIELD GENERAL COURT-MARTIAL

4/38B

Convening Offr Lt Col D H Ross Smith Comd RCASC 2 Cdn C Tps dated 12 Oct 44

ACCUSED.

(As to trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-104363	Pte	Keith Monroe	Dunlop	34 Can C Tps Comp Coy

PROCEEDINGS REVIEWED

JAG Examiner 2 Nov 44

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 13 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 12/18.

A1. The President, Members, ~~waiting Members~~, JA, ~~if any, and Offrs under Instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~s~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1200 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(E). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under Instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	K. E. Morris	2 Cdn C Tps Coy RCASC
Member	Capt.	R. Church	2 Cdn C Tps Coy RCASC
Member	Lt.	T. J. Van Raes	4 Cdn Armd Div Tps Coy RCASC
Judge-Advocate	Capt	G. H. Jennyns	HQ 2 Cdn Corps.
Prosecutor	Capt.	C. M. Longbotham	34 Cdn C Tps Comp Coy RCASC
Defending Offr	Capt.	W. I. Moore	34 Cdn C Tps Comp Coy RCASC

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (E) and fn 2 were not followed. See Dil p 32.)

A8. The accused ..... before arraignment makes(s) (no) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 26, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is~~ ~~are~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

(2 Copies Brought Up p 35)

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The ~~President~~ JA, ~~if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or call witnesses as to character and make an address in mitigation of punishment.(1)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(1), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused : Do you wish to make a statement ? Ans N4 SIR .....(4)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para L3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea of Guilty is (are) not changed the President records finding of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive on Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)*
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.).

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A65. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (d), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Service as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 335 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement of Service and Conduct Sheet and in mitigation of punishment ?(1) Ans YES SIR BY MY COMMANDING OFFICER .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(5), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

THE ACCUSED ELECTS TRIAL BY COURT-MARTIAL

L.M.

CHARGE SHEET

The accused L.104363 Pte Keith, Monroe, DUNLOP,
34 Canadian Corps Troops Composite Company RCASC
a soldier of the Canadian Army Overseas,
is charged with

FIRST CHARGE WHEN ON ACTIVE SERVICE
Sec 40 AA CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

in the Field on or about the day the Unit left.
Epron (15 August 44) until on or about 23
September 44 was improperly in possession of
a Ronson combination cigarette case and lighter,
the property of No. U.1637 Pte Ledson, H.B.,
34 Canadian Corps Troops Composite Company
RCASC CA(C).

W. H. Hefferman Major

(W.H.Hefferman) Major,
Officer Commanding,
34 Cdn C Tps Comp Coy RCASC.

In the Field
4 Oct 44

To be tried by Field General Court Martial.

D Ross-Smith

(G D Ross-Smith)Lt-Col
Comd RCASC 2 Cdn C Tps

12 Oct 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-104363	Pte		Keith Monroe	Dunlop	34 Cdn C Tps Comp Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 12 Oct 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	KE Norris	2 Cdn C Tpt Coy RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	R Church	att HQ RCASC 2 Cdn C Tps
Lt	T J Van Raes	4 Cdn Armd Div Tpt Coy

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	G H Jermyn	HQ 2 Cdn Corps

On Active Service in the Fd

in Belgium (*Country.*)

Date 12 Oct 44

(*Signed personally. ~~RP 105 for 2.~~*) Lt-Col (*Rank.*)

(G D Ross-Smith)

Commanding RCASC 2 Cdn C Tps

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CP A&S (To item of AFAS) 60/P & R/1897 (4611))

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, time permitting, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, *e subject to RP 95(A)*, be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as* practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accsd:

(i) Opening address by Defending Offr. (*RP* 60(C), 97(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 86.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than on mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 563(a).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered serially on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admissibility in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1), (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part 3 of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), 3d M.L. p 769.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in one envelope marked "Confidential", or as otherwise directed.

MEDICAL CERTIFICATE

I certify that I have this morning examined

No. L.104363 rank Pte Name DUNLOP K.M.

and in my opinion he is fit to undergo trial by Court Martial

Station Field

Date 13 Oct 44

Medical Officer,
HQ RCASC 2 Cdn C tps

Before the court decides on punishment I would like to make a plea on his behalf. The accused is 19 years old and has served a long time overseas. He has two brothers in the army in Italy. I make this plea on the grounds of this boys youth. He is guilty of having the lighter and he knows that he was wrong in not taking the proper steps to find the owner. He knew that it might be Pte Ledsons lighter and I have discussed his action fully with him and say without fear of contradiction that he has just been foolish, has lacked worldly knowledge. He has agreed to pay back the money and I plead for leniency.

EXHIBIT A

Summary of Evidence in the case of L.104363 Pte Dunlop, K.M., 34 Canadian Corps Troops Composite Company R.C.A.S.C., Canadian Army Overseas, charged with improper possession.

The Commanding Officer directs that the evidence be taken on Oath.

First Witness

A.63184 Pte Murcar, G.A., of 34 Canadian Corps Troops Composite Company R.C.A.S.C., having been duly sworn, states:

I am A.63184 Pte Murcar, G.A., of 34 Cdn Corps Troops Comp Coy., R.C.A.S.C. - C Pl. On or about the 25 Sep 44 I came off detail at about 2000A hrs. Accompanied by Cpl McBride I went to a pub near Boschsnepe for a drink. While in the pub I asked a group of men if they had a lighter to sell. Pte Dunlop then told me that he had one for sale. He showed it to me: it was a Konson Combination lighter and cigarette case, in nickel finish, with a brass Canadian Maple Leaf on the face of it. We haggled over the price and I finally gave him 800 francs, French, for it. A few days later I showed it to my spare driver who said that he thought it was Pte Ledson's lighter. I was going to check on this but was away on detail and when I got back to the Unit the matter was under investigation.

Q. (By officer taking Summary): "Is this the lighter you purchased from Pte Dunlop."

A. "Yes".

The accused declines to cross-examine the witness.

G.A. Murcar

The lighter referred to by this witness, produced and shown to the accused is marked Exhibit "A", signed by me, and attached to this Summary of Evidence.

Lieut

(Signature of Officer taking Summary)

Second Witness

U.1637 Pte Ledson, H.B., of 34 Canadian Corps Troops Composite Company R.C.A.S.C., having been duly sworn, states:

I am U.1637 Pte Ledson, H.B., of 34 Canadian Corps Troops Composite Company R.C.A.S.C. On the day we left Epron, near Caen, I was in "B" Pl vehicle lines and just before lunch I filled my lighter and placed it on the ground to dry by my kit which was near my vehicle. I was called away to the other side of the lorry to check the kitchen fire. I was gone about five minutes and when I came back my lighter was not there. I informed Lt Gaitens, my Platoon Officer, that my lighter had been stolen. The description of my lighter is as follows: it is a Ronson Combination cigarette case and lighter; nickel finish with a brass CANADA Maple Leaf soldered on the front of it. I asked one or two of the men in my platoon (B platoon) to keep their eyes open and let me know if thoy saw it around. I also asked everyone around at that time if they had seen it and nobody seemed to know anything about it. On Sunday morning, 1 October 44, the platoon arrived in location near St. Nocolas and I was standing by my vehicle talking to Pte Stranges. Stranges mentioned to me that he had seen my lighter sold to Pte Murcar in a pub. He said that Pte Dunlop had sold it to Murcar. I then went to Lt. Gaitens, my platoon officer, and told him what Stranges told me and that my lighter was located.

Q. (By officer taking Summary): "Is this your lighter?"

A. "Yes, Sir."

Q. (By accused) "Do you swear that your kit was out of the truck?"
A. "Yes"

Q. "Approximately how many men did you ask if they had seen the lighter?"
A. "At least twelve."

H.B. Ledson
.....

The lighter referred to by this witness, produced and shown to the accused is marked Exhibit "A", signed by me, and attached to this Summary of Evidence.

Cecil Langfordtrann Capt
.....
(Signature of Officer taking Summary)

Third Witness

B.84342 Pte Cummins, H.C., of 34 Canadian Corps Troops Composite Company R.C.A.S.C., having been duly sworn states:

I am B.84342 Pte Cummins, H.C., of 34 Canadian Corps Troops Composite Company R.C.A.S.C. About noon of the day the Unit moved from Epron, I was with Pte Ledson. He filled his lighter and it overflowed. He then placed it on his kit which was on the ground beside his vehicle. About five minutes later he told me that his lighter was missing. We both looked for it but could not find it. After he had placed the lighter on his kit we both moved away whilst working around the vehicle. Pte Ledson made several inquiries if anyone had found his lighter. I also made enquiries but everyone I asked said that they hadn't seen it. Pte Ledson then reported the matter to Lt. Gaitens, the pl officer. The lighter was a combination cigarette case and lighter made by Ronson. There is a dent in the actual lighter part and a bronze Maple Leaf soldered on the face of it. It was a nickel-finished lighter. That is all I know of this matter.

Q. (By Officer taking Summary): "Is this the lighter which belonged to Pte Ledson and which disappeared the day the Unit left

A. "Yes, that's it".

Q. (By accused) "Cummins, where was Ledson's equipment?"

A. "On the ground about a foot from the truck."

H. G. Cummins

The lighter referred to by this witness, produced and shown to the accused is marked Exhibit "A", signed by me, and attached to this Summary of Evidence.

Chas Langstaff Capt

(Signature of Officer taking Summary)

Fourth Witness

B.89665 Pte Merrlles, J.A., of 34 Canadian Corps Troops Composite Company R.C.A.S.C., having been duly sworn states:

I am B.89665 Pte Merrlles, J.A., of 34 Canadian Corps Troops Composite Company R.C.A.S.C. - Workshop Platoon. While the Unit was at Epron, Pte Ledson came to me with a Ronson combination cigarette lighter and cigarette case, which was nickel finished. He wanted me to solder a brass Maple Leaf, with the word CANADA on it, on to his lighter. I did so and returned it to Pte Ledson. Shortly after that I left the platoon to go to workshop. I left the platoon to go to workshop before we left Epron. The lighter had a small dent in the actual lighter part on the same side as the Maple Leaf was soldered. That is all I know.

Q. (By Officer taking Summary): "Is this the lighter which belonged to Pte Ledson and on which you soldered the Maple Leaf?"

A. "Yes, sir - that is the lighter all right."

The accused declines to cross-examine the witness.

J. A. Merrlles

The lighter referred to by this witness, produced and shown to the accused is marked Exhibit "A", signed by me, and attached to this Summary of Evidence.

Chas Langstaff Capt

(Signature of Officer taking Summary)

Fifth Witness

B.84813 Pte Jones, H.W.R., of 34 Canadian Corps Troops Composite Company R.C.A.S.C., having been duly sworn states:

I am B.84813 Pte Jones, H.W.R., of 34 Canadian Corps Troops Composite Company R.C.A.S.C. - "B" Platoon. On or about the day the Unit moved from Epron, Pte Dunlop came to me and showed me a lighter. He said "I found this lighter, do you know who owns it" or words to that effect. Then, or perhaps a little later on, after thinking it over, I told Pte Dunlop that I had seen Pte Ledson with a lighter like it. I can't remember whether he said anything further or not. That is all I know about the lighter.

Q. (By Officer taking Summary): "Do you think that this is the lighter you saw Dunlop with and which you think might have been Ledson's?"

A. "To the best of my recollection I would say it was, Sir."

Q. (By accused) "Did you see the lighter around the kitchen lorry at any time in the morning that we left

A. "No".

Q. "Did you notice whether or not there was equipment laying beside Ledson's truck?"

A. "No"

H.W.R. Jones
.....

The lighter referred to by this witness, produced and shown to the accused is marked Exhibit "A", signed by me, and attached to this Summary of Evidence.

[signature]
.....
(Signature of Officer taking Summary)

Sixth Witness

H.87570 Pte Stranges, J.J., of 34 Canadian Corps Troops Composite Company R.C.A.S.C., having been duly sworn states:

I am H.87570 Pte Stranges, J.J., of 34 Canadian Corps Troops Composite Company R.C.A.S.C. One night about the 27 Sep 44 I left Composite Platoon lines to go to a cafe for a drink in the village of Boeschaepe. While I was in the cafe, I got talking to Pte Dunlop and a few other lads. One of the other chaps was Pte Murcar of "C" platoon. After talking for a while the conversation got around to cigarette lighters and Pte Dunlop said to all in general "I have a lighter to sell." Pte Murcar, who was there, bought the lighter from Pte Dunlop for 800 francs, French. I recognized the lighter as one which I had seen Pte Ledson with previously. I didn't say anything to anyone although I knew that Ledson had lost his lighter before I left "B" platoon. When I saw Ledson again I told him that I had seen Pte Dunlop sell his lighter to Pte Murcar. The article in question is a Ronson combination lighter and cigarette case. It has a nickel finish and a Canadian Maple Leaf badge in bronze on it. That is all I know about this.

Q. (By Officer taking Summary): Is this the lighter you saw Dunlop sell for 800 francs, French, to Murcar and is it the one Ledson lost?"

A. "That is it, Sir."

Q. (by accused): "At the time I sold the lighter to Murcar did you know it was Ledson's?"

A. "Yes".

Q. "Why did you not tell me that it was Ledson's, then?"

A. "For the simple reason that I figured it was none of my business what was going on in the pub."

Pte J. Stranges

The lighter referred to by this witness, produced and shown to the accused is marked Exhibit "A", signed by me, and attached to this Summary of Evidence.

Lieut Capt

(Signature of Officer taking Summary)

Seventh Witness

B.93289 Pte Hindmarsh, T.M., of 34 Canadian Corps Troops Composite Company R.C.A.S.C., having been duly sworn states:

I am B.93289 Pte Hindmarsh, T.M., of 34 Canadian Corps Troops Composite Company R.C.A.S.C. A few days after the Unit had left Epron, When we were at Langannerie on Caen - Falaise road, about 1100 hours I was in "B" platoon lines lying beside the kitchen lorry. I had noticed Pte Ledson's lighter laying on the ground about five feet away from it. I got up and walked away from the lorry for some reason or other: the lighter was there when I left. When I returned a few minutes later I laid down again but noticed the lighter had disappeared. I thought nothing of it because I knew Ledson owned it and it was his lorry, therefore I assumed he had picked it up. Shortly after that Pte Ledson approached me and stated that his lighter had disappeared. I told him that I had seen it but that I didn't know where it had gone to. That is the last I heard of this lighter until this investigation opened.

Q. (By Officer taking Summary): "Is this the lighter which you knew to be Ledson's and which you saw laying on the ground the day he claims to have lost it?"

A. "Yes"

Q. (By accused) "Hindmarsh, how long were you lying on the ground before you moved away?"

A. "Roughly one half an hour."

Q. "Was the lighter there all the time you were lying there?"

A. "Yes"

T.M. Hindmarsh

The lighter referred to by this witness, produced and shown to the accused is marked Exhibit "A", signed by me, and attached to this Summary of Evidence.

C.R. Longbotham Capt.
(Signature of Officer taking Summary)

RP 4 (c)(d)(e)(f) having been complied with, the accused declines to make any statement or to give any evidence on Oath. Taken by me in the Field in the presence and hearing of the accused this 4th day of October 1944.

C.R. Longbotham Capt.,
(C.R.Longbotham) Capt.,
34 Cdn Corps Troops Comp Coy RCASC.

I desire the services of Major Craig, RCA, HQ 2 Cdn Corps as counsel if he is available.

T.M. Hindmarsh

List of Exhibits

Exhibit "A" - Ronson combination lighter and cigarette case in nickel finish with Canadian maple leaf badge on face.

List of Exhibits

Exhibit "A" - Ronson combination lighter and cigarette case in nickel finish with Canadian maple leaf badge on face.

EXHIBIT B

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
L.104363	Pte	Dunlop, K.M.	34 Cdn Corps Tps Comp Coy RCASC

1. The following is a fair and true summary of the entries in the regimental and [redacted] company conduct sheets† of the accused, [redacted]—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, R.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	A.A. Sec 15(1) AWL Three	times	Five	times.
For	A.A. Sec 24(2) Losing by Neglect One	times	One	times.
For		times		times.
For		times		times.
For		times		times.

[redacted]

2. The accused has not been previously convicted, [redacted] By Court Martial

[redacted]

3. [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and ~~Two~~ // days in military custody, making a total of ~~Two~~ // days, of which NIL days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 19 yrs 10 mos 16 days

6. [redacted] attestation specified in his [redacted] attestation paper is 13 Jan 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 year 8 Mos 21 days.

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr 8 mos 21 days service.

9. The accused is entitled to reckon 1 yr 8 mos 21 days service for the purpose of determining his pension, etc.

10. [redacted]

11. [redacted]

12. [redacted]

[redacted]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(*INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		N/A		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13th day of October 1944

[signature] Capt

13. [illegible] Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years, ...

In the rank of ..... years, ...

(*INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

EXHIBIT C

No. L.104363 Name DUNLOP K.M. Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 13Jan43 | GC Badges | Service & Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (5418)

Date of last entry in Company Conduct Sheet: N/A | No. and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No 1 | Signature OC Company, etc: J.M.Gibbons, Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed on completion of six months		service 13 Jul 43.			
Red Deer	6Aug43	Pte		AWL. from 2000 hrs.6Aug43 until 0300 hrs.9Aug43 (Absent 2 dys. 7 hrs.) A.A.Sec.15(1).	Documentary	3 dys C.B.	9Aug43	Capt. A.H. Mitchell	Forf.3 dys Pay FR&I 149 (1)(a)
" "	9Sep43	"	(1)	AWL. from 2200 hrs.9Sep43 until 1330 hrs.29Sep43 (Absent 19 dys 15 hrs.30 mins.) A.A.Sec.15(1)	Documentary	25 dys.Detn.	30Sep43	Col. J.J. Burton-Willison.	Forf 20 dys Pay FR&I.149 (1)(a)Forf. 25 dys Pay FR&I 149(1b)
			(2)	Losing by neglect his clothing equipment and regimental necessaries AA.Sec.24(2)	Documentary				
Debert	27Dec43	"		AWL.0600 hrs.27Dec43 to 0030 hrs 30Dec43 (Absent 2 dys.18hrs.30mins). Open arrest.	Documentary	Forf 5 dys. Pay	30Dec43	Capt. JD Cockburn	Forf.3 dys. Pay FR&I.149 (1)A)Forf 5 dys.Pay

CERTIFIED TRUE COPY ..... CAPT & ADJT

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Debert	11Mar44	Pte	(1)	AWL.from 0630 hrs.until 0830 hrs. 12Mar44 Tot.Time Absent 1 dys.2Hrs. AA Sec.15(1).	Cpl.O'marra	28 dys.Detn.	13 Mar44	Lt.Col.WE. Gillespie	Forf.2 dys.Pay FR&I 149(1)b Forf 28 dys Pay FR&I 149(1)b)
			(2)	AA Sec.15(1) AWL.from 2200 hrs. 12-Mar44 until 2230 hrs.13Mar44 Total time absent 30 mins.	Cpl.Buckley				
Field	28 Jun 44	Pte		AA Sec 15(1) AWL 4 hrs	L/Sjt Quinney	14 days forf of pay	29 Jun 44	Major W.H. Heffernan	

CERTIFIED TRUE COPY.....CAPT & ADJT.

Y.17

PTE. DUNLOP, T. S.

See 80-0 for 1st Case.

Y.17

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

"A." F.J. Gilmour Major Pres.

Order convening the Court.

On Active Service, this FOURTH day of FEBRUARY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 6th Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[illegible] Jam

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[illegible]

*[illegible]

*[illegible] Jam

[illegible]

In my opinion military exigencies, namely the dispersion of units and difficulties of communication and other difficulties render it inexpedient to observe the provisions of those rules inconsistent with Appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

Proceedings Reviewed

Molin Capt

for Reviewing Officer (I.A.G.) C.M.H.Q.

16 Feb 43

14-1

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	F.J. Gilmour	HQ., 2 Cdn Div

Members.

Rank.	Name.	Regiment.
Captain	L. Lacroix	Regt de Montmagny
Lieutenant	W.H. Graham	Camerons of C.
Waiting Member Lieutenant	I.E. Burrows	S Sask R

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature]

(S.A. McCarter) Brigadier

Commanding Comd. 6 Cdn Inf Bde.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
H-19074 Pte. DUNLOP Thomas Stobo Camerons of C	First Charge A.A. Sec 15 (1) See charge sheet attached	Guilty	Guilty	Confirmed.
	Second Charge A.A. Sec 40 See charge sheet attached	Guilty	Guilty	[signature] COMD. 6 CDN INF BDE. 7 Feb. 43.
			80 days detn & stoppages of pay of £3/8/5 5 Feby 43 F Gilmour Major PRS	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) [signature] (Signed) F Gilmour Major

(G.A. McCarter) - Brigadier
Comd. *Commanding* 6 Cdn Inf Bde
Convening Officer (e)

RCA
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 5th day of February 1943 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~ FR
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 5th day of February 1943.

F. Gilmour Major

President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this FR day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I ~~direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ Gam

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this Seventh day of February 1943.

[signature]

~~Confirming Officer.~~

COMD. 6 CDN INF BDE.

Promulgated and extracts taken in the case of

(a) (Dated) 8 Feb 43 (Signed) R.W. Campbell Capt. & Adj.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] Wt. 38092/1318 7m 2/41 W. & Co., Ltd. Gp. 748/2

THE QUEEN'S OWN CAMERON HIGHLANDERS OF CANADA DATE: 5 Feb 43

This is to certify that I have this morning examined:

No. H19076 Rank Sgt Name Dunlop. T. S.

and find him fit or ~~unfit~~ to undergo Court Martial.

H Marantz Capt. (RCAMC)
(H. Marantz)
Medical Officer,
Camerons of Canada

CHARGE SHEET

H 19074 Private Thomas Stobo DUNLOP, of the Queen's Own Cameron Highlanders of Canada, a soldier in the Canadian Army Overseas, is charged with:-

FIRST CHARGE
A.A. Sec. 15 (1)

When on active service, absenting himself without leave, in that he, at Petworth Park Camp, Petworth, West Sussex, did absent himself from 0600 hrs, 12 January 1943 until apprehended by the Canadian Provost Corps at 1145 hrs on the 27 January 1943, (an absence of 15 days, 5 hrs, 45 minutes), incurring expenses to the amount of three pounds, eight shillings and five pence (£3-8-5d) in returning him to his Unit.

SECOND CHARGE
A.A. Sec. 40

Conduct to the prejudice of good order and military discipline, in that he, at 1500 hrs on 28 January 1943, returned to Petworth Park Camp, Petworth, West Sussex, under escort, with a dirty rifle.

In The Field
3 Feb 43

A.T. Law A/Lt.-Col.
(A. T. Law)
Comd. Camerons of Canada.

To be tried by F.G.C.M.

(G.A. McCarter) Brig.,
Comd 6 Cdn Inf Bde.

4 Feb 43.

B² [illegible]

I hereby acknowledge receipt of one copy of the Charge Sheet and Summary of Evidence.

F. S. Dunlop
B 18074 Pte. Dunlop, F.S.

I request that an Officer be appointed to represent me at my trial.

I request the services of ....Lieut. R. R. Connell.....
if he is available.

F. S. Dunlop
B 18074 Pte. Dunlop, F.S.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field Genl Court-Martial held at In the Field on the 5th day of Feby. 1943 by order of Brigadier G. A. McCarter Commanding 6 Can Inf Bde dated the 4 day of Feby 1943

President.

Major T. J. Gilmour H. Q. 2 Can Div RCA

Members.

Capt L. Lacroix Regt. de Montmagny attd Fus. M.R.

Lieut W. H. Graham Cans of C

Trial of* H. 19074 Pte Thomas, ~~Judge Advocate~~

Stobo Dunlop, Queens Own Cameron Highrs of Can.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ is not available ~~to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt. J. J. D. Gaynor Cans of C

Counsel‡ or defending officer† Lt. R. R. Counsell Cans of C

At 0945 o'clock the Trial commences.

The order convening the Court is read, and is marked A signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

QDS. WA-W-62203-826. 10,000 sets. 1/40. R. A. H. Ltd. Gal/2/11. Form A 9/35.

T. J. Gilmour
Major
Pres

B

The President, members ~~and judge advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Lieut J E Burrows South Saskatchewan Regt
J 21183 P/O N Melnick RCAF
J 21468 P/O E J Hepburn RCAF

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty *Answer.*

~~Are you guilty or not guilty of the third charge against~~ you, which ~~you have heard~~ read? *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which~~ you have ~~heard read~~? *Question.*

Answer.

The accused having pleaded Guilty to both charges, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

[signature]
Chairman

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been [illegible] with.

~~*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]~~

The accused H. 19074 Pte Thomas Stobo Dunlop is found guilty of both charges.

†The summary (or abstract) of evidence is read, marked "G" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment ?

yes.

Answer. The accused in mitigation of punishment says :—

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~

I have been over here 2 years & 5 months. I came over to fight & have got browned off wanting around so I went a w.l. With regard to the rifle I cleared it once during my leave of absence with 4 x 2 flannel but could not make a good job as it has a starred barrel & actually needs wire guage to clean it properly.

Instruction. † If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

FR

Do you wish to give evidence yourself or to call any witnesses as to character? I wish to give evidence myself that I wrote a letter to my C.O.

Question to the accused

Answer

The Court give permission to the accused as per RP-37F that he wrote a letter to his C.O.

Evidence as to character

The accused H.19074 Pte ~~Charles~~ FR Thomas Stobo DUNLOP

duly sworn states:

I wrote to Col Cunningham who was the C.O of this unit until July 18th. I wrote on Tues July 26th & mailed it the same morning. I thought he was still the C.O. I gave the Col the reason for my being AWL & stated I intended to return on my own & would be back before 21 day limit for being declared a deserter would be up. The provost picked me up on Wednesday which squashed my chances of going back on my own. I also asked if it would be possible to have me posted to North Africa.

Cross Exam. I thought if I was absent over 21 days they would stop my mother assigned pay. I was working in the B.O.R. for 2 years & took a clerks admitted course.

F Gibson

E

Finding.*

"To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~

HL

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before* Sentence.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lt. J.D. Gagnon. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* MFB 355 + Cert copy of M.F.M. 6

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked "K + L", signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* yes.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. yes.

(Instructions.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment, an addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Cross-examined by the accused. No ~~my defending officer [illegible]~~

The defending officer reads a written statement which is attached + marked as "M" + attached to the proceedings

Question to the accused.

Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

H. Gilmour
Major
P.O.

F

Sentence.

The Court sentence the accused to undergo Sentence.
detention for 80 days + be
put under stoppages of pay until
he has made good the sum of
£3/8/5 in respect of costs of
apprehension + return to
unit.
5 Feby 1943 J Kilmour
Maj
Pres

SUMMARY OF EVIDENCE

In the case of H 19074 Private Thomas Stobo DUNLOP of the Queen's Own Cameron Highlanders of Canada, Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS PROSECUTION

H 19019 A/Cpl. Beer, B.A. of the Queen's Own Cameron Highlanders of Canada, having been duly sworn states:-

"On the 12 January 1943, I was Orderly Sergeant for B.H.Q. Company, Queen 's Own Cameron Highlanders of Canada, and when I called the roll at 0600 hours on that date, H 19074, Private Dunlop, T.S., whom I recognize as the accused, was absent."

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS.

B.A. Beer.
H 19019 A/Cpl. Beer, B.A.

SECOND WITNESS PROSECUTION

C-5375 Pte. Maxwell, S.H., of the Queen's Own Cameron Highlanders of Canada, Canadian Army Overseas, having been duly sworn states:-

"At 1425 hours on the 28 January 1943, I picked up H 19074 Pte. Dunlop, T.S. at Pulborough Railway Station. He was in custody of the Canadian Provost Corps. From the Provost escort I took over the following documents:-

(1) Certificate of Apprehension by No. 6 Canadian Provost Corps, London, dated 27 January 1943. (Exhibit "A")
(2) Expense voucher for prisoner and escort from Glasgow to London. (Exhibit "B")
(3) Expense voucher for prisoner and escort from London to Pulborough. (Exhibit "C")

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS.

S.H. Maxwell
C-5375 Pte. Maxwell, S.H.

THIRD WITNESS PROSECUTION

B-75680 Sgt. Simpson, F.A., of the Royal Canadian Ordnance Corps, attached to the Queen's Own Cameron Highlanders of Canada, Canadian Army Overseas, having been duly sworn, states:-

"On 29 January 1943, I inspected and cleaned rifle number V.8117 on charge to H 19074 Pte. Dunlop, T.S., and found the barrel in a rusty and dirty condition."

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS.

F.A. Simpson
B-75680 Sgt. Simpson, F.A.

~~**STATEMENT OF THE ACCUSED**~~

~~The accused, H 19074 Pte. Dunlop, T.S., having been duly sworn, states:-~~

~~"I cleaned the rifle barrel while on leave with flannelette four by two, but it could not be properly cleaned as it was a "Starred" barrel and required the use of a wire gauze, which I did not have.~~

G.J.F.

no indication accused cautioned

T.S. Dunlop
H 19074 Pte. Dunlop, T.S.

CERTIFICATE IN ACCORDANCE WITH P.C. 2707 of 16 APR 48

I CERTIFY that No R-19074 Rank Pte. Name DUNLOP T.

Unit R.H.C.Coy. Cameron's of Canada was arrested at Strathaven (Place)

at 1145 (Hour) on 27-Jan.1943 (Date) and that at the time of his arrest he was wearing (Military Uniform) or (Civilian Clothes). Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

[signature] ~~Lieut.~~

Officer i/c Detention Room,
No. 6 Coy., Canadian Provost Corps.

"X" 768

- 2 -

SUMMARY OF EVIDENCE (CONT'D)

Taken down by me in the presence of the accused at Petworth Park Camp, Petworth, West Sussex, this 2nd day of February 1943, having complied with R.P. 4.

[signature] Lieut.
(A.C. Kavanagh)
Officer detailed to take the Summary.

Expense [redacted] Ref: K.R. & O. (Can) 539

Reg. No H-19074 Rank Pte. Name Dunlop, T Unit Cam. H of Can

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ ~~Unit From~~ London from Glasgow

Date	Particulars	Amount		
28 Jan 43	Escorts return fare from LONDON To Glasgow	3	1	7
	Prisoners single fare to LONDON From Glasgow	own ticket		
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares		3	0
	Total £	3	4	7

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] ~~Lieut.~~

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/P & S/483

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. H-19074 Rank Pte. Name Dunlop, T. Unit Cam of Can

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
28 Jan 43	Escorts return fare from LONDON To Pulborough C's portion		3	10
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Pulborough	Own ticket		
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		3	10

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] ~~Lieut.~~

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:55
40/P & S/483

Amplification of Dunlop's closing address - in mitigation of sentence.

Gentlemen,

I wish to mention a few points on this man's behalf which will cause you to regard his admitted breach of discipline in a little better light.

First - Intention - It is pointed out that both times he has been AWL. it was the act of over-staying a leave, but each time for different reasons. With regard to the absence for which he is now on trial the question arises whether or not he intended, when he left, to over stay his pass or not. The answer is no - for two reasons;

1. He gave his address whilst on leave & was apprehended here on the 27th of January '43. Obviously he would not have given his correct address if

if he had no intention of returning.

2 He wrote to Col. Cunningham of his intention to return, but was apprehended the day before Lewes due to leave.

Second - Reason. - A man may have a reason for going A.W.L. which, although it is not sufficient justification under the provisions of the Army act, such as an act of God, sickness etc, is, in the man's own mind, a good and sufficient reason for him to take matters into his own hands.

The usual reasons, as you all know, are liquor and/or women, but in this case the accused does not drink, nor be mixed up with a woman. Through no fault of unfortunate

occurrences and disappointments. His man has become "browned off." Briefly the events leading him into this state of mind are as follows:

1. Petties conviction by court-martial for absence during Dieppe operations has occasioned an adverse attitude on the part of certain officers and N.C.O.'s even though the accused had no idea that the raid was to take place and that he returned voluntarily immediately he learned of the raid.

2. Upon his return to holding unit from detention, he came under the command of the officer who had been his prosecutor at his trial, and it can be understood that relations between them were somewhat strained.

3. A few days after his arrival this officer ~~called him into the~~

promised him a clerks
appointment with a good
recommendation at the
Admit. He proceeded to
Admit. but the appointment
did not materialize, and
nothing had been heard of
the recommendation.
4. Request for leave
was delayed, refused,
and passed from hand
to hand in such a way
as to discourage the
accused to such an ex
tent that he asked to
be paraded to the
commanding officer.
5. The commanding
officer did not receive

him favorably, and mentioned his previous conviction in such a way as to injure the feelings of the accused so that it preyed on his mind.

6. He eventually got a leave and a weekend, and while on leave received a telegram instructing him to return two ~~and~~ days early, thus depriving him of his 48. This was the final straw which made him decide to stay away.

7. The conduct of the accused while he was with the unit is good, as his conduct sheet will show. He is young.

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H 19074	Private	DUNLOP, Thomas Stobo	CAMERONS OF CANADA

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets / Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act / Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For A.W.L.	01 times	01 times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act / Air Force Act and dispensations with trial under A.A. 73 / A.F.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and Ten days in military custody, making a total of ten days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ / attestation paper is 20 Years

6. The date of his ~~commission~~ / attestation specified in his ~~record of service~~ / attestation paper is 5 September 1939

7. The service which the accused is allowed to reckon towards discharge is 5 years 6 months

8. The accused is entitled to reckon 5 yrs 6 months service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to).~~ ~~State any air force decoration or reward~~ / ~~military~~ / ~~military~~

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of .....~~

11.—(In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated, and in his regiment (or corps), the rank of dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5th day of

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "12" signed by the president, and annexed to the proceedings.

M.F.M. 6
(A F B 122)
17534—7-41 (1210-20)
H.Q. 1772-39-1652

No. H-19074 Name Pte. Dunlop, T.S. Sqn., Battery, or Company } Corps Q.O.C.H. of C. Date of enlistment } 5 SEPT 39 G.C. Badges } N/A. Service or Proficiency Pay } N/A.

Date of last entry in Company Conduct Sheet } No. and date of last drunk } N/A Period not reckoning towards freedom from extra fine } N/A. Sheet No. 1. Signature O.C. Company, etc. } Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Denton	31/12/41	L/cpl.	—	Absent without leave from 0600 hrs. 26 Dec 41 until 2200 hrs. 30 Dec 41. (Absent 4 days 16 hrs)	H-19330 Sgt. Henderson, L.	Reduced to the rank of Pte.	31/12/41.	Major A. Thomson	Forfeits 5 days pay.
Field.	20/7/42	Pte.		W.O.A.S. A.W.L. in that he was absent from his quarters from 0600 hrs. 20-7-42 until 1210 hrs. 24-8-42 Absent - 35 days 6 hrs. 10 mins) A.A. 15.	Docy	49 days detention and placed under stoppage of pay in the amount of £5-8-6.	4-9-42.	F.G.C.M.	Forfeits 95 days pay.

L. J. Gilmour
Major
Pres

L. A. Campbell Sgt. Adj.
Certified true Copy.

(P.T.O.)

4X-90.
Cte. Dunn. AE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C.53923 Pte Albert Edward DUNN S D & G Highrs

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd	AA Sec 40	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under stoppages for [illegible] beginning on (date) [illegible] (1)
(1. Insert instance being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned without hard labour for two years and to be discharged with ignominy from His Majesty's Service.

(Sgd) ..... 1 Feb 45 (Sgd) J.M. Braden Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal off record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(1), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57; RP 37(G) fn 6.46(A), 51-56, 120, MML pp 739–766; KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for rewision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 14. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be duly committed to prison or detention barracks for such further orders.(1) JWB
(1. AA 57A. Delete if not used.)

(Sgd) J.M. Rockingham Brig
Date 6 Feb 45 Commanding 9 Cdn Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C.53923 Pte Albert Edward DUNN D&G Highrs	10 Feb 45	(Sgd) S.P. LaFontaine Capt S D & G Highrs

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

43-90

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA21 40/P & S/1606 (4956) 4/38B

Convened by Order of Brig J M Rockingham Comd 9 C.I.B. dated 1 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.53923	Pte		Albert Edward	DUNN	S D & G Highrs

Certified true copy of original proceedings herein.
22 Aug 45
[signature] Capt.
J.A.G. Rep. 3 JAG Rec'd 3.

PROCEEDINGS OF TRIAL

Held in the Fd in (country) NETHERLAND on (date(s)) 1 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 23134

A1. The President, Members, waiting Member, JAs, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 749. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (not) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (not) brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (fit) to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused is to be tried by court-martial (unless objection is taken) on a charge of [illegible] (2) JWB
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(1). Delete, if not applicable.)

A5. President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Do you object to [illegible] or the shorthand writer? Accused: (1) Does not object. Understood. JWB
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)
(1. RP 110. 2. If no objection, waiting member returns. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JAs, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.M. BRADEN	S D & G Highrs
Member	Capt	D.R. PLAYFORD	H.L.I of C
Member	Lt.	B. PITCH	Nth N S Highrs
Judge-Advocate			
Prosecutor	Lt.	G.D. HAIG	S D & G Highrs
Defending Offr	Lt.	T.W. STANLEY	S D & G Highrs

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (3) and fn 2 were not followed. See Dir p 33.)

A8. The accused C53923 Pte Albert Edward DUNN before arraignment makes(s) (no) plea (2)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB caps and name of the accused making the plea.)

A9. The accused is (are) arraigned separately on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use seperate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 69(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 2. *2. MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO.(5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on DOES charge(s). The accused is (are) so informed, and he (they) charge(s), his (their) plea(s) on XXXX

No. C53923 Name DUNN A E | Sqn, Battery, or Company | Corps CIC | Date of enlistment 10 Jul 40 | GC Badges | Service or Proficiency Pay Ex C JWB | 3/17 MFM 6 (AFB 122) 40/P&E/136 (5412)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET. ORIGINAL NOT AVAILABLE					
				(Sgd) S.P. LaFontaine Capt & Adjt Offr i/c Regtl Documents					

(PTO)

Ex "B" JWB

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
C.53923	Pte	DUNN, A.E.	S D & G Highlanders

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For	times	times
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 75 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time; *or* The accused at the present time is under sentence for _____ beginning on the day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 22 days in military custody, making a total of 22 days days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 25 yrs

6. The date of his ~~conviction~~ attestation specified in his ~~record of service~~ attestation paper is 10 Jul 40 ~~SPL~~

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 6 mons

8. The accused is entitled to deferred pay or gratuity in respect of _____ service.

9. The accused is entitled to reckon 4 yrs 6 mos service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*). CVSM & Clasp

11. (*If the accused is a warrant officer*) The accused before he was made a warrant officer last held the regimental rank of _____

12. (*In the case of an officer.*) The accused holds in the army the rank of _____, dated _____ and in his regiment (*or corps or department*) the rank of _____ dated _____

W.L.23837/1559 20M. 5/40. P. Ltd. T.12.A.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C53923 *Rank* Pte *Name* Dunn, A.E. of SDG Highrs Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		N I L		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1st **day of** February 1945 (Sgd) S.P. LaFontaine Capt

15. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

JWB

CHARGE SHEET

The accused, number C53923 Private Albert Edward DUNN Stormont, Dundas & Glengarry Highlanders, a soldier in the Canadian Army Overseas, is charged with

when on Active Service

First Charge
AA Sec 15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in the Field, absented himself without leave from 1400 hrs 10 Aug 44 to 2000 hrs 9 Jan 45. (Absent 152 days 6 hours).

Second Charge
AA Sec 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field on or about 10 Aug 44 improperly and without authority took and used Canadian Military Vehicle No. C4200037, whereby the said vehicle was lost; value $83-0-0.

Field
30 Jan 45.

(Sgd) R Rowley Lt-Col.,
Commanding,
S D & G Highrs

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL.

In the Field
31 Jan 45.

(Sgd) J M Rockingham Brig
Comd 9 Cdn Inf Bde

JWB

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.53923	Pte		Albert Edward	DUNN	SD & G Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 31 JAN 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(*AA 49, RP 106(3), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.E. Braden	S D & G Highrs

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	D.R. Playford	H L I of C
Lt	R. Fitch	Nth N S Highrs

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	J.E. Gillespie	HQ 9 Cdn Inf Bde

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in	(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)
Holland		(Sgd) J K Rockingham	Brig

Date 31 Jan 45 Commanding 9 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAR (To Dftl of A.F.A.S. 40-7 & 8/1807 (4-43).)

(*See overleaf for oaths and notes for use on trial.*)

Due to operational committments it was necessary to appoint an officer from the unit of the accused, as president of the court.

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2692.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 16 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 118 provides that for procedure on defence RP 40-42 will apply *so far as* practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP 85(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (not sworn or subject to cross-exam by Prosecutor, Court or JA (*RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn* 2, *46 fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, *87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, *87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 565(a).*)

(vii) Summing up by JA, *if any*. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, *if any*, and then pinned by top left corner to p 2 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(8), RP 118(C), MML p 759.*)

4. The President or JA, *if any*, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

JWB

TRIAL BY COURT MARTIAL

I hereby certify that I have this day examined C53923 Pte DUNN, A.E. of S D & G Highrs and in my opinion he is fit to undergo trial by Court Martial.

Station Field

Date 1 Feb 1945

(Sgd) ??????????? Capt
M.O., S D & G Highrs

JWB

PLEA IN MITIGATION IN THE CASE OF C-53923 PTE DUNN, A.E.

A man who pleads guilty to a charge of absence without Leave from 152 days, and also to a charge of the loss of a Motorcycle, is pleading guilty to two very serious charges.

It shows that he is a t leavst honest with himself.

At the time of Pte Dunn's absence, the Canadian Army was in some very heavy fighting, and he was discouraged, fed up, and worried. His fiancee (whom he hopes to marry after the war) lives in England in the Rocket Bomb area, and Pte Dunn was worried about her welfare.

It was with the intent of seeing her, that he went absent. He went to Caen, where the Motorcycle broke down. He left the Motorcycle there after dismantling the gear box, and proceeded to St Aubin sur Mer, where he found that he was unable to get to England, so he started working his way back to the unit by hitch-hiking with British convoys. He proceeded as far as Lille, where he went into a Hospital, and after being discharged from the Hospital, he gave himself up.

In conclusion gentlemen, I would remind you of these points.

(a) He has not had any serious charges placed against him before.

(b) After realizing that he could not reach England he started his trek across France to rejoin his unit.

(Sgd) T.W. Stanley Lt.

Ex A JWB

SUMMARY OF EVIDENCE in the case of C53923 Pte Dunn, A.E., Stormont, Dundas and Glengarry Highlanders, a soldier in the Canadian Army Overseas.
By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st Witness for the Prosecution

C40805 Sgt Smith R., S D & G Highlanders, having been duly sworn, states:-
I am Pl Sgt of No 4 Platoon and Pte Dunn was one of my DRs. On 10 Aug 44 at approx 1400 hrs I was talking to the accused and told him it was not necessary to proceed to "A" Ech to repair his M.C. From that time and date I have not seen Pte Dunn at our company lines and he was reported by me as absent on the absentee report of 10 Aug 44.

The accused declines to cross-examine the witness.

2nd Witness for the Prosecution

Lt G F Hunter, A/Adjt of the S D & G Highrs., having been duly sworn, states:-
I am Lt Hunter, A/Adjt of the S D & G Highrs. I produce Certificate of Apprehension relating to the accused Pte Dunn. Admitted as Exhibit "A".

The accused declines to cross-examine the witness.

3rd Witness for the Prosecution

Lt D C Stewart, Tpt Offr., S D & G Highlanders, having been duly sworn, states:-
I am Lt D C Stewart, Transport Officer of the S D & G Highlanders. A Norton Motorcycle (solo, light) MD No. C4200037, tactical marking T.5 was on charge to C53923 Pte Dunn, A.E. of the Carrier Platoon of Sp Coy., S D & G Highlanders. Pte Dunn took this Motorcycle without authority on 10 Aug 44 and returned to the Unit on 9 Jan 45 without the said motorcycle.

The accused declines to cross-examine the witness.

4th Witness for the Prosecution

S/Con J.M. Pickie, RCOC
A signed statement of the evidence of this witness is read over to the accused and attached to the Summary as Exhibit "B". I certify that in my opinion owing to the exigencies of the service and the time and expense involved, the attendance of this witness is not readily procurable.

The accused does not demand the presence of this witness for cross-examination.

The accused, having been duly cautioned in accordance with Rule of Procedure 4(E), reserves his defence.

Certified that Rules of Procedure 4 (C)(D)(E)(F) and (G) have been complied with.

Taken down by me in the presence and hearing of the accused this 24th day of January 1945, in the Field.

(Sgd) G Haig Lt.
S D & G Highlanders.

Ex "A"

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT SECTION 163 (1) (jj)

I certify that No. C.53923 Rank Pte Name DUNN, Albert Edward of C Coy Stormount, Dundas, Glengarry(unit) was arrested at LILLE (place) at 2000 hrs on 9 Jan 1945 (date). He was dressed in uniform.

Date
Signature of Provost Marshall A.P.M. or other Officer into whose custody the above named person was taken on arrest.

(Sgd) A.S. Dunn?? Capt
D.C. 609 Company C.M.Police (V.P.)

EXHIBIT "B"

Certified that the V.A.O.S. price for Norton Motorcycle Light is Eighty One Pounds (£81-)

plus 2½ for inland transport Two Pounds (£2-)

Eighty Pounds (£83)

Date 16 Jan 45

(Sgd) J.M. Dickie S/Con
for W.P. Dew Lt-Col
ADOS, 3 Cdn Inf Div.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C.53923 Pte Albert Edward DUNN S D & G Highrs

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd	AA Sec 40	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

[illegible] JWB
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned without hard labour for two years and to be discharged with ignominy from His Majesty's Service.

(Sgd) ..... Judge-Advocate, if any. 1 Feb 45 Date awarded. (Sgd) J.W. Braden Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

[illegible] JWB
(1. AA 57A. Delete if not used.)

(Sgd) J.W. Rockingham Brig

Date 6 Feb 45 Commanding 9 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C.53923 Pte Albert Edward DUNN S D & G Highrs	10 Feb 45	(Sgd) S.P. LaFontaine Capt S D & G Highrs

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

4x-90

FIELD GENERAL COURT-MARTIAL

CFA66 (To Item of AFA3) 4/38B

Convened by Order of Brig J M Rockingham Comd 9 C.I.B. dated 1 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.53923	Pte		Albert Edward	DUNN	S D & G Highrs

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 1 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member [illegible] JWB, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 49A, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge(s) [illegible] JWB attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is [illegible] JWB amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [illegible] JWB brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is [illegible] JWB fit to undergo trial by court-martial.(1) [illegible] JWB

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: [illegible] JWB

[illegible] JWB

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires, AA 49(B). If objection, see procedure AA 51, RP 25, 71, 111, MML p 742.)

A7. The President, Members, [illegible] JWB are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.W. BRADEN	S D & G Highrs
Member	Capt	D.R. PLAYFORD	HLI of C
Member	Lt.	B. FITCH	Nth N S Highrs
Judge-Advocate			
Prosecutor	Lt.	G.D. HAIG	S D & G Highrs
Defending Offr	Lt.	T.W. STANLEY	S D & G Highrs

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See also [illegible] JWB

A8. The accused C53923 Pte Albert Edward DUNN before arraignment makes(s) (no) [illegible] plea(s).(1)

(1. If a special plea is made (for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is [illegible] JWB arraigned [illegible] JWB on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 49A to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP*, 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. Statement, *if any, recorded per Notes.*)

B3. ~~XXX C X C X C X C X C X C X C X C X C X C X C~~ JWB The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on both charge(s). The accused is ~~XXX~~ so informed. ~~X C X C X C X C X C X C X C X C X C X C

JWB

CHARGE SHEET

The accused, number C53923 Private Albert Edward DUNN Stormont, Dundas & Glengarry Highlanders, a soldier in the Canadian Army Overseas, is charged with

when on Active Service

First Charge
AA Sec 15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in the Field, absented himself without leave from 1400 hrs 10 Aug 44 to 2000 hrs 9 Jan 45. (Absent 152 days 6 hours).

Second Charge
AA Sec 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field on or about 10 Aug 44 improperly and without authority took and used Canadian Military Vehicle No. C4200037, whereby the said vehicle was lost; value £83-0-0.

Field
30 Jan 45.

(Sgd) R Rowley Lt-Col.,
Commanding,
S D & G Highrs

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL.

In the Field
31 Jan 45.

(Sgd) J M Rockingham Brig
Comd 9 Cdn Inf Bde

JWB

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.53923	Pte		Albert Edward	DUNN	SD & G Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 31 Jan 45 endorsed by me, ~~accordingly~~, "To be tried by Field General Court-Martial". JMR JMR

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~xxxx

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl B. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) *is suggested as* being fair to the accused :

(i) Opening address by Defending Offr. (*RP 80(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(F)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 81.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(e).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

JWB

TRIAL BY COURT MARTIAL

I hereby certify that I have this day examined C53923 Pte DUNN, A.E. of S D & G Highrs and in my opinion he is fit to undergo trial by Court Martial.

Station Field

Date 1 Feb 1945

(Sgd) ????????? Capt
M.O., S D & G Highrs

JWB

PLEA IN MITIGATION IN THE CASE OF C-53923 PTE DUNN, A.E.

A man who pleads guilty to a charge of absence without Leave from 152 days, and also to a charge of the loss of a Motorcycle, is pleading guilty to two very serious charges.

It shows that he is a t leavst honest with himself.

At the time of Pte Dunn's absence, the Canadian Army was in some very heavy fighting, and he was discouraged, fed up, and worried. His fiancee (whom he hopes to marry after the war) lives in England in the Rocket Bomb area, and Pte Dunn was worried about her welfare.

It was with the intent of seeing her, that he went absent. He went to Caen, where the Motorcycle broke down. He left the Motorcycle there after dismantling the gear box, and proceeded to St Aubin sur Mer, where he found that he was unable to get to England, so he started working his way back to the unit by hitch-hiking with British convoys. He proceeded as far as Lille, where he went into a Hospital, and after being discharged from the Hospital, he gave himself up.

In conclusion gentlemen, I would remind you of these points.

(a) He has not had any serious charges placed against him before.

(b) After realizing that he could not reach England he started his trek across France to rejoin his unit.

(Sgd) T.W. Stanley Lt.

Ex A JWB

SUMMARY OF EVIDENCE in the case of C53923 Pte Dunn, A.E., Stormont, Dundas and Glengarry Highlanders, a soldier in the Canadian Army Overseas.
By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st Witness for the Prosecution

C40605 Sgt Smith R., S D & G Highlanders, having been duly sworn, states:-
I am Pl Sgt of No 4 Platoon and Pte Dunn was one of my DRs. On 10 Aug 44 at approx 1400 hrs I was talking to the accused and told him it was not necessary to proceed to "A" Ech to repair his M.C. From that time and date I have not seen Pte Dunn at our company lines and he was reported by me as absent on the absentee report of 10 Aug 44.

The accused declines to cross-examine the witness.

2nd Witness for the Prosecution

Lt G F Hunter, A/Adjt of the S D & G Highrs., having been duly sworn, states:-
I am Lt Hunter, A/Adjt of the S D & G Highrs. I produce Certificate of Apprehension relating to the accused Pte Dunn. Admitted as Exhibit "A".

The accused declines to cross-examine the witness.

3rd Witness for the Prosecution

Lt D C Stewart, Tpt Offr., S D & G Highlanders, having been duly sworn, states:-
I am Lt D C Stewart, Transport Officer of the S D & G Highlanders. A Norton Motorcycle (solo, light) WD No. C42000037, tactical marking T.5 was on charge to C53923 Pte Dunn, A.E. of the Carrier Platoon of Sp Coy., S D & G Highlanders. Pte Dunn took this Motorcycle without authority on 10 Aug 44 and returned to the Unit on 9 Jan 45 without the said motorcycle.

The accused declines to cross-examine the witness.

4th Witness for the Prosecution

S/Con J.M. Dickie, RCOC
A signed statement of the evidence of this witness is read over to the accused and attached to the Summary as Exhibit "B". I certify that in my opinion owing to the exigencies of the service and the time and expense involved, the attendance of this witness is not readily procurable.

The accused does not demand the presenc e of this witness for cross-examination.

The accused, having been duly cautioned in accordance with Rule of Procedure 4(E), reserves his defence.

Certified that Rules of Procedure 4 (C)(D)(E)(F) and (G) have been complied with.

Taken down by me in the presence and hearing of the accused this 24th day of January 1945, in the Field.

(Sgd) G Haig Lt.
S D & G Highlanders.

Ex "A"

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT SECTION 163 (1) (jj)

I certify that No. C.53923 Rank Pte Name DUNN, Albert Edward of C Coy Stormount, Dundas, Glengarry(unit) was arrested at LILLE (place) at 2000 hrs on 9 Jan 1945 (date). He was dressed in uniform.

Date
Signature of Provost Marshall A.P.M. or other Officer into whose custody the above named person was taken on arrest.

(Sgd) A.S. Dunn?? Capt
D.C. 609 Company C.M.Police (V.P.)

EXHIBIT "B"

Certified that the V.A.O.S. price for Norton Motorcycle Light is Eighty One Pounds (£81-)

plus 2% for inland transport Two Pounds (£2-)

Eighty Pounds (£83)

Date 16 Jan 45

(Sgd) J.M. Dickie S/Con
for W.P. Dew Lt-Col
ADOS, 3 Cdn Inf Div.

Ex "B" JWB

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name.*	*Regiment (or as the case may be)*
C.53923	Pte	DUNN, A.E.	S D & G Highlanders

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 617, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For	times	times
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for ..... beginning on the day of .....

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 22 days in military custody, making a total of 22 days days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ SPL is 25 yrs
attestation paper

6. The date of his ~~[illegible]~~ SPL specified in his ~~[illegible]~~ SPL is 10 Jul 40
attestation attestation paper

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 6 mons

8. The accused is entitled to deferred pay or gratuity in respect of ..... service

9. The accused is entitled to reckon 4 yrs 6 mos service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*). CVSM & Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of .....

12. (*In the case of an officer.*) The accused holds in the army the rank of ..... dated ..... and in his regiment (*or corps or* department) the rank of ..... dated .....

WT.5383/4388 30M. 3/40. P. Ltd. T10-3.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C53923 *Rank* Pte *Name* Dunn, A.E. of SDG Highrs Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		N I L		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1st **day of** February 1945 (Sgd) S.P. LaFontaine Capt

No. C53923 Name DUNN A E

Sqn, Battery, or Company

Corps CIC

Date of enlistment 10 Jul 40

GC Badges

Service or Proficiency Pay Ex C JWB

3/17 MFM 6 (AFB 122) 40/P&S/136 (5413

Date of last entry in Company Conduct Sheet N/A

No. and date of last drunk N/A

Period not reckoning towards freedom from extra fine

Sheet No

Signature OC Company, etc

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET. ORIGINAL NOT AVAILABLE (Sgd) S.F. LaFontaine Capt & Adjt Offr i/c Regtl Documents					

(PTO)

900-67

S PR DUNN A.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-25786 Spr Munn JA - 30 Cdn Fd Coy RCE

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; Findings on alternative charges see MML p 483 fn 4 paras 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of, see RP 44 fn 6.)

~~At present under sentence for~~ ~~94~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B296.)

Time in confinement awaiting present trial—a total of 47 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for ninety days and to be put under stoppages of pay until he has made good the sum of 10 shillings and 8 pence in respect of the cost of return to his unit.

(Sgd) Gordon N Jermyn, Judge-Advocate, if any — 13 June 44, Date awarded — (Sgd) D H McCallum, Major, President. (RP 45, 90)

(See back of Convening Order re: custody and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 120(D) fn 6.46(A), 54-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back Finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 654. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally: AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

I ~~decline to confirm the sentence~~ ~~(or finding)~~ ~~for the following reasons~~ ~~and further direct~~:

(Sgd) W Black Lt Col

Date 14 Jun 44 Commanding 30 Cdn Fd Coy RCE 2 Cdn C Tps

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 570, 577.)

Accused. B-25786 Spr Munn J.A. Date. 14 June 44 Signature of Offr. J.T. Williams Maj

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 8000-67

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AF A3) (C.R.O. 1606 (2864))

Convened by Order of Lt-Col D K Black Comd CRE, 2 Cdn C Tps dated 12 Jun 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or temporary rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmt R. (b) Appmt, A/R or A/Appmt.	Full Christian Name.	Surname.	Unit.
B25786	Spr	Alex Joseph	MUNN	30 Cdn Fd Coy

PROCEEDINGS REVIEWED Date 15 JUN 44 D.J.A. Cdn. Sec GHQ 2 Echn. Army Gp

PROCEEDINGS REVIEWED 21 Jun 44

A Whelan Capt.

RECEIVED JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 13 June 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 7/51

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns KOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~& attached thereto~~.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with~~ summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 90 fn 1. For effect on fn see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do~~ you object to ~~the~~ as interpreter? Ans

~~The Interpreter~~ is sworn.(1) Do you object to as shorthand writer? Ans

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 53, RP 23, 71, 78, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D H MCCALLUM	31 Cdn Fd Coy
Member	Capt	R W LOCKWOOD	Hq 5 CIB - RCASC
Member	Lt	T G CLENDENNING	Hq RCE 2 Cdn C Tps
Judge-Advocate	Capt	G JERMYN	HQ 2 Cdn Corps
Prosecutor	Lt.	TAA Adams	30 Cdn Fd Coy RCE
Defending Offr	The accused refuses the services of a defending officer		

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans ~~No~~. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 84 (B) and fn 2 were not followed. See Dir p 33.)

A8. The accused ~~before~~ before arraignment make(s) (no) ~~objn~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to Rule cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused ~~does~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62. 2. When several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 3. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is about to~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B + E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 74 *instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 98(*A*) (*H*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President of the JA, if not, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or call witnesses as to character and make an address in mitigation of punishment.(1)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(1), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused: Do you wish to make a statement? Ans. No (4)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge to which the plea of Guilty is (and) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "Yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. .....
Do you intend to call witnesses on your behalf?
Ans. .....
Are they witnesses as to character only? Ans. .....
(1. *RP* 105. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(1. *MFB* 335 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes Sir (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) *see p 2 (3)*
(1. *When several accused tried separately see RP* 106. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 336, 343-344. *Overseas AO* 309, 2323, *MML p* 80, 757-758. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Con* 364. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

DHM

CHARGE SHEET

The accused B25786 Spr. Alex Joseph Dunn 30 Cdn Fd Coy RCE, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15(1)A.A.

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

in the field on 4 Jun 44, absented himself without leave from his Company, 30 Cdn Fd Coy from 2359 hrs 4 Jun 44 until surrendering to the Can Provost Corps at Lingon at 1130 hrs 6 Jun 44, thereby incurring expense for his Unit the sum of £0-10-8 (Total absence 1 day 11hrs 31 mins)

J.T.W.
Returned to Unit

J. T. Williams Mor.
(J.T. Williams) Major, RCE
Commanding
30 Cdn Fd Coy.

In the Field
7 Jun 44

To be tried by Field General Court Martial

D Black
(D R Black) Lt-Col
CRE, 2 Cdn C Tps

In the Field
12 Jun 44

DHM

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA2)
40/P&S/1697 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B25786	Spr		Alex Joseph	DUNN	30 Cdn Fd Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~[illegible]~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 Jun 44 endorsed by me, ~~(or by an officer my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, [illegible] Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D H MCCALLUM	31 Cdn Fd Coy

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	R W LOCKWOOD	HQ 5 CIB / RCASC
Lt	T G CLENDENNING	HQ RCE 2 Cdn C Tps

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	G JERMYN	HQ 2 Cdn Corps

On Active Service in the Fd

in England (Country.) — [signature] (Signed personally. RP 105 fn 2.) — Lt-Col (Rank.)

Date 12 Jun 44 — Commanding CRE, 2 Cdn C Tps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr *(RP 95(C))*, any objections *(RP 95(B))*, and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. *(RP 95 fn 1.)* If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply *so far as* practicable, having due regard to the public service. *(RP 122.)* If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. *(RP 99(C), 87(C), 92(C) (D).)*

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. *(See RP 45 fn 3, 46 fn 1, 80.)*

(iii) Evidence of witnesses for accused as to facts or his character or both. *(See RP 46 fn 1.)*

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court *(RP 86(B))*, or to prove previous convictions when accused has called witnesses as to character. *(RP 86(C).)*

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. *(See RP 40 fns 8-12, 87(C), 92(C) (D).)* But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. *(When accused charged jointly see RP 61.)*

(vi) Closing address by Prosecutor. *(See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).)*

(vii) Summing up by JA, if any. *(RP 42.)*

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order :

(i) Charge Sheet. *(On top.)*

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). *(KR Can 567.)*

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. *(As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 162 (1) (g) (h).)*

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. *(RP 95(D).)* A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. *(AA 53(9), RP 118(C), MML p 759.)*

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE
(K.R. (Can) Para 557)

DHM

I certify that I have this morning examined No B25786 Sapper Dunn Alexander Joseph. of 30 Cdn Fd Coy RCE. and in my opinion is fit/~~unfit~~ to undergo trial by court martial.

Station : in the field

Date 13 June 44

W L Muldrum Capt
Medical Officer

DZM

E-3 Statement by accused in mitigation of punishment

About six months ago I spoke to Major Smellie about getting out of this unit. He said to wait a couple of months and we might see action. When I heard that we were going I came right back to the unit I want to get over that channel and fight with the rest of them.

EXHIBIT A

CERTIFICATE UNDER THE ARMY ACT, SECTION 153 (1) (3)

I, Capt. R.J.Stinson D.A.P.M. C.M.H.Q. certify that

Regt. no. B-25786 Rank. Spr. Name. Dunn A.J.

Regiment. 30th Fld. Coy. R.C.E.

Unit

Stationed at.

Surrendered himself to No. P-32080 Rank. L/Cpl. Name. Perkins

of the No. 6 Cdn. (Area) Provost Coy.

on the 6 day of June 194 4, at 11.30 hours.

AS AN ABSENTEE WITHOUT LEAVE.

At the time of surrendering he was wearing (Military uniform) or (Civilian clothes).

Signature of Provost-Marshall, Assistant Provost-Marshall, or other officer or the Commanding Officer of the portion of His Majesty's forces or the officer, warrant-officer, or the non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on surrendering.
(Strike out part inapplicable).

This is Exhibit A to the summary of evidence in the case of B-25786 Spr Dunn A.J. taken before me this 9th day of June 44

London
6 June 44.

(R.J. Stinson), Capt.,
D.A.P.M. C.M.H.Q.

J.A.G. Can. 44

EXHIBIT B
AJM

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. B25786 Rank Spr Name Dunn, A.J. Unit 30 Fld Coy R.C.E.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars (½ Portion)	Amount		
7 June 44	Escorts return fare from LONDON To Sharncliffe		5	4
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Sharncliffe		5	4
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		10	8

This is Exhibit B to the summary of evidence in the case of B-25786 Spr Dunn A J taken before me this 8th day of June 44

[signature] Lt.

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

W.E. Birch LIEUT.

Officer Issuing Railway Warrant and Expense money
No. 6 Provost Company, Canadian Provost Corps, London

R. E. BIRCH,
ADMIN. OFFICER—D.P.M's BR.
C.M.H.Q.

C.M.H.Q. 1000/55
40/P & S/483

EXHIBIT (C)

CHARGE

Army Form B 252
(See King's Regulations)

30th Fld. Coy. R.C.E. Regiment / Battery / Squadron / Troop or / Company

CHARGE against No B-25786 Rank Spr.

Name Dunn A.J.

Place London Date of Offence 6 June 44

OFFENCE W.O.2.B. was A.W.L.

F. L. Stinson

Names of Witnesses:—

L/Cpl. Perkins Cdn. Provost Corps. No.6 Coy.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

F.T.

Statement of **EVIDENCE** in the case of
B-25786 Spr. Dunn A.J.
30th Fld. Coy. R.C.E.

Sir:

At London at about 11.30 hrs. on the 6 June 44. Acting on information received I proceeded to Victoria Stn. where I saw the a/m soldier.

He approached me and stated that he wished to surrender himself as an absentee.

I placed him under arrest and escorted him to No.6 Cdn.(Area) Provost Coy. Detention Room where he was handed over to the N.C.O. i/c Cells to be detained.

London
6 June 44.

G. Perkins .....L/Cpl.
D-32020 Perkins G.W.M.

This is Exhibit C to the Summary of Evidence in the case of B-25786 Spr Dunn A J taken before me this 8th day of June 44

[illegible] Lt.

REMARKS

DHM

I do not desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court-Martial.

Dunn AJ.

(B25786 Spr. Dunn,A.J.)

I desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court-Martial.

(B25786 Spr. Dunn,A.J.)

EXHIBIT A SHM

SUMMARY OF EVIDENCE in the case of B25786 Spr. Dunn,A.J., 30 Cdn Fd Coy, a soldier of the Cdn Army Overseas charged with A.W.L. from 2359 hrs 4 JUN 44 until 1130 hrs 6 JUN 44, cost of return £0-10-8.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS for the prosecution

Capt. W.A. Ewener,M.C. on the strength of 30 Cdn Fd Coy, an officer of the Cdn Army Overseas, having been duly sworn states:-

I produce the following documents:-

(a) A certificate of Apprehension of B25786 Spr. Dunn,A.J., signed by Capt. R.J. Stinson, D.A.P.M. CMHQ.

(b) A statement of Expenses involved in returning B25786 Spr. Dunn,A.J. to his Unit

The Documents referred too, were produced, read over to the accused, marked Exhibit "A" and "B" respectively, and attached hereto.

W. Alan Ewener Capt

The accused declines to cross-examine this witness.

SECOND WITNESS for the prosecution

No. D32020 L/Cpl. Perkins,G.W.M. of the Cdn Provost Corps, a soldier of the Cdn Army Overseas, submitted a written statement, which was read over to the accused and attached hereto as Exhibit "C".

I certify that in my opinion, due to the exigencies of the Service including the time and expense involved, the attendance of this witness at the taking of the Summary of Evidence cannot readily be procured.

[illegible]

The accused does not require the attendance of this witness for cross-examination.

THIRD WITNESS for the prosecution

No. M38757 L/Cpl. Lutz,A., of the 30 Cdn Fd Coy, a soldier of the Cdn Army Overseas, having been duly sworn states:

"I was Company Orderly Corporal on the night of 4 - 5 JUN 44. The accused B25786 Spr. Dunn,A.J., had a 24 hour pass which expired at 2359 hrs 4 JUN 44. When he returned he should have reported to me and turned in his pass. He did not do so.

A. Lutz L/Cpl.

The accused declines to cross-examine this witness.

FOURTH WITNESS
For the prosecution

No. B25737 L/Sgt. Smith,L.S., of the 30 Can Fd Coy., a soldier of the Can Army Overseas having been duly sworn states:-

"I was on 5 JUN 44 and still am L/Sgt of No. 1 Platoon 30 Can Fd Coy. Spr. Dunn was on the strength of this platoon on 4 JUN 44. On the morning of 5 JUN 44 at 0800 hrs I called the roll of No. 1 Platoon and Spr. Dunn did not answer to his name. A further search did not find him in his billets nor did he report in during the day. I did not see him again until he was brought in the platoon Orderly Room as a prisoner at 1630 hrs 7 JUN 44."

L. S. Smith
L/Sgt.

The accused declines to cross-examine this witness.

FIFTH WITNESS
For the prosecution

No. B28716 Sgt. Wake,G.E. of the 30 Can Fd Coy., a soldier of the Can Army Overseas having been duly sworn states:-

"I was on 6 JUN 44 and still am Sergeant of No. 1 platoon 30 Can Fd Coy. I called the roll of No. 1 platoon at 0800 hrs on 6 JUN 44 and 7 JUN 44 and Spr. Dunn,A.J. did not answer to his name nor could he be found in the billets until he reported to the Platoon Orderly Room at 1630 hrs 7 JUN 44.

G. E. Wake Sgt

The accused declines to cross-examination this witness.

The accused was warned as follows:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused: I have nothing to say at this time.

I certify that R.P. 4 has been complied with. Taken by me in the Field in the presence and hearing of the accused this 8th day of June 1944.

J. G. G. Cole — Lt
Signature of Officer Taking Summary

Reviewed in Accordance with R.O. 2084 wef 30 Dec 43

DHM

No B25786 Name Dunn, A.J. Sqn, Battery, or Company Corps R.C.E. Date of enlistment 6 May 41 GC Badges Service or Proficiency Pay

MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet N.A. No and date of last drunk N.A. Period not reckoning towards freedom from extra fine N.A. Sheet No 1 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	20 Apr 42	Spr.		AWL from 2200 hrs 20 APR 42 to 2200 hrs 23 Apr 42 (3 days Pay)	L/C Chapman	8 days F.P.	24 Apr 42	Major Black	Forf 11 days Pay
(1) Bordon	16 May 42	Spr.		AWL from 2200 hrs 16 May 42 to 2345 hrs 16 May 42 (1 hr, 45 min)	Doc. Evid.	7 days C.B.	18 May 42	Capt White	
(2) Bordon	17 May 42	Spr.		AWL from 1230 hrs 17 May 42 to 1345 hrs 17 May 42 (1 hr, 15 min)	Sgt Pinder				
(3) Field	24 May	Spr		Conduct to the Pry etc.	Sgt. Pinder				
Field	24 Jun	Spr		AWL from 2200 hrs 24 Jun 42 to 2330 hrs 24 Jun 42 (1 hr, 30 mins)	Doc. Evid.	4 days C.B.			
Field	27 Aug 42	Spr		A.A. Sec 9 (2) Disobeying a lawful command given by a Superior Officer	Sgt James Cpl Barker	4 days C.B.			

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25 Oct 42	Spr		AWL from 1300 hrs 22 Oct 42 to 2230 hrs 25 Oct 42 (3 days, 9 hrs)	Sgt Barker Cpl McGuire	20 days Forf of Pay	26 Oct 42	Lt-Col D.K. Blaris	Forf 4 days Pay Total 24 days Pay
Field	21 Jan 43			AA Sec. 15 (1) AWL from 0900 hrs 30 Jan 43 to 2359 hrs 30 Jan 43 (Absent 14 hrs, 59 min)	Sgt Barker L/C Fromm S.O.T.	6 days Forf of Pay	30 Jan 43	Major W. A. Capelle	Forf 1 days Pay under F.R.&F. 49(1)(a)
Field	1 Apr 43	Spr		AA Sec 11 (a) Leaving Camp after appearing on Sick Parade	L/C Grant Cpl Tees	Forf 3 days Pay	2 Apr 43	Major R.J. Smallian	
Field	2 Aug 43	Spr		(1) AA Sec 15 (1) AWL from 1400 hrs 24 Jul 43 to 0800 hrs 26 Jul 43 (Absent 1 day, 18 hrs)	Sgt. Barker L/C Leslie	14 days F.P.	10 Aug 43	Major R.J. Smallian	14 days F.P.
				(2) AA Sec 15 (1) AWL from 2300 hrs 1 Aug 43 to 1700 hrs 2 Aug 43 (18 HRS)	CQMS Chapman L/C Leslie, M.S.	5 days C.B.	15 Nov 43	Major R.J. Smallian	
Field	1 Nov 43	Spr		AA Sec 40 Carless Driving	Doc Evid.				
Field	31 Jan 43	Spr.		Sec 15 (1) AA AWL from 1045 hrs 31 Jan 43 to 1150 hrs 31 Jan 43 (Absent 1 hour 5 mins)	Sgt Vrahan	14 days F.P. 14 days Pay F.R.&F. 49(2)	31 Jan 44	Major R.J. Smallian	

MFM 6
(AFB 122)
40/PAS/136 (3438)

No. 325786 Name Dunn, A.J. Sqn, Battery, or Company | Corps RCE | Date of enlistment 6 May 41 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 1 Nov 43 | No and date of last drunk N.A. | Period not reckoning towards freedom from extra fine N.A. | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13 Apr 44	Spr		AA Sec 15(1) AWL from 0200 hrs 13 Apr 44 until 1600 hrs 13 Apr 44 (Total Absence 14 hrs)	Doc Evid L/Sgt Haunts R.E.K.	10 days C.B. 10 days Pay	15 Apr 44	Major R.J. Sinclair	Fof 1 days Pay FR&E 149 (2)

— Certified to be a true Copy from the Regimental Books held in my Custody —

W. Alex Dunn Capt.
2nd in Command

(PTO)

AHM

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B25706	Sapper	Alex Joseph DUNN	30 CDN FD COY

1. The following is a fair and true summary of the entries in the ~~Service and General Regimental and Squadron Battery Conduct Sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Four (4)	times	Ten (10)	times
For		times		times
For		times		times
For		times		times

~~Number of sentences of gallantry or distinguished conduct~~

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.A. 53 are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for~~ ~~[illegible]~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 1 Mdy. days in ~~Air Force~~ military custody, making a total of 1 Mdy. days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 23

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 6 MAY 41

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward.

military military military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated, and in his regiment (or corps), the rank of dated.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused. Number Rank Unit Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Thirteenth day of June 44 W. Abercrombie Capt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

NNN·88
PTE DUNN C·E

RECEIVED 12 JUN 1944 JAG BRANCH

NNN 88

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col V R Jones Comd 1 Cdn Army Tpt Coln dated 29 May 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-86966	Pte		Clarence Elwood	DUNN	86 Cdn Tr Coy

PROCEEDINGS REVIEWED

J C A Campbell Major 12 Jun 44

REVIEWING OFFICER JAG BRANCH

PROCEEDINGS REVIEWED Date 12 JUN 1944 Cdn. Sec. G.H.Q. 2 Ech. 21 Army Gp.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 31 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 7/64

A1. The President, Members, waiting Member, JA, if any, and ~~Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1145 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to as interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J. Edgrandolph	63 Cdn Army Tpt Coy
Member	Capt	R.H. Pudney	45 Cdn Army Tpt Coy
Member	Capt.	B.F. Pryce	64 Cdn Army Tpt Coy
Judge-Advocate	Capt.	D.R. Dean	HQ. 8 Troops 1st Cdn Army
Prosecutor	Lt	J.T. Robertson	86 Cdn Tr Coy
Defending Offr	Lt	R.W. Johnston	86 Cdn Tr Coy

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused B 86966 Pte Dunn C.E. before arraignment make(s) (no) ~~(a)~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B&C.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No sir (5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

~~B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A., initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans..... Do you intend to call witnesses on your behalf ?

Ans..... Are they witnesses as to character only ? Ans.....

(1. RP 185. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 93, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No sir

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B, and Ex C, respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes sir through my defence Officer.(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 1323, MML p 80, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-86966 Pte DUNN Clarence Elwood - 86 Cdn Br Coy

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 41	Guilty	Guilty	
2nd AA 40	Guilty	Guilty	
3rd AA 40	Guilty	Guilty	
4th AA 15(1)	Guilty except that surrendered and was not apprehended	Guilty with the exception that the accused surrendered and was not apprehended.	
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~Represent under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 22 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for a period of six months.

(Sgd) D. Dean Capt. Judge-Advocate, if any. 31 May 44 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

(Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention [illegible] further orders (1)~~

(Sgd) [signature] (J. R. JONES) LT. COL., COMD. 1 CDN. ARMY TPT. COLN.

Date 31 May 44 Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

B-86966 Pte Dunn Clarence Elwood 1 Jun 44 W. O. Dennis Lt Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Entitled no allegations or irregularities that would warrant withholding confirmation. D. Dean Capt. 31 May 44

1407

CHARGE SHEET

The accused No B 86966 Pte Clarence Elwood DUNN, 86 Cdn Br Coy., RCASC, a soldier of the Cdn Army Overseas, is charged with:-

First Charge
Sec 41
Army Act

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, that is to say obtaining money by false pretences contrary to Section 32 (1) of the Larceny Act, 1916.

in that he

in REDDITCH about 3 May 44 with intent to defraud obtained from Henry Ernest Sargent the sum of £5-0-0 by falsely pretending that a certain ch eque which he, the accused then produced and delivered to the said Henry Ernest Sargent, was a good and valid order for the payment of £5-0-0 and that he the accused then had authority to draw a cheque for the payment of £5-0-0 upon the Midland Bank Limited, Redditch.

Second Charge
Sec 40
Army Act

WHILE ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field between 26 Apr 44 and 9 May 44 did improperly wear badges of rank of a Captain of th e Cdn Army to which he was not entitled and while falsely pretending to be an Officer of the Canadian Army, did borrow from Arthur George Brooks the sum of £2-0-0 which sum has not been repaid and did incur a liability to the said Arthur George Brooks for board and lodgings in the sum of 14 shillings which liability has not been discharged.

Third Charge
Sec 40
Army Act

WHILE ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field between 25 Apr 44 and 6 May 44 improperly and without authority was concerned in the taking and using of a Cdn Army Vehicle No CM 195260.

Fourth Charge
Sec 4(1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field on 26 Apr 44 did absent himself without leave from 0800 hrs 26 Apr 44 until he was apprehended by the military authorities at 1135 hrs 9 May 44.

(Total absence: 13 days 3 hrs 35 mins)

In the field
27 May 44

Officer Commanding
No 86 Cdn Br Coy. RCASC

Approved for trial under KR(Can) 540 and Overseas RO 2223.

To be tried by F.G.C.M.

(D.G. Dean) Capt.
ADJA
A Tps Area, First Cdn Army
In the field
28 May 44

29 May 44

(V R Jones) Lt-Col
Cqmd 1 Cdn Army Tpt Coln

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-86966	Pte		Clarence Elwood	DUNN	- 86 Cdn Br Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 29 MAY 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[illegible]~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~ attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	J. FitzRandolph (Must be named. RP 106.)	63 Cdn Army Tpt Coy (Unit.)

MEMBERS.

Capt	K.H. Pudney	45 Cdn Army Tpt Coy
Capt (Rank.)	B.F. Pryce (Named or detailed. RP 106.)	64 Cdn Army Tpt Coy (Unit.)

WAITING MEMBER.

Lt (Rank.)	J.A.F. Bolduc (Named or detailed, if any. RP 106.)	63 Cdn Army Tpt Coy (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	D. Dean (Must be named, if any. RP 106.)	HQ A Tps First Cdn Army (Unit.)

On Active Service in the Fd

in Field (Country.)

[signature] (Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

(V.R. Jones)

Date 29 MAY 44

Commanding 1 Cdn Army Tpt Coln
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A.* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than on mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 563(a).*)

(vii) Summing up by J.A., if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A., if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A., if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits (numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy as item of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any reports or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 759.*)

4. The President or J.A., if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Friday Exhibit D.

Dear Danny

I only received your letter tonight. so I did the best I could I wired it to your address. it is payable at the Canadian army overseas. if you dont get it let me know. but I sent it Friday night 6-30 to this address D. Dunn. B. 86966. 86. Bridge Coy £5 = R.C.A.S.C. Cdn. army overseas so its up to you now. I told Mother because I had not enough money. so she lent me some she [illegible]

MEDICAL OFFICER'S REPORT

I certify that No. B 86966 Pte DUNN, C.E.
No 86 Bridge Coy
of RCASE is in a Fit state of health,
and Fit . to undergo Trial by Court martial.

[signature]
Medical Officer

.....
Dental Officer

Station In the Field

Date 31 May 44

[signature]
31 May 44

M. F. B. 246
25M—6-41 (792)
H.Q. 1172-39 480

On being arraigned on the 4th charge, the accused pleads guilty to the charge except that his absence was terminated by surrender rather than apprehension.

The prosecutor signifies the concurrence of the convening authority in the acceptance of this plea.

The court, being satisfied of the justice of such course, accept and record the plea of guilty subject to the variation that the accused surrendered.

1407

SUMMARY OF EVIDENCE

in the case of

B-86966 Pte Dunn, C.E. of the No.86 Bridge Coy.,RCASC Canadian Army Overseas.

The Commanding Officer, Major A.S.W. White, No.86 Bridge Coy. R.C.A.S.C., directs that the evidence be taken on oath.

FIRST WITNESS for the Prosecution

H-65703 Sgt. Sparrow, L.H. of No.86 Bridge Coy. R.C.A.S.C. having been duly sworn, states:-

"I am H-65703 Sgt. Sparrow, L.H. of NO.86 Bridge Coy., R.C.A.S.C. On 26 Apr 44 at approximately 0745 hours I came out on parade and looked for vehicle CM 195260 in order to start repairs on it. I looked all through the workshop lines and then all through the Company lines and could not find the vehicle. I reported this to the M.Q.M.S. of the workshop, who in turn reported it to the Workshop Officer.

The accused declined to cross examine the witness.

(Sparrow, L.H.)Sgt.
H-65703
No.86 Bridge Coy. R.C.A.S.C.

SECOND WITNESS for the Prosecution

C-30818 A/CSM Tait, T.B. of No.I Special Investigation Section, First Canadian Army, having been duly sworn, states:-

I am C-30818 A/CSM Tait, T.B, of No. I Special Investigation Section, First Canadian Army. On 10 May 44 at approximately 1200 hours whilst conducting inquiries relating to Staff Car W.D. number CM 195260 I had the occasion to question B-86966 Pte Dunn, C.E. at No.86 Bridge Coy., R.C.A.S.C. Pte Dunn having been cautioned verbally, stated that in company with Pte Hardie on 26 Apr 44, he had taken this Staff Car and left this Unit. On the Afternoon of 10 May 44 I accompanied Ptes Dunn and Hardie with Cpl Barry to Towcester. About 1 Mile outside the town behind a straw stack in a field adjacent to the road, they showed me this Staff Car. The car was brought back to this Unit. The examination of the car showed that front and rear formation signs had been covered with camouflage paint, the WD number on the rear of the car had been altered to CM 195162 and the "T" following the original number had been covered with camouflage paint. At about 1000 hrs 11 May 44 Pte Dunn was again cautioned when he gave a voluntary statement, covering the removal of the car from Unit lines, which I produce. (Attached Exhibit "A")
In the rear of the vehicle at the time of its recovery there were found, two American type Jerricans, which PTe Dunn stated had not been in the car when it was left behind the straw stack. The petrol tank of the vehicle was about half full of petrol when I saw it. The accused rendered every assistance possible in effecting the recovery of this vehicle.

(Tait, T.B.)A/CSM.
C-30818
No.I Special Investigation Section.

THIRD WITNESS
for the
Prosecution

B-81226 Cpl Ledsham, C.F. of No.86 Bridge Coy., R.C.A.S.C. having been duly sworn, states:-

I am B-81226 Cpl Ledsham, C.F. of No.86 Bridge Coy. R.C.A.S.C. On 26 Apr 44 at 0800 hrs I called the roll of "M" Platoon and the accused whom I now recognize as B-66966 Pte Dunn, C.E. did not answer his name. I made a search of the lines and could not find Pte Dunn. Pte Dunn has not answered the Platoon roll call since that date. I hereby present as evidence Certificate of Apprehension relating to the accused. (Attached Exhibit "B").

The accused declined to cross examine the witness.

C.F. Ledsham

(C.F. Ledsham)Cpl.
B-81226
No.86 Bridge Coy., R.C.A.S.C.

FOURTH WITNESS
for the
Prosecution

Lt. W.G. Dennis of No.86 Bridge Coy., R.C.A.S.C. having been duly sworn, states:-

I am Lt. W.G. Dennis, Adjutant of No.86 Bridge Coy., R.C.A.S.C., in charge of all records and documents relating to personnel of the Unit. I hereby produce as evidence a letter from the Midland Bank Limited, Redditch, and marked Exhibit "C" and also a cheque which was attached to the letter and marked Exhibit "D". Both these documents pertain to the accused.

The accused declined to cross examine the witness.

W.G. Dennis Lt

(W.G. Dennis)Lt.
Adjutant,
No.86 Bridge Coy., R.C.A.S.C.

FIFTH WITNESS
for the
Prosecution

Henry Ernest Sargent, 3 Easemore Lane, Redditch.

I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved, not readily procurable and a written statement of his evidence signed by him has been read to the accused and is attached hereto as Exhibit "E".

J.T. Robertson Lt.

Lt. J.T. Robertson.
Officer detailed to take summary.

SIXTH WITNESS
for the
Prosecution

Arthur George Brookes, Brickwork Cottage, Feckenham, Redditch.

I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved, not readily procurable and a written statement of his evidence signed by him, has been read to the accused and is attached hereto as Exhibit "F"

J.T. Robertson Lt.

Lt. J.T. Robertson,
Officer detailed to take summary.

SEVENTH WITNESS
for the
Prosecution

David Griffith, Dunstall Court, Feckenham, Redditch.

I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved, not readily procurable and a written statement of his evidence signed by him, has been read to the accused and is attached hereto as Exhibit "G"

J.T. Robertson Lt.

(J.T. Robertson)Lt.
Officer detailed to take summary.

EIGHTH WITNESS
for the
Prosecution

B. Gunning, P.C. 185, Godalming Division C.I.D. Office.

I am B. Gunning, P.C. 185, of the Godalming Division C.I.D. Office. On the 18 May 44 after having duly cautioned B-86966 Pte Dunn, C.E. that he need not make a statement unless he wished, but whatever he said would be taken down in writing and might be used as evidence against him, I obtained the following voluntary statement. (Marked Exhibit "H").

The accused declined to cross examine the witness.

B Gunning

(B. Gunning)P.C. 185,
Godalming Division C.I.D. Office.

The accused B-86966 Pte Dunn, C.E. was then cautioned as follows in accordance with Rules of Procedure 4 (c). "Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

"A" I do not wish to make a statement.

WITNESS FOR THE DEFENCE

Nil

I certify that the foregoing summary of evidence consisting of 3 pages was taken down by me in presence and hearing of the accused, and that the Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

J.T. Robertson Lt

(J.T. Robertson)Lt.
Officer detailed to take summary.

11 May 1944

Statement of B86966, Pte Dunn,
Clarence Elwood, 86 Bridge Co. RCASC.

I have been cautioned by C.S.M. Fait, T.B. No 1 Special Investigation Section, that I am not obliged to say anything unless I wish to do so, but anything I do say will be taken down in writing and may be given in evidence. C. Dunn.

I am Clarence Elwood Dunn, age 27 years, and was born at Alliston, Ont., civilian occupation, tanner, I engaged in the Canadian Army on 3 June 1940 and arrived in England on Sept 1940. On the afternoon of 25 April 1944, I had dressed to go out as it was "day off" for "M" Platoon. At about 6 o'clock in the evening, Lt Brooks came and told us that our passes had been cancelled. He said it was because the other men left their tents untidy. I had a bottle of liquor to take out with me that evening, and as I had just come off guard, I felt disappointed because we were being punished for something we had nothing to do with. I stayed in that night, and answered roll call at 11.00 o'clock at night. I drank the bottle of liquor with my friend Pte Hardie and we decided to leave camp for a few hours. We both got at out drunk on the liquor and we took the staff car CM 195260 and left camp. We drove up North of London and ran short of gas. We cached the car behind the straw stack not far from Towcester

C.D.

and went to London for a few days. We ran short of money and decided to come back to the unit. We surrendered to the Canadian Provost at Guildford.

I have read over this statement and it is correct and true to the best of my knowledge and memory. C. Dunn.

Witness [illegible]
Com. No 1 S.I.S.

STATEMENT OF B-86966, Pte. DUNN, CALARENCE ELWOOD, EXHIBIT "A"
86 Bridge Co., R.C.A.S.C.

I have been cautioned by C.S.M. Tait, T.B., No.1 Special Investigation Section, that I am not obliged to say anything unless I wish to do so, but anything I do say will be taken down in writing and may be given in evidence.

(sgd) C. Dunn.

I am Clarence Elwood Dunn, age 27 years, and was born at Alliston, Ontario, civilian occupation, tanner. I engaged in the Canadian Army on the 3 June 1940, and arrived in England in September 1940. On the afternoon of 25 April 1944, I had dressed to go out as it was "day off" for "M" Platoon. At about 6.00 o'clock in the evening, Lt. Brooks came and told us that our passes had been cancelled. He said it was because the other men left their tents untidy. I had a bottle of liquor to take out with me that evening, and as I had just come off guard because we were being punished for something we had nothing to do with, I stayed in that night and answered roll call at 11.00 o'clock at night. I drank the bottle of liquor with my friend Pte. Hardie, and we decided to leave the camp for a few hours. We both got a bit drunk on the liquor, and we took the staff car, CM 195260, and left camp. We drove up north of London and ran short of gas. We cached the car behind a straw stack near Towcester, and went to London for a fewwdays. We ran short of money and decided to come back to the unit. We surrendered to the Canadian Provost at Guildford.

I have read over this statement and it is correct and true to the best of my knowledge and memory.

(SGD) C. Dunn.

WITNESS: T.B. Tait,
CSM No.1 S.I.S.

Exhibit B 1-11

SCHEDULE "F"

Certificate in Accordance with P.C. 2797 of 10 Apr 42

I CERTIFY that No. B86966 Rank Pte. Name Dunn C.E.

Unit 56 Bridge Coy. RCASC was arrested at Guildford, Surrey. (place)

at 1135 hours on 9 May 44 (date) and that at the time of his arrest he was wearing (military uniform) or xxxxxxxxxxxxxxxxx

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the Officer, non-commissioned officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Can Army, by whom the above named person was taken on arrest.

(R.I.Luker) Lieut.

No.9 Cdn.Provost Coy.

ORDERLY ROOM MAY 0 1944 NO 9 PROVOST COY

Exhibit "C" 117

Midland Bank Limited.

Old Bank.

Address letters to The Manager
Telephone No. 132

Redditch. May 23rd, 1944.

TO WHOM IT MAY CONCERN:-

We beg to inform you that cheque no. 223921 for £5 dated May 4th, 1944, and signed "Captain Dunn", payable to E. Sargant, was presented by E. Sargant for payment over the counter on May 9th, 1944, and was duly returned by us marked "No account." The cheque form was one out of a book belonging to Mr. D. Griffith, Dunstall Court, Feckenham.

MANAGER.

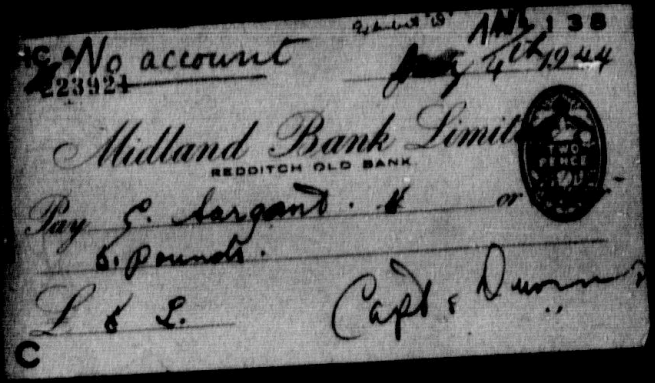


Exhibit "D" AMC 138

No account

23924

4th 1944

Midland Bank Limit

REDDITCH OLD BANK

TWO PENCE

Pay E. Sargent. or

6 pounds.

L & L.

Capt. Dunn

C

EXHIBIT "E" 1442

STATEMENT OF HENERY ERNEST SARGENT, 3 Easmore Lane, Redditch.

Henry Ernest Sargent having been duly sworn states:

I am Henry Ernest Sargent of 3 Easmore Lane, Redditch. On 3 May 44 at approximately 1100 hrs a man, whom I now recognize as Pte Dunn, C.E., came into the Hungry Man Hotel, Redditch, wearing the uniform of a Captain in the British or Canadian Army, in company with a Lieutenant of the American Army. We got into conversation and I took Dunn and the American Lieutenant in Dunn's car to the White Lion Hotel at Portway, north of Redditch. Dunn during the conversation mentioned he had a small acount in the Midland Bank and a large account in the Lloyds Bank and also a draft for about £60 on Lloyds Bank. Owing to the fact that I thought it was too late for him to cash a cheque at the Bank, he suggested that I should cash him a cheque, which I did for £5.

This witness was questioned by the Officer taking the summary.

"Q"1 Dunn gave you no intimation that he was anything other than a Captain in the Canadian Army?

"A"1 No. He did not.

"Q"2 When you presented the cheque to the Midland Bank was it honoured?

"A"2 No.

The accused declined to cross examine the witness.

Signed- ..... (Henry Ernest Sargent)

Certified True Copy of original.

Lt. [illegible] Robertson

Dunn

(1)

Exhibit "E" 1111

Statement of Henry Ernest Sargent, 3 Easmore Lane, Redditch.

Henry Ernest Sargent having been duly sworn states:—

1. I am Henry Ernest Sargent of 3 Easmore Lane, Redditch.

On 3 May 44 at approximately 1100 hrs a man, whom I now recognise as Dunn, G.E., came into the Hungry Man Hotel, Redditch, wearing the uniform of a Captain in the British or Canadian Army, in company with a Lieutenant of the American Army. We got into conversation and I took both Dunn and the American Lieutenant in the Dunn's car to ~~[illegible]~~ the White Lion Hotel at Portway, North of Redditch. Dunn during the conversation mentioned he had a small arrent in the Midland Bank and a large arrent in Lloyds Bank and also a draft for about £60 on Lloyds Bank. Owing to the fact that I brought it was too late for him to cash a cheque ~~£ for £6~~ at the Bank, he suggested that I would cash him a cheque which I did for £6.

This witness was questioned by the officer taking the summary.

Q-1. Dunn gave you no intimation that he was anything else than a Captain in the Canadian Army.

A-1. No he did not.

Q-2. When he presented the cheques at the Midland Bank was it honoured.

A-2. No.

Henry Ernest Sargent

23 May 44

The accused declined to cross-examine the witness

EXHIBIT "F"

STATEMENT OF ARTHUR GEORGE BROOKES, of Brickwork Cottage, Feckenham, Redditch.

Arthur George Brookes having been duly sworn states:

I am Arthur George Brookes of Brickwork Cottage, Feckenham, Redditch.

At the gate of Dunstall Court at approximately 1315 hrs, 27 Apr 44, I saw a military vehicle pull up and a man in uniform asked me who ran the show here. I told him I did and he led me to understand he was on leave and wanted to do some work. I promised him some work and the next day, in the morning, he and Hardie came to work. They worked for me on Friday, Saturday and Monday mornings. On Sunday 30 Apr 44 Dunn borrowed from me £2 and brought it back on Monday 1 May 44. Dunn made arrangements with me for lodgings. He paid me ten shillings in advance, clearing him and Hardie until Sunday night. Lodgings were paid for from Thursday night until Sunday night. I do not remember the exact sum set upon the lodgings but I know it to have worked out to 14 shillings, the amount he did not pay. Dunn borrowed a further £2-0-0 on 2 May 44 which I have not yet received.

This witness was questioned by the Officer taking the summary.

"Q"1 Is the accused Pte Dunn, C.E, the same man you know as Captain Dunn, and who borrowed money from you and owes you for lodgings?

"A"1 Yes. He is the same person.

"Q"2 How was Dunn dressed when you first saw him?

"A"2 He had on battledress trousers and what I recognized as an Officers shirt.

"Q"3 Did Dunn while he was here, wear the badges of the rank of a Captain in the British or Canadian Army, namely three pips?

"A"3 Yes.

"Q"4 Are you in any way associated with the Army?

"A"4 Yes. I am a member of the Home Guard.

"Q"5 When Dunn honoured the £2-0-0 from you, you thought him to be a Captain in the Canadian Army?

"A"5 Yes.

"Q" 6 Did Dunn ever give any intimation to you that he was not a Captain?

"A" 6 Decidedly not.

"Q" 7 There was no written aggeement with regard to the payment for lodgings?

"A" 7 No. It was done as a matter of trust.

"Q" 8 Did Dunn have an Army vehicle with him when he was with you?

"A" 8 Yes.

"Q" 9 What kind, could you describe it?

"A" 9 Yes. A Ford Sedan, khaki colored.

The accused declined to cross examine the witness.

Signed: Arthur George Brookes.

Certified True Copy of original.
Lt. J.T. Robertson.

G 1117

Statement of Arthur George Brookes of Brickwork Cottage, Fickenham, Redditch

Arthur G. George Brookes having been duly sworn states:—

"I am Arthur G. George Brookes of Brickwork Cottage, Fickenham, Redditch. Aug 27th 1944

At the gate of Cornstall Court at approximately 1315 hrs I saw a military vehicle full up and a ~~Captain~~ man in uniform asked me who ran the saw here. I told him I did and he lead me to understand he was on leave and wanted to do some work. I promised him some work and the next day in the morning he and Hardie came to work. They worked for me on Friday, Saturday and Monday morning. On Sunday 30 April 44 Dunn borrowed from me £2-0-0 and brought it back on Monday the 1 May. Dunn made arrangements with me for lodgings. He paid me ten shillings in advance, sharing him ~~until~~ and Hardie until Sunday night. Lodgings were paid for from Thursday night to Sunday night. I do remember the exact sum ~~of~~ set upon the lodgings but I know it to have worked out to 14 shillings, the amount he did not pay. Dunn borrowed a further £2-0-0 on 2 May 44 which I have not yet received.

Her witness was questioned by the officer taking the summary.

~~Q1 When you first saw~~

Q1. Is the accused Pte Dunn B.E., the same man whom you know as Captain Dunn, and who borrowed money going and owes you for lodgings.

A-1 Yes he is the same person.

Q2. How was Dunn dressed when you first saw him.

A-2. He had on a battle dress trousers and what I recognized as an officer shirt.

Q-3. Did Dunn while he was here wear the badge of rank of a Captain in the British or Canadian Army, namely three pips?

A.3 Yes.

Q-4. Are you in any way associated with the Army.

A-4. Yes I am a member of the Home Award.

Q-5 When Dunn borrowed the £2-0-0 from you you thought him to be a Captain in the Canadian Army

A-5. Yes.

Q-6. Did Dunn ever give any intimation to you that he was not a Captain

A-6. Decidedly not.

Q-7. There was no written agreement with regard to the payment for lodgings.

A-7 No it was done as a matter of trust.

Q-8. Did Dunn have an army vehicle with him when he was with you?

A-8 Yes

Q-9. What kind, could you describe it

A-9. Yes a Ford Sedan, Khaki colored.

The accused declined to cross examine the witness.

A G Brooks

27 Nov 1918

EXHIBIT "F"

STATEMENT OF DAVID GRIFFITH, Dunstall Court, Feckenham, Redditch.

David Griffith, having been duly sworn, states:-

I am David Griffith of Dunstall Court, Feckenham, Redditch. I returned from Buxton on the ev ening of May 1st. On the following morning my man, George Brookes, introduced me to Captain Dunn who called to see me. I brought Captain Dunn to the dining room and did have some conversation with him. I asked him what he was doing in the district and he said he was establishing a repair depot for convoys passing through. Then in the course of the conversation Captain Dunn asked me for a blank cheque. I asked him what bank he had his account at and he stated Lloyds. I stated that would not do at all as my bank is the Midland Bank. He said that was alright I can alter it from the Midland Bank and my bank will honour it all right. His reason for getting the cheque form was that he wanted money at once and that his book was exhausted. I then asked him who was going to cash the check for him, and he said Tim Shakles. I replied that if he did that Tim was a very good fellow.

This witness was questioned by the Officer taking th e summary.

"Q" 1: Can you give me the number of th e cheque?
"A" 1: Yes, it is on the Midland Bank Redditch and the number is 223921.
"Q" 2: Did you see Pte Hardie at any time?
"A" 2: No.
"Q" 3: Do you recognize th e accused Pte Dunn C.E. as the man known to you as Captain Dunn?
"A" 3: Yes.
"Q" 4: How was Dunn dressed?
"A" 4: He had on a battle dress with three pips on th e shoulder.
"Q" 5: Were any remarks made concerning Dunn being a Captain?
"A" 5: Yes, in the course of our conversation I congratulated Dunn on havin g become a Captain so soon.

The accused declined to cross examine the witness.

D. Griffith
23 May 1944.

Certified true copy of original.
Lt. J.I. Robertson

(1) Exhibit "B" 1117

Statement of David Griffith, Dunstall Court, Feckenham, Redditch.

David Griffith having been duly sworn states:—

"I am David Griffith of Dunstall Court, Feckenham, Redditch. I returned from Buxton on the evening of May 1st. On the following morning my man, George Brookes, introduced me to Captain Dunn who called to see me. I brought Captain Dunn to the dining room and had some conversation with him. I asked him what he was doing in the district and he said he was establishing a repair depot for convoys passing through. Then in the course of the conversation Captain Dunn asked me for a blank cheque. I asked him what bank he had his account at and he stated Lloyds. I said that would not do at all as my bank is the Midland Bank. He said that was all right I can alter it from the Midland Bank and my bank will honour it all right. His reason for getting the cheque form was that he wanted money at once and that his book was exhausted. I then asked him who was going to cash the check for him and he stated Sir Shakles. I replied but it he did that Sir was a very good fellow."

This witness was questioned by the officer taking the summary.

Q1. Can you give me the number of the cheque.
A1. Yes it is on the Midland Bank Redditch and the number is 223921
Q2. Did you see Pte Hendre at any time
A2. No
Q3. Do you recognise the accused Pte Dunn E.C. as the man known to you as Captain Dunn.

A-3. Yes.

Q-4 How was Dunn dressed.
A-4 He had on a battledress with three pips on the shoulders.

Q-5 Were any remarks made concerning Dunn being a Captain
A-5 Yes in the course of our conversation I congratulated Dunn on having become a Captain so soon.

The accused declined to cross examine the witness.

D. Griffiths
23rd May 1944

Exhibit H

Copy.
G.

Surrey Joint Police Force

C.I.D.

Godalming Division.

Pte. No. B86966. Clarence Elwood DUNN.

Royal Canadian Army Service Corps.86 Bridge Coy., stationed at Newlands Corner, Surrey.

Age 27 years. Serving soldier.

States:-

" I have been cautioned that I am not obliged to say anything unless I wish, but that whatever I do say will be taken down in writing and will be given in evidence.

Signed. C. Dunn

During the early morning of the 26th of April, 1944, I left my camp at Newlands Corner in a Ford Sedan Army Staff car, number CM 195260, in company with Pte Hardie of my unit. We travelled up through the Great North Road and spent the night in the car at the side of the road, just outside Kidderminster. On the following morning, the 27th of April, 1944, we drove on to Feckenham, near Redditch, Worcestershire, and arrived there at about mid-day, Hardie and me went into a public house there. I do not know the name of this public house. I was wearing battledress with three pips on the shoulders, at the time, and I met in the public house, a farmer who said his name was Brooks. While I was in the public house I did say that I was a Captain Dunn and that I was looking for a suitable meadow in which to erect a camp for myself, a lieutenant and thirty other ranks, which would be working as a mechanical repair unit. I said this in general conversation and Brooks was there when I was saying this.

Mr Brooks invited myself and Hardie to his house on that day, 27th April, 1944, for lunch, and we went with him and had lunch. Later that day I asked Mr Brooks if he could give Hardie and myself lodgings while we were in the district and he agreed to do so, and arrangements were made for the price we were to pay for the lodgings, but I do not know now what the amount was. We stayed at Mr Brooks house each night from the 27th April, 1944 until 2nd May, 1944, and I paid for both our lodgings up until Sunday, 30th April, 1944, but we did not pay for the board and lodgings we had during the 1st and 2nd May, 1944, and I agree that we owe Mr Brooks the sum offourteen shillings for board and lodgings. I also admit that I obtained two pounds, in cash, from Mr Brooks, while I was staying there. I cannot now remember what day it was when I got this money.

On Tuesday, 2nd May, 1944, I met a white haired elderly man, whose name I do not know, at Mr Brock's farm at Feckenham. I asked him if he could give me a blank cheque as I wanted some money at once, and he handed me one from a cheque book, straight away.

On the 3rd May, 1944, I went to the White Lion Inn, Portway, Warwickshire, where I filled in the blank cheque form I had obtained the previous day, and I made it payable to a Mr Sargent who I drove out to this pub from Redditch. I do not remember whether I signed my name on the cheque or somebody else's. I handed the cheque to Mr Sargent and he gave me five pounds in cash. The cheque was issued for an account either on Lloyds' Bank or Midland Bank, I don't know which. I first met Mr Sargent in a public house at Redditch.

Hardie and me slept in an American Army Camp, near Redditch, for a couple of days and later we drove the car on the Northampton road and left it behind a hay stack, and then we hitch-hiked back to Guildford where we arrived on the morning of Tuesday 9th May, 1944, where we handed ourselves in to the Canadian Provost.

continued overleaf.

Exhibit "H" 1.HP.

1-50pm.

18th May 1944.

Pte. No. B86966. Clarence Elwood DUNN.
Royal Canadian Army Service Corps. 86. Bridge Coy.
stationed at Newlands Corner, Surrey.
Age. 27 years. Serving soldier.

States

"I have been cautioned that I am not obliged to say anything unless I wish, but that whatever I do say will be taken down in writing and will be given in evidence. C. Dunn.

During the early morning of the 26th April 1944, I left my camp at Newlands Corner in a Ford Sedan Army staff car, number CM 195260 in company with Ole Hardie of my unit. We travelled up through the Great North Road, & spent the night in the car at the side of the road, just outside Kidderminster. On the following morning, the 27th April 1944, we drove on to Feckenham, near Redditch, Worcestershire, and arrived there at about midday. Hardie & me went into a public house, there. I do not know the name of this public house. I was wearing battle dress with three pips on the shoulders, at the time, and I met in the public house, a farmer who said his name was Brooks. While I was in the public house I did say that I was a Captain Dunn and that I was looking for a suitable meadow in which to erect a camp for myself, a lieutenant and thirty other ranks, which would be working as a mechanical repair unit. I said this in general conversation and Brooks was there when I was saying this. Mr Brooks invited myself and Hardie to his house on that day, 27th April 1944, for lunch and we went with him and had lunch. Later that day I asked Mr Brooks if he could give Hardie and myself lodgings while we were in the district and he agreed to do so and arrangements were made for the

C. Dunn

Exhibit 4

Copy.
G.

Surrey Joint Police Force

C.I.D. Godalming Division.

Pte. No. B86966. Clarence Elwood DUNN.

Royal Canadian Army Service Corps.86 Bridge Coy., stationed at Newlands Corner, Surrey.

Age 27 years. Serving soldier.

States:-

" I have been cautioned that I am not obliged to say anything unless I wish, but that whatever I do say will be taken down in writing and will be given in evidence.

Signed. C. Dunn

During the early morning of the 26th of April, 1944, I left my camp at Newlands Corner in a Ford Sedan Army Staff car, number CM 195260, in company with Pte Hardie of my unit. We travelled up through the Great North Road and spent the night in the car at the side of the road, just outside Kidderminster. On the following morning, the 27th of April, 1944, we drove on to Feckenham, near Redditch, Worcestershire, and arrived there at about mid-day, Hardie and me went into a public house there. I do not know the name of this public house. I was wearing battledress with three pips on the shoulders, at the time, and I met in the public house, a farmer who said his name was Brooks. While I was in the public house I did say that I was a Captain Dunn and that I was looking for a suitable meadow in which to erect a camp for myself, a lieutenant and thirty other ranks, which would be working as a mechanical repair unit. I said this in general conversation and Brooks was there when I was saying this.

Mr Brooks invited myself and Hardie to his house on that day, 27th April, 1944, for lunch, and we went with him and had lunch. Later that day I asked Mr Brooks if he could give Hardie and myself lodgings while we were in the district and he agreed to do so, and arrangements were made for the price we were to pay for the lodgings, but I do not know now what the amount was. We stayed at Mr Brooks house each night from the 27th April, 1944 until 2nd May, 1944, and I paid for both our lodgings up until Sunday, 30th April, 1944, but we did not pay for the board and lodgings we had during the 1st and 2nd May, 1944, and I agree that we owe Mr Brooks the sum offourteen shillings for board and lodgings. I also admit that I obtained two pounds, in cash, from Mr Brooks, while I was staying there. I cannot now remember what day it was when I got this money.

On Tuesday, 2nd May, 1944, I met a white haired elderly man, whose name I do not know, at Mr Brook's farm at Feckenham. I asked him if he could give me a blank cheque as I wanted some money at once, and he handed me one from a cheque book, straight away.

On the 3rd May, 1944, I went to the White Lion Inn, Portway, Warwickshire, where I filled in the blank cheque form I had obtained the previous day, and I made it payable to a Mr Sargent who I drove out to this pub from Redditch. I do not remember whether I signed my name on the cheque or somebody else's. I handed the cheque to Mr Sargent and he gave me five pounds in cash. The cheque was issued for an account either on Lloyds' Bank or Midland Bank, I don't know which. I first met Mr Sargent in a public house at Redditch.

Hardie and me slept in an American Army Camp, near Redditch, for a couple of days and later we drove the car on the Northampton Road and left it behind a hay stack, and then we hitch-hiked back to Guildford where we arrived on the morning of Tuesday 9th May, 1944, where we handed ourselves in to the Canadian Provost.

continued overleaf.

During the time we were away with the car, Hardie and I took it in turns to drive.

I will see that Mr Hook's will be repaid the two pounds fourteen shillings in cash.

This statement has been read over to me and is quite true.

Signed:- R66966. Clarence Dunn.

Witnessed by R. Gunning. P.C. 185.

Certified true copy of the original:

J.T.Robertson

Lt.J.T.Robertson.

Exhibit "H"
1-50pm.
18th May 1944.

Pte. No. B86966. Clarence Elwood DUNN.
Royal Canadian Army Service Corps. 86. Bridge Coy.
stationed at Newlands Corner, Surrey.
Age. 27 years. Serving soldier.

States

"I have been cautioned that I am not obliged to say anything unless I wish, but that whatever I do say will be taken down in writing and will be given in evidence. C Dunn.

During the early morning of the 26th April 1944, I left my camp at Newlands Corner, in a Ford Sedan Army staff car, number C.M. 195860, in company with Pte Hardie of my unit. We travelled up through the Great North Road, & spent the night in the car at the side of the road, just outside Widdermuster. On the following morning, the 27th April 1944, we drove on to Feckenham, near Redditch, Worcestershire, and arrived there at about midday. Hardie & me went into a public house, there. I do not know the name of this public house. I was wearing battle dress with three pips on the shoulders, at the time, and I met in the public house, a farmer, who said his name was Brooks. While I was in the public house I did say that I was a Captain Dunn and that I was looking for a suitable meadow in which to erect a camp for myself, a lieutenant and thirty other ranks, which would be working as a mechanical repair unit. I said this in general conversation and Brooks was there when I was saying this. Mr Brooks invited myself and Hardie to his house on that day, 27th April 1944, for lunch and we went with him and had lunch. Later that day I asked Mr Brooks if he could give Hardie and myself lodgings while we were in the district and he agreed to do so and arrangements were made for the

C. Dunn

price we were to pay for the lodgings, but I do not know now what the amount was. We stayed at Mr Brook's house each night from the 27th April 1944 until 2nd May 1944, and I paid for both our lodgings up to Sunday 30th April 1944, but we did not pay for the board and lodgings we had during the 1st and 2nd May 1944, and I agree that we owe Mr Brooks the sum of fourteen shillings for board and lodgings. I also admit that I obtained two pounds in cash from Mr Brooks while I was staying there. I cannot now remember what day it was when I got this money. On Tuesday, 2nd May 1944, I met a white haired elderly man whose name I do not know, at Mr Brook's farm at Teckenham. I asked him if he could give me a blank cheque as I wanted some money at once, and he handed me one from a cheque book, straight away. C.D. on the 3rd May 1944, I went to the White Lion Inn, Portway, Warwickshire, where I filled in the blank cheque form I had obtained the previous day, and I made it payable to a Mr Sargent, who I drove out to this pub from Redditch. I do not remember whether I signed my name on the cheque or somebody else's. I handed the cheque to Mr Sargent and he gave me five pounds in cash. The cheque was issued for an account either on Lloyd's Bank or Midland Bank. I don't know which. I first met Mr Sargent in a public house at Redditch. C.D. Hardie & me slept in an American Army Camp, near Redditch for a couple of days & later we drove the car on the Northampton road and left it behind a haystack, and then we hitch-hiked back to Guildford where we arrived on the morning of Tuesday 9th May 1944, where we handed ourselves in to the Canadian Provost. During the time we were away with the Car Hardie & I took it in turns to drive. I will see that Mr Brooks will be repaid the two pounds fourteen shillings in cash. This statement has been read over to me and is quite true."

Witnessed by B. [illegible] Pt 85 B 86966. Clarence Dunn.

No. B 86966 Name Dunn C.E. Sqn., Battery, or Company 24 Cdn Fd Amb(att) Corps RCAMC Date of enlistment 3 Jun 41 G.C. Badges Tradesmen's Rates of Pay

30-10-41 No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. W.A. McKibbon Capt.

M.F.M. 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field				Granted Leave #3 F.T.W. from 0500 hrs 1 Sept 42 to 2230 hrs 8 Sept 42					
"	20/4/43	Dvr		Sec 15(1)(a) AA Absent without leave from 2201 hrs 20 Apr 43 to 1045 hrs 21 Apr 43.(Total absence 12 hrs 44 min)	Cpl Slann Sgt CC Monk	7 days C.B.	30 Apr 43	Capt A.H. Williams	
"	15/5/43	Dvr		Sec 40 AA At approximately 2120 hrs 15 May 43 was in possession of WD Veh CM 1164526 without proper authority.	Pte Doyle A. Sgt Boyden F.G. Cpl Jeffrey W.R. Pte Maddeaux N. Pte Bates R. Pte Brewer A.D. Pte Gilbert W.C. Pte Frizzel N. Pte Rultz H.J.	28 days F.P.	17 May 43	W.L. Cake Lt.-Col	Forf 28 days pay. Under FR& I 149(1)(6)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2 Nov	L/Cpl		Conduct to the Prejudice AA Sec 40 carrying a passenger on M/C	Lt Lafrance L/C Domoney	Reverted to rank of Pte	2 Nov 43	W.G. Pepall Major	
"	2 Nov 43	Pte		WOAS A.W.L. AA Sec 15(1) Total Absence 13 days, 15 hrs & 30 Min	L/Sgt Miller	21 days F.P. (Total forf of 35 days pay)	17 Nov 43	W.G. Pepall Major	

Certified true copy of original.

(D.E. Fenny) Capt.
No 86 Bridge Coy., RCASC

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force / unit ..... dated ..... , and in his regiment (or corps), the rank of ..... dated ..... . B+

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.
In the rank of ..... years. B+
In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	NA			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27 day of May 44 [signature] Capt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

B 1.100

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-86966	Pte	Clarence Elwood Dunn	No.86 Bridge Coy.RCASC

1. The following is a fair and true summary of the entries in the ~~Conduct Sheet~~ Conduct Sheet ~~Regimental and Squadron, Battery or Company Conduct~~ Service and General sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

Within last 12 months		Since enlistment or appointment	
For	times	Conduct to the Prejudice AA Sec 40	times 2
For	times	A.W.L. Sec 15 (1)	times 2
For	times		times
For	times		times

~~[illegible]~~ Bt

~~or~~ Bt

There are ~~no~~ Bt entries in the conduct sheets of the accused.

~~[illegible]~~ Bt

2. The accused has not been previously convicted

~~or~~ Bt

~~[illegible]~~ Bt

3. The accused is not under sentence at the present time.

~~or~~ Bt

~~[illegible]~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 18 days in military custody, making a total of 18 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 28 yrs 1 month ~~attestation paper~~ Bt

6. The date of his commission specified in his record of service is ~~attestation~~ attestation paper Bt

7. The service which the accused is allowed to reckon towards discharge is 2 yrs 11 mos.

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~no air force decoration~~ military decoration or ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force decoration~~ military reward. Bt

10. ~~(If the accused is a warrant officer.)~~ The accused before he was made a warrant officer last held ~~Air Force~~ the regimental rank of Bt

1.1.17

Defending Officer in mitigation.

The witness ~~says~~ sat says that Dunn gave every assistance in recovering the vehicle. I hand in a letter to show that the accused has written for money to repay the debt he owes. This letter shows that the money will be forthcoming. (Letter attached as Ex. A).

The accused surrendered himself and was not running away. This is the story of a man, overseas for 3 years 4 months, who was suddenly C.B'd. When he was expecting a day's leave. He had a bottle of liquor and we all know how it could happen. The car was not damaged & well looked after.

The accused is an intelligent man with definite initiative ability. He is the type who will make a valuable soldier & who could hold rank. He is a willing & an able soldier to my knowledge. He should not be too harshly judged for getting drunk for a few days.

Dunn showed willingness to cooperate in recovering the car, in coming 175 miles to his own area to surrender. Moreover he is going to make restitution of the money.

P.S. Dunn states that he wishes to add that restitution will be made for all sums, including the £5 cheque.

C.A.O.F. - 1 - 15
Lpr. Dunn, C.H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not guilty	Not guilty	
2nd	Not guilty	Not guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

~~Sentence Awarded by the Court~~ :

(Sgd) Lt Col Judge-Advocate, if any. 12 Sep 45 Date awarded. (Sgd) President (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date .....

Commanding .....

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECEIVED 17 SEP 1945 JAG BRANCH

RECORDED AT CMHQ IN AB 160 AT C.H.Q.F - 1 - 15

FIELD GENERAL COURT-MARTIAL

CFAB6 (In lieu of AFAB) 40 P A D (1808) (2664)

Convened by Order of Lt Col R.F. Tolson Comd RCE(MF) COOF dated 8 Sep 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F82256	Sgt.	Clarence William	Dunn	2/6 Cdn Fd Coy RCE

PROCEEDINGS REVIEWED 17 Sept 45

REVIEWING OFFICER, JAG BRANCH CMHQ.

PROCEEDINGS OF TRIAL.

Held in ~~the Fd~~ in (country) Germany on (date(s)) 12 Sep. 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~ JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1715 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ~~Lt~~ Lt Loiselle R. 2/6 Cdn Fd Coy and Sgt. Swinards P 2/6 Cdn Fd Coy as ~~interpreter(s)~~ ~~shorthand writer(s)~~ ~~and high status~~ ?

Ans. No Sir

The Interpreter(s) ~~and~~ sworn.(1) ~~Has you object to the shorthand writer a man~~.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans. No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 118, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Maj. D H C Saunders	AQ RCE 3 Cdn Inf Div (COOF)
Member	Lt. A. G. Macaulay	AQ RCE 3 Cdn Inf Div (COOF)
Member	Lt P Freedlander	1AQ RCE 3 Cdn Inf Div (COOF)
Judge-Advocate	LtCol W B Butlin	AQ 3 Cdn Inf Div (COOF)
Prosecutor	Lt A.S. Mitchell	2/6 Cdn Fd Coy RCE.
Defending Offr	Lt W.C. Thompson	2/6 Cdn Fd Coy RCE.

Questions by President : Is the Prosecutor a lawyer ? Ans. No Is the Defending Offr a lawyer ? Ans. No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ~~.....~~ before arraignment make(s) ~~.....~~ (a) plea

(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*ii*) ; *duty and [illegible] of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) charge(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by vis of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by completing with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No, Sir (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~one~~) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Neither. Do you intend to call witnesses on your behalf ?
Ans Yes. Are they witnesses as to character only ? Ans No
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(E).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(E).*)

~~D8a. The President announces the findings(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s) being subject to confirmation, will be promulgated later.(1)~~

~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

~~D8b. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(*1. MFB 355 or AFB 2960. 2. MFM 6. 2. RP 46, KR Can 358. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 46fn. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its purview, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 562. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Dnc Smaj

CHARGE SHEET

The accused, F82256 Spr Clarence William DUNN 2/6 Cdn Fd Coy RCE, a soldier of the Canadian Army (Overseas) is charged with:

FIRST CHARGE
ARMY ACT SEC 8 (2)

WHEN ON ACTIVE SERVICE
OFFERING VIOLENCE TO HIS SUPERIOR OFFICER

in that he

at LEER, GERMANY, on the 19th day of August 1945 when checked by M45074 Cpl Sinclair W, 2/7 Cdn Recce Regt CAOF, discharged a small arms weapon, namely a pistol, in the direction of the said corporal.

SECOND CHARGE
ARMY ACT SEC 40

WHEN ON ACTIVE SERVICE
DISORDER TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at LEER, GERMANY, on the 19th day of August 1945 was disorderly in discharging a small arms weapon, namely a pistol, without provocation in the presence of a soldier of the Belgian Army.

Walker Kayes Major
(Walker Kayes) Major RCE
Officer Commanding
2/6 Cdn Fd Coy RCE CAOF

LEER, GERMANY
25th day of August 1945

To be tried by F.G.C.M.

R. F. Johnson Lt Col.

Germany
9 Sep 45

One Copy

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA2) 40/FMR/1067 (2008)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F82256	Spr		Clarence William	DUNN	2/6 Cdn Fd Coy.,RCE

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 8 Sep 45 endorsed by me, (~~or by order of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint an other Offr before the Court, the said Offr as President, for the reason that he is the accused's~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj (Rank.)	D.M.C. Saunders (Must be named. RP 106.)		HQ RCE 3 Cdn Inf Div CAOF

MEMBERS.

Lt.	A.G.	MacAulay	HQ RCE 3 Cdn Inf Div CAOF
Lt. (Rank.)	P.	Freedlander (Named or detailed. RP 106.)	HQ RCE 3 Cdn Inf Div CAOF (Unit.)

WAITING MEMBER.

Lt. (Rank.)	E.A.	Percival (Named or detailed, if any. RP 106.)	2/18 Cdn Fd Coy.,RCE (Unit.)

JUDGE-ADVOCATE.

LT.COL. (Rank.)	W.B.	Bredin (Must be named, if any. RP 106.)	HQ 3 Cdn Inf Div CAOF (Unit.)

On Active Service in the Fd

in Germany (Country.)

R. F. Jobson Lt-Col
(Signed personally. RP 105 fn 2.) (Rank.)

Date 8 Sep 45

Commanding 6 K G E M E
Convening Offr.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. *(or,* None.*)*

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as practicable*, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), *or* evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. *(On top.)*

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE
K R (CAN) Para 557

I certify that I have this morning examined No. FS2256.....

Rank..Spr.....Name.....DUNN C W.....

and in my opinion he is ~~unfit~~ fit to undergo trial by Court-Martial.

STATION: Field Germany...

DATE:..12 Sept 45.....

SGD..R. J. Tancas Capt....
(MEDICAL OFFICER)

Dunn Saunders Maj

First Witness for Prosecution

M 45074 Cpl. Sinclair W., 2/7 Cdn Recce Regt., CAOF, sworn, states:—

I recognise accused (Indicates him) at approx 2330 hrs night of 19 Aug 45 I was guard comd. at Frissa Hotel, Leer. As result of a report of some shooting I was ordered to investigate. I proceeded down the street & heard some loud talking in a bldg. I went in & into a room on the left. I saw accused sitting with his arm round a man who was partially dressed. The accused ~~He~~ had an automatic pistol in his hand, he was pointing ~~waving~~ it around. I asked him to come out for a drink in order to get him out of the house & to get the pistol from him. He ordered me to get out — I took a step forward & he pointed the pistol at me & I withdrew. As I got to the door a pistol was discharged from direction of accused — I did not look round to see who fired. I waited outside bldg. until prov. arrived a few minutes later. Two prov. entered the house & came out with the accused. When shot was fired I was about in the door-way, sideways to the accused. I ducked fast when I heard the shot.

Cross. examine.

(Def Offr. produces plan. Pros. offr. consents to admission of plan. Plan marked Ex. "A") I went 2 or 3 steps into the room. I went no further than "M" (marked by witness) accused was then at "N" (marked by witness) approximately. When I first entered room I asked accused to ~~come~~ put his gun down & come out for a drink. He looked under the influence of liquor by the way he was acting with a gun out & his arm round a man & the tone of voice I had heard from outside. I did not inform accused I was a NCO — I was ~~as~~ dressed as I am now — that is all I sd. to accused. The lights were good — clear enough to see anyone. Accused told ~~him~~ me to get out. I considered if he was sober he wd. know my rank. When shot was fired I was approx. at "O" (marked by witness) The door was swung back. ~~I had~~

At the moment of firing I don't know if ~~it was~~ accused had a clear view of me. (Def. Offr. refers to witnesses evidence at Summary) I signed that (referring to evidence at Summary produced by Def. Offr.) The statement in the summary that the accused fired "at" me should be "in my direction". I knew of the shooting from a report from 2 men of the guard — that is before I proceeded down the street. I don't know where the bullet fired in my direction struck. I am sure the accused pointed the revolver in my direction. The revolver wasn't steady.

Re-exaution.

When I asked accused to come out, the pistol steadied pointing in my direction & he ordered me to get out; that ~~he~~ was the second time he ordered me to get out. The first time he ordered me to get out was when I first entered the room.

Cross-exaution.

The accused was holding the pistol in his right hand & had his left arm around the man. When he pointed the pistol towards ~~at~~ me I started to step backwards still facing the accused & then I turned & left ~~the~~ quickly:

Quest'd by JA.

When I was in the room the only other persons present ~~were~~ were the accused & the man sitting by him. As far as I saw only the accused had a pistol.

~~Cross-exaution~~.

RP 83 (b) complied with.

Court adjourns to 1905 hrs.

Court re-assembles at 1910 hrs.

Second Witness for Prosecution.

1111 Pte Van de Venne E, Belgian Traffic Control Coy. COP (2281 T.C.) BLA, sworn states (through interpreter Sgt. Swinkels — Flemish to English):—

I recognise accused (indicated him). On 19 Aug 45 about 2230 hrs. the accused came up to me & asked me to have a drink. I refused & accused went into a hotel near the station at Leer. I went in with him & accepted one drink. Accused took a pistol from his pocket & I asked him if I could look at it. The accused handed it to me & I looked it & I saw there was a bullet in the barrel. I gave it back to accused because I trusted him. The accused put

pistol back in his pocket. The accused took a bottle of Schnapps out of his battle dress blouse when we first went in & that is what I drank from. I had 2 drinks out of that bottle. It was full when accused first produced it. I don't know how many drinks the accused had. There was a third man who was in the room when we entered — he had 2 drinks out of it. The bottle was all drunk & the accused produced another bottle also Schnapps. ~~another~~ About 12 Belgian policeman came in at that moment. ~~The third man~~ They finished the second bottle. They all then left except myself & the accused. A Belgian policeman entered the room & at that moment the accused took his pistol ~~& pointed it at~~ in his hand & the Belgian policeman went out. ~~& he left~~. The accused turned the pistol pointing it at me. He sd "Fucking Belgium" I thought it would be dangerous so I seized accused & pushed him out of the room & then accused fired a shot. I went out of the hotel & went to a Cdn Cpl. & reported to him there was a Cdn soldier in the hotel with a pistol & asked him to warn the provosts. ~~The condition of~~ The accused was a bit drunk when he first handed me his pistol — he was talking & mumbling, we did not talk I cannot talk in English. I handed back the pistol because I trusted him with it.

Cross-exam.

I had 2 drinks with the accused. I am not sure if the pistol was first produced before the accused produced the second bottle. I am quite sure I did not have a drink from the second bottle. I remember giving evidence at the Summary. ~~In the Summary~~ I can't remember what I sd then. The accused was lying on the ground when he fired the shot or he might have been falling. I pushed accused outside the door & he then fell on the ground. ~~He~~

~~By~~ Questd by JA.

On 19 Aug the Belgian ~~[illegible]~~ police used the hotel & slept upstairs.

Cross-exam (continued)

(Def. offr. produces Ex A.) I was at "P" (marked by witness on Ex A) when shot was fired & accused was then at "Q" (marked by witness) I seized accused, pushed him outside the door, & the accused fell in the hall & I went out of room to point "P". It is possible that the accused fired accidentally.

Questd by Ct.

I did not see from go off.

Cross examtn (contd.)
I only heard the shot. I did not hear the bullet hit anything.
Re-Examtn.
I did not see where bullet lodged at that time.
Questd. by JA.
I seized accused by the arms when I pushed out. The accused had the pistol in his right hand.
Questd. by CC.
I pushed accused outside & then he fell. I pushed him from inside the room to "Q" & I stepped backwards to point "P" The shot was fired after I had stepped back to "P." As I stepped back I bent forward & did not see accused fire. I bent down as I was afraid accused would fire. There was no light in the hall but some light from the moon. The front door was open, & some light also came from the room.
R P 83 (6) complied with.

Third witness for prosecution B 26418 C/Cpl. Bell R A 2/6 Cdn Fd Coy RCE sworn states:-
I recognise this doc. (plan produced by Pros. offr.) It is a sketch of a room in the hotel where Belgian Pol. were. (Def. offr. consents to admission. Sketch marked Ex "B") On 27 Aug 45 I went to the room to prepare a sketch showing bullet holes. I took measurements down & the bullet holes were as shown on the sketch. They were alleged bullet holes; I could not say they were bullet holes. No 1 was in passage way in the trim of the door, No: 2 was in the floor of room, No 3 & 4 were in the walls of room.
Cross-examtn.
The holes I took notice of were the only holes that might have been caused by small arms fire.
R P 83 (6) complied with.
Court adjourns ~~for~~ at 2100 hrs.

~~Fourth witness for prosecution~~ ~~F 15263 Pte Belaskaur A F 2/4 Cdn Pro Coy, sworn, states:-~~
~~Prosecution closed~~ Pros. offr. states he is not calling further witnesses. JA advises Def. offr. if he requires any witness at Summary to be called Pros. offr. should call him. Def. offr. requests Pte Dealaunions be called.

Fourth witness for prosecution.

Pol. 2/80 Pte Delannois V., 2nd Belgian Traffic Control Coy, Col Belgian army (by interpreter, Cpl Loiselle R., French to English) sworn, states:—

I recognise accused (indicates him) In our traffic control billets 19 Aug 45 I heard a shot. I was in bed. I got up & put on my pants. When I got to first floor someone shouted at me not to go down. I came down & saw accused sitting on sofa & he was talking by himself with a revolver in his hand. So I got close to him & sat next to him. I tried to reason with him in French. I mentioned "Provost" that's all I could say to make him understand. The accused started shouting so I put my arm round his neck in a friendly way & ~~by doing so I held the arm~~ with other hand held his wrist. The accused fired one shot in the floor. I gave him a drink of tea & kept mentioning "provost" to him. Cpl. Sinclair arrived; he just stuck his head in the door — he sd. something in English so the accused started shouting at him with the revolver pointing to the wall. The Cpl. withdrew & the accused fired to his (accused's) front & broke a picture on the wall. Again I mentioned "Provost" & the accused unloaded magazine of pistol & I pulled the trigger to clear the pistol, & the last round fell on the ground. The accused put the pistol on the table & the Coy. prov. came in & took accused. I picked up revolver & the round on the ground & handed them to the Prov. & went back to bed. Cpl. Sinclair put his head & shoulders round the door. The shot was fired after the Cpl. had gone — about 10 seconds after. The shot was fired at the wall opposite the door.

Cross examiner.

I had not been drinking before I went to bed, only tea. The accused did not fire at anyone. The room was fairly well lit. I did not see Cpl Sinclair's stripes. I encouraged accused to fire into the floor to empty the pistol.

RP 83(b) complied with.

Prosecution closed.

Def. Offr. does not make opening address (RP 41 (ii)(a))

First Witness for Defence

H 617362 Pte Sutherland R G, Mob. Laundry & Bath unit 2/7, Leer, sworn, states:—

On 11 Sep 45 I saw you (referring to def. Ofr.) remove a bullet from the door trim in passage way this is no 1 in Ex "B". It was this or similar to it (Bullet produced marked Ex "C")

Cross-examin.

I did not see Ex "C" in the door trim. I saw the hole from which it was obtained. It was about 6'6" from floor.

~~Re-examin.~~

It was an oblong hole - about 2½".

Questd by Ct.

That was the only hole I noticed in the door trim.

R P 83(b) complied with.

Defence closed.

Def. Ofr. addresses Court.

Pros. not proved first charge. No proof accused knew Cpl. Sinclair was a N C O. Shot was not fired in direction of Cpl. Sinclair. As to 2nd charge Van de Venne ~~accused~~ was under influence of liquor. The firing was during a struggle; it was an accident.

Pros. Ofr. addresses Court.

Cpl. Sinclair's evidence substantiates first charge. Second charge clearly proved. The bullet hole "No 1" Ex B shows shot fired in direction of de Venne.

JA addresses Ct.

Advises as to burden of proof, benefit of doubt & facts for Ct. to determine. Charges explained. On 1st charge, if accused did not know Cpl Sinclair's rank he should be acquitted. As to 2nd charge was a shot or shot fired by accused in presence of Belgian soldier, without provocation? If firing deliberate provocation should be in self-defence or circumstances justifying shooting.

Martin Ltd
~~DJAG~~ JA.

(Bullet Ex "C" handed to def. Ofr.)
Ex "A" to Summary handed to pros. Ofr. for delivery to "Eclipse" Dump
Martin Ltd.
JA

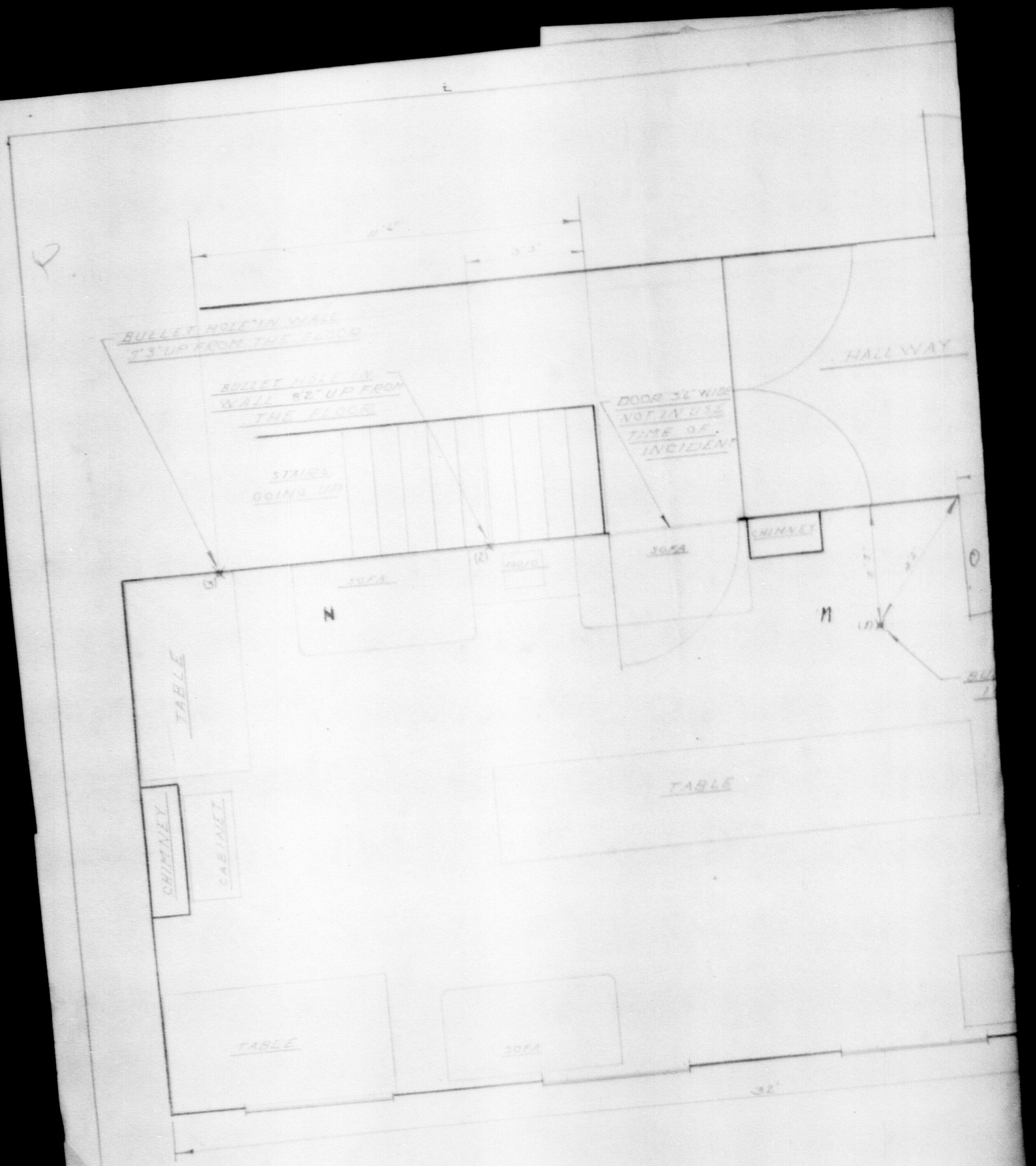
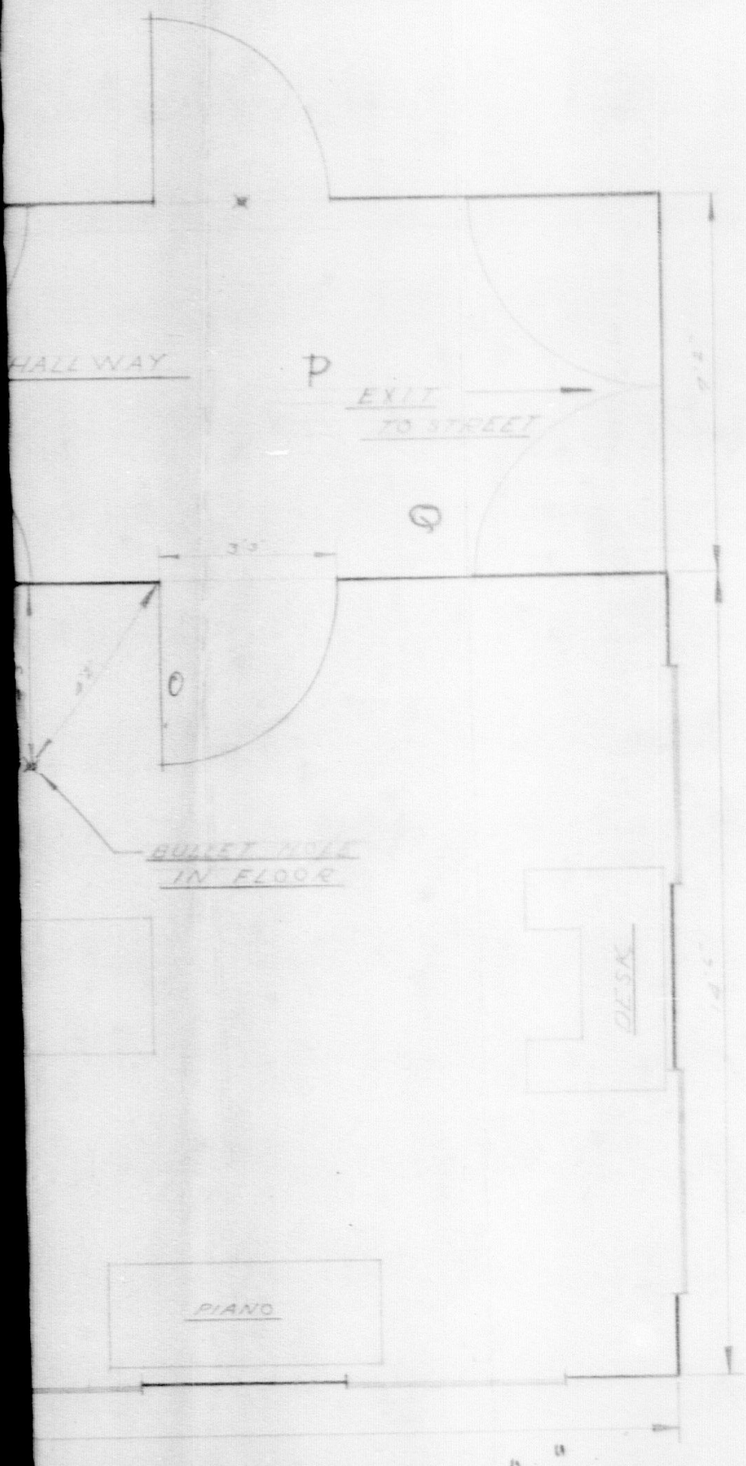


DIAGRAM INDICATING BULLET



EX. "A"

LLET HOLES

DRAWN BY:
SPR. KULCHYSKI
A-609263

SCALE 1"=2'

DIAGRAM OF INDICATING BULLET HOLES

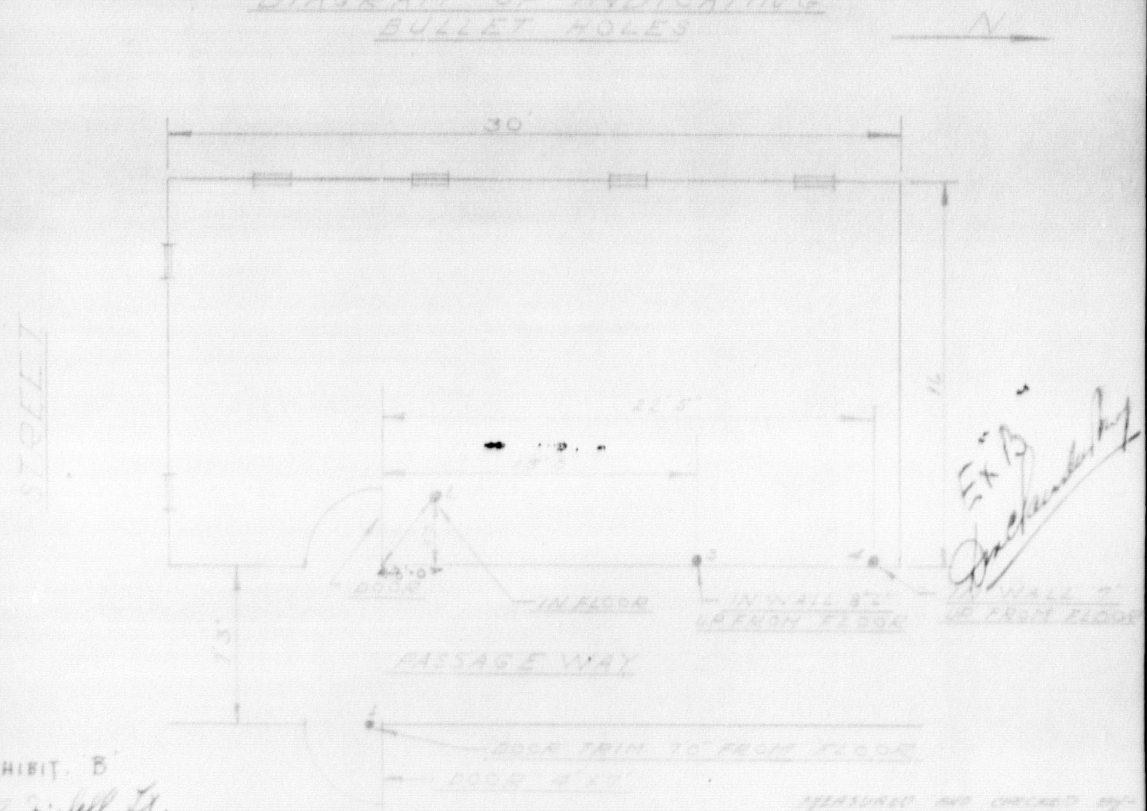


EXHIBIT "B"

A.S. Michell, Lt.

MEASURED AND CHECKED BY:-

B26418 Sgt Bell R.A

2/6 Field Coy. R.C.E. C.A.O.F

27 Aug. 45

Dunchunders Maj
Pres.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of F82256 Spr Clarence William DUNN, 2/6 Cdn Fd Coy RCE, a soldier of the Canadian Army (Overseas).

By direction of the Officer Commanding, the summary of evidence is taken on oath.

FIRST WITNESS
For the Prosecution

1111 Pte Van de Venne, Eustachius of the Belgian Traffic Control Company, CMP (2281 T.C.) BLA a soldier of the Belgian Army, having been duly sworn states as follows:

I am No 1111 Pte Van de Venne, Eustachius of the Belgian Traffic Control Coy CMP (2281 TC) BLA stationed at LEER, GERMANY. On 19 August 1945, at approximately 2230 hours a drunken Canadian soldier came to our billets. He started speaking but we could not understand him very well. He produced a bottle of gin asking us to have a drink. We Said "No", but he came in, sat down, and we started drinking. When the bottle was empty, he produced a second bottle. We did not want to drink anymore, but he persuaded us. All at once, he seized his pistol so I thought right away that it might become dangerous. I asked to see his pistol. He handed it to me and I saw that it was loaded with a bullet in the barrel. Then I returned it, as I trusted the soldier fully. After that, other soldiers from my unit came in. They all had a drink and then they all went to bed. When they were gone, L/Cpl Maurice, H came in to join us. The The Canadian pulled out his pistol again; whereupon L/Cpl Maurice went away. Then he pointed the revolver at me saying continuously, "Fucking Belgium." I thought it would become dangerous and jumped to my feet and seized him and pushed him outdoors. He shot once at me; then I went out to the NCO of the 7th Recce Regt who reported it to the Cdn Pro Corps. It was then approximately 2330 hrs. I later learned that the Canadian soldier was Spr Dunn, 2/6 Cdn Fd Coy RCE

The accused declined to cross-examine the witness.

E Van de Venne

1111 Pte Van de Venne, E
Belgian TC Coy CMP
2281 TC BLA

I certify that the above is a true translation by me of the original statement made in Flemish and that the above record has been read back to the witness in Flemish.

[signature]

103087 Sgt GOETTSCH F H
Interpreter 2/4 Cdn Pro Coy

SECOND WITNESS
For the Prosecution

POL 2/80 Pte Delaunois, Victor, 2nd Belgian Traffic Control Coy, CMP. a soldier of the Belgian Army, having been duly sworn, states as follows:

I am POL 2/80 Pte DELAUNOIS, VICTOR, of the 2nd Belgian Traffic Control Coy, CMP stationed at Leer Germany. During the evening of Sunday the 19th August 1945, I was suddenly awakened by the sound of a pistol shot which seemed to come from the inside of the building in which we are billeted. I then went downstairs into our guardroom to find out what was going on. It was around 2330 hours and I saw a Canadian soldier, who I later learned was Spr Dunn of the 2/6 Cdn Fd Coy, RCE, armed with a pistol, seated on a sofa. So I went up to him, put my arm around his neck, as I could see that he had been drinking and tried to make him listen to reason. On account of the difference in languages, it was evident that he did not understand what I was trying to tell him and he shot twice into the floor. I was trying to get him to empty the magazine into the floor so that no one would get hurt. Then he started singing. Then I gave him two cups of tea, feeding it to him, as I was still holding on to him. While Spr Dunn was drinking his tea, a corporal of the Canadian Army, warned by my friend Pte Van de Venne stuck his head in the door and said something to Spr Dunn. Spr Dunn replied but I did not understand what they were saying. Spr Dunn was still brandishing the pistol. The corporal left the room and Spr Dunn fired into the wall but not in the direction of the doorway in which the corporal had been standing. Then I grabbed him by both arms, saying, "Attention, Provost" and Spr Dunn removed the magazine from the pistol. Then I succeeded to eject the cartridge that was still in the barrel and made sure the pistol was empty and persuaded him to put the pistol on the floor, which he did. Two members of the Cdn Pro Corps ran into the room, seized the soldier and took him away with them.

Questioned by the accused:

Q1 Did I still have the pistol after the tea was served to me?
A1 Yes, you did.

P Delaunois.

POL 2/80 Pte Delaunois V.
2 Belgian Traffic Control Coy
C.M.P.

I certify that the above is a true translation by me of the original statement made in French and that the above record has been read back to the witness in French.

J H A Beaupre

D 132318 L/Cpl Beaupre J H C
2/4 Cdn Pro Coy.

THIRD WITNESS
For the Prosecution

M 45074 Cpl SINCLAIR W, 2/7 Cdn Recce Regt, CAOF a soldier of the Canadian Army (Overseas) having been duly sworn states:

I am M 45074 Cpl Sinclair W, 2/7 Cdn Recce Regt CAOF, stationed at Leer, Germany. At approximately 2330 hours, 19th August 1945, I was guard commander in our billets, located in the FRISIA HOTEL, on the corner of Churchillstabe and Bahnhofstrasse in LEER, when I was informed by two members of the guard that there was a soldier discharging a pistol. I immediately informed the duty officer who instructed me to proceed to the scene of the shooting. I then proceeded in the direction of the firing when I heard a threatening voice coming from the billets of the Belgium Military Police. I went into the house where I saw Spr Dunn holding a pistol in his right hand and holding another soldier by the neck with his left arm. When I made an appearance in the same room, Spr Dunn pointed the pistol at me and ordered me out of the room. I took a few steps backwards. He then fired the pistol at me but the bullet missed me and hit the wall. I then stood outside and guarded the house until member of the Provost arrived, who placed the soldier under ar arrest.

The accused declined to cross examine the witness

W Sinclair
M 45074 Cpl Sinclair W
2/7 Cdn Recce Regt CAOF

FOURTH WITNESS
For the Prosecution

R-26321 L/Cpl REED R G, 2/6 Cdn Fd Coy R.C.E., a soldier of the Canadian Army (Overseas) having been duly sworn states:

I am R-26321 L/Cpl Reed R G, of the 2/6 Cdn Fd Coy RCE stationed in Leer Germany. I was guard commander of the 2/6 Cdn Fd Coy RCE on the night of August 19, 1945. Around midnight I was awakened by a member of the Provost who had Spr Dunn C W in custody. Spr Dunn appeared very drunk and I was told that he was und close arrest for being mixed up in some trouble in Leer. I gave a receipt for him and he flopped down on a bunk in a helpless condition. He was up a couple of times but was not rational. Finally around 0530 hours on 20th August 1945, Spr Dunn woke up and seemed to be in his right mind.

The accused declines to cross examine the witness

R G Reed
R 26321 L/Cpl Reed, R G
2/6 Cdn Fd Coy RCE

FIFTH WITNESS
For the Prosecution

F 15263 Pte LeLACHEUR A F, 2/4 Cdn Fre Coy, a soldier of the Canadian Army (Overseas) having been duly sworn, states:

I am F 15263 Pte LeLACHEUR A F, of 2/4 Cdn Fre Coy stationed in Leer Germany. The Belgium Military Police handed over to me a pistol alleged to have been

FIFTH WITNESS
For the Prosecution
Cont'd

Fired by Spr Dunn. It was make CESKA ZBROJOVKA A S v PRAZE NO 177063. It was loaded, one cartridge in the barrel and two cartridges in the magazine. I was also given one live cartridge found on the floor of the Belgium Military Police billets and three empty casings all of the same calibre, namely, 8 mm. I herewith submit the above-mentioned pistol together with loaded magazine and the three empty casings.

The accused declines to cross-examine the witness.

F15263 Pte LeLacheur A F
2/4 Cdn Pro Coy

SIXTH WITNESS
For the Prosecution

B26418 L/Cpl Bell R A 2/6 Cdn Fd Coy RCE CAOF, a soldier of the Canadian Army (Overseas) having been duly sworn states:

I, B26418 L/Cpl Bell R A 2/6 Cdn Fd Coy RCE CAOF on 27 Aug 45 was detailed by Lieut F J Dwyer to go to the HQ of the Leer Det of 2 Belgian Traffic Control Coy to take measurements of the room and get the location of the bullet holes where the alleged shooting took place on the evening of 19 Aug 45. I took the measurements of the room and the position of four holes in the wall and floor which looked to me to have been caused by SA fire. I had a sketch made of the room showing the position of the bullet holes, which I herewith submit.

The accused declines to cross-examine the witness.

B26418 L/Cpl Bell R A
2/6 Cdn Fd Coy RCE CAOF

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused, F82256 Spr Dunn C W 2/6 Cdn Fd Coy RCE CAOF having been duly sworn states:

I, F82256 Spr Dunn C W of the 2/6 Cdn Fd Coy RCE CAOF stationed in LEER, GERMANY was on company guard on the 19 Aug 45. I came off guard at 2000 hours and went for a walk towards LEER when I met a Canadian soldier who stopped my for a match. He then asked me if I would have a drink. I agreed and we went into an alley-way out of sight. We drank one bottle of what I thought was "Schnapps." He said, "Wait here and I will get another bottle." He was gone about five minutes and came back with two bottles. We started to drink one of these bottles and that was the last I remember until I woke up in my unit Guard Room at 0530 hours Monday morning Aug 20, 1945. At approximately 1400 hours 20 Aug 45 Pte LeLacheur came to our unit Guard Room where I was held. He had with him a pistol (CESKA ZBROJOVKA A S v PRAZE No 177063) which belongs to me.

F82256 Spr DUNN C W 2/6 Cdn Fd Coy RCE

I certify that the foregoing Summary of Evidence consisting of five pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c),(d), (e), (f), and (g) have been complied with.

A. S. Michell, Lt.
(A S MICHELL) Lieut RCE
2/6 Cdn Fd Coy RCE CAOF

Officer detailed to take the Summary.

LEER, GERMANY
25th day of August 1945

138 V

Pte DUNN, D R

Correspondence to be PINNED here.

A1
K. Morris Major
President

Army Form A.3.

138V

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 14th day of January, 1943.

Whereas it appears to me, the undersigned, an officer in Command of R.C.A.S.C. 1 Canadian Corps, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

~~*[I am unable to appoint:—~~

~~*(1) Three Officers to form the Court.~~

~~*(2) A Field Officer as President.~~

~~for the following reasons, namely:—]~~

Proceedings Reviewed
[illegible]
for Reviewing Officer
29 Jan 43

374

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	K.E. Morris	63 Cdn Gen Tpt Coy RCASC

Members.

Rank.	Name.	Regiment.
Captain	Captain W.S. Hanny	Comd HQ, 1 Corps Troops
Lieutenant	Lieutenant G.A.R. Knott	85 Cdn Bridge Coy RCASC

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature]
(K.V. McQueen) Colonel
Commanding R.C.A.S.C. 1 Canadian Corps
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
C-11753 Private David Richard DUNN 1 Canadian Corps Troops Supply Company (33 Coy) R.C.A.S.C.	FIRST CHARGE Sec 15(1) A.A.	Guilty	The accused is found Guilty of being absent without leave and is sentenced to undergo Detention for a period of 90 Days. 15 Jan. 1943 K. Morris Major	Confirmed W°C

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) D W McQueen (Signed) K. Morris Major
(M.V.McQueen) Colonel 62 Edm. Fd Amb. Transport Coy. R.C.A.S.C.
Commanding R.C.A.S.C. 1 Canadian Corps
Convening Officer (c) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 15th day of January 1943, and duly tried the person named in the Schedule, and that the plea, finding, and sentence in the case of ~~each~~ such person ~~were~~ was as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witness~~es~~
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)
were duly sworn.

* Omit if not applicable.

Signed this 15th day of January 1943.

K. Morris Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 702 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

~~K. Morris Major~~
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 15th day of January 1943.

D W McQueen
Confirming Officer. Col

Promulgated and extracts taken in the case of C-11753 Pte D. R. Dunn

(*a*) (Dated) 18 Jan 43 (Signed) K. Hoyland Major.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, C.11753 Pte. DUNN, David Richard, 1 Canadian Corps Troops Supply Company (33 Coy) R.C.A.S.C. is charged with, when on active service:

First Charge
A.A. Sec 15 (1) A.A. Absenting himself without leave

in that he

in the Field absented himself without leave from 1200 hrs. 18 Nov 42 until he surrendered himself at 1930 hrs. on 11 Jan 43.

Time Absent:- 54 days, 7 hrs., 30 mins.

W.H. Copeland
.....
(W.H. Copeland) Major
Commanding C.T.S.U. Coy (33 Coy)
R.C.A.S.C.

FIELD
13 Jan 43

To be tried by Field General Court Martial.

M.V. McQueen
.....
(M.V. McQueen) Colonel
D.D.S.T.
1 Cdn Corps

FIELD
14 Jan 43

A.L. Morris Major
62 Can General Transport Coy RASC.
President

MEDICAL CERTIFICATE (KR(Can)557)

I certify that I have this morning examined No 811753

Pte Dunn, D R of C.T. Sup. Coy. and in my opinion he

is fit to undergo trial by Court-Martial.

~~unfit~~

Station 4 CCS. x J. S. Gardner Capt

Medical Officer

Date [illegible] Jan 43 x E. Morris Major

President

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General. Court-Martial held at 33 Coy. RCASC on the 15th day of January. 1943 by order of Col. A.Y. McQueen

Commanding D.D.S.T. 1 Cdn. Corps

dated the 14th day of January. 1943.

President.

Major K.E. Morris
62 General. Transport. Coy. RCASC.

Members.

Capt. W.S. Haney.
Com'd. 1 Corps. Troops. RCASC.

Lieut. L.A.R. Knott
85 Cdn. Bridge Coy. RCASC.

, ~~Judge Advocate~~.

Trial of* C 11753 Pte. Bunner D.R.

The order convening the Court, the charge-sheet and the summary (~~or abstract~~) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~ , ~~waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut. M.I. Friedman, 33 Coy. RCASC.

~~Counsel~~‡ or defending officer† Lieut. D.C. Johnson, 33 Coy. RCASC.

At 1045 o'clock the Trial commences.

The order convening the Court is read, and is marked A1 signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. Wt.W16628/78. 25,000 sets. 4/43. K. & H. Ltd. G487/11. Forms A 9/55.

B

The President, members and ~~judge advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn:~~

Charge-Sheet.

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? Guilty. Lieut.

Question to the accused.

Answer.

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~

Question.

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~

Question.

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~

Question.

Answer.

The accused having pleaded Guilty to the First charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Instruction.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused C11753 Pte. Bunn O.R.
is found guilty of being absent without leave contrary to Sec. 15 (1) A.A. Time absent :- 54 days, 7 hours, 30 min.

†The summary (~~or abstract~~) of evidence is read, marked "C" signed by the President, and attached to the proceedings.

Question to the accused.

Do you wish to make any statement in mitigation of punishment ?
Yes.

Answer.

The accused in mitigation of punishment says :— Through his defending Officer

~~[or hands in a written statement, which is read, marked~~ , ~~signed by the President, and attached to the proceedings.]~~

1. He willingly surrendered himself and was not apprehended
2. That during the three years of his service his record discloses but one charge of A.W.O.L.
3. Prior to his going absent he was a good soldier in my Platoon
4. The accused felt that he had had too many Guards & fatigues and too few passes.

Morris Major
President

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character? No

Question to the accused.

Answer.

Evidence as to character.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused is Guilty~~

[illegible]

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before Sentence.*

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut. M. I. Friedman is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes Sir.

MFM 6 and AFB 296

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E 1 & 2, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes Sir.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes Sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes Sir

(Instruction.—If by reason of the nature of the service of the accused or a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Cross-examined by the accused. No.

Question to the accused.

Do you wish to address the Court? *Answer.* No Sir.

The Court is closed for the consideration of the sentence.

[illegible] Morris Major
President

F

Sentence.

The Court sentence the accused C11783 Pte. Brown D.R. Sentence.

To undergo Detention for a period of 90 Days.

Summary of Evidence in the
Case of C.11757 Pte. Dunn, D.R.
of 1 Canadian Corps Troops Supply Company
(33 Coy) R.C.A.S.C.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

First Witness Prosecution

B.86228 L/Cpl. Rusnak, I.E., of 1 Cdn C.T.Sup Coy (33 Coy) R.C.A.S.C. having been duly sworn, states:

"I am B.86228 L/Cpl. Rusnak, I.E., 1 Cdn C.T. Sup Coy (33 Coy) R.C.A.S.C. On 12 November, 1942 I was Orderly Cpl. at "D" Transport Platoon. At 1200 hrs. I called the roll and found the accused, whom I now recognize, absent. He did not answer to his name and I reported him to the Orderly Room. I also made a search and could not find him. I next saw him on 12 Jan 43 when he was paraded to the Commanding Officer"

The accused declines to cross-examine this witness.

I.E. Rusnak
"I.E. Rusnak"

Second Witness Prosecution

B.83149 L/Cpl. Grant, C.E. of 1 Cdn C.T.Sup Coy (33 Coy) R.C.A.S.C. having been duly sworn, states:

"I am B.83149 L/Cpl. Grant, C.E. of 1 Cdn C.T. Sup Coy (33 Coy) R.C.A.S.C. On 11 January, 1943 I was Orderly Corporal at "D" Transport Platoon. The accused, whom I now recognize, reported to me at 1930 hrs. that date. I knew that he had been absent without leave and I brought him to Corporal McKinven at Company H.Q. and he placed him under close arrest".

C.E. Grant
"C.E. Grant"

The accused declines to cross-examine this witness.

The accused was duly warned pursuant to R.P.4 (e) and declined to make a statement.

I, Lieut. M.I. Friedman of 1 Cdn C.T.Sup Coy (33 Coy) R.C.A.S.C. do certify that the above Summary of Evidence consisting of one page was taken by me at Coy H.Q., C.T.Sup Coy in the presence and hearing of the accused and that R.P.4 (c)(d)(e) and (f) was complied with, this 13th day of January, 1943.

M.I. Friedman
(M.I. Friedman) Lieut.
Officer taking Summary of Evidence.

"I wish the convening Officer to appoint an officer to defend me at my Field General Court Martial".

D.R. Dunn
(D.R. Dunn"

Exhibit G

A.L. Thompson Major
President

CERTIFIED TRUE COPY [illegible]

No. C11759 Name DUNN, D.R. Sqn., Battery, or Company Corps T.Sup Coy

Date of last entry in Company Conduct Sheet N.A. No. and date of last drunk N.A. Period not reckoning towards freedom from extra fine N.A. Date of enlistment 14/1/40 G.C. Badges N.A. Service or Proficiency Pay N.A.

Sheet No. 1 Signature O.C. Company, etc. Character

M.F.M. 6 (A.F.B. 1-44) 175M—7-41 (1218-20) H.Q. 1772-38-1682

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed 14/1/42 Field 10/8/42 Pte.				Date of last entry Nil cases of drunkenness. A.W.L. 18 dys 6 hrs.	L/C.Prentice	29/8/42 14 dys F.P. 19 dys pay	G.E.Simmons (Major)		

Exhibit E1

[illegible] Morris Major
President

P.T.O.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C.11753	Pte.	DUNN, D.R.	C.T.SUP COY (33 Coy) R.C.A.S.C.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, E.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct.~~

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, or

~~[illegible] convictions of the accused by~~ a court martial or a civil court, summary awards under section 47 of the Army Act, ~~and dispensations with trial under section 47 of the Army Act, or the accused has not been [illegible]~~

3. The accused is not under sentence at the present time, ~~or the accused at the present time is under sentence for~~ ~~[illegible] day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for two days in civil custody, and Nil days in military custody, making a total of two days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 23 yrs. 1 month

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper is 14 Jan 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of dated and in his regiment (or corps or department) the rank of dated

[illegible]

Exhibit E2

[illegible] Morris Major
President

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C.11757 Rank Pte Name DUNN, D.R. of C.T.SUP COY Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13th day of January 1943

[signature] H.Q. Lieut.
Cdn. C.T. [illegible]

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

1790

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this 11th day of September, 1941.

Whereas it appears to me, the undersigned, ~~An officer in command of~~ Chief Engineer, Canadian Corps., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[~~I am unable to appoint~~

*(1. ~~Three Officers to form the Court.~~)

*(2. ~~A Field Officer as President.~~)

*(3. ~~Three Officers having ranked that one needs service.~~

~~for the following reasons, namely:~~]

PROCEEDINGS REVIEWED.

4/11/41

Reviewing Officer (Jos) Emery

President.

Rank.	Name.	Regiment.
Major	W.K. MacDonald	1 Cdn Corps Fd Svy Coy.

Members.

Rank.	Name.	Regiment.
Lieut	E. White	13 Cdn A Fd Coy.
Lieut	J.M.S. Patton, G.C.	1 Bn R.C.E.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (C.S.L. Hertzberg) Brigadier,
Commanding Chief Engineer, Canadian Corps.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-28397, Spr. Dunn, E. 1 Bn R.C.E.	1st Charge. A.A. Sec.15 (1) as per charge sheet attached.	Guilty	To undergo Detention for a period of Sixty Five (65) days and be placed under stoppages of pay to the amount of $2-15-2.	Findings and sentence confirmed.
	2nd Charge A.A. Sec.24 (2) as per charge sheet attached	Guilty		

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) (C.S.L. Herzberg) Brigadier, Chief Engineer, Cdn Corps.
Commanding *Convening Officer* (*c*)

(Signed) (W.K. MacDonald) Major, R.C.E.
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Sixteenth day of September 1941 and duly tried the person named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)
were duly sworn. The Stenographer

* Omit if not applicable.

Signed this 16 day of Sept 19 41

W.K. MacDonald Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 764 M.M.L. 1920.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison until further order.~~

Signed this twenty third day of September 1941.

C.S.L. Herzberg Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) 16 Oct 41 (Signed) Edwyn Webb Captain
1st Battalion, R.C.E.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

C O N T E N T S

Proceedings - Pages: 1.
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1. PROCEEDINGS OF A FIELD GENERAL COUR
Wentworth Hall, near Dorking Surrey, at
16 September 41 by order of the Chief En
Corps.

President.

Major W.K. MacDonald — 1 Cdn.Corps Fd.Sy.

Members.

Lieut. E. White — 13 Cdn. A. Fd. Coy.
Lieut. J.M.S. Patton, G.C. — 1 Bn., R.C.E.

Trial of No. B28397 Spr. Dunn, E., 1st Bn., R.C.

2. The Court satisfied themselves as to their elig
ibility (R.I. 22) and that the accused was amenable
to their jurisdiction.

3. The Prosecuting Officer (Capt. D.H. McCallum, 1 Bn.
R.C.E.), Defending Officer (Capt. G.M. Ross, 1 Bn.,
R.C.E.), Stenographer, Witnesses, Escort and accused
were brought before the Court. Prosecuting Offr. handed Me
Offr's certificate to Court; marked App.1; att'd to Proceed
4. The Order Convening the Court, the Charge Sheet, ings
and the summary of Evidence were laid before the Court.

5. The Order Convening the Court was read, marked and
signed by the President and attached to the Proceedings.

6. Questions by the President to the Accused:
Q. Do you object to being tried by me as President, or
by any of the Officers whose names you have heard read
over.
A. No.
Q. Do you object to Sgt. Richardson as Stenographer.
A. No.

7. The President, Members, and Stenographer were duly
sworn.

8. The Charge Sheet was signed by the President, marked
Appx.2 and annexed to the proceedings.

9. The accused was arraigned on the FIRST Charge.

Question by the President to the Accused:
Q. Are you "guilty" or "not Guilty" of the charge just
read.
A. "Guilty".
The Court was cleared and the President and Members
discussed the plea.
The accused was recalled.
The President asked the accused if he fully understood
the nature of the charge and explained that though
he had surrendered himself, a possible interpretation
of intention to desert could be placed on his absence.
Question by the President to the Accused:
Q. Do you wish to testify yourself or call witnesses as
to your character.
A. No.
The accused was then arraigned on the SECOND Charge.
Question by the President to the Accused:
Q. Do you plead "Guilty" or "Not Guilty".
A. "Guilty".

10. The Court adjourned for ten minutes.

11. Capt. E.H. Webb, 1st Bn., R.C.E., Called: Sworn:
The Statement, Appendix No. 3 made by Capt. E.H. Webb,
regarding the declaration of "Court of Inquiry" Appendix
No. 4, held on the illegal absence and deficiencies of
clothing and regimental necessaries of No. B28397 Spr.
Dunn, E. was read.

1. PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL, held at Wentworth Hall, near Dorking Surrey, at 1000 hours on 16 September 41 by order of the Chief Engineer, Canadian Corps.

President

Major W.K. MacDonald — 1 Cdn.Corps Fd.Svy.Coy.,R.C.E.

Members.

Lieut. E. White — 13 Cdn. A. Fd. Coy.,R.C.E.
Lieut. J.M.S. Patton, G.C. — 1 Bn., R.C.E.

Trial of No. B28397 Spr. Dunn, E., 1st Bn., R.C.E.

2. The Court satisfied themselves as to their eligibility (R.P. 22) and that the accused was amenable to their jurisdiction.

3. The Prosecuting Officer (Capt. D.H. McCallum, 1 Bn., R.C.E.), Defending Officer (Capt. G.M. Ross, 1 Bn., R.C.E.), Stenographer, Witnesses, Escort and accused were brought before the Court. Prosecuting Offr. handed Med. Offr's certificate to Court; marked App.1; att'd to Proceedings.

4. The Order Convening the Court, the Charge Sheet, and the summary of Evidence were laid before the Court.

5. The Order Convening the Court was read, marked and signed by the President and attached to the Proceedings.

6. Questions by the President to the Accused:
Q. Do you object to being tried by me as President, or by any of the Officers whose names you have heard read over.
A. No.
Q. Do you object to Sgt. Richardson as Stenographer.
A. No.

7. The President, Members, and Stenographer were duly sworn.

8. The Charge Sheet was signed by the President, marked Appx.2 and annexed to the proceedings.

9. The accused was arraigned on the FIRST Charge.

Question by the President to the Accused:
Q. Are you "guilty" or "not guilty" of the charge just read.
A. "Guilty".
The Court was cleared and the President and Members discussed the plea.
The accused was recalled.
The President asked the accused if he fully understood the nature of the charge and explained that though he had surrendered himself, a possible interpretation of intention to desert could be placed on his absence.
Question by the President to the Accused:
Q. Do you wish to testify yourself or call witnesses as to your character.
A. No.
The accused was then arraigned on the SECOND Charge.
Question by the President to the Accused:
Q. Do you plead "Guilty" or "Not Guilty".
A. "Guilty".

10. The Court adjourned for ten minutes.

11. Capt. E.H. Webb, 1st Bn., R.C.E., Called; Sworn; The Statement, Appendix No. 3 made by Capt. E.H. Webb, regarding the declaration of "Court of Inquiry" Appendix No. 4, held on the illegal absence and deficiencies of clothing and regimental necessaries of No. B28397 Spr. Dunn, E. was read.

Question by President to Capt. Webb.
Q. Is the statement you have just heard read, a true transcript of your evidence.
A. Yes.
Capt. E.H. Webb then produced an A.B. 161 which was checked by the Court against A.B.119, Appendix No. 4

12. E2066, C.Q.M.S. Bateman, J.S., 1 Bn., R.C.E. called:
Sworn:
The Summary of Evidence given by C.Q.M.S. Bateman at a Court of Inquiry, Appendix No. 4 held on the illegal absence and deficiencies of Spr. E. Dunn, was read.
Question by the President to the Witness:
Q. Are the statements you have just heard read a true transcript of your evidence.
A. Yes.
The statements were filed with the proceedings, Appendix No. 5, Appendix No. 6.
Summary of Evidence given by C.Q.M.S. Bateman, J.S., (No. E2066) was read.
Question by the President to the Witness.:
Q. Is the statement you have just heard read a true transcription of your evidence.
A. Yes.
Statement filed with the Proceedings, Appendix No. 7.
The accused and Defending Officer accept the list of Kit Deficiencies and Kit belonging to No. B28397 Spr. E. Dunn returned to 4th Coy. Stores by the Orderly Cpl. on the 26th August 41, as filed.
List filed with the Proceedings, Appendix No. 8.

13. M13035, C.S.M. Bissett, G.A., 1st Bn., R.C.E. called:
Sworn:
The summary of evidence given by C.S.M. Bissett at a Court of Inquiry, Appendix No. 4 held on the illegal absence of B28397 Spr. Dunn, E. was read.
Question by the President to the Witness.
Q. Is the statement you have just heard read a true transcript of your evidence?
A. Yes.
Statement filed with the proceedings, Appendix No. 9.

14. B26266 L/Sgt. Buie, E.A., 1st Bn., R.C.E. called:
Sworn:
The summary of evidence given by L/Sgt. Buie, E.A. at a Court of Inquiry, Appendix No. 4 held on the illegal absence of B28397 Spr. E. Dunn, was read.
Question by the President to the Witness.
Q. Is the statement you have just heard read a true transcript of your evidence.
A. Yes.
Statement filed with the Proceedings, Appendix No. 10.

15. E2001 Sgt. Mosher, E., 1st Bn., R.C.E., Called: Sworn:
The Summary of Evidence given by Sgt. Mosher E at a Court of Inquiry, Appendix. No. 4 held on the illegal absence of B28397 Spr. E. Dunn, was read.
Question by the President to the Witness:
Q. Is the statement you have just heard read a true transcript of your evidence?
A. Yes.
The Statement filed with the Proceedings, Appendix No. 11.

16. M25182, Cpl. Waterton, E., 1st Bn., R.C.E., called,
Sworn:

The Summary of Evidence given by Cpl. Waterton, W. was read.
Question by the President to the Witness.
Q. Is the statement you have just heard read a true transcript of your Evidence?
A. Yes.
Statement filed with the Proceedings , Appendix No. 12.

17. The statement by the accused and Capt. G.M. Ross was read:
Question by the President to Capt. G.M. Ross:
Q. Is the statement you have just heard read a true transcription?
A. Yes.
Question by the President to the Accused.
Q. Is the Statement you have just heard a true transcription.
A. Yes.
Statement filed with the Proceedings, Appendix No. 13.

Certified True Copy of M.F.M. 6 for B28397 Spr. Dunn.,E filed with the Proceedings, Appendix No. 14

18. The Prosecuting Officer addresses the Court as follows:

Sir: The accused pleaded Guilty to both charges and on reviewing the evidence, there is no reason why he should have not pleaded guilty.

It has been proved that he was absent without leave 33 days, 11 hours, 30 minutes and it has been proved he had kit deficiencies to the value of £2.15.2.

With reference to the 1st charge; the offence of absence without leave is becoming more and more prevalent in the Canadian Army as time goes on. A great deal of time is lost in dealing with these cases. In the event of a call to action which might happen at any time, if the men are not at their stations and are not in trim, the whole Empire suffers.

The fact must be faced that all soldiers in the Canadian Army are given ample opportunity for leave, recreation, etc.. For example, 4 "week" leaves a year are granted when circumstances permit, which is more than one would have in civilian life. Also, a point that should be remembered is that a large number of week-end passes are granted. Providing the allotment is not exceeded these passes are granted to anyone.

We do not work long hours. This past summer, work stopped at 1630 hours in the afternoon and the men were free until 0730 hours parade the following morning.

Therefore it isn't a case of a man being over-worked or not having ample opportunity for recreation. Everyone has plenty of spare time.

Spr. Dunn evidently intended to stay away as he didn't become "Fed Up" with being absent after two or three days, but stayed away over a month. He had plenty of time to think things over and come back to his Company after two or three days but he didn't.

May the Court take all this into consideration, and since offences of this nature are steadily increasing, I

respectfully request that this man be given a severe sentence.

With reference to the second charge, losing of clothing and necessaries to the value of £2.15.2. This equipment was supplied to the men, free. Spr. Dunn lost it by his own neglect. I suggest the Court deal with the offence as you see fit.

19. The Defending Officer addresses the Court as follows:

Sir: It is not my purpose to try and condone the conduct of the accused. He has pleaded guilty. I would, however like to give you a "word" picture of this man's civilian and Army career, and his mental background.

Spr. Dunn, Age 24, enlisted in May 1940, the 31st Day. In about 1 week, he sailed to England. What he would learn about the Army in 1 week would not be much. Shortly after landing in England he went to Hospital for serious Hernia Operations, and was 3 months in Hospital convalescing. On return to his Battalion he was placed on light duty in the kitchen. The R.C.O. cook in the kitchen was a negroe. Just how would you react to this? Dunn did not take well to the idea but worked faithfully.

The Prosecuting Officer has stated that the Soldier's hours were from Reveille to 1630. Gentlemen, you know you work longer than that in a kitchen.

Dunn was working under Adverse conditions.

He had no knowledge of Army Procedure. He applied for a week-end pass once, and was too late in doing so. The pass was not granted.(The first pass he ever asked for was refused). Dunn, to use the vernacular, went off the deep end and "took" a week-end. He was absent 1 day and 2 hrs. This was his first crime. For this 1st offence, his O.C. awarded him 7 days C.B. and 5 days forfeiture of pay. This was a pretty severe sentence, you will admit. Dunn naturally felt bitter. He went back to work in the kitchen.

Now let us see a little of his civilian backing. He was married shortly after the war started, in Sept. 1939. To the present date he has only had 2 or 3 letters from his wife. He also has a child, 2 years old. Since he has heard so seldom from his wife, he knew nothing of how the child was. This was a constant worry to him. He also felt he hadn't been treated fairly, had to relax, and went absent without leave again.

Dunn joined the Army of his own free will, in order to give help to his country. After what he came through he felt that he did not get a square deal.

Another point, Dunn's mother was separated from his father. His mother married again and didn't pay much attention to the family.

After joining the Army, Dunn had a wife and child to support. This was a source of worry.

This man's Army record to March, 1941 was 100%. He also had worked hard and worked long hours.

Spr. Dunn has already spent 26 days, 12 hours and 30 minutes under close arrest. During this time, he has been deprived of mail, cigarettes and other small pleasures and necessities which mean a great deal to a soldier.

When summing up and rendering justice, I wish to suggest that the Court weigh in the balance of that which I have said.

20. The Court was closed for the Finding.

SIGNED AT Wentworth Hall, near Dorking Surrey, this 16th day of September, 1941.

PRESIDENT: K. MacDonald

K.K. MacDonald, Major.
1st Cdn. Corps Fd. Swy. Coy., R.C.E.

MEMBERS: E White Lieut

E. White., Lieut.,
13 Cdn. A. Fd. Coy., R.C.E.

J.M.S. Patton Lieut

J.M.S. Patton, G.C.,
1 Bn., R.C.E.

App X 1

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. B. 28397, Sapper Dunn, E.

of the 1st. Battalion Royal Canadian Engineers, and in my

opinion he is ~~unfit~~ fit to undergo Trial by Court Martial.

Station Field

Date 16 Sep 41

H.A. Brown Capt.
Medical Officer. R.C.A.M.C.

A.F.B. 252
Appx 2

CHARGE SHEET

The accused, No. B.28397, Sapper Dunn, E., 1st Battalion, Royal Canadian Engineers, Canadian Army (Overseas), is charged with:-

First Charge
A.A. Sec. 15 (1) WHILE ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he at NO. 70, THURSLEY TENTED CAMP, SURREY, absented himself without leave from 0600 hours, 18 Jul 41 until surrendering himself at WENTWORTH HALL near DORKING, SURREY, at 1730 hours, 20 Aug 41.

(Absent 33 days, 11 hours and 30 minutes)

Second Charge
A.A. Sec. 24 (2) WHILE ON ACTIVE SERVICE

LOSING BY NEGLECT HIS CLOTHING AND REGIMENTAL NECESSARIES, in that he at WENTWORTH HALL, near DORKING, SURREY, at 1730 hours 20 Aug 41, was deficient the following articles valued at £2-15-2

Socks, woolen, prs.	2 @ 1/11	3 - 10
Towels, hand	2 @ 1-6	3 - 0
Shirts, flannel	1 @ 10/-	10 - 0
Shirts, cotton, P.T.	1 @ 1/11	1 - 11
Helmet, steel	1 @ 9/6	9 - 6
Mess Tin (tinned)	1 @ 2/10	2 - 10
Knife, N.S., table	1 @ -/1-	- 10
Fork, N.S., table	1 @ -/4½	- 4½
Spoon, N.S., table	1 @ -/4½	- 4½
Boots, ankle, prs. (one boot only)	1 @ 1/2/6	1 - 2 - 6
	Total	£ 2-15-2

Signature of Acting Commanding Officer [signature]

To be tried by Field General Court-Martial.

[signature]
(C.S.L. Hertzberg) Brigadier,
Chief Engineer, Canadian Corps.

12 Sep 41.

W.K. Macdonald
Major
16/9/41

Appx 3

Witness:- Capt. E. H. Webb, states:-

I am Adjutant of the 1st Battalion, R.C.E. and I herewith produce A.F.B. 115 which is a true copy of the record of the declaration of a court of inquiry on the illegal absence of a soldier in A.B. 161, which book is kept by me. This declaration pertains to the illegal absence of B-28397 Spr. Dunn, E. whom I can identify.

The accused declines to cross examine this witness.

Edw Webb

(E. H. Webb) Capt., R.C.E.
Adjutant
1st Battalion, R.C.E., Cdn. Army.

Appx 4

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Green Tiles, No.2 Box Hill, Surrey on the 11th day of August 1941, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B.28397 Spr. Dunn, E.

DECLARATION.

The Court declare that B.28397 Spr. Dunn, E. illegally absented himself without leave in the Field on the 18th day of July 1941; that he is still so absent, and that on the 11th day of August 1941 he was deficient, and that he still is deficient of the following articles.

Battle dress blouse	1	£ 1-2-6
" " trousers	1	1-0-6
Helmets, steelm MK I	1	9-6
Boots, ankle, prs	1	1-2-6
Jerseys, pullover	1	6-9
Shirts, angola	2	1-0-0
Dressing, first fld.	1	1-1
Respirator, complete	1	1-1-0
Cloth disinfecting	1	5½
Eyeshields	6	2-3
Ointment anti-gas	1	9
Socks, prs.	3	5-9
Towels, hand	1	1-6
		£ 6-14-6½

Names of President and Members

President - Capt. D.H. McCallum

Members - Lieut. J.J. Dussault

- Lieut. D.D. Love.

Signature of Commanding Officer Harold R. Lynn Lt-Col.

CERTIFIED TRUE COPY.

Edwyn Webb Capitaine

Signature of Officer having custody of the Original Record.

(12281) Wt.24318/1622 75,000 10/39 A. & E.W. Ltd. Gp.498
(13448) Wt.45725/760 225,000 1/40 " " Forms/B115/56

Appx 5

FIFTH WITNESS.

C.Q.M.S. Bateman J.S. B-2066

states:-

The deficiencies as listed on the charge sheet are correct.

Q. When I left I had a pair of boots. What happened to the other one.

A. There was only one boot turned in to me.by the Orderly Corporal.

The accused declines to further cross examine the witness.

.....
C.Q.M.S. Bateman J.S. B-2066

Appx 6

FIRST WITNESS.
C.S.M.S. Bateman E-2066 states:-

Spr. Dunn's Kit was turned in to me by Cpl Waterton, who was Orderly N.C.O.

The Kit was checked by Spr. Shusterove and myself and deficiencies were noted.

The accused asked if he could see a list of deficiencies as declared by a Court of Inquiry under Capt. D.H. McCallum, Lieut. J. Dussault, and Lieut. Love. This was produced.

Question: Do you agree with this list.

Answer : Yes Sir.

The accused declined to further cross examine the witness

.....
(C.S.M.S. Bateman E-2066)

Appx 7

4 Sep 41

KIT DEFICIENCIES
B.28397, Spr. Dunn, E.

Capt. G.M.Ross

1. Attached hereto are kit inspections made by me on a/m Sapper's kit on 9 Aug 41 and again on 28 Aug 41.

2. It will be noted that many of the shortages noted on 9 Aug 41 which date this kit was accepted in C.Q.M. Stores, are not shown on the later date, as these items were in possession of the a/m Sapper.

3. Please note that on comparing the two lists together with what is now actually in possession of the a/m Sapper, the only difference which exists is, 2 towels being short on the later date instead of one.

Sapper Dunn was absent from both kit inspections held here and at THURSLEY CAMP.

E.2066, C.Q.M.S.Bateman, J.S.

TS/1/S

Appx 8

28-8-41

Kit Deficiences - B.28397, Sapper Dunn, E.

1.	Socks, woolen, prs.	2 @ 1/11d.	£0-3-10
	Towels, hand	2 @ 1/6d.	3- 0
	Shirts, flannel	1 @ -/10d.	10
	Shirts, cotton, P.T.	1 @ 1/11d.	1-11
2.	Helmets, steel	1 @ 9/6d.	9- 6
	Mess Tin (tinned)	1 @ 2/10d.	2-10
	Knife, N.S., table	1 @ -/10d.	10
	Fork " "	1 @ -/4½d.	4½
	Spoon " "	1 @ -/4½d.	4½
	Boots, ankle, prs. (one boot only)	1 @ £1-2-6	1-2- 6
			£2-15-2

Kit of No. B. 28397, Sapper Dunn, E. returned to "B" Coy Stores by Orderly Corporal.

Rifle, Serial I-2491		
Bayonet & Scabbard - 306		
Web complete, sets,	1	
Holdall	1	
Razors	2	
Brushes	6	
Braces, prs.	1	
Balaclavs	2	
Clasp knife	2	
Housewife, complete	1	
Towel, hand	1	
Blouse, denim	2	
Trousers, denim	2	
Gas Cape	1	Checked by C.Q.M.S. Bateman, J.S.
Battle Dress, blouse	1	
" " trousers	1	
Cap, F.S.	1	Witness - Spr. Shusterove, R.
Greatcoat	1	
Anklets,web,prs.	1	
Shoes, canvas,prs	1	
Shirts, woolen	2	
Drawers, woolen	2	
Sweaters, sleeveless	2	
Bathing trunks	1	
Water bottle	1	
Boots, ankle, 1 boot only		
Carrier, water bottle	1	
Ration Bag	1	
Pen & Pencil set	1	
Button Sticks	3.	

Appx 9

SECOND WITNESS.

C.S.M. Bissett G.K. H.13035 states:-

I returned from leave 24/7/41. The acting C.S.M., E. Mosher H.2001 reported to me that Spr. Dunn was A.W.O.L. from 0600 hrs. 18/7/41. He was still absent on the 8th Day and was shown in a Casualty Return. He was also shown on a Casualty Return on 14th and 21st Day of his absence.
Sapper Dunn was reported absent daily to me until he surrendered himself to Cpl. Waterton W. H.25182 at the Battalion Guard Room at WENTWORTH HALL at 1800 hrs. on 20/8/41.

The Accused declines to cross examine the witness.

G.K. Bissett
(C.S.M. Bissett, G.K. H.13035)

Appx: 10

THIRD WITNESS.

L/Sgt. Bule E.A. B-26286 states:-

I was in charge of No. 9 Section on 18th July 1941 Sapper Dunn whom I recognized was in the Section. At 0600 hrs. on the 18th July 1941 I checked my Section at reveille, Sapper Dunn was missing. I checked with the Guard Room to see if he had turned in his pass, it was not there. I reported the absence of Dunn to Act. C.S.M. Mosher.

The accused declines to cross examine this witness.

E.A. Bule

(L/Sgt. E.A. Bule B-26286)

Appx 11

FOURTH WITNESS.

Sergeant Mosher E. E-2001 states:-

I was acting C.S.M. in the absence of C.S.M. Bissett on the 18th of July 1941 when the accused whom I recognized was reported absent to me at 0730 hrs. 18th July 1941 The accused was reported absent from all parades while I was Acting C.S.M.
C.S.M. Bissett returned from leave on the 24th July 1941 when I turned over my duties to him.

The accused declines to cross examine this witness.

Sgt E. Mosher
.....
(Sgt. E. Mosher E-2001)

SIXTH WITNESS

Appx 12

Cpl. Waterton, W. H.25182 states:-

I was Guard Commander on the 20/8/41 when Sapper Dunn, E. B.28397 surrendered himself to me at 1800 hrs, at the Battalion Guard Room at WENTWORTH HALL.
Sapper Dunn was sober. I placed him under close arrest in the Battalion Guard Room.

The Accused declines to cross examine the witness.

Cpl Waterton W

.....
(Cpl. Waterton, W. H.25182)

Appx 13

The Accused having been duly cautioned in accordance with Rule of Procedure 4 (e) elects to reserve his defence on all charges.

.....

Certified that Rule of Procedure 4(c),(d),(e),(f) and (g) have been complied with.

Taken down by me in the presence and hearing of the Accused, this 21st day of August 1941.

IN THE FIELD

.....

(C .M. Ross) Captain,

1st Battalion R.C.E. Cdn. Army .

Appx 14.

No. B20397 Name Dunn, E Sqn., Battery, or Company "B" Corps 1 Bn., RCE., Date of enlistment 31-5-40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 300M—6-39 (1703) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				1st. sheet destroyed on completion of 6 mos service 31-11-40. No Regimental entries.					
In the Field	15/5/41	Spr.		A.A. Sec 15(1) WOAS - AWL from 1800 hrs 15-3-41 to 2030 hrs 16-3-41. Absent 1 day 2 hrs. 30 mins.	Sgt Cooper L/C Lawrence CSM Bissett	3 days pay forfeiture	18-3-41	K.J.Southern Major O.C. "B" Coy. 1 Bn., R.C.E. K.J.Southern Major	Forfeits 2 days pay und Art.149 (1) F.R.& I
				A.A.Sec.10(4) WOAS - Breaking Barracks		7 days C.B.	18/3/41	K.J.Southern Major	
In the Field	5/5/41	Spr.		A.A. Sec.15(1) WOAS-AWL from 1800 hrs 4/5/41 to 2000 hrs 5/5/-41	Documentary evidence C.M.P.	7 days C.B.	8/5/41	G.C.Tyrrell Major O.C. "B" Coy 1 Bn., RCE	Forfeits 2 da pay under ART 149(I)F.R.&

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28/5/41	Spr		A.A.Sec.15(1) WOAS-AWL from 0600 hrs 29/5/41 to 1700 hrs. 28/5/41(Absent 11 hrs.)	Sgt.Cooper Documentary	7 days C.B.	29/5/41	G.C.Pyrrell Major O.C. "B" Coy	Forfeits 1 days pay Art. 149 (1) P.R. & I.
Field	23/6/41	Spr.		WOAS - A.W.L.(s) In that he was absent from 2200 hrs 22-6-41 to 0805 hrs 23-6-41. Absent 10 hrs 5 mins. A.A. Sec.15 (1)	CSM Bissett Cpl Matthews	7 days for-feiture of pay	25-6-41	Lt.Col. F.R.Henshaw C.O. 1 Bn.,RCE	1 days pay Art 149 (1)a P.R. & I.

Certified true copy

D. H. McCallum Capt.

(D. H. McCallum) Capt.
1st. Battalion, R.C.E., C.A.

Appx 15

Spr. Dunn, E. B.28397 states:-

When I went A.W.O.L. at THURSLEY TENTED CAMP on the 17/7/41 I was completely equipped with kit. I am sure of this as two days previously we had a section kit inspection by Lieut. J.M. Scott who is my Section Officer and C.S.M. Bissett. At that time my kit was complete.

Dunn E.

.....
Spr. Dunn, E. B.28397

152 G. Spr. DUNN, E.

See 179 D (1st F.G.C.M.)

O. H. M. S.

M. F. B. 270

152 G-1

Original Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.1

Order convening the Court.

On Active Service, this 7th day of April, 19 42.

Whereas it appears to me, the undersigned, an officer in Command of Canadian Corps Artillery, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*~~I am unable to appoint:—~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

~~(or the following reasons, namely:—)~~

PROCEEDINGS REVIEWED

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	H. G. Shepard	63 Cdn Sen Tpt Coy

Members.

Rank.	Name.	Regiment.
Capt	D.N. Macleod	1st Cdn Corps Sigs
Lieut	J. M. Benkhe	1st Cdn Corps Sigs

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed W.N. Brownfield

(W.N. Brownfield) Brigadier

Commanding A/CCRA - Cdn Corps

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B28397 Spr Dunn, E. 1 Bn R.C.E.	1st. Charge Sec 12(1)(a) Army Act	Not Guilty	Not Guilty as charged but guilty of absence Without Leave AA 15(1) Sentence – Imprisonment with hard labour for a period of one year	I confirm the finding and sentence but commute the sentence to be on years detention H.O.N. Brownfield (H.O.N. Brownfield) Brigadier C.C.R.A. Cdn Corps

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
" Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ? "
Answer to be recorded on separate sheet (if necessary) :—

(Signed) H.O.N. Brownfield (H.O.N. Brownfield) Brigadier A/C.C.R.A. Commanding Cdn Corps (Signed) H.G. Shepard Major
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 16th day of April 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

~~*(3. The interpreter)~~
~~*(4. The officers under instruction)~~

were duly sworn.

* Omit if not applicable.

Signed this 16th day of April 1942.

H.G. Shepard Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this [illegible] day of 19 .

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 20th day of April 1942.

H.O.N. Brownfield (H.O.N. Brownfield) Brigadier CCRA Confirming Officer. 1 Cdn Corps

Promulgated and extracts taken in the case of B28397 Spr. Dunn, E.

(a) (Dated) 26 Apr 42 (Signed) [illegible] Commanding Officer 1st, Battalion, R.C.E. - C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field on the 16th day of April 1942 by order of H.O.N. Brownfield Brigadier A/CCRA

Commanding Cdn Corps Royal Artillery dated the 7th day of April 1942

President.

Major H.G. Shepard 63 Cdn Gen Tpt Coy

Members.

Capt DN Macleod 1 Cdn Corps Sigs ~~1 RCCS~~

Lieut J.M. Benkhe 1 Cdn Corps Sigs

, ~~Judge Advocate~~ n/a

Trial of*

B 28397 Spr. Edward Dunn
1 Cdn RCE

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~

, ~~waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut H.M. Hunter 1st Bn RCE

Counsel‡ or defending officer† Capt E.H. Webb 2 Bn RCE

At 1030 o'clock the Trial commences.

The order convening the Court is read, and is marked A1 signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

QC[illegible] [illegible] 2-40 [illegible] Form A 9(1).

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Charge-Sheet.

Instruction.
If the accused has elected to be tried under Army Act, sec. 45 (3) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the (first) charge against you, which you have heard read ? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read ? *Question.*

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read ? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read ? *Question.*

Answer.

The accused having pleaded Guilty to charge , the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

B 2

C H A R G E S H E E T

The accused, No.B.28397 Spr. Edward Dunn, a member of the Canadian Army (Overseas), is charged with:-

FIRST CHARGE
Sec 18(1)(a)
Army Act

When on active service deserting His Majesty's Service,

in that he, at Wentworth Hall, at 2145 hrs on 20 Sep 41, when in custody absented himself from 1 Bn RCE, until he surrendered himself to the civil police at NOTTING HILL, at 0910 hrs on 19 Mar 42, dressed in plain clothes.

(A. J. Kerry) Major R.C.E.
Commanding 1 Bn RCE

To be tried by Field General Court Martial

(H. O. B. Bronfield) Brigadier
A/C.C.R.A. - Odm Corps

7 Apr 42

W. B. Shepard Major
President of Court

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A)).

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. B 26153 Corporal Lambert W.E.P.
1 Bn RCE
~~M7181~~

being duly sworn, is examined by the prosecutor.

1st Witness – States: I was Corporal of the guard of the above unit at 2100 hrs 20 Sep 41 and at that time Spr. Dunn was in our guard compound. This compound is in the nature of a barbed wire enclosure. At 2145 hrs I again inspected the compound and found Spr Dunn missing.

~~Cross examined by Defence~~

2nd Witness – M7184 L/Cpl MacDonald D.N.
being duly sworn, is examined by the prosecutor.
States: As a member of the R.P. of this unit I inspected guard compound at 2230 hrs 20 Sep. 41 and found the accused Spr. Dunn missing I did not see him again until 21 Mar 42.

3rd Witness – M7360 Spr. MacDonald R
being duly sworn, is examined by the prosecutor.
States: On 20 Mar 42 I was a member of the R.P. of this unit I was ordered to proceed to Ashtead Surrey to pick up Spr. Dunn. At approx 1330 hrs same date I picked up the accused at Ashtead in civilian clothes and brought him back to this unit.

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. no

Question. Do you intend to call any other witness in your defence?

Answer. no

Question. ~~Is he a witness as to character only?~~ *Answer.* n/a

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

is not guilty of desertion but is guilty of Absence Without Leave AA 15 (1)

Proceedings on Conviction before Sentence.

*Where the Court is already open this sentence will be struck out.

~~The Court having~~ re-opened the accused ~~again~~ brought before it.

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* ~~No~~ yes

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked (3) (7) signed by the President, and annexed to the proceedings.

The prosecutor having been duly sworn states:—

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. yes

Cross-examined by the accused.

accused does not wish to cross-examine

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused

To imprisonment ~~of~~ with hard labour for the period of one year.

Sentence.

H G Shepard Major

No B28397 Name Dunn, E. Sqn., Battery, or Company "B" Corps 1 Bn R.C.E. Date of enlistment 31-5-40 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 500M—8-39 (1751) H.Q. 1772-41-18

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				1st sheet destroyed on completion of 6 mos. service 31-11-40. No regimental entries.				K.J.Southern, Major. RCE	
In the Field	3 15/41	Spr.		A.A.Sec. 15(1) W.O.A.S.-AWL from 1800 hrs 15-3-41 to 2030 hrs 16-3-41. (Absent 1 day 2 hrs, 30 mins.) XXXXXXXXXXXXX	Sgt.Cooper L/C.Lawrence CSM.Bissett	3 days pay forfeiture	18-3-41	K.J.Southern Major	Forfeits 2 days pay under art.149(1) F.R.& I.
				A.A.Sec. 10(4) W.O.A.S. - Breaking Barracks		7 days C.B.	18-3-41	KJ.Southern Major	
In the Field	5/5/41	Spr		A.A.Sec. 15(1) WOAS-AWL from 1800 hrs 4/5/41 to 2000 hrs 5/5/41 (Absent 1 day 2 hrs)	Documentary evidence	7 days C.B.	8/5/41	GC.Tyrrell Major O.C., "B" Coy 1 Bn RCE.	Forfeits 2 days pay under art 149(1) F.R. & I.

(P.T.O.)

Place	Date of offence	Rank	Name of accused	OFFENCE	Name of Witnesses	Punishment awarded	Date of award of punishment	By whom awarded	Remarks
Field	28/5/41	Spr		A.A.Sec. 15(1) WOAS-AWL from 0600 hrs 28/5/41 to 1700 hrs 28/5/41 (Absent 11 hrs)	Sgt.Cooper Documentary	7 days C.B.	29/5/41	GC.Tyrrell Major, O.C. "B" Coy	Forfeits 1 days pay Art.149(1)(a) F.R. & I.
Field	23/6/41	Spr		WOAS-AWL (a) in that he was absent from 2200 hrs 22-6-41 to 0605 hrs 23-6-41.(Absent 10 hrs 5 mins) AA.Sec. 15(1)	CSM.Bissett Cpl."atthews	7 days forfeiture of pay	25-6-41	Lt.Col. PR.Henshaw O.C. 1 Bn RCE	1 days pay Art.149 (1)(a) F.R. & I.

Certified true copy

L B Fraser

(R.B."raser) Capt.R.C.E.,
Adjutant,
1 Bn R.C.E., C.A.

No. B28397 Name DUNN, E. Sqn., Battery, or Company Corps 1 Bn R.C.E. Date of enlistment 31-5-40 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet 23-6-41 No. and date of last drunk NIL Period not reckoning towards freedom from extra fine Sheet No. 3 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	41 18 Jul	Spr	-	WOAS.- (1) A.W.L. from 0600 hrs 18 Jul 41 to 1730 hrs 20 Aug 41 (Absent 33 days 11½ hrs) AA15(1) (a)XXXX (2) An offence under AA24(2) in that at 1730 hrs 20 Aug 41 he was deficient clothing to the amount of £2-15-2.		65 days detention stoppages £2-15-2	16 Sep 41 Promulgated 30-Mar 42	FGCM.	33 days pay FRI. (149(1)(c) Total 125 days

Certified true copy

R.B. Fraser

(R.B. Fraser) Capt., RCC.E.,
Adjt., 1 Bn R.C.E.

Exhibited by prosecution
W.J. Hyland Major (9)
Pres of Court

(F.I.O.)

Exhibited by prosecutor (8)
H.M. Shepard Major
Pres. of Court

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B28397	Spr.	Dunn, Edward	1st. Battalion, R.C.E.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishments being given in the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	A.W.L.	3 times	4	times.
For	Breaking out of Barracks	1 times	1	times.
For		times		times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct, N.A.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. ~~The accused was under sentence at the present date,~~ or The accused at the present time is under sentence for A.W.L. - 65 days detn. beginning on the 16th day of September 1941

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and ~~28~~ 218 days in military custody, making a total of ~~28~~ 218 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 25 yrs 165 days

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 31 May 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr 10 mos 16 dys

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr 10 mos 16dys service.

9. The accused is entitled to reckon 1 yr 10 mos 16 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*). NA

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of NA

12. (*In the case of an officer.*) The accused holds in the army the rank of NA dated and in his regiment (*or corps or department*) the rank of dated

(7)51(4) W1.8324/972 75,000 12/40 A.S.S.W.Ltd. Gp.675

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B28397 Rank Spr. Name Dunn, Edward of 1 Bn. R.C.E. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
F.G.C.M.	In the Field on 16 Sep 41.	W.O.A.S.(1) A.W.L. from 0600 hrs 18 Jul 41 to 1730 hrs 20 Aug 41 (Absent 33 days 11½ hrs) A.A. Sec 15(1) W.O.A.S.(2) An offence under A.A. Sec 24 (2) in that at 1730 hrs 20 Aug 41 he was deficient clothing to the amount of £2-15-2	65 days detn. stoppages £2-15-2 w.e.f. 16 Sep 41	Nil

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15th day of April

[signature] Adjutant

1st. Battalion, R.C.E. - C.A.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years, ...

In the rank of N.A. years .....

In the rank of ..... years, ...

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

30 Mar 42

C.O.
1 Bn RCE

I hereby certify that the kit of
B.28397 Spr. Dunn, Edward, is complete as of
this date.

The deficiencies shown in the findings of the
Court of Inquiry dated 13 Oct 41 no longer exist.

V. I. McCallum

(V.I. McCallum) Lieut. R.C.E.
Quartermaster
1 Bn RCE

(7)

Exhibited by prosecution
Dr Shepard Major
Pres of Court

C O P Y

RECORD of the Declaration of a Court of inquiry assembled at the Field on the 13th day of October 1941, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B.28397 Spr. Dunn, E.

DECLARATION

The Court declare, that B.28397 Spr. Dunn, E. of the Royal Canadian Engineers, illegally absented himself without leave in the Field, on the 20th day of September 1941; that he is still absent and that on the 13th day of October 1941 he was deficient, and he is still deficient of the following articles.

		£	S	D			£	S	D
Anklets	1		4	4	Knives, table	1			10
Cap F.S.	1		2	5	Blouses, denim	1		12	9
Bags kit	1		5	3	Trousers, denim	1		11	9
Battle dress, blouse	1	1	2	6	Razor	1			5½
Battle dress trousers	1	1	0	6	Shirts, flannel	1		10	-
Boots laces	2			3	Shirts, woollen	1		7	9
" ankle, prs.	2	2	5	0	Shoes, canvas	1		3	6
" lumbermans prs	1		9	9	Shorts, Gym	1		2	1
Braces, prs.	1		1	6	Belts, waist	1		3	6
Brushes blacking	1			8½	Bottles, water	1		2	11
" polishing	1		2	1	" " carrier	1		1	11
" cloth	1		2	3	Braces, left	1		1	10
" shaving	1		1	2	Braces, right	1		1	8
" tooth	1			5	Carriers, cartridge	2		8	10
" hair	1		2	6	Frogs, bayonet	1			11
" comb	1			2	Helmet steel	1		9	6
Discs, identity	3			1½	Haversack, respirator	1		6	6
Drawers, woolen prs.	1		7	6	Straps, shoulder	2		3	10
Dressing F.P.	1		1	1	" Web, supporting	2		1	1
Forks	1			4½	Tins, mess	1		2	10
Gloves, woolen	1		1	11	Anti-dim	1			2½
Holdall	1			9	Eyeshields, pkgs. 6	1		2	3
Jacket sweater	1		6	9	Ointment	2		1	0
Knives, clasp & lanyard	1		3	5	Wallet A/G	1			9
					Cloth, face piece	1			5½
								12.1.10	

(6)

Exhibited by prosecutor
H. Shepard major
Pres of Court

NAMES OF PRESIDENT AND MEMBERS:

President - Capt. J.C. Byrn, R.C.E.
Member - Lieut. T.A.C. Tyrrell, R.C.E.
Member - Lieut. A.D. Carmichael, R.C.E.

SIGNATURE OF COMMANDING OFFICER E. R. Lynn
Lt-Col. R.C.E.

91.7056. Wt. 10120. 3,000 Bks, 1/40. D.P.M.

Certified true and correct copy of Record of Declarations of Courts of Inquiry on Illegal Absence of Soldiers (Army Book 161)

H. M. Hunter
(H. M. Hunter) Lieut. R.C.E.
1 Bn RCE

Exhibit B

IMMEDIATE. **ROYAL AIR FORCE.** FORM 1617.

(5)

Exhibited by prosecution
H. G. Shepard Major
President of Court

PART I.

Certificate of Surrender to the Civil Police of a Deserter or Absentee without Leave.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith enquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into Air Force custody without bringing him before a court of summary jurisdiction.

In such case a telegram should be despatched to the C.O. of the airman's unit,* stating the official number, rank, name, unit and place from which the man absented himself. That officer will at once arrange to send an escort for the man to be taken into Air Force custody. Where the airman's unit is overseas or cannot be traced the telegram will be despatched to the O.C., R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of units are shown in the Monthly Air Force List.

[illegible]

I CERTIFY that the man whose personal description is given below surrendered himself to* P.C.478'F'. HUGHES. (in folam clothes)

at Notting Hill on the 19th. day of March, 1942.

as being No. B. 28397 (Rank and Name) Sapper Edward DUNN

a deserter (or absentee without leave) from 21/9/41. Canadian Royal Air Force, and

it appears to me from his confession that he is a deserter or absentee without leave.

*After the word "to" to be inserted the name and rank of the police officer concerned.

Age 25 Height 5 Feet 4 Inches.

Complexion FRESH Hair GINGER Eyes GREY

Marks

Probable Date and Place of Attestation	21/5/40. Toronto, CANADA ~~4/9/41 Box Hill~~
Probable Date of Desertion or beginning of absence, and from what place	Box Hill, Surrey. 21/9/41.

R. Reard Sgt F

Signature of Officer of Police in charge of Notting Hill Station.

19/3/42. Date of Signature.

O. Nic. Detention Room
No. 6 Provost Company
Lieut.

~~ROYAL AIR~~ FORCE. FORM 1617.

PART 2.

Statement of Expenses chargeable to Air Force Funds incurred by the ..... Police in the case of No ..... of the ..... Royal Air Force, who surrendered to the Police at ..... on .....

Payable to .....

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at .....

Date of Signature.

H.Q. Physical Major Exhibit by prosecution (1)

I. Sapper E. Dunn, B28397

hereby certify that I do not require the attendance of P.C. 472 F. Ronald Hughes and P.C. Eycott both of the Metropolitan police of the City of London as witnesses in person at my trial Thurs 16 Apr 42 at 1000 hours.

E. Dunn Spr R.C.E.

B-28397

Exhibit by prosecution (2)
Hayhurst - major

April 15/42.

1st Battalion Royal Canadian Engineers.

This is to certify that B 28397 Spr Dunn A. has been examined by me and is declared fit to undergo courtmartial proceedings.

B.C. Miller

(B.C. Miller) Capt. R.C.A.M.C.
Medical Officer,
1st Bn. R.C.E.

Exhibit C.

Officer Commanding
1st Bn.R.C.E. B.Coy.

File No. 12/40..

Re:B.28397 Spr Dunn.E.

Exhibited by prosecution (4)
H.E. Shepard Major
President of Court

1. Forwarded for your information and necessary action, please, and disposal under C.A. Routine Orders (C) No. 388 dated 29 Oct.40.

2. The m/n has no complaints as to his treatment. He states he "Broke Detention" at the time he went H.W.L.

London
20-Mar-42.

J.A.W. Whittington --Lt.
for Capt.S.Dalton
O.C.No.6 Coy.
Cdn.Provost Corps.

Exhibit A.

No. 992.

METROPOLITAN POLICE.

STATEMENT OF WITNESS.

Notting Hill Station. F Division.

19th day of March 1942

Name PC 472F Ronald Hughes

Address

Age Occupation

Statement: At 9.10 am on 19th March 1942, in company with PC Bycott, we were patrolling Uxbridge Street, Notting Hill. W11 when a man came up to us and asked us if we were Police Officers, we replied that we were. He then said "I am a deserter from the Canadian Army, and I have been on the run for six months, and I wish to surrender myself, as I do not wish to cause any further trouble. He was taken to Notting Hill Police station where he was detained for an escort.

[signature]
O. i/c Detention Room
No. 6 Provost Company.

Exhibited by prosecution (3)
[signature]
President of Court

Signature Ronald Hughes

Signature witnessed by

M.P.-37-12599/100M G6 (8)

SUMMARY OF EVIDENCE

in the case of

B.28397 Spr. Dunn, Edward

taken by Lieut. H. H. Hunter

on instructions of

Major A.J. Kerry

FIRST WITNESS

B.26153 Cpl. Lambert, W.E.P. having been duly sworn states:-

I, Cpl. Lambert, W.E.P. was on 20 Sep 41, and still am a corporal in the 1st Bn R.C.E. I was corporal in charge of the detention guard at Wentworth Hall on the night of 20 Sep 41. I made my routine inspection of the guard compound at 2100 hrs and found all prisoners present amongst whom was the accused B.28597 Spr. Dunn, E. At 2145 hrs, I made my next inspection and found three prisoners had escaped, one of whom was the accused. I immediately notified the Orderly Officer and the military police. I did not see the accused again until this morning 30 Mar 42.

Questions by Lieut. H.E. Hunter

Ques. 1 At what time did you go on duty on 20 Sep 41?
Ans. 1 At 1800 hrs.

Ques. 2 Were sentries posted around the compound?
Ans. 2 One sentry only, Sir.

Ques. 3 Did the sentry give any alarm at the time of the escape?
Ans. 3 No Sir.

Ques. 4 Were you in the immediate vicinity of the detention compound during the period of time between your two inspections?
Ans. 4 Yes Sir.

Ques. 5 Did you hear any suspicious noises or was anything drawn to your attention which might have given warning of the escape of the prisoners?
Ans. 5 No Sir.

Ques. 6 Was the night dark?
Ans. 6 It was a dark night.

The accused did not desire to question the witness.

W.E. Lambert. Cpl.
B26153.

SECOND WITNESS.

M.7184 L/Cpl. MacDonald, D.M. having been duly sworn states:-

I, M.7184 L/Cpl. MacDonald, D.M. am a Lance Corporal of the Regimental Police of 1 Bn RCE and was so, on 20 Sep 41. The accused B.28397 Spr. Dunn, E. was being detained in the Guard detention compound at Wentworth Hall under close arrest at that date. While preforming my duties, I visited the detention compound at Wentworth Hall at 2230 hours on the night of 20 Sep 41 and found that Spr. Dunn had escaped. I went through the usual procedure of notifying the orderly officer. The next time I saw Spr. Dunn was at 1000 hrs on 21 Mar 42 in the detention compound at Wentworth Hall.

Questions by Lieut. H.M. Hunter

Ques. 1 In your official capacity do you know that Spr. Dunn was illegally absent from 1 Bn RCE from the time of his escape until apprehended.

Ans. 1 Spr. Dunn was illegally absent during that period.

Ques. 2 When you saw Spr. Dunn on 21 Mar 42, how was he dressed?

Ans. 2 He was wearing battle dress.

Ques. 3 Do you know the date he was brought back to Wentworth Hall?

Ans. 3 I don't know, I was not in barracks at the time.

L Cpl MacDonald D M

The accused declined to question the witness.

THIRD WITNESS

M.7360 Spr. MacDonald, R. being duly sworn states:

I, M.7360 Spr. MacDonald, R. am a member of the Regimental police of 1 Bn RCE and while performing my duties on 20 Mar 42 at Wentworth Hall was ordered to go to ASHTEAD to the Medium Artillery Reception Camp to escort B.28397 Spr. Dunn, E. to Wentworth Hall. I Picked up Spr. Dunn at approximately 1330 hrs 20 Mar 42, brought him to Wentworth Hall and placed him in the guard detention room. He was wearing civilian clothes when I received him at ASHTEAD.

Questions by Lieut. H.M. Hunter

Ques. 1 When did the accused change from civilian clothes to Battledress?

Ans. 1 At 1430 hrs 20 Mar 42 I took the accused to Bn Quarter master stores where he was issued with Battledress. I returned him to the detention room where he changed from the civilian clothes he had been wearing to battledress.

Ques. 2 As a member of the Regimental Police of 1 Bn RCE can you state that Spr. Dunn has been illegally absent from 1 Bn RCE from 2145 hours 20 Sep 41 until he surrendered to the civil police on 19 Mar 42?

Ans. 2 Yes he has been illegally absent for that period.

The accused declined to question the witness.

R. MacDonald

FOURTH WITNESS

P.C. 4729 Ronald Hughes, Metropolitan Police HOWARD HILL Station, LONDON W 11.

Statement by the above is attached as Exhibit A. He was not called to give evidence due to the expense and loss of time involved.

The accused did not wish to call this witness.

FIFTH WITNESS

P.C. Wyatt, Metropolitan Police HOWARD HILL Station, LONDON W11.

A statement by the above was not secured. He was not called to give evidence due to the expense and loss of time involved.

The accused did not wish to call this witness.

The accused declined to make a statement.

Taken down by me on this 30 day of Mar 42 in the presence of the accused. Rule of Procedure 4 complied with.

F.M. Hunter

(F.M. Hunter) Lieut. R.C.E.
1 Bn RCE Cdn Army

I, B.28397 Spr. Dunn, Edward
hereby request that Capt. E.H. Webb
of 1 Bn R.C.E. be assigned to be
my representative at the forthcoming
trial.

Edward. Dunn

TT-80 (case #2)
PTE DUNN E.W.
see AA-117 for let case

TT-80

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this sixteenth day of October, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 5 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer]~~ GW

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

~~*[I am unable to appoint as]~~

~~*(1) Three Officers to form the Court~~ GW

~~*(2) A Field Officer as President~~

~~for the following reasons, namely:~~

Proceedings Reviewed

Reviewed 11 June 43

R Mowat Maj

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	R. B. Mowat	R.H.C.

Members.

Rank.	Name.	Regiment.
Lieut	H.G.C. Leith	R de Mais
Lieut.	G. B. Knox	R.H.C.

WAITING MEMBER

An officer to be appointed by O.C., Calg.Highrs.

*Signed G V Whitehead

(G. V. Whitehead) Brigadier

Commanding 5 Cdn Inf Bde.

Convening Officer.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
K-53096 Private Edgar William DUNN, Calg Highrs, a soldier of the Canadian Army, Overseas.	FIRST CHARGE A.A. Sec 15 (1) (See charge sheet attached)	Guilty	Guilty. 150 days Attention due [illegible] [illegible] [illegible] [illegible] 19 Oct 43. R Minowat Maj	I confirm G.W.W.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) G.W. Whitehead (Signed) R. Minowat Maj

(G.V.Whitehead)Brigadier
Commanding 5 Cdn Inf Bde.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that ~~the~~ above Court assembled on the 19th day of October, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
~~2. The witnesses~~ RDM
~~*(3. The Interpreter)~~ RDM
~~*(4. The officers under instruction)~~ RDM

were duly sworn.

*Omit if not applicable.

Signed this 19th day of October 1943.

R Minowat
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

*See footnote (b) on page 762 M.M.L. 1929.

WMWS

~~Signed this day of 19~~

~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ GW

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 20 day of Oct 1943.

G.W. Whitehead
Confirming Officer.

Promulgated and extracts taken in the case of K-53096 Pte Dunn, E.W. Calg Highrs

(a) (Dated) 25 Oct 43 (Signed) W. F. Hyland Capt, Rear Party Calgary Highlanders C.A.D.O.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

JAG BRANCH REVIEW RECORD

Accused

K.53096 Pte Dum. E.W.
Colg. H.

Remarks	Date
Trial in (Country) Eng.	19 Oct.
Charges 15 (1)	
Sentence 150 dys.	19 Oct.
Rec'd from CR at JAG Branch	9 Nov.
To D.W. for (~~pre~~)(post) rev	10 Nov.
Recommendations by [illegible]	
(1) Pass and record	
(2) Ltr on irregularities	
(3) quash charge(s)	
(4)	
Ret'd to JAG Rev 1 by [illegible]	11 Nov.
Passed to	
Passed to	
To AG 5 for	
Ret'd from AG 5 to JAG Rev 1	
Instrs by JAG Rev 1 on disposal	
Record + file	11 Nov.
Instrs completed by	

CHARGE SHEET

The accused K53096 Pte. Dunn, Edgar William, The Calgary Highlanders, a soldier in the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec.15(1)

N.O.A.W. Absenting himself without leave.

in that he,

In the field, absented himself without leave from 2300 hrs. 8 Aug 45 until 1120 hrs. 2 Sep 45. (Time absent 24 days 12 hrs. 20 minutes.), thereby incurring expenses for his return in the amount of £ 2 - 15 - 1.

(V. Stott) Major.
A/Commanding Officer,
The Calgary Highlanders CA(O)

TO BE TRIED BY F.G.C.M.

OCT 16 1945 (G.V. Whitehead) Brigadier
Comd 5 Cdn Inf Bde

STATEMENT OF THE ACCUSED

I, K53096 Pte. Dunn, E.W., a soldier of the Canadian Army, In the Field, do desire the services of an officer to defend me at my trial by F.G.C.M.

Should Lieut. E.W.B. O'Meara be available I should like to avail myself of his services as Defending Officer.

Dunn. E.W.

Witness: R.W. Roy Lieut.

Signed In the Field this 11 day of October 1943.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	guilty	guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

4 (~~correct under sentence~~) for ..... beginning on (date) 6 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 97 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : See schedule page 2 of AFA3.

(Sgd) ..... Judge-Advocate, if any. 18 Oct 43 Date awarded. (Sgd) R B Moore Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date .....

Commanding .....

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

FIELD GENERAL COURT-MARTIAL

CPA96 (1st Issue of AFA32) 61/P & C/1608 (2864)

Convened by Order of Brig G.V. Whitelaw Comdr 5 Cdn Inf Bde dated 16 Oct 43.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K53096	Pte.		Eagan Williams	Glenn	Cdn Sigs.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England. on (date(s)) 19 Oct 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6, ~~App~~. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to ..... as interpreter ? Ans .....~~ Nil

The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer ? Ans .....~~ Nil

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No Obs. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 187, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, viz :

President	Major	R.B. Moore	R.A.C.
Member	Lieut	H.C.L. Lieut	R.A. Fus
Member	Lieut	E.J. Kemp	R.C.A.
Judge-Advocate			
Prosecutor	Lieut	Alex. Ross	Cdn. Sigs.
Defending Offr	Lieut	E.L.B. O'Meara	Cdn. Sigs.

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DJ p 3.)

A8. The accused K53096 Pte Evans E. G. before arraignment makes(s) (no) (~~a~~) plea(s). (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and findings are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is advised of~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 86), 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans Yes, Sir.(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty on ~~Count~~ charge(s). The ~~accused is (are) so informed, and he (they)~~ ~~change(s) his (their) plea(s) on~~ ~~charge(s).~~ Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by usl of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 pards 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans ..... Do you intend to call witnesses on your behalf?
Ans ..... Are they witnesses as to character only? Ans .....
(1. RP 155. 2. RP 40(A), see 86(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, EK 695. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No Sir.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 253 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans No (see D)(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or refute anything there or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 4(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICER'S REPORT

I certify that No. K53096 Pte. Dunn, E.W.
of The Calgary Highlanders C.A.(O.) in a good state of health,
and is fit to undergo Trial by Court martial.

J.D. Cardy, Capt.
Medical Officer

Station In The Field

Date 19 Oct. 43.

M. F. B. 246

SUMMARY OF EVIDENCE IN THE CASE OF K53096 Pte. Dunn, Edgar William, The Calgary Highlanders, C.A.(O), a soldier of the Canadian Army. The accused is informed of his rights. The Commanding Officer directs that evidence be taken on oath.

First Witness for the Prosecution, Lieut. Robert Whitla Ross, having been sworn states: "I produce one copy of Declaration of Court of Inquiry held on 1 September 1943, signed by Capt. G.B. Wood, Adjutant, The Calgary Highlanders which signature I have witnessed. This is Appendix "A".

I also produce original letter from Chief Constable, Bradford, Yorks, City Police dated October 1943, showing that K53096 Pte. Dunn, E.W., whom I recognize was apprehended on 2 Sep 43 at 1120 hrs, by Bradford City Police. Total time absent is thus 24 days, 12 hours, 20 minutes. This is Appendix "B".

I hereby produce expense voucher purporting to be signed by D.A.P.M. London Area, showing expenses incurred in returning K53096 Pte. Dunn, E.W. to his unit. This is Appendix "C"."

This completes the evidence for the Prosecution.

ACCUSED DECLINES TO CROSS-EXAMINE.

"A"

Rules of Procedure 4, complied with.

Appendix "A"

DECLARATION

The Court declare that No. K53096 Pte DUNN E.W.

The Calgary Highlanders,CA(O)

illegally absented himself without leave at 2300 hrs 8 Aug 43 on the first day

at In the Field

of September ; that he is still so absent, and that on the first day of

September , he was deficient, and that he is still deficient of the following articles:—

ARTICLES		VALUE £	s	d	ARTICLES	VALUE
Anklets, Web prs	1		2	6½		
Blouse, B.D.	1	1	0	6½		
Bonnets, Tam-O'Shanter	1		3	1½		
Boots, Ankle, prs	1	1	12	0		
Drawers, short	2		3	0		
Shirts, Angora, drab	1		6	9½		
Trousers, BD	1	1	0	7½		
Badges, Cap	1			6		
Braces, prs	1			10½		
Combs, hair	1			1½		
Patches, D.S. prs	1			3		
Vests, cotton gym	1		1	6½		
Towels, hand	1			9		
Unit titles, prs	1			3		

Unexpended Wear Value £4-12 - ¾

W.H. Buchanan, Capt
The Calgary Highlanders, CA(O) — President.

F.J. Reynolds, Lieut
The Calg Highrs, CA(O) — Members.

G.R. McKenzie, Lieut
The Calg Highrs, CA(O)

Signed at In the Field

this eleventh day of September 1943

CERTIFIED TRUE COPY

G.R. Wood Capt & Adjt

(G.R. WOOD) Capt & Adjt.,
The Calg Highrs, CA(O)

M.F.H. 259

Appendix "B"

All Communications addressed to the Chief Constable

TELEPHONE No. 7000

CITY POLICE HEADQUARTERS,
TOWN HALL,
BRADFORD, YORKS.

LW.

HERBERT L. PRICE
Chief Constable

Our Ref. 43/2980

Your Ref.

9th October, 1943.

Dear Sir,

K.53096 Pte. Dunn, E. W.

Referring to your telephonic communication of the 8th instant, I would inform you that the above-named was arrested for Housebreaking at approximately 11.20 hours, on the 2nd September, 1943. He was remanded until the 7th September, and again remanded until the 30th September, on which date he was handed over to the Military Police.

Yours faithfully,

Chief Constable.

The Adjutant,
Calgary Highlanders,
Canadian Army,
ENGLAND.

Appendix "C"

File No 22/139

Officer Commanding
"A" Coy. Calgary Highlanders

Re; K-53096 Pte. Dunn, E.W.

1 The a/m soldier is being returned to your unit under escort from Bradford City Quarter Sessions.

2 He was handed over to the Canadian Provost Corps at about 1700hrs on the 2-Oct-43. and at the time of his arrest by the Civil authorities he was A.W.L.

3 Full particulars of arrest have been forwarded to your unit.

London
3-Oct-43

.....Capt.
(W.Fern,) D.A.P.M.London Area.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. K53096 Rank Pte. Name Dunn, E.W. Unit Cal. High

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Bradford

Date	Particulars	Amount		
3 Oct 43	Escorts return fare from LONDON To Bradford	1	9	6
	Prisoners single fare to LONDON From Bradford		14	9
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		9	10
	Total £	2	4	1

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature]

Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/P & S/485(3287)

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. K53096 Rank Pte. Name Dunn, E. W. Unit Calgary Highrs

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars 1/3 Portion	Amount		
3 Oct. 43.	Escorts return fare from LONDON To Pulborough		5	2
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Pulborough		3	10
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		9	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
80/P & S.452(2087)

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

I would like to try and explain to the court some of my personal history in the hope that it will help you to understand my case.

As my crime sheet goes against me and I have not gone A.W.O.L. for the fun of it, all my troubles have been caused by women and drink and being too far in debt to the army.

I joined the army in Vancouver in 1940 and was sent to a training centre in Calgary. At that time my wife and I were on good terms and she was to join me in two weeks time; a month passed and she did not come. I found out the excuses she was making were not true. I tried to get leave to go home and see what the matter was but could not get it.

I was very worried and despondent and went home without leave. I phoned my wife to meet me, and she agreed. But instead she sent the M.P.s and had me picked up for being absent and I was taken back and put in detention. I went absent again to see her. She admitted there was another man but defied me to prove it and again had me turned over to the M.P.s. I was again put in detention and when I got out I paraded to the C.O. to see if I could have my wife's allowance stopped. He said this could not be done without proof and I felt it was unfair that I should have to support her. I was arrested and got detention.

On my release I again went absent and was picked up and was awaiting Court Martial, when the army investigated my case and found that my wife was untrue. The C.O. had me paraded and told me that my wife's allowance would be stopped and asked me if I would like to go overseas. I told him I would and the Court Martial

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

charges were dropped and I was given detention instead. I was put on draft and left for overseas. By this time I was deeply in debt but as my troubles seemed to have been settled, I intended to soldier now that I was overseas. I got along fine for the first eight months and then I got mixed up with a woman and went absent. I was put in detention and when I got out I applied for leave to visit my relations. This was refused and I came down to the field unit in the next draft. I got drunk in Horsham one Saturday night and when I woke up I had over stayed my pass by ten hours. I intended going absent to visit them. When I got there I found that my girl freind was pregnant and she accused me of being the father. I did not think that I was and stayed on there trying to prove that I was not. After all the trouble I had had at home I did not want the same sort of thing to start all over again here. I was arrested by the police but I think I can prove now that the child w was not mine.

I hope that my personal trouble will explian to some extent the reason for my conduct. I volunteered for service (active) in the first year of the war and have two brothers in the army. I want to take my punishment and then get into action as soon as possible

Your obedient servant,

Pte Dunn Ed
K 53096

"C"

[illegible]

No. K53096 Name Dunn E W | Sqn., Battery, or Company | Corps | Date of enlistment 20-1-40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /8136 (2068)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. J.O. Gross Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order disposing with trial	By whom awarded	Remarks
Current Bks.	26-6-41	Pte		2 AWL 0200 hrs 26-6-41 until apprehended by military authorities in Vancouver at 1115 hrs 27-6-41. Absent 1 day 11 hrs 15 mins. Cost of apprehension allowed $2.61	See previous Sheet.				
Current Bks.	26-6-41	Pte		Causing by neglect articles of his clothing & Kit Necessaries & equipment to be lost to extent of $18.22	C.S.M. Smith, Cpl Brennan	Admonished	21-6-41	J.W. MacDonald Major	Placed under stoppages to make good value of deficiencies $18.22
Current Bks.	12-7-41	Pte		Detention, A.W.L. from 0700 hrs 12-7-41 until apprehended at Vancouver B.C. at 1930 hrs 19-8-41. Absent 38 days 12 hrs 30 mins. (over)					

(P.T.O.)

No. K53096 Name Dunn E W | Sqn., Battery, or Company | Corps | Date of enlistment 20-1-40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /8136 (2068)

Date of last entry in Company Conduct Sheet 2-7-40 | No. and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. A. Dobson Lieut | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order disposing with trial	By whom awarded	Remarks
				Shut destroyed 19-7-40					
Current Bks.	17-7-40	Pte	1	Drunkenness (1st Offence)	Cpl Corrigan W. Lt Hutchison	admonished 3 days C.B.	19-8-40	A.D. Wilson Lieut	
Current Bks.	17-7-40	Pte		(1) AWL from 0600 hrs 31-8-40 till surrendered at Vancouver B.C. at 2200 hrs 15-9-40 Absent 15 days 16 hrs (2) Breaking out of Barracks whilst under open arrest (3) Loss of clothing & Kit Necessaries cost of Compensation $37.65	Sgt Boyce R.A. C.S.M. Beckett	28 days Detention	15-10-40	F.M.W. Harvey Lt Col	7 of 28 days Pay F.R. 41. Cost of app. $7.65 placed under stoppages to make good $5.25
Current Bks.	1-7-41	Pte	2	(1) Drunkenness County Vancouver (2) Disobedience of good order & military discipline in that when placed on C.F.R. drunk & incapable & ordered by Sgt Mills to his quarters, he failed to do so.	Sgt Mills Cpl Goodale Cpl Hancock L/Cpl Barker	14 days detention Finished 5-00	22-7-41	E.R. Knight Lt Col.	7 of 7 days Pay F.R. 53. Placed under stoppages to make good cost $

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
(cont'd)				2. Losing by neglect articles of clothing to the value of $22.97	Pte 11 274	168 days Detention	24-11-42	D C M M.D.13	7 of 28 days pay F.R.41 Placed under stoppages of pay to cover cost of app. $14.23 Placed under stoppages of pay to value difference of lot 4 value 22.97
Avonmore Bchs	11-3-42	Pte		1. A.W.L. from 2200 hrs 31-3-42 till 2340 hrs 19-4-42. Absent 19 days 1 hr 40 min 2. Losing by neglect clothing & Right 1 serviceman's A value of $4.76 3. Cost of return to unit $1.53	Capt H.S Clarke C/Sgt Duncan Capt Smith C/Sgt Mc[illegible]	28 days detention	4-7-41	A/Col [illegible]	7 of 20 days pay 1941/47 (1)(a) 7 of $4.76 was ord 137 cost of appreh $1.53

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
(cont'd)				2(a) Without leave left the city of Calgary without permission					Apprehension $2.50
				3. A.W.L. from 2130 hrs 1-7-41 to 1504 hrs 12-1-41 (absent 6 days 17 hrs 30 mins)	Capt Rolland Capt Deering Capt Ball	(See other charge)			
Avonmore Bchs	23-7-41	Pte		1) Absent without leave from 2200 hrs 17-7-41 until arrested by military authorities at Vancouver at 1930 hrs 20-7-41 (100 hrs 30 mins) 2) Breaking arrest on 2-8-41 3) Absent without leave from 2200 hrs 2-8-41 until apprehended by military authorities in Vancouver at 2200 hrs 10-8-41 (Absent 8 days)	Lt Rountree Documentary	28 days detention	23-8-41	A/Col E R Knight	7 of 3 days pay under FR41 1 charge 7 of 5 days pay FR41 2nd charge Placed under stoppages $79.70 cost of apprehension
	10-8-41			Total absent 10 days 21 hrs 30 mins					
Avonmore Bchs	2-6-41	Pte		1) Left unit and absented himself without leave from 0200 hrs 2-6-41 until apprehended by military authorities in Vancouver at 0015 hrs 9-6-41 Absent 6 days 23 hrs 15 mins	Lt Rountree Pte Constable Documentary	28 days detention Placed under stoppages $72.21 commencement of	17-6-41	Major H J Fairclough	7 of 7 days pay FR41

M.F.M. 6
(A.F. B.122)
40/P & /S136 (2965)

No. K53096 Name Dunn, E W | Sqn., Battery, or Company | Corps | Date of enlistment | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5 Aug 43	Pte		AA Sec 15(1) WOAS, AWL from 2300 hrs 5 Aug 43 to 0600 hrs 6 Aug 43. absent 7 hrs	Cpl McFarland	7 of 3 days Pay	6 Aug 43	Major V Stott	7 of 1 days Pay 1 R & I

"Certified True Copy"

R W Ross Lieut & A/Adjt.

THE CALGARY HIGHLANDERS

R Monowat Major

(P.T.O.)

(Substitute for A.F.B. 296)
or M.F.B. 345.

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF THE ACCUSED

No. K 53096 Name Pte. Dunn, E.W. Unit The Calgary Highlanders

Age 30 Married or Single married No. of Dependents nil

Date of Attestation 20 Jan. 1940

No. of Days spent in Close Arrest (To date of Trial)

Civil 30 Military 17 Oct Hospital Nil Total

Date of Promotions, Appointments and Confirmations of Rank, if any

A Certified True Copy of M.F.B. 6 must accompany this form.

R W Rose Lieut & Adjt
Adjutant
The Calgary Highlanders

Dates at

This day of 1943
(To be dated and signed as of date of trial).

C
R Monroe Maj

HH-139
PTE DUNN E.W.

Correspondence to be PINNED here.

C.37587 Pte. Dunn, E.W.
1 Cdn A.S.C. R.U.
BGHQ 5-6-2/218 HH-139

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 14th day of JUNE, 1943.

Whereas it appears to me, the undersigned, an officer in Command of B GROUP, CANADIAN REINFORCEMENT UNITS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers ~~hereunder named~~ appointed or detailed hereunder:

* Omit if not applicable.

~~*(1) Three Officers to form the Court.~~

~~*(2) A Field Officer as President.~~

~~*(3) Three Officers having more than one year's service.~~

~~for the following reasons, namely:—~~

Proceedings Reviewed

for [signature] 10 Jul 43

President.

Rank.	Name.	Regiment.
Major	A.S. Pettapiece	HQ CRU

Members.

Rank.	Name.	Regiment.
Captain	from	1 C.S.R.U.
Lieutenant	from	1 CERU

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (P.R. Shields) Brig

Commanding "B" Gp Cdn Ft Units.

Convening Officer.

Arthur S. Pettapiece, Major

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C-37587 Pte DUNN, Ernest Williard 1 CASCRU	First Charge A.A. Sec.11	Guilty	Guilty	I confirm the finding and sentence of the Court but commute the sentence to one of ninety (90) days detention
	Second Charge A.A. Sec. 40	Guilty	Guilty	
	Third Charge A.A. Sec. 10(3)	Guilty	Guilty	
	See Charge Sheet Attached			

Sentenced to be imprisoned with hard labour for nine (9) months
16 Jun 43
Arthur S. Pettapiece Major

P.R. Dunn
19 Jun 43 Brig

~~Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—~~
~~"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"~~
~~Answer (to be recorded on separate sheet if necessary):—~~

(Signed) P.R. Dunn (P.R. Shields) Brig
Commanding "B" Gp Cdn Rft Units
Convening Officer (c)

(Signed) Arthur S. Pettapiece, Major
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 16th day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
~~2. The witnesses~~
~~*(3. The interpreter)~~
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 16th day of June 1943.

Arthur S. Pettapiece, Major
President of the Court Martial.

C. Certificate in case of death sentence.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~President of the Court Martial.~~

* See footnote (b) on page 762 M.M.L. 1929.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 19 day of Jun 1943.

P.R. Dunn Brig
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 21 June 43 (Signed) [signature] Brig

Promulgated and extracts taken in the case of

(Dated) Do 151 S/B June 43 (Signed) [signature] Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, C-37587 Pte. Ernest Williard DUNN, RCASC, 1 Cdn ASC Rft Unit, a soldier of the Cdn. Army, Overseas, is charged with:

WHEN ON ACTIVE SERVICE

1st Charge
A.A.
Sec.11

NEGLECTING TO OBEY REGIMENTAL PART 1 ORDERS ISSUED BY 1 CDN ASC RFT UNIT

in that he,
at Aldershot, Hampshire, on 2nd June 43, at approximately 1650 hrs, did sell Canadian cigarettes marked "Gifts to Canadian Troops on Active Service only, and not for re-sale", contrary to Daily Part 1 Order No. 135 and 136, dated 15th and 16th May, 1943.

WHEN ON ACTIVE SERVICE

2nd Charge
AA
Sec.40

AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,
at Aldershot, Hampshire, on 2nd June 43 at approximately 1650 hrs, used Improper language to members of the Corps of Military Police when asked to produce his pay book, M.B.1.

WHEN ON ACTIVE SERVICE

3rd Charge
A.A.
Sec.10(3)

RESISTING AN ESCORT WHOSE DUTY IT WAS TO HAVE HIM IN CHARGE

in that he,
at Aldershot, Hampshire, on 2nd June 43 at approximately 1650 hrs, while under escort of the Corps of Military Police resisted the escort by kicking and struggling.

(H.P.Bonnick) Lt-Col.
Commanding, 2 Trng. Wing,
1 Cdn ASC Rft Unit.

Farnborough, Hampshire,
6th June 43

To be tried by Field General Court Martial.

14 June 43

(T.B. Shields) Brig
Comd
B Gp Cdn Rft Units.

Major
President

Medical Officers' Certificate.
K.R. (Can.) Para 557

I certify that I have this morning examined NO. 637587 Pte Dunn E.W.

of H.L. Edn. A.S.E. (R.U.) and in my opinion he is fit to undergo

~~unfit~~

trial by court martial.

Station. Field

Date. ~~12-6-43~~ 16-6-43

Sgd. [illegible]
(Medical Officer)

Arthur S. Pettapiece, Maj'or

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Blenheim Barracks, Farnborough, Hants
ON THE 16th DAY OF June 1943

The accused. C 37557 Pte Hamm E.W. Unit. 1 C.A.S.C.R.U. .....

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President. Maj. A. S. Pettapiece .....Unit. H.Q.C.R.U. .....

Members. Capt. H. H. McLean .....Unit. 1 C.S.R.U. .....

.....Lt. P. C. Fuller .....Unit. 1 C.C.R.U. .....

The officers under instruction are duly sworn:-

.....Lt. R. S. McArthur .....Unit. 1 C.A.S.C.R.U. .....

.....Lt. J. Van Doornick .....Unit. 1 C.C.R.U. .....

Prosecutor. Lt. D. L. Swanney .....Unit. 1 C.A.S.C.R.U.

Defending Officer. Lt. S. A. Ames .....Unit. 1 C.A.S.C.R.U. .....

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, ~~AFB 296~~ and MFM 6. AHP
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

~~(a) Makes a statement in mitigation of punishment.~~ AHP
~~(b) Calls witnesses as to character.~~ AHP
~~(c) Calls witnesses in mitigation of punishment.~~ AHP
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

~~SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and~~ ADDRESS OF ~~ACCUSED OR~~ HIS DEFENDING OFFICER AHP

---

attached hereto.

Arthur S. Pettapiece
Major

Field General Court Martial 16 Jun 43

C-37587 Pte Dunn E. M.

Sir, I would just like to mention a few points that evidence does not bring out.

1. The lad is just twenty, having joined the army as a boy of eighteen.
2. He, did not pick out his companions wisely, consequently he has lost pay from AWL charges.
3. Owing to the loss of pay, he has been unable to take leave.
4. Since being under close arrest, he has been a model prisoner.
5. In closing, I might say that I have had the opportunity of talking with this lad. He realizes now what the loss of pay means, and has given me his word that when he gets his pay book balanced, will keep it that way. He knows now that he has to soldier in order to get his leave. I sincerely hope, the court will take these points into consideration and treat this lad leniently.

J Adams Capt.

CANADIAN PROVOST CORPS.

EXHIBIT "B"

Exhibit and Property Report No.

COMPANY: D.A.P.M. FORMATION: H.Q., C.R.U.

FILE NO.:

DATE: 3 JUN 43. PLACE: FARNBOROUGH, HANTS.

SUBJECT:

C-37587 PTE DUNN, E.W.
Alleged sale of duty-free cigarettes

The property described below came into our possession on 3 JUN 43.

At: FARNBOROUGH, Hants. By: C.M. Police

ITEM NUMBER	DESCRIPTION OF PROPERTY
	2 packets "Sweet Caporal" cigarettes

F.B. Creasy
(F.B. Creasy) Capt.
D.A.P.M.,
CANADIAN REINFORCEMENT UNITS.

The property described above has been disposed of delivered by hand to Adjt 1 CASCHU to be used as Court exhibits in the a/m case.

At: FARNBOROUGH, Hants. On: 3 JUN 43. By:

Receipt/~~Issue~~ of the property described above is hereby acknowledged/~~certified~~

WITNESS: SIGNATURE OF RECIPIENT:

C.M.H.Q./1000/124
40-P & R/1343 (10-42)

Certified True Copy.
of original order in my possession.

1 CANADIAN ARMY SERVICE CORPS REINFORCEMENT UNIT OIC Records.
1 CASCRU.CA(0).

CANADIAN ARMY OVERSEAS

D.O. 135 & 136
15 & 16 May 43

Daily Part 1 Orders

D.O. 135 & 136
15 & 16 May 43

Issued by

Colonel J.H. Rocock, Commanding

---

1. DUTIES

Field Officer	15 May 43		Major	V.R.	Jones
Field Officer	16 May 43		Major	L.C.	Parkinson
Field Officer	17 May 43		Capt.	W.B.	Kelly
Duty Officer	15 May 43		Lieut.	J.	Rayson
Duty Officer	16 May 43		Lieut.	G.A.	Smith
Duty Officer	17 May 43		Lieut.	J.J.	Richardson
Orderly Officer	15 May 43		Lieut.	F.M.	Winch
Orderly Officer	16 May 43		Lieut.	J.A.	Whitelaw
Orderly Officer	17 May 43		Lieut.	A.R.	Svanson
Camp Sgt/Major	15 May 43		S/Sgt.	L.J.R.	McLeod
Camp Sgt/Major	16 May 43		S/Sgt.	L.J.R.	McLeod
Camp Sgt/Major	17 May 43		MQMS	W.R.	Lorimer
Orderly Sgt	15 May 43	D.91363	Sgt.	F.	Berry
Orderly Sgt	16 May 43	A.9613	Sgt.	J.A.	Brunet
Orderly Sgt	17 May 43	A.9556	Sgt.	J.	Patient

The Duty Officer of MT Coy will be Regimental Blackout Officer 15 May 43 and the Duty Officer of No.1 Coy will be Regimental Blackout Officer 16 May 43. The Regimental Blackout Officer will be personally responsible for preventing the display of any unauthorized lights during Blackout time. MT Coy will detail one 8 cwt to report daily to R.H.Q. at Blackout time for use of Blackout Officer.

DUTY COMPANY

No.1 Coy will be Duty Coy for week ending 0600 hrs 24 May 43.

DUTIES	NCOs	ORs	TOTAL
(a) L.M.G. - as detailed in Part I Orders D.O. 99 d/10 Apr 42.	1 Cpl	8	9
(b) MT PICQUET, RHQ PATROL & GUARD PICQUET - to patrol from 1700-0600 hrs daily.	1 Sgt & 2 Cpls	33	36
(c) FATIGUES - All fatigues as detailed by R.S.M. in accordance with list issued by R.S.M. No other fatigues will be detailed without having been approved by the R.S.M's office.			

AIR DEFENCE COMPANY

No.3 Coy will be A.D. Coy for week ending 1830 hrs 24 May 43.

DUTIES	NCOs	ORs	TOTAL
(a) A.D. CENTRE - as detailed in Part 1 Orders D.O. 302 & 303 d/31 Oct & 1 Nov 42.	9 Cpls	48	57

NEXT FOR DUTY COMPANY

No.2 Coy will be Duty Coy for week ending 0600 hrs 31 May 43.

2. PARADES

Reveille.....0600 hrs
Sick Parade.....0700 hrs
Retreat.....1900 hrs
Tattoo Roll Call.....2200 hrs
Lights Out.....2215 hrs

BLACKOUT TIMES

Commences at....2228 hrs

Ends at.....0524 hrs

3. GAS DUTY SERGEANT

M-42613 Sgt Weir, R., of No.6 Coy will be on Gas Duty from 1300 hrs 17 May 43 to 1300 hrs 24 May 43. He will perform the duties as laid down in D.O. 267 & 268 d/26 & 27 Dec 42.

(tumble)

4. DUTY MEDICAL OFFICER

Capt. W.S. Woolner will be Duty Medical Officer from 0700 hrs 18 May 43 to 0700 hrs 25 May 43 inclusive. He will perform the duties as laid down in D.O. 340 para 3 d/8 Dec 42. Capt. A.D. MacDonald will be next for Duty Medical Officer.

5. FATIGUES

1. In future all fatigues will be handled as follows:-

Fatigues for:

(a) Officers', Sergeants' and Men's Messes will report direct to Wing S.M. Office at 0630 hrs daily.

(b) Fatigues for N.A.A.F.I's will report at 0730 Hrs daily to Wing S.M. Office.

(c) All other fatigues will report at 0800 hrs daily.

(d) Guards will be paraded to respective duties direct from Coys. A nominal roll will be sent to the R.S.M's office by 1600 hrs daily of men on guard and the area they are guarding.

(e) Fatigue State Nominal Roll Form - copies for R.S.M., Wing S.M. and Coys.

2. In future all N.C.O's in charge of fatigues will make a nominal roll and will call the roll twice in the morning and twice in the afternoon.

6. AIR DEFENCE AUXILIARY DETAIL

1. A.D. Auxiliary Detail will consist of 1 Sergeant, 3 Corporals and 4[illegible] Privates, which will be supplied by the Company second on the Duty Roster after the Duty Coy.

2. The detail will parade with a Nominal Roll made out on correct forms, under the Sergeant i/c to the A.D. Centre, Malplaquet Barracks, at 1830 hrs daily and will there be turned over to the A.D. Sergeant and will remain as long as required for training.

DRESS: Battle Dress and Steel Helmets.

3. Tour of Duty will be one week, commencing at 1830 hrs each Monday. Personnel will not be changed unless authorized by R.H.Q.

4. Detail will be inspected, at the A.D. Centre, by the Regimental Orderly Officer or Duty Officer at 1830 hrs daily.

5. Personnel to be C.B. each night during tour of duty but will carry out normal duties of training during the day. Coy Commanders will ensure that at least 50% of detail are present in the barracks area from Reveille to 1830 hrs.

6. Sergeant in charge of detail will sleep at the A.D. Centre and will be responsible for the mobilization of the detail in the event of an emergency.

7. Personnel under sentence of F.P. or C.B. will NOT be detailed for this duty.

7. COMMITTEE OF ADJUSTMENT

A Committee of Adjustment composed of the undermentioned officers will assemble forthwith for the purpose of reporting upon, after collecting, making inventories and disposal of the effects, government clothing, etc., of the late, C-1159 Pte. Frizzell, E.D., deceased, whose death occurred 1345 hrs 2 May 43 at Stafford General Infirmary, and whose religion was C. of E.

Major	D.B.	Morrison	-	President
Lieut.	W.F.	Rhodes	-	Member
Lieut.	J.M.	Porrier	-	Member

The provisions of F.R. & I. Article 831 will be complied with. Proceedings on M.F.B. 303 (in triplicate) with exhibits attached to be submitted to R.H.Q. without delay.

8. INTERCOMPANY POSTINGS

Capt. J.M. Snowball SOS No.4 Coy TOS Offrs Pool

(cont'd)

8. INTERCOMPANY POSTINGS (CONT'D)

B-3430	Pte.	Wakefield, C.	SOS No.5 Coy	TOS No.1 Coy
F-78201	Pte.	Crane, F.	SOS No.5 Coy	TOS No.1 Coy
B-89619	Pte.	Chousky, N.	SOS No.2 Coy	TOS No.1 Coy
L-64883	Pte.	Bespflug, J.	SOS No.3 Coy	TOS No.6 (Hold)
E-49434	Pte.	Ouellet, P.E.	SOS No.3 Coy	TOS No.6 (Hold)
C-35208	Pte.	Perry, S.	SOS No.5 Coy	TOS CB Wing
B-38437	Pte.	Bradley, R.E.	SOS No.5 Coy	TOS CB Wing

9. EDUCATIONAL LECTURE
1. A lecture will be given by the Countess of Listowell at 1400 hrs 26 May 43 on "Occupied Europe".
2. Further instructions will be issued to Wing Commanders at a later date.

10. CHURCH PARADES - SUNDAY 16 May 43 - DIVINE SERVICE
D.O. 134 para 5, sub-para 1, d/14 May 43 is amended by: Delete 0845 hrs and Sub 0915 hrs; Delete 0920 hrs and Sub 0930 hrs.

11. DRESS, OFFICERS AND OTHER RANKS - MODIFICATIONS
1. Overseas R.O. 123 is hereby amended as follows:-
Delete detail of para 2 (f), insert:-
"During the summer months (i.e., 1 May-30 Sep) O.R's wearing battledress may wear the collar of the blouse open (top hooks and one button only) when walking out, and at the discretion of the commanding officer on other occasions, except on ceremonial parades."
2. Overseas R.O. 2234 and 2275 are hereby cancelled.
(Overseas R.O. 3415)

12. ILLEGAL SALE OF GIFTS FROM CANADA
1. The British Government agreed to allow gifts for the Cdn Army to enter the United Kingdom, free of duty, on the distinct understanding that these gifts were for personal use and NOT for re-sale.
2. The number of cases of re-sale of gifts, particularly cigarettes and tobacco, are increasing to such an extent that the British Treasury have made representations that unless the practice is discontinued, they may have to reconsider their decision regarding duty free entry.
3. The effect of a decision of this nature is obvious and the attention of all ranks is drawn to the fact that they are liable to lose this privilege, which is now enjoyed through courtesy of the Government of the United Kingdom (Overseas R.O. 635)
4. The sale, or any disposal on a commercial or barter basis in the United Kingdom by military to other military personnel or a civilian person or corporation of any gift or gifts to an officer or soldier of the Canadian Army or for distribution to the personnel of a unit of the Canadian Army, which have entered, or are commonly known to enter, the United Kingdom, free of duty, is hereby forbidden. (Overseas R.O. 960)
5. It is emphasized that the privilege extended by the British Government was only in respect of cigarettes or tobacco sent from Canada for personal use, i.e., consumption by the recipient himself and other dealings by recipients with cigarettes or tobacco from Canada is hereby forbidden. The sharing of cigarettes or other gifts with other Canadian Army personnel and the free distribution by C.O's or other individuals of such gifts among Cdn Army personnel are exempted from the provisions of this order.
6. The use of Regimental Funds for the purchase of cigarettes or tobacco in Canada for delivery in the United Kingdom, and the sale of any duty free cigarettes or tobacco in messes and canteens are also contrary to the privilege extended by the British Government, and are hereby forbidden (Overseas R.O. 1360 & 1659)

Certified true copy of D.O. 135 & 136
[illegible]
Officer Re Records
Cdn. A.S.C. Reinf. Unit

(cont'd)

12. ILLEGAL SALE OF GIFTS FROM CANADA (CONT'D)

7. Any contravention of this order will be severely dealt with under Section 11 of the Army Act.

13. DISCIPLINE - SAFETY PRECAUTIONS TO BE OBSERVED BY TROOPS WALKING OUT DURING THE HOURS OF DARKNESS

1. Owing to the regrettable number of accidents, involving loss of life, which have occurred during the hours of "Blackout", it is considered desirable that the attention of all ranks should be drawn to the necessity of taking the normal precautions when walking in public thoroughfares at night when off duty or on duty as individuals. It should be pointed out that drivers of vehicles are often unable to see pedestrians, particularly those dressed in khaki, in sufficient time to avert an accident.

2. In places where no footway is in existence and it becomes necessary to walk in a roadway, pedestrians should walk on the right hand side of the road, i.e., against the oncoming traffic and not on the left hand side, where there is always the danger of being run down from the rear by overtaking traffic.

3. All traffic signals must be observed and thoroughfares crossed only at the appointed pedestrian crossings, when these are available.

(R.U.R.O. 1049)

R
L
W

(J.H. Pocock) Colonel,
Commanding,
1 Cdn A.S.C. Rft Unit.

SUMMARY OF EVIDENCE

In the case of,

C-77567 Pte. Ernest Willard DUNN, RCASC, 1 Cdn ASC Rft Unit, Blenheim Barracks, Farnborough, Hampshire.

The Commanding Officer, Colonel J.M.Pocock, 1 Cdn ASC Rft Unit, directs that the evidence be taken on oath.

1st Witness For the Prosecution

Number 106[illegible]6 L/Cpl Salter, A., 15d Provost Coy. C.M.P. Aldershot, having been duly sworn, states:

I am number 106[illegible]6 L/Cpl Salter, A. of 15d Provost Coy. C.M.P. Aldershot.

At Aldershot on the 2nd June 42 at about 1850 hrs, I was on duty on Alisons Road when I saw the accused, C-77567 Pte. Dunn, E.W. Pte. Dunn stopped two soldiers, number illegible Pte. Berbuto, P.C.F. and number illegible Pte. Harrison, T and P.C.F. and offered to sell them Canadian cigarettes.

Whilst approaching this group of three soldiers, I saw the transaction take place and when I got here I asked Pte Dunn "Is you selling Canadian cigarettes." He replied, "What the hell's that got to do with you."

I then asked Pte. Berbuto and Pte. Harrison where they had obtained their cigarettes which they were holding in their hands and they replied, "We have just bought a package each from this Canadian soldier for two shillings a pack". These cigarettes were marked on the outside of the package, "Sweet Caporal".

I ordered Ptes Harrison and Berbuto to surrender the cigarettes to me which they did.

I then ordered Pte. Dunn to produce his M.B.I [illegible] replied, "I will when you make me my fucking [illegible]". I then ordered him to accompany me to the C.M.P. Barracks when I said to myself, "You will accompany me", when he turned round to me and said to me, "If you have to do something about it, I will". I then said to him, "If you have to do something about it, I will" and he replied, "I will when you make me my fucking arm I'll come quietly".

This was done and as we walked along Alisons Road in order. As we entered Provost Road, Pte Dunn suddenly turned and ran away. I gave chase with L/Cpl Estell and Sgt. Peppy who was also in the vicinity. The soldier ran across St. George's Church parade ground in the direction of Transport Road. I blew my whistle and attracted the attention of number illegible Pte. Mills, G., "B" Coy. Army Catering Corps, Bk. Cher Barracks, Aldershot who was proceeding along Transport Road in the direction of Queen's Avenue. Pte Mills also gave chase and caught and held the soldier until L/Cpl Estell and myself arrived and took hold of him. The above mentioned soldier violently resisted arrest by struggling and kicking me in the leg, thereby causing damage to my W.D. S.D. Trousers, also an abrasion of my left leg which I received first aid treatment at the Buller Barracks M.I. Room.

On reaching the duty room C.M.Police Barracks, the above mentioned soldier said, "Don't worry I shall get away with this". The C.M.Police Duty Sergeant was ordered and the soldier conveyed under military police escort to Blenheim Barracks Guardroom where he was handed over to the R.C.O. i/c Regimental Police to be detained.

The accused declines to cross examine the witness.

.....A Salter.....

Number L/Cpl Salter, A.

SUMMARY OF EVIDENCE in the case of C-37587 - Pte. DUNN, E.W.

Further statement of evidence given by the 1st Witness for the Prosecution, Number 1064386 L/Cpl Salter, A. 158 Provost Coy., C.M.P. Aldershot.

1st Witness for the Prosecution

Number 1064386 L/Cpl. Salter, A., 158 Provost Coy. C.M.P. Aldershot, having been duly sworn, states:

I am number 1064386 L/Cpl Salter, A. of 158 Provost Coy., C.M.P. Aldershot.

The two packages of Sweet Caporal cigarettes referred to in my evidence were marked as follows:

One package: Bears the signature of Pte. Harrison from whom I confiscated them, the signature of L/Cpl Estell of the C.M.P. and my own signature.

One package: Bears the signature of Pte. Berbuto from whom I confiscated them, the signature of L/Cpl Estell of the C.M.P. and my own signature.

Both packages were stamped by me with the Orderly Room Stamp of the Assistant Provost Marshall, Aldershot Area, dated 3rd June 1943.

These two packages of Sweet Caporal cigarettes are presented as Exhibit "A", and I now recognize them as the packages confiscated by me from Ptes. Harrison and Berbuto

The accused declines to cross examine this witness.

A Salter L/Cpl
.....
1064386 L/Cpl Salter, A.

Further statement of evidence given by the 2nd Witness for the Prosecution, Number 7689749 L/Cpl Estell, J 158 Provost Coy. C.M.P. Aldershot.

2nd Witness for the Prosecution

Number 7689749 L/Cpl Estell, J. 158 Provost Coy. C.M.P. Aldershot, having been duly sworn, states:

I am number 7689749 L/Cpl Estell, J. 158 Provost Coy. C.M.P. Aldershot.

The two packages of Canadian Cigarettes referred to in my evidence were confiscated from Pte. Harrison and Pte. Berbuto by L/Cpl Salter, A. which I signed as a means of identification and are now presented as Exhibit "A", and which I now recognize.

The accused declines to cross examine this witness.

J Estell L/Cpl
.....
7689749 L/Cpl Estell, J.

2nd Witness
for the prosecution

7689749 L/Cpl Estell, J. 158 Provost Coy C.M.P. Aldershot, having been duly sworn states:

I am 7689749 L/Cpl Estell, J. of 158 Provost Coy C.M.P. Aldershot. At Aldershot on 2 June 43 at approximately 1850 hrs I was on duty on Alisons Rd. in company with L/Cpl Salter, and was proceeding along Alisons Rd. in the direction of Queens Avenue wh n I saw the accused whom I now recognize as Pte Dunn, standing on the corner of Marsh Rd. and Alison Rd. As we approached him I saw him stop two soldiers and appear to offer for sale Canadian cigarettes. As we approached these soldiers I saw the exchange of cigarettes and money.

L/Cpl Salter asked the accused soldier if he was selling Canadian cigarettes. He replied " What the Hell's that got to do with you". L/Cpl Salter then ordered Pte Dunn to produce his M.B. 1. Whilst doing so L/Cpl Salter confiscated the cigarettes which were then in the hands of Ptes' Berbuto and Harrison.

Pte Dunn refused to obey this order to produce his M.B. 1 and stated " I will when I get my fucking fags back". L/Cpl Salter then ordered the accused to accompany us to the C.M.P. Barracks. He refused to do so and it became necessary for us to take hold of him. We each took hold of an arm and the accused then stated " If you let go my arms I will walk quietly with you". This was done. We proceeded along Alison Rd. and had just turned the corner into Provost Rd. when the accused turned and ran away.

He ran in the direction of St. George's Church cutting across the parade ground. I also blew my whistle which attracted the attention of Pte Mills who was on Transport Rd. He held the accused soldier until we arrived.

The accused violently resisted us by struggling and kicking. We brought him to the C.M.P. Barracks where he was detained until charges were laid and read to him. At that time he stated " Don't worry I'll get away with all this ",

The accused declines to cross examine the witness.

J. Estell L/Cpl
7689749 L/Cpl Estell, J.

3rd Witness
for the prosecution

14553599 Pte Berbuto, P.C.F. "X" Coy RASC Buller Barracks Aldershot having been duly sworn states:

I am 14553599 Pte Berbuto, P.C.F. of "X" Coy RASC Buller Barracks Aldershot. On the corner of Alisons and Marsh Lane at 1850 hrs on the 2 June 43 I was walking with a friend No 14537652 Pte Harrison, T., of my Coy, when we were stopped by a Canadian soldier who I recognize as the accused Pte Dunn.

The accused stopped us and asked us if we would like xx xxxxsome Canadian cigarettes. I asked him what he meant and he said " Sweet Caporal for 2 shillings a package ". Pte Harrison and I decided to each buy a package which Pte Dunn sold us for two shillings each. The package was white, it bore the name Sweet Caporal, and was of the size containing 25 cigarettes

At this moment two Military Police Corporals arrived on the scene and asked us if we had just bought the cigarettes which we were holding in our hands, and we told them that we had. They took possesion of the two packages and they asked Dunn if he had sold them. Dunn said that it was none of their business. After a scuffle the police took Dunn into custody.

Cross examined by the accused.

Question 1. "Was money mentioned in our conversation?"

Answer 1. " Yes, it was."

Question 2. " Did you give me two shillings for a package of cigarettes?"

Answer 2. " I gave you 2/6 but you had no change, so you returned the two and six after my friend paid you 2 shillings for my cigarettes."

Question 3. " Did you ask me if I had any cigarettes?"

Answer 3. " No."

F.C.J. Berbuto.
.....
14553599 Pte Berbuto, P.C.F.

4th Witness
for the prosecution

14587652 Pte Harrison, T. "X" Coy 12th Trainging Battalion RASC, Buller Barracks, Aldershot having been duly sworn states:

I am 14587652 Pte Harrison, T. "X" Coy 12th Training Battalion RASC, Buller Barracks, Aldershot. At approximately 1850 hrs, on the 2nd June 1943, I was at the corner of Alisons Road and Marsh Lane with Pte Berbuto of my Coy, when the accused whom I now recognize as Pte Dunn asked if we would like some cigarettes. Not quite understanding what he meant we stopped and he told us that we could each buy a package of twenty-five cigarrettes for 2 shillings each.

We agreed to buy them and we each paid Dunn two shillings and he in turn gave us each a package of Sweet Caporal cigarrettes. Just then two C.M.P. Cpls approached us and ordered us to hand the cigarettes over to them which we did.

The police then asked the accused for his Pay-Book and he refused to show it. They then took hold of him and led him away. I accompanied them, and shortly they allowed Dunn to walk without being held. Then after walking about a hundred yards Dunn broke from his escort and run away. I lost sight of him until I again saw him outside the C.M.P. Orderly Room.

The accused declines to cross examine the witness.

T Harrison
.....
14587652 Pte Harrison, T.

5th Witness
for the prosecution

14565591 Pte Mills, G., "B" Coy Army Catering Corps, St. Omer Barracks Aldershot having been duly sworn states:

I am 14565591 Pte Mills, G., "B" Coy Army Catering Corps, St. Omer Barracks Aldershot. At about 1900 hrs on the 2nd June 1943, I was walking down Transport Road in the direction of Queen's Avenue when my attention was drawn by the blowing of whistles. I noticed two M.P.s and a Sgt chasing the accused whom I now recognize as Pte Dunn.

One of the M.P.s called upon me to stop the soldier. I gave chase and caought up with him at the corner of Transport Road and Queen's Avenue. I grappled with him and he fell, and I

held him down until the Police arrived. Upon the arrival of the two M.P. Cpls. Dunn was taken away and the Sgt detained me for my identity.

The accused declines to cross examine the witness.

G. Mills
.....
14565591 Pte Mills, G.

6th Witness
for the prosecution

Lieut. D.L. Swanney, #1 R.C.A.S.C. Rft Unit, C.A.O., having been duly sworn states:

I am Lieut. D.L. Swanney, #1 R.C.A.S.C. Rft Unit, C.A.O., and have knowledge and am custodian of certain documents and articles relative to this case and pertaining to the accused.

I produce herewith:

Exhibit "A"
Two packages of Sweet Caporal Cigarettes, each marked "Gifts to Canadian Troops on Active Service Only, and not for Re-Sale." Each package bearing the stamp of the Assistant Provost Marshall, Aldershot Area, 3 June 1943, bearing the signatures of L/Cpl's Salter, A., and Estell, J.

Exhibit "B"
A Canadian Provost Corps, Exhibit and Property Report, signed on behalf of the D.A.P.M. certifying the receipt of two packages of Sweet Caporal Cigarettes from the C.M.P. in regard to the alleged sale of duty-free cigarettes by C 37587 Pte Dunn, E.W.

H. L. Swanney
.....
Lieut. D.L. Swanney

The accused was then warned in accordance with R.P. (4) (e)

"Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

Ans. I wish to make a statement.

C 37587 Pte Dunn, E.W. #1 R.C.A.S.C. Rft Unit, C.A.O. having been duly sworn states:

I am C 37587 Pte Dunn, E.W. #1 R.C.A.S.C. Rft Unit, C.A.O., at approximately 1850 hrs 2 June 1943, I was standing on the corner of Queen's Avenue and Alisons Road waiting to meet my girl friend when two English soldiers and asked me if I had any fags. I gave them each a package but didnot ask them for any money. They then asked how much I wanted. I said, "Nothing".

Then two M.P.s grabbed the cigarettes out of the hands of the English soldiers and asked me if I was selling them. I told them that I didnot think it was any of their business. They then asked me for my pay-book and I told them that if they would give me back the cigarettes I would give them my pay-book, then they took me by my arms and forced me to go with them. I told them to "lay-off" and they did so. I walked along for a while and then turned back and ran, they chased me and while doing so one of them fell and tore the knee of his pants. He later blamed me for kicking him and tearing his trousers.

When rounding the corner I fell, and an English soldier held

me down until the M.P.s arrived. They took me to the Police Station and charged me.

E.W. Dunn
.....
C 37587 Pte Dunn, E.W.

I hereby certify that the foregoing summary of Evidence was taken down by me in writing the 5th day of June 1943 at No.1 C.A.S.C. Rft Unit. in the presence and hearing of the accused and that R.P. (4) (c) (d) (e) (f) and (g) have been complied with.

D.L. Swanney
.....
Lieut. D.L. Swanney

I, C 37587 Pte Dunn, E.W., desire the assignment of an Officer to represent me at my forthcoming trial by Cpourt Martial. I request the assignment of Major V.R. Jones, No.1 C.A.S.C. Rft Unit.

E.W. Dunn
.....
C 37587 Pte Dunn, E.W.

LIST OF EXHIBITS

Exhibit "A" - Two packages of Sweet Caporal Cigarettes.
Exhibit "B" - CMHQ form 1000:124 - Cdn Provost Corp Exhibit and Property Report Number.

LIST OF WITNESSES

No. 1064386 L/Cpl Salter, A. - 158 Provost Coy C.M.P.Aldershot.
No. 7689749 L/Cpl Estell, J. - 158 Provost Coy C.M.P.Aldershot.
No. 14553599 Pte Berbuto, P.O.F. - "X" Coy RASC Buller Barracks, Aldershot.
No. 14587652 Pte Harrison, T.- "X" Coy. 12th Training Battalion RASC Buller Barracks, Aldershot.
No. 14565591 Pte Mills, G. - "B" Coy Army Catering Corps. St.Omer Barracks, Aldershot.

Arthur S. Pettapiece, Major

Farnborough, Hampshire
6th June, 1943.

No. C37587 Name DunnE.W. Sq. Batty. or Company Corps R.C.A.S.C. Date of enlistment 1-5-41 Sheet No.

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A G.C. Badges Long Service and G.C. Pay N/A Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of Drunkenness	Supplement Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed 1 Nov 41 last entry NIL cases of drunkenness NIL									
Field	2-6-42	Pte		Sec 40 A.A. Conduct to the predjudice etc		14 days C.B. 14 dys pay	6-6-42		
Field	23-9-42	Pte		Sec 40 A.A. Conduct to the Pred. etc		14 days C.B. 14 days pay	23-9-42		
Field	9-1-43	Pte		Sec 15(1) five days AWL		28 dys Det.	20-1-43		
Field	31-3-43	Pte		(1)Sec9(2)A.A. Sec 40 A.A.		28 dys F.P.	1-5-43		

CERTIFIED [illegible] Capt
OFFICER i/c RECORDS.

Arthur S. Pettapiece, Major

Army Form B.122

[P.T.O.

M.F.B. 355
40/F & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C-37567	Pte	DUNN, E.W.	1 Cdn ASC Rft Unit

1. The following is a fair and true summary of the entries in the ~~Service and General~~ ~~Regimental and Squadron, Battery~~ ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	Sec. 15(1)	1 times	Sec. 15(1)	1 times
For	Sec. 40	3 times	Sec. 40	3 times
For	Sec. 9(2)	1 times	Sec. 9(2)	1 times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for~~ ~~[illegible]~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 2/0 days in civil custody, and 14 days in military custody, making a total of 14 days in custody, of which 2/0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 22 years.

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 1 May 1941

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward. N/A

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force
.....dated....., and in his regiment (or corps), the rank of unit
.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number..... Rank.....
Name..... of.....Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
N/A	N/A	N/A	N/A	N/A

Officer i/c Records.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this SIXTEENTH day of JUNE 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

Major.

45.112

PTE DUNN E.W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : C37587 Pte Ernest Willard Dunn 7 Bn 2 C.B.R.D.

	Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd	AA Sec 15(1)	Guilty	Guilty	
3rd	AA Sec 15(1)	Guilty	Guilty	
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

"THW"

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

to undergo detention for two (2) years

(Sgd) ..... Judge-Advocate, if any. 1 Dec 44 Date awarded. (Sgd) "TH White"Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(3), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

[illegible] (1. AA 57. Delete if not used.)

(Sgd) "T.G.Gibson" Brig
Commander
Date 2 Dec 44 Commanding 1 Cdn Base Rft Group
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.		Date.	Signature of Offr.
C37587	Pte Dunn E.W.	4 Dec 44	"E.W.George" Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY
(D.M.Owen) Capt
Cdn Sec GHQ 2 Ech AAI

4F-112

CFA405 (To Dest of AFA3) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of BRIG. T.G.GIBSON Comd 1 CBRG dated 29 Nov 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 37587	Pte	ERNEST WILLARD	DUNN	7 CBRD 2 CBRD

Proceedings Reviewed
"W.P.Taylor" Major
8 Dec 44 AJA
Cdn Sec GHQ 2 Ech AAI.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date) 1 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see forms for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening ... CF 405. For duties and instrs on how to record addresses, evidence, etc, which must hereafter be called "Notes". As to general provisions for conducting the trial see AA 13, RP 36, 63-70, 72, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet [illegible] attached thereto.(1) "THW" The Court is satisfied that it is properly convened and constituted(2), accused is [illegible] amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 103-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [illegible] brought before the Court. At 1005 hours trial commences. "THW"

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) [illegible]

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : Do you [illegible] to [illegible] "THW"

The Interpreter is sworn.(1) Do you object to [illegible]
The shorthand writer is sworn.(1)

(1. RP 72. Delete if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No. (2)

(1. RP 110. 2. If no objection, waiting member returns. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 108, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	T.H.WHITE	3 Bn 1 CBRD
Member	CAPT	S.O.F.EVANS	C Bn INT C 8 Bn 2 CBRD
Member	LIEUT	C. MAJOR	1 Bn 1 CBRD.
[illegible]			"THW"
Prosecutor	CAPT	J.M.TIERNEY	CIC 7 Bn 2 CBRD
Defending Offr	LIEUT	R.G. BRYSON	R.C.S. 7 Bn 2 CBRD "THW"

Questions by President : Is the Prosecutor a lawyer ? Ans. No Is the Defending Offr a lawyer ? Ans. No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused [illegible] before arraignment make(s) (inter) (a) plea [illegible] (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in RsP rank and name of the accused making the plea.) "THW"

A9. The accused is [illegible] arraigned [illegible] on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. "THW"

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused : Do you wish to make a statement ? Ans No.(4)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on No charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on No charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

"THW" B4. On the charge(s) to which the plea(s) of Guilty ~~●~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex E, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1) "THW"

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, Court then proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

(3). The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here: Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....

(*1. RP 115. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 44(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 42, 103(A). See Notes in Part I of Schedule. 2. RP 44(E).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

"THW" D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*) "THW"

E2. The Prosecutor produces Statement[illegible] as to Character and Particulars of Service(1), and certified true copy [illegible] of Conduct Sheet[illegible](2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A.A 165(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex P and Ex Q respectively.(3)

(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in "THW" mitigation of punishment ?(1) Ans Yes.(2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3)(b), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, C 37587 Private Ernest Willard DUNN RCASC, 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Section 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field in Italy, did absent himself without leave from 1430 hours on the 12th day of July, 1944, until apprehended at 2340 hours on the 19th day of July, 1944. Total time absent - 7 days 9 hours and 10 minutes.

SECOND CHARGE
Section 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field in Italy, did absent himself without leave from 1000 hours on the 16th day of August, 1944, until apprehended at 2130 hours on the 27th day of October, 1944. Total time absent - 72 days 11 hours and 30 minutes.

THIRD CHARGE
Section 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field in Italy, did absent himself without leave from 1805 hours on the 6th day of November, 1944, until apprehended at 1730 hours on the 15th day of November, 1944. Total time absent - 8 days 23 hours and 25 minutes.

"THW"

"EW George"
.....
(E W George) Major,
Officer Commanding,
7 Cdn Base Rft Bn,
2 CBRD C M F .

In the field
this 27th day of November, 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Fd
Sa Italy
29th Nov 44

"T.G.GIBSON"
(T.G.Gibson) Brig
Comd 1 Cdn Base Rft Gp
Cdn Army - CMF

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 328, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.37587	Pte		Ernest Willard	DUNN	7 Bn 2 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (*date*) 29 Nov 44 endorsed by me, [illegible], "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]

(RP 106(E). Delete, if none appointed.)

"THW" PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	T.H. White (CIC)		3 Bn 1 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lieut to be detailed by the OC 1 Bn 1 CBRD		
Capt or Lieut to be detailed by the OC 8 Bn 2 CBRD		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by the OC 8 Bn 2 CBRD		

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (*Country.*)

Date 29 Nov 44

"T.G.GIBSON" (*Signed personally. RP 105 fn 2.*)

(T.G.Gibson)

Brigadier (*Rank.*)

Commanding 1 Cdn Base Rft Gp, Cdn Army - CMF.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAAO 12b (4th) of AFAO 40/P & S/16(1) (4/61)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr *(RP 95(C))*, any objections *(RP 95(B))*, and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (or, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. *(RP 95 fn 1.)* If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. *(RP 122.)* If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. *(RP 80(C), 87(C), 92(C) (D).)*

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. *(See RP 41 fn 3, 46 fn 1, 80.)*

(iii) Evidence of witnesses for accused as to facts or his character or both. *(See RP 46 fn 1.)*

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court *(RP 86(B))*, or to prove previous convictions when accused has called witnesses as to character. *(RP 86(C).)*

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. *(See RP 40 fns 8-12, 87(C), 92(C) (D).)* But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. *(When accused charged jointly see RP 61.)*

(vi) Closing address by Prosecutor. *(See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(F), KR Can 565(a).)*

(vii) Summing up by JA, if any. *(RP 82.)*

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. *(On top.)*

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). *(KR Can 587.)*

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. *(As to admitting in evidence a certified copy in lieu of original see KR Can 566). As to certified copies of regimental books see AA 163 (1) (g) (h).)*

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. *(RP 95(D).)* A recommendation for mercy will be inserted in Part 1 of Schedule (*i.e. p 4 after minute of sentence awarded. (AA 53(3), RP 118(C), MML p 759.)*

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

7 CANADIAN BASE REINFORCEMENT BATTALION

Certified that I have examined No C 37587 Rank Pte
Name Dunn, EW and in my opinion is Fit
to undergo trial by Field General Court Martial.

In the Field
this 1 day of Dec 1944

"D.B.McKee" Capt
(Signature of Medical Officer)

Page 1

C-37587 Pte Dunn R.C.A.S.C.

DEFENDING OFFICER
LT R.G.Bryson

Mr President and Members of the Court

In plea of mitigation for the accused, may I point out that he joined the Army in May 41. He arrived overseas in Oct 41 and was eventually sent to Africa in Sep 43. He was with the 5th Field Ambulance Corps at Ortona in Dec of last year. This man desired to be transferred from the R.C.A.S.C. to the Infantry and was paraded to the C.O. of 7 Cdn Base Rft Bn before his last charge of A.W.L. He was refused.

Because he is still willing to transfer to the Infantry I ask the Court to be lenient in handing out his punishment so that he may transfer and go to the front.

"TJBW"

Summary of Evidence in the case of C 37587 Private Ernest Willard DUNN, RCASC, 7 Canadian Base Reinforcement Battalion 2 Canadian Base Reinforcement Depot, a soldier of the Cdn Army Overseas.

The Commanding Officer directs that the evidence will be taken upon oath.

FIRST WITNESS for the prosecution

K 71883 Corporal John Gordon STACE-SMITH, C A C, 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, having been duly sworn states:-

EXHIBIT "B"

"I am Cpl Stace-Smith J G, a clerk in the B O R 7 Battalion. I produce herewith in evidence this Certified True Copy of X-List Royal Canadian Army Service Corps Part II Order Number 113, dated 14 Aug 44, purporting to be signed by Lieutenant W H Laughlin, Cdn Sec GHQ 2 Echelon AAI, and direct attention to page four para 8(a) insofar as it pertains to the accused, Private Dunn E W. I produce also this Headquarters 1 Canadian Infantry Divison Part II Order Number 43 dated 23 Nov 44, purporting to be signed by Officer IC Custody of Regimental Documents, and direct attention to page two para 6(f) insofar as it pertains to the accused, Private Dunn E.W. I produce also this Certificate in accordance with Army Act Sec 163 (1) purporting to be signed by Lieutenant W Baine, Provost Staff Lieutenant 71 Sub-area, insofar as it pertains to the accused, Private Dunn E.W. I produce also this Certified True Copy of X-List Royal Canadian Army Service Corps (A) Part II Order Number 161 dated 23 Nov 44, purporting to be signed by Lieutenant W H Laughlin Cdn Sec GHQ 2 Echelon AAI, and direct attention to Page Three para 5(a) insofar as it pertains to the accused, Private Dunn R.W.

FIRST WITNESS for the prosecution (Cont'd)

Each of these four documents are initialled by me for purpose of identification."

The foregoing statement is read back to this witness in the presence and hearing of the accused:

The accused declines to cross-examine this witness:

"J G Stace-Smith"
.....
(J G Stace-Smith) Corporal

The Part II Order No.113, the Part II Order No 43, the certificate in accordance with Army Act Sec 163 (1) (JJ) and the Part II Order No 161, referred to by this witness, produced, read over to the accused, marked as exhibits A, B, C and D respectively, signed by me and attached hereto.

WARNING TO THE ACCUSED - You may make a statement or give evidence on oath but you do not have to make a statement or give evidence on oath unless you wish, but if you do, it will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on oath and he reserves his defence.

I CERTIFY that the foregoing Summary of Evidence consisting of this one page was taken down in writing by me in the presence and hearing of the accused this 25th day of November, 1944, and that Rules of Procedure 4(C) (D) (E) and (F) have been complied with.

"JM Tierney"
.....
(J M Tierney) Capt & Adjt,
Officer detailed
to take the Summary of Evidence.

In the field
this 25th day of November, 1944.

This is exhibit A referred to in the Summary of Evidence in the case of C 37587 Pte Dunn E.W. RCASC taken before me this 25th day of November, 1944.

"JM Tierney"
.....
(J M Tierney) Capt & Adjt,
Officer detailed
to take the Summary of
Evidence.

"THW"

25 Nov 44.

Certified a TRUE extract from regimental books in my custody.

"W H Laughlin" Lt
(W.H.Laughlin) Lieut
Cdn Sec, G.H.Q., 2nd Echelon, A A I

Last Order No. 112 12 Aug 44	X-LIST ROYAL CANADIAN ARMY SERVICE CORPS Part II Orders Issued by CANADIAN SECTION GHQ 2ND ECHELON AAI	This Order No. 113 14 Aug 44

Page 4

"B" Other Ranks

8. ABSENT WITHOUT LEAVE
(a) from 1430 hrs 12 Jul 44, Apprehended by CMP 2340 hrs 19 Jul 44
C.37587 Pte Dunn E.W. X-4 List(7Bn)

This is exhibit B referred to in the Summary of Evidence in the case of C 37587 Pte Dunn E.W. RCASC, taken before me this 25th day of November, 1944.

"JM Tierney"
.....
(J M Tierney) Capt & Adjt,
Officer detailed
to take the Summary of Evidence.

"THW"

CERTIFIED TRUE COPY

"D.M.Owen" Capt
Officer i/c
Custody of Regimental Documents

Last Order No. 42 16 Nov 44	HEADQUARTERS 1 CANADIAN INFANTRY DIVISION Part II Orders Issued by CANADIAN SECTION G.H.Q., 2nd ECHELON -AAI	This Order No.43 23 Nov 44

Page 2

"B" Other Ranks

6. STRENGTH DECREASE
(f) S.O.S. deserter 7 Oct 44 having been declared illegally absent by Court of Inquiry from 1000 hrs 16 Aug 44 Deficiencies of kit unknown.
C37587 Pte Dunn, E.W.

This is exhibit C referred to in the Summary of Evidence in the case of C 37587 Pte Dunn, E.W.RCASC, taken before me this 25th day of November, 1944.

"JM Tierney"
.....
(J M Tierney) Capt & Adjt,
Officer detailed
to take the Summary of Evidence.

"THW"

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT
SEC 163 (1)(JJ)

I certify that

No C 37587 Rank Pte Name Dunn E.W.
of the ROYAL CANADIAN ARMY SERVICE CORPS
was arrested at PERUBIA at 2130 Hrs.
on the 27th day of October 1944.

Signature of P.M., A.P.M. or other Officer into whose custody the above named person was taken on arrest) "W Baine" Lieut

"THW"

Appointment if any(Provost Staff Lieut)
71 Sub.Area.

Date 27th Oct 44.

This is exhibit D referred to in the Summary of Evidence in the case of C 37587 Pte Dunn E.W., RCASC, taken before me this 25th day of November, 1944.

"JM Tierney"
.....
(J M Tierney) Capt & Adjt,
Officer detailed
to take the Summary of Evidence.

"THW"

---

25 Nov 44. Certified a TRUE extract from regimental books in my custody.

"WH Laughlin" Lt
(W.H.Laughlin) Lieut
Cdn Sec, G.H.Q., 2nd Echelon, A A I

LAST ORDER
No. 160
21 Nov 44

"X-LIST ROYAL CANADIAN ARMY SERVICE CORPS THIS ORDER
Part II Orders issued by (A) No.161
CANADIAN SECTION G.H.Q. 2ND ECHELON A.A.I. 23 Nov 44

Page 3

"B" Other Ranks

5. ABSENT WITHOUT LEAVE
(a) AWL from 1805 hrs 6 Nov 44 App at 1730 hrs 15 Nov 44
C-37587 Pte Dunn, E.W. (7Bn)

Exhibit "F" "THW"

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C37587	Private	DUNN E W (RCASC)	7 Cdn Base Rft Bn, 2 CBRD CMF

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishments being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For AA Sec 19	one	times	two	times.
For AA Sec 15(1)	Nil	times	Seven	times.
For AA Sec 40	ONE	times	sixteen	times.
For AA Sec 11	NIL	times	one	times.
For AA Sec 9(2)	NIl	times	one	times.
AA Sec 10(4)	NIL		one	

[redacted]

"JT"

2. [redacted]

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, [redacted] day of

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 25 days in military custody, making a total of 25 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service [redacted] is

6. The date of his [redacted] attestation specified in his record of service [redacted] is 1 May 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)) C V S M & C

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated N/A and in his regiment (*or* corps or department) the rank of N/A dated N/A

(*2264) W3-31700/387 10,000 10-41 A & E W Ltd. Gp.698
(*5448) W3-12827/431 M.900 5-43

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C37587 Rank Private Name DUNN E W of 7 CBRBn, 2 CBRD Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charge upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge or order of the dispensing authority.	Punishment remitted.
F G C M	16 Jun 43 in the field.	AA Sec 11 Neglecting to obey Part 1 Order 1 CASCHU. AA Sec 40 an acto the prejudice etc using improper language to personnel of the Military Police. AA Sec 10 Resisting an escort whose duty it was to have him in charge.	Imprisonment with hard labour for 9 months. Commuted to Sentence of 90 days detn.	30 days

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1st day of December, 1944

"JM Tierney"
(J M Tierney) Capt & Adjt
7 Cdn Base Rft Bn, 2 CBRD.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of	N/A	N/A
In the rank of	N/A	N/A
In the rank of	N/A	N/A

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, words that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph returned amended accordingly.)

C37587 DUNN E W
No Name

Sqn, Battery or Company: N/A Corps: R C A S C Date of enlistment: 1 May 1941 OC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/PAG/136 (3438)

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc: P Wheeler (?) Character

CERTIFIED TRUE COPY

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24-10-42	Pte		Neglect AA 40 - Neglect to comply with order	Cpl Fortier	7 days C B	29-10-42	Major U R Jones	
Field	30-10-42	Pte		Neglect AA 40 - Neglect to report as defaulter	CSM Thibert	14 days C B 14 days pay	2 Nov 42	Major U R Jones	
Field	30 Dec 1942	Pte		(1) AWL Sec 15(1)AA 5 days 10 hrs 3 min (2)Conduct Sec 40 AA	Sgt Cameron	28 days F P	9 Jan 43	U R Jones Major	
				~~Whilst under close arrest:-~~	Documentary Cpl Fortier	28 days detn	20 Jan 43	U R Jones Major	
Field	18 Jan 1943	Pte		AA SEC 15(1) AWL 14 hrs45 minuts whilst under close arrest.					
Field	2 Mar 43	Pte		(1) Sec 9(2)Disobeying lawful command	L/Sgt Robinsky	28 days F P	31 Mar 43	Lt-col Bantle	
	4 Mar 43	"		(2) Neglect etc Sec 40 AA					
Field	6 Sep 43	"		Breaking out of barracks, broke out of barracks after tattoo roll call on 5 Sep 43 AA Sec 10(4)	documentary	2 days pay	8-9-43	Lt-Col W C Fletcher.	

(PTO)

Exhibit "THW"

C37587 DUNN E W
No Name

Sqn, Battery or Company: N/A Corps: R C A S C Date of enlistment: 1 May 1941 OC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/PAG/136 (3438)

"C" Company Conduct Sheet Date of last entry in No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc: P Wheeler (?) Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Kingston	2-6-41	Dvr		AWL from 2359 hrs 2 Jun 41 until 1300 hours 8 Jun 41. TTA 5 days 13 hrs 1 min.	Cpl Sorivener Dvr Rothwell	6 days pay 14 days detn	9 Jun 41	H Down	
Kingston	16-6-41	Dvr		Was and undergoing detention, bringing contraband i.e.cigarette butts into detention barracks.	Sgt Hale Pte Hale	72 hrs punishment	16-6-41	L M Hughes Major	
Debert	9-7-41	Dvr		Did refuse to get out of his bed at the prescribed hour of reveille (arising at 0650 hrs)	Cpl Sarazen	14 days C B	9-7-41		
Debert	11-8-41	Dvr		Illegal absence - 23 days 19 hrs 1 min	Lt Kirby & Sgt Culler	28 days detn	4-9-41	Capt W G Beamish	
Borden Hants	23-12-41	Dvr		A W L from 2200 hrs 23-12-41 to 2310 23-12-41. TTA 1 hr 10 min.	Sgt Haylock L/Cpl. Letwack	3 days pay forf	23-12-41	Beamish Capt	
Borden	31-12-41	Dvr		Disobeying Coy Pt I Orders-Removing blackout shield and failing to replace same Subordinate to NCO	L/Cpl Letwack Dvr Plante	14 days pay 14 days C B	31-12-41	Beamish Capt	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11 Nov 43	Pte	1	Drunkeness (1st offence) AA Sec 19	Sgt Templeton	forf 28 days pay	29 Nov 43		
Field	21 Nov 43	"		AA Sec 40 disorderly conduct, losing 1 steel helmet, 1 great coat and one pair of boots through neglect.	RQMS Walker CSM Ure	14 days pay	12 Nov 43	J A Noble Lt-col.	
Field	21 Nov 1943	Pte		AWL from 1215 hrs 21 Nov 43 to 0930 hrs 23 Nov 43 TTA 1 day 20 hrs 15 min	Capt Tellard S/Sgt Harvey Sgt Strom	Forf 7 days pay forf 2 days pay 28 days	29-11-43 13 Jan 44	J A Noble Lt-Col J A Noble Lt-col.	
Field	12 Jan 44	Pte	2	Drunkeness(2nd offence)AA Sec 19	L/Cpl Westfield	Field Punishment with loss of pay.			
Field	16 Jun 1943	Pte		AA Sec 11 Neglecting to obey Pt 1 Order 1 CASCRU & AA Sec 40 An act to the prejudice etc using improper language to MPs AA Sec 10 resisting an escort whose duty it was to have him in charge.	Documentary	9 months hard labour commuted to 90 days detn	19-6-43	F G C M	Total forf 104 days pay.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Borden	13-1-42	Dvr		Late for Kitchen duty	Cpl Hopcraft	7 days C B	13-1-42	Beamish Capt	
Borden	23-1-42	Dvr		Conduct to the Prejudice of good order etc - left his post of duty	Cpl McCann Cpl Hopcraft	7 days pay	forf 23-1-42	Beamish Capt	
Field	14 Feb42	Dvr		WOAS leaving his guard without orders from Superior Officer.	Cpl Cartrand Dvr Dugdale Sgt Haylock	14 days C B	17-2-42	Beamish Capt	
Field	28-1-42	Dvr		Neglect to the prejudice of good order etc - through neglect lost his respirator	Capt Shillington Dvr Bannister	3 days C B Stoppage £1-1-0	3-3-42	S R Jones Major Beamish Capt	
Field	13-4-42	Dvr		Neglect to the prejudice of good order and etc in that he did drive WD Vehicle in negligent manner resulting in accident with civilian car.	Dvr Stenchcombe	14 days C B and to pay all or any costs of damage as laid down by Claims Dept			
Field	11-5-42	Dvr		Conduct to the prejudice of good order etc Refused to take up his duties in Mens' Mess Hall when ordered by Cpl Sarazen.	Cpl Sarazen T Cpl Troome HK	7 days pay & 7 days C B	12-5-42	Major Jones	
Field	30 May 42	Dvr		Neglect - Sec 40 - failed to report for parade	Cpl Sobenge	14 days CB & 14 days pay	26-42	Major Jones	

C37587 No | DUNN E W Name | Sqn, Battery or Company N/A | Corps R C A S C | Date of enlistment 1 May 1941 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc P. Wheeler (?) | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8 Oct 43	Pte		A" Sec 15(1) AWL-TTA 2 hrs 10 minutes	Sgt Brannigan Sgt Smith CG	14 days F P & 15 days pay forf	9 Oct 43	Lt-Col McKenna	
Field	12 Oct 43	Pte		AA Sec 40 - Appearing on defaulters parade unshaven.	Sgt Pethick	5 days pay forf	12 Oct 43	Lt-col Mckenna	

CERTIFIED TRUE COPY FROM REGIMENTAL BOOKS IN MY CUSTODY

"JMTierney"
(J M Tierney) Capt & Adjt,
7 Can Base Rft Bn, 2 CBRD.

(PTO)

C37587 No | DUNN E W Name | Sqn, Battery or Company N/A | Corps R C A S C | Date of enlistment 1 May 1941 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/136 (3438)

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc P Wheeler (?) | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3-6-42	Dvr		Neglect-40 - failed to report for parade	Cpl Sobenge	14 days CB & 14 days pay	26-42.		
Field	22-9-42	Pte		Neglect - 40 - Neglect to obey order	CSM LOWE	14 days C B	23-9-42	Major U R Jones	

(PTO)

AA-117

PTE DUNN E.W.

AA-117

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty-third day of March, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 7 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer]~~ HP

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

~~[I am unable to appoint:~~

~~(1) Three Officers to form the Court.~~ HP

~~(2) A Field Officer as President.~~

~~for the following reasons, namely:~~

Proceedings Reviewed 27 Aug 43

Reviewing Officer (IAG) C.M.H.Q.

89

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	R.B. Hobson	R Wpg Rif

Members.

Rank.	Name.	Regiment.
Capt.	W.D. Hewlett	1 C Scot R
Lieut.	G.D. Dickin	Regina Rif
Waiting Member Lieut.	D. Ramsey	Regina Rif

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (H.W. FOSTER) Brigadier,
Commanding 7 Canadian Infantry Brigade.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
K53096 Pte DUNN, Edgar William 1 C Scot R	A.A. Sec. 15 (1) see charge sheet attached	Guilty	Guilty 1 years detention [illegible] May 21 March 43	I confirm the finding and Sentence of the Court but remit six months of the Detention H.F.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) H.W. FOSTER (H.W. FOSTER) Brigadier, *Commanding* 7 Canadian Infantry Brigade. *Convening Officer* (*a*)

(Signed) R.B. ROBSON (R.B. ROBSON) Major, R Regt Rif *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23rd day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

* Omit if not applicable.

*(3. ~~The interpreter~~)

*(4. ~~The officers under instruction~~)

were duly sworn.

Signed this 23rd day of March 19 43

R.B. Robson Major
President of the Court Martial.

C. Certificate in case of death [illegible]

* See footnote (b) on page 762 K.M.L. 1929.

I certify that the ~~terms of *A.C.I. 570 of 1918 have been~~ complied with.

~~Signed this day of 19~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~

Signed this 24 day of March 1943.

H.W. Foster
Confirming Officer.
(H.W. FOSTER) Brigadier,
7 Canadian Infantry Brigade.

Promulgated and extracts taken in the case of K53096 Pte. Dunn E.W.

(*a*) (Dated) 24th March, 1943 (Signed) J.D. Macbeth (J.D. MACBETH) Lt.-Colonel O.C., 1st Bn. C.Scot.R. (AF)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Appendix "A"

MEDICAL OFFICER'S CERTIFICATE

K.R.(Can.) Para. 557

I certify that I have this morning examined

K53096 PTE DUNN, E.W. and in my opinion
Number Rank Name

he is fit to undergo trial by Court Martial.

Date 23rd March/43

Capt. RCAMC
Medical Officer 1 C.Scot.R.(AF)

CHARGE SHEET

B2

The accused, K53096 Private Edgar William DUNN, 1st Battalion, The Canadian Scottish Regiment, (AF), a soldier of the Canadian Army, placed on Active Service in England, is charged with:--

Army Act Sec. 15(1)

ABSENTING HIMSELF WITHOUT LEAVE

In that he

in the Field, was absent without leave from 2359 hours, 24th February 1943 until surrendering himself at unit guard room at 2130 Hours, 10th March 1943. (Total Absence: 13 days 21 hours, 31 minutes.)

(J.D. MACBETH) Lt.-Colonel
O.C., 1st Bn. C.Scot.R. (AF)

In the Field
19th March, 1943.

To be tried by a Field-General Court Martial.

.....
Signature of Convening Officer.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialed by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at In the field on the 23rd day of March 1943 by order of

Brigadier H. W. Foster

Commanding 7th Canadian Infantry Brigade.

dated the 23rd day of March 1943

President.

Major R. B. Hobson. R. W.R.

Members.

Capt. W. D. Hewlett 1. C. Sect. R.

Lieut. G. D. Dickin 1 Regina Rif.

, ~~Judge Advocate~~

Trial of* K 53096 Pte. Dunn Edgar William 1 C. Sect. R.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~

, ~~waiting member takes his place as a member of the Court~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut. A. C. Lundie 1 C Sect. R.

~~Counsel,‡ or~~ defending officer† Lieut. J. P. R. Mollison 1 C. Sect. R.

At 1130 o'clock the Trial commences.

The order convening the Court is read, and is marked A, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4214. WLW1669/78. 25,000 sets. 1943. K. & H., Ltd. G427/11. Forms A 9(1).

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Nil.

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (B) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Nil. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

N. A. *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

N. A. *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

N. A. *Answer.*

The accused having pleaded Guilty to the charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused K53046 Pte Dunn Edgar William is found guilty of absence without leave R.

†The summary (or abstract) of evidence is read, marked "66.1" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:—

see appendix 66.2

[or hands in a written statement, which is read, marked "66.2", signed by the President, and attached to the proceedings.]

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No.

Answer.

Evidence as to character

Summary of evidence in the case of K53096, Pte. Dunn, E.W., 1st Bn., The Canadian Scottish Regt.

By direction of the Commanding Officer, the Summary of evidence is taken on oath.

1st Witness for the Prosecution. K57545 Cpl. Crockett, J.W., 1st Bn., C.Scot.R.(AF), having been duly sworn, states:

"Sir, I am K57545 Cpl. Crockett J.W., and while acting Company Orderly Sergeant on the 25th February 1943 I found that Pte. Dunn, the accused, whom I now recognize, had not returned to camp from his leave, which ended at 2359 hours, 24th February, 1943, when I checked the roll-call at Reveille, 0630 hrs., 25 Feb 43, and he was absent from all roll calls until I turned over my duti to Cpl. Clark, at 1200 hrs. 27 Feb 1943, and he did not return to camp during that time to my knowledge.

J.W. Crockett Cpl
Signature of Witness

The accused declined to cross-examine this witness.

2nd Witness for the Prosecution. K57599 Cpl. Clark, A., 1st Bn., C.Scot.R. (AF), having been duly sworn, states:

"Sir, I am K57599 Cpl. Clark A., and I relieved Cpl. Crockett J.W. of his duties as Company Orderly Sgt. on the 27th February 1943 at 1200 hrs. I found Pte. Dunn E.W. was absent from all roll calls during my tour of duty, of which I was relieved when we left on the exercise Spartan on 28th February at 2100 hrs. He did not return to Camp area at any time while I was Company Orderly Sergeant to my knowledge.

A. Clark Cpl
Signature of Witness

The accused decline to cross-examine this witness.

3rd Witness for the Prosecution. K62011, Sgt. Smith, C.J., 1st Bn, C.Scot.R. (AF), having been duly sworn, states:

"Sir, I am K62011 Sgt. Smith, C.J., and as Platoon Sgt. of No.9 Platoon I called the roll in the morning at 0830 hours and just before moving out of camp at 2100 hours 28 February 1943 on exercise Spartan, and found that the accused, Pte. Dunn E.W., whom I now recognize, to be absent. I called the roll at least once each day and the accused was not present. I did not see him at any time during the exercise SPARTAN. On returning to camp on 13th ~~Feb~~ March, 1943 at Monks Common, I found Pte. Dunn E.W. in his quarters under open arrest.

[illegible]
Signature of Witness

The accused declined to cross-examine this witness.

4th Witness for the Prosecution. H17852 L/Cpl. Golembasky M., P.P.C.L.I.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence.

Having regard to the exigencies of the service, the attendance of this witness cannot in my opinion be readily procured.

The accused does not dmenad the attention of this witness for cross-examination.

[illegible]
Signature of Officer taking

The accused having been duly cautioned in accordance with Rule of Procedure 4 (E) reserves his defence.

Certified that Rule of Procedure 4 (C)(D)(E)(F) & (G) have been complied with.

Taken down by me in the presence and hearing of the accused this 16th day of March, 1943 in the Field.

.....
Signature of Officer
Taking Summary.

66-2

In the Field,
16th March, 1943.

DOCUMENTARY EVIDENCE in the case of K53096 Pte. Dunn E.W.

"Sir, I, M17851 L/Cpl. Golembiasky M., was 1/c Guard on 10 Mar 43.
The accused, K53096 Pte. Dunn E.W., reported to me at the unit guard room at 2130 hours 10 Mar 43.
I saw by his pass that he was Absent Without Leave, so I placed him under close arrest. Sir."

M. Golembiasky L/Cpl.

"L/Cpl GOLEMBIASKY"

P.P.C.L.I.

Certified a True Copy.

L B Ralph Capt
.....
Witness

Statement in mitigation of punishment. 66-2

I should like to ask the court for mitigation of sentence on these grounds, that the accused when he was in Canada had a very bad record indeed. His was caused by domestic trouble, resulting as he thought in no satisfaction from the military authorities he finally took the law into his own hands. Every time he was approached he made a further effort to go home and fix up matters with his wife when. However he came over to this country he has made a sincere effort to soldier properly. This fact is reflected in his crime sheet which shows no entries during the time he has been in this country, some 8 or 9 months. And this present offence he had no intention of staying away.

2

"66-2" [illegible]

Unfortunately he was a little late owing to having had too much to drink. He decided, foolishly, that he might just as well "be hung for a sheep as for a lamb." Later however he realized his own error and he surrendered himself

On the grounds of the following points

1 - His genuine effort to soldier in the country.

2 - The fact that he surrendered himself.

I would like to ask for mitigation of punishment.

Exhibit "A"

ABSENTEE REPORT. A. Coy.

Squadron, Battery, Troop, Company.

Army Form B 290 (In sheets of 7)

Army No.	Rank and Name	When Absent	Hour of Return	In what state	Remarks
K47467	Pte Morrison W.F.	2/2/43			
K53096	" Dunn E.W.	24/2/43			
[illegible]	" [illegible]	[illegible]			

A. Clark Cpl. Orderly Sergeant.

Date 27/2/43.

1st Bn The Canadian Scottish Rgt.

A. F.

Exhibit "B"

In the Field

No. K53096 Pte Dunn E.W.
has permission to be absent from
1630 hrs 24 Feb to 2359 hrs 24 Feb 43
to proceed to Horsham

A. COY.

Issuing Officer

A. L. Perdriving Capt

1ST BN. C.S.R.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

N. A.

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

~~*The Court being re-opened, the accused is again brought before it.~~ Not

Lieut. A. C. Landis ~~is duly sworn~~ is duly sworn RAC

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* ~~Yes~~ yes RAC

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E1 & E2, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* yes

Cross-examined by the accused.

The accused declines to cross examine the witness

(Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that or to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.* no

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused K 53096 Pte Dunn Edgar Sentence William to One year detention.

Signed at:- In the field - this 23rd day of March. 1943.

[illegible]

No. K53096 Name DUNN E.W. Sqn., Battery, or Company "A" Corps 1 C SCOT R (AF) Date of enlistment 20-1-40 G.C. Badges Nil Service or Proficiency Pay Nil M.F.M. 6 (A F B 122) 175M—7-41 (1219-20) H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet No. and date of last drunk nil Period not reckoning towards freedom from extra fine n.a. Sheet No. 1 Signature O.C. Company, etc. "W.W. WILSON" Character

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	1940			Sheet destroyed 19-7-40					
Currie Bks	17-8	Pte	1	Drunkenness (1st offence)	Cpl Corrigan Pte Hutchinson	Admonished 3 days CB	19-8-40	A.O. WILSON	
do.	31-8	"		AWL 0600 hrs 31-8 to 2200 hrs 25-9-40 (25 days 16 hrs). Breaking out of bks while under arrest Loss of clothing & necessaries $5.25 Cost of transportation $54.68	Sgt Brymer CQMS Beckett	28 days Detention	15-10-40	F.M.W. Harvey	26 days FR&I pay Cost 54.68 stoppages $5.2
do.	1941 1-1	"	2	Drunkenness. Conduct to Prej. i.e. left City of Calgary without permission. 3 AS 1 from 2130 hrs 5-1-41 to 1500 hrs. 12-1-41 (6 days 17 hrs. 30 misn.) A.A. 15(1)	Sgt Hele Cpl Lonsdale Sturrock L/C Barker " Rollard " Cressy L/C Ball	14 days detention Fined $5.00	22-1-41	E.R. Knight	7 days pay FR&I 149(2) stoppages for cost of apprehension $23.45

(P.T.O.)

Place	Date 1941	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Currie Bks	17-3	Pte		AWL 2200 hrs 17-3-41 to 1930 hrs 20-3-41 (2 days 21 hrs 30 mins)	Cpl Newstead Documentary	28 days detention	23-4-41	E.R.Knight	3 days pay 149(1)(A)
	2-4			Breaking ~~xxx~~ arrest on 2-4-41 AWL 2200 hrs 2-4-41 to 2200 hrs 10-4-41 (~~xxxx~~ 8 days) A.A.15(1)					8 days pay 149(1)(A) Stoppages $79.70
do.	2-6	"		AWL while under arrest 0200 hrs 2-6-41 to 0015 hrs 9-6-41 (6 days 22 hrs 15 mins)	Sgt Newstead Pte Lonsdale Documentary	28 days detention Stoppages $42.81	17-6-41	H.L.Tawerton	7 days pay FR&I 149(1)(A)
				AWL from 0200 hrs 26-5-41 to 2315 hrs 27-5-41 (21 hrs 15 mins)	CQMS snell	Admonished	21-6-41	J.W.MacDONA	9 days pay 149(1) (A)
do.	26-5	"		Losing by neglect Equip. $18.22	Cpl Drimmer				~~[illegible]~~ Stoppages $18.22
do.	12-7	"		DESERTION AWL 0700 hrs 12-7-41 to 1930 hrs 19-8-41 . 38 days 12 hrs 30 min Losing by neglect articles $22.97	Pt.11 279	DETENTION 168 days	24-11-41	D.C.M. M.D.13	39 days pay 149(1)(A) Costs. $14.25 Stoppages. $22.97

No. K53096 Name DUNN E.W. Sqn., Battery, or Company "A" Corps 1 C Scot R Date of enlistment 20-1-40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 172) 175M—7-41 (1219-20) H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet No. and date of last drunk 2 1-1-41 Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of Offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Currie Bks	1942 31-3	Pte		AWL 2200 hrs 31-3 to 2340 hrs 19-4-42. (19 days 1 hrs 40 min) AKI Losing by neglect clothing &c $4.76	Capt.Clarke CSM Anscombe L/Cpl Dick CQMS Newell	28 days detention	4-7-42	L.Scott	20 days pay FR&I 149(1)(A) $4.76 stoppage Art. 158 Costs of apprehension $51.55 FR&I 172(8)

Certified a true copy.

(J.D.W. GILLAN)
Capt. & Adjt.

(P.T.O.)

K-1

K53096 Private Dunn E.W. 1 C.Scot.R.

Drunkenness	A.A. 19		2
A.W.L.	A.A. 15	1	7
Conduct to Prej. A.A.40			1

nil

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- 9 -

30

20 Jan 40

3 yrs. 2 mos.

N.A.

N.A.

N.A.

N.A.

		K53096	Private		
Dunn E.W.		1 C Scot			
D.C.M.	Currie Barracks Calgary, Alta. 24 Nov 41	AWL 38 days Losing by Neglect, etc.	168 days detention		Nil

19th March, 1943

(J.D. MACBETH) Lt.-Colonel
O.C., 1st Bn. C.Scot.R. (AF)

f 3.6 Pile Dunn. H.

Correspondence to be PINNED here.

Arrangement

ZC (1)

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this 15th, day of May, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

*[illegible]

*(1. [illegible]

*(2. [illegible]

*(3. [illegible]

[illegible]

Proceedings Received [illegible] Reviewing Officer [illegible]

President.

Rank.	Name.	Regiment.
Major	G.W. Smart	No.1 Cdn Sigs Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	A. Maw	No.1 Cdn Arty Hldg Unit
Lieutenant	H.J.A. Reynolds	No.1 Cdn Eng Hldg Unit.
Lieutenant	L.L. Van Luven	No.1 RCASC Hldg Unit.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [signature] Brigadier

Commanding Cdn Base Units, Cdn Army.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-73518 PTE. DUNN, H. (48th H. of C. reinforcement) No. 1 Cdn Inf Hldg Unit.	First Charge A.A. Sec 15(1) as per charge sheet	GUILTY	GUILTY TO UNDERGO DETENTION FOR A PERIOD OF NINE MONTHS.	I confirm the finding & sentence of the Court but remit 3 months of the sentence P

RECOMMENDATION TO MERCY

The Court recommend the accused to mercy on the ground that:

(a) Punishment will aggravate condition;
(b) Some statements showing persecution;
(c) Full medical examination not carried out - although false attestation and concealed disease up to some time in 1941.

(President)

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— YES. (See P. 1 Transcript of Evidence)

(Signed) L. F. Rep. Brigadier (Signed) Lew Smart May

Commanding Cdn Base Units, Cdn Army.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 17th & 30th days of May, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~) Court Stenographer
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 30th day of May 1941.

Lew Smart May
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ P

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 7th day of June 1941

L. F. Rep. Brigadier.
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 10 June, 1941 (Signed) L.W.W. Slack Lieut-Col.
(L.W.W. Slack) Officer Commanding
No. 1 Cdn. Inf. Hold. Unit

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Accused pleaded
guilty —
Further summary of evidence
nor other evidence disclosed
that accused was "in
lawful custody" at time
he went absent. The offence
of being absent without
leave however is still
proven. ∴ R.P. 35(B)
does not matter.

27/9/41 [illegible] Capt
[illegible]

CHARGE-SHEET

The accused, No. B-73518 Pte. DUNN, H. (48th Highlanders of Canada Regiment), on the strength of No. 1 Canadian Infantry Holding Unit as a reinforcement, a soldier of the Canadian Army (Overseas), is charged with:-

First Charge
Sec. 15 (1)
Army Act.

When on active service, absenting himself without leave--

in that he

when in lawful custody, at Camp 101, Witley, Surrey, absented himself without leave from about 1800 hours on the 15th January 1941, until he surrendered himself at Camp 101, Witley, at about 1530 hours on the 12th March 1941.

L.W.W. Slack
..... Lt-Col.
(L.W.W. Slack) Cmdg. Officer
No. 1 Cdn. Inf. Holding Unit

Witley, Surrey,
12th May, 1941.

To be tried by Field General Court Martial

L. [illegible] Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This/5th day of May 41.

MEDICAL OFFICER'S CERTIFICATE

- K.R. (Can) Para. 557 -

I certify that I have this morning examined No. B-73518 Pte. DUNN, Henry (48th Highlanders of Canada Regiment), No. 1 Canadian Infantry Holding Unit, and in my opinion he is fit ~~unfit~~ to undergo trial by Court-Martial.

(Medical Officer)

Algonquin Camp,
Witley, Surrey,
30th May, 1941.

B 73518 Pte. Dunn, H.(48th H & C reinforcement) No. 1 Cdn Inf Bldg Unit, tried by Field-General Court-Martial at Witley, 17 May 41.

The order convening the Court, the charge sheet and the summary of evidence are laid before the Court.

Prosecutor: Lieut. H. M. Howell.
Defending Officer: Lieut. R. O. Cleworth.

At 1000 hours the Trial commences.

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No.

The President and members are duly sworn.

Officers under instruction are sworn.

Q2 - Do you object to B 88521 Sgt. James Lonergan, R.C.A., C.M.H.Q., acting as Court Stenographer?
A2 - No.

The Court Stenographer is sworn.

The Charge sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon the charge in the above-mentioned charge sheet.

Q3 - Are you guilty or not guilty of the charge against you, which you have heard read?
A3 - Guilty.
R.P. 35(B) is complied with.

Q4 - Do you wish to make a statement in mitigation of punishment?
A4 - (Defending Officer) In connection with the charge against this man we plead guilty to his absence but he states that he had a reason for being absent, that reason being that he was sick. He says he was unable to obtain attention for his sickness here, and that it got him into such a state of morbidness that he became dissatisfied with the attention he was getting and decided to go elsewhere and obtain some medical treatment that would be satisfactory to him. He had complained of dental trouble and tried to pin his situation on the state of his teeth. The Medical Officer of this unit stated that there was nothing wrong with his teeth, in spite of which, on attending a dentish in London, a civilian dentist, that dentist saw fit to make seven extractions. I have here the certificate from that civilian dentist, which I would like to have the court examine. I would also point out that one's system could become so affected by bad teeth that he could easily become very ill and be excused mentally for that reason. The accused also has suffered from syphilis. On occasions he has paraded to the Medical Officer of this unit on the complaint, and has stated to him that he was unable to keep up with the duties required of him. In every instance he has been given medicine and duty. The accused also wishes to produce a photograph of himself and family three days prior to his leaving Canada, which would indicate that at that time he was obviously in much better health than he seems to be in today. He just felt that he should get away and obtain better treatments elsewhere.

Accused: I would like to point out that my Defending Officer couldn't be here today and he didn't give me a copy of the Summary of Evidence. I have never seen it.

President: The case is adjourned under R.P. 39A.

The Court re-assembles at 1000 hours, 30th May, 1941.

Lieut. J.A. Wilson, No. 1 Cdn. Inf. Holding Unit, appears as defending officer for the accused.

Q5 - Do you object to M-15577 Sgt. Stanley Fidler, The Edmonton Regiment, C.M.H.Q., acting as Court Stenographer?
A5 - No, sir.

The Court Stenographer is duly sworn.

Q6 - You made a statement which caused the adjournment of this Court, to the effect that you had not had an opportunity to see the charge-sheet or the summary of evidence.
A6 - That is correct, sir.
Q7 - Are you now satisfied that you have had time to prepare your defence?
A7 - Yes, sir.
Q8 - Have you any further evidence to support your statement that you did not have time to prepare your defence?
A8 - No, sir.
Q9 - Have you any evidence to refute this, Mr. Prosecutor?
A9 - Yes, sir, I would like to call Major Kennedy to give evidence.

Major A.A. Kennedy, No. 1 Cdn. Inf. Holding Unit, being duly sworn, is examined by the prosecutor.

Q10 - Will you identify yourself to the Court, please?
A10 - I am Major A.A. Kennedy, No. 1 Cdn. Inf. Holding Unit, officer commanding the Hastings & Prince Edward Company.
Q11 - Do you recognize the accused?
A11 - Yes, Pte. Dunn.
Q12 - I am showing you here a message; have you seen that before?
A12 - Yes, I have seen this before.
Q13 - Under what circumstances?
A13 - I believe there was a note placed on my desk and attached to the charge-sheet against these people.
Q14 - Do you recognize this signature?
A14 - It is your signature; Mr. Howell.
Q15 - Will you tell the Court the date and time?
A15 - It is dated the 15th May, 1941, and the Court-Martial was to assemble at Camp 101 on the 17th May, 1941.
Q16 - What time was it on the 15th May?
A16 - 1700 hours.
Q17 - As a result of that note what happened?
A17 - Previous to receiving the note -- at least a month -- I had known these three people wished me to defend them and had discussed their cases with them for a long time in my own office and discussed the charge-sheets and, in the case of Dunn, felt the thing to do was plead guilty to the charge and enter a plea for compassion on grounds of medical inattention.

The prosecutor produces in evidence a note to Major A.A. Kennedy concerning the trial of the accused; this note is signed by Lieut. H.M. Howell and dated 15-5-41.

Q18 - On receiving that note what did you do with the charge-sheet and summary of evidence of Dunn?
A18 - There had been a previous charge-sheet; this was an additional copy.
Q19 - Will you explain what you did?
A19 - The next day, I believe the 16th, and the trial was to be on the Saturday; on the 16th late in the afternoon I was told by the commanding officer that I had been appointed in charge of a working party at Ascot.
Q20 - Will you tell the Court if you did anything regarding the accused; going into the nature of his defence and showing him the charge-sheet and summary of evidence?
A20 - I had done it long before this -- three weeks before -- and we discussed the whole thing but I did nothing as far as Dunn was concerned on the 16th.
Q21 - Had he previously seen this charge; that is, the one now before the Court. (Hands charge-sheet)
A21 - Yes, sir, I believe, so.

Q22 - Well then, in the summary of evidence at that time the first witness, and only witness, was Lieut. Rider and the whole effect was to produce a confession. Has Pte. Dunn seen that since the summary was taken?
A22 - After the summary was taken I read Dunn's confession to him.
Q23 - At that time did you also discuss the charge with him?
A23 - Yes, but I didn't on the 16th.
Q24 - But it was done previous to that?
A24 - It was previous to that.
Q25 - Will you tell the Court whether Dunn had an opportunity to prepare his defence previous to the 17th May?
A25 - When did he give himself up?
Q26 - The 12th March.
A26 - I would say at least a month previous to the 16th May. I knew I was to defend Dunn and discussed it with him two or three times and discussed whether we should bring a medical officer from the No. 15 General Hospital to give evidence and I thought it unnecessary as he was going to plead guilty and as he had records of the disease of which he was suffering.
Q27 - As I to understand that he did have an opportunity of seeing the charge-sheet and summary of evidence in preparing his defence?
A27 - Yes, sir, in my opinion.

Cross-examination by the accused.

Q28 - A moment ago you made a statement that you showed me the charge-sheet at your office and, you think, before May 16th.
A28 - Yes.
Q29 - Wasn't I, along with Bockout and Marshall, paraded before you at a quarter to two on May 16th and I was the first man brought before you to discuss the case and witnesses and you had a file of papers on your desk and suddenly the 'phone rang and you said "Yes, I have Dunn with me now" and you said "I am not going to let him go until I get through talking to him". A couple of minutes later you gave the file of papers to the escort and told them to take me over to the F.A.P. and when we were finished over there the escort was told to bring them back to you but you weren't there, you were just getting into a car and the escort thought the best thing he could do was bring the file of papers to Mr. Howell's office on May 16th?
A29 - That is quite true. There is no question about that, but we had been discussing the file several times before that.

Re-examination by the prosecutor.

Q30 - I am showing you a charge-sheet dated the 13th March, 1941; have you seen that charge-sheet before?
A30 - Yes.
Q31 - Is the second charge a similar one or the same as the present charge against the accused?
A31 - Yes, except it is worded differently; the second charge is not as strong.
Q32 - Would you explain how the charges bear relationship to each other?
A32 - The one on the 13th March is a simple charge of absence without leave and in the case of the charge-sheet dated the 12th May the charge is one of absence without leave while in lawful custody.
Q33 - What was the first charge on the 13th March?
A33 - Breaking out of barracks while under open arrest.
Q34 - What happened to change the charge of the 13th March?
A34 - In substance actually the action of Dunn on the 15th January is more or less condensed into one charge.
Q35 - Then the two charges have been compressed into one?
A35 - Yes.
Q36 - Did you go into the charges of the 13th March with Dunn?
A36 - Yes.
Q37 - On several occasions?
A37 - Yes.

The prosecutor produces in evidence the charge-sheet dated 13th March, 1941.

President - In view of the circumstances, I wish you to be given the opportunity of recording a plea again. Are you guilty or not guilty of the charge against you which you have heard read?
Accused - Guilty, sir.

R.P. 35(B) is complied with by the Court.

Q38 - Do you wish to make any statement in mitigation of punishment?
A38 - (Accused) Sir, when I came out of the glass-house last September 7th I was in a run-down condition. I was nervous and had aches and pains all through my body. I was paraded before my company commander and told him I needed a leave, that I hadn't had leave all the time I had been in England and he asked me where I wanted to go and I told him London. Then my company commander said "Take a rest, Dunn" and he asked if he should recommend me for a couple of weeks at the convalescent camp at Brixham and I said "That will be fine" and he said he would get in touch with the M.O. About a week or ten days went by and the M.O. said "Get yourself ready, you are going to Brixham". A few more days went by and I was all prepared to leave and then in the latter part of September of the first week of October I was sent to the C.M.C. at Bordon. I stayed at Bordon for a period of three or four days and left for Brixham and was there for fifteen days. I felt a little better after I came back and had put on a couple of pounds in weight. I went back on full duty after I got back and then the pains started to bother me and bothered me ever since and I paraded before the M.O. again and the M.O. asked me about my family and also asked me if I had ever had V.D. I said "Yes, sir!" He asked what kind and I said I had been suffering from syphilis for about thirteen years and I asked for an X-ray and wanted to find out about my loss of weight and appetite and the fact that I couldn't sleep. I got no results until November; all during the time from Brixham until November I paraded before the M.O. In November the M.O. sent me to Bramshot to take a blood test. It was taken and I never got any word about it and came back on duty and my health was getting worse all the time until the time I went absent and came back voluntarily on March 12th. The reason I went absent was that I had been after the M.O. time after time and time again and I couldn't get medical treatment.

Q39 - Is that M.O. still here?
A39 - I understand there is a new M.O.
Prosecutor - The present M.O. has had a good deal to do with this case and has all the documents relevant to it.
Accused - In November, long before I went absent, I was on duty as cook in the men's cookhouse and at midnight I got an awful sharp pain in my side. It was something that had never happened before. There happened to be a sergeant in the cookhouse and he got the medical orderly and brought him back and the medical orderly said "Keep him lying on the steam table while I get the M.O." After a while he came back and said the M.O. wouldn't come down and he took it upon himself to call the ambulance to take me to the C.M.C. Every word I have told you gentlemen is the God's honest truth.
Prosecutor - I would refer the Court to R.P. 37(F).

Capt. H.C. Johnson, No. 1 Cdn. Inf. Holding Unit, Medical Officer, being duly sworn, is examined by the President.

Q40 - Have you any information or any documents which you can produce concerning the accused?
A40 - Yes, sir, numerous documents here. I would like to give a general discussion on the accused and bring out particular points. I would like to discuss the case generally.
President - Is that question satisfactory to you?
Accused - Yes, sir.

Witness/ I should think that Dunn might well have complained of pains in the chest or in the back or any other part of the body and the unit medical officer might well have had to come to inspect Dunn. I might add, though, that Dunn has been examined in four hospitals. He had been examined in two hospitals before this charge and we have records on hand to show him on sick parade and documents from C.M.H.Q. regarding what he has been considered to have during the past year and a half. Dunn came on sick parade with back pains and was put back on full duty, but I do say he had been investigated in four hospitals. He was examined by Major Gossage and

Major Hamilton and since being examined by Major Hamilton who was medical officer of the unit, he has been examined by Capt. Ireland. Capt. Ireland examined him and sent him to Branshot and he was excused from Bramshot and sent to the C.M.C. and from there to Brixham this spring. It later came to light that he suffers from syphilis. He denied having syphilis on attestation. He may have brought up the subject last year and been referred to the hospital by Capt. Ireland. When he went to the hospital no complaint was given to the consultant. The man's job was that of cook which he would lose if it became known that he had syphilis. Many people have considered Dunn. The fact that syphilis was not discovered until spring is that the Department of National Defence does not necessarily take a blood Wasserman but does ask the question and each soldier is given the opportunity of saying whether he had syphilis or gonorrhoea. To both these questions Dunn answered no. As far as records are concerned, no history was given until spring. Last fall Capt. Ireland wrote down "V.D.S. (?)" and sent Dunn to the hospital and he didn't mention it. Records weren't discovered until spring. Dunn knew that he had it fourteen years ago and had not been adequately treated for it and he said he wasn't interested enough. I don't think you can hold any one officer responsible, or the whole medical corps responsible but I think you should hold Dunn responsible for not admitting he was inadequately treated fourteen years ago and that he had gone back after five years and taken two months more treatment and then gave it up because he was fed-up. It was discovered in April and investigations show that it is in the blood stream but it has not affected the brain and the nervous system and they are intact. These are the documents which will back up these statements.

Witness produces for inspection by the Court a medical file dealing with the history of the accused. Documents contained in the file are not accepted by the Court in evidence.

Accused - I would like to know what became of the report that Major Van Ostrand sent down.

Witness - This statement was given by C.M.H.Q. I was unable to get anything further from hospital at Bramshot than that.

Defending Officer - Capt. Johnson said that the previous M.O. wrote on a medical report V.D.S. (?) Isn't it possible that when that report went to Bramshot with Dunn that he was given a blood test for V.D.?

Witness - One would expect that, and I have 'Phoned Bramshot and there is no indication on their records showing a blood test had been made at that time. The first record we have of Dunn having V.D. is in late March.

Cross-examination by the prosecutor.

Q41 - Capt. Johnson, How do you account for the fact that this man did not have any treatment previous to the spring of this year? Is it owing to the fact that he made no statement until recently?

A41 - I have no evidence that he made a statement until spring.

Q42 - Is that the reason you give for no treatment?

A42 - I would say so.

Q43 - If he did have syphilis is there any evidence that he was affected mentally or nervously causing him to go a.w.l. for treatment?

A43 - No.

Q44 - Do you wish to call any witnesses as to character?

A44 - Yes, sir.

First witness, B-78522, Cpl. Harrod, S.A., No. 1 Cdn. Inf. Holding Unit, being duly sworn, is examined by the accused.

Q45 - (President) You are called as a witness to the character of Dunn, will you give us the particulars?

A45 - As far as I know about Dunn, all I can say is that while he was under my command while I was sergeant in my platoon -- on the day of Dunn's enlistment on the 25th November, 1939, I was a sergeant and he came to me in the reserve platoon. From that time on until I reverted to

the rank of corporal in March, Dunn was a good soldier and told to the best of his ability. From that time on I could

Q46 - You were in charge until last May?
A46 - I was in charge but not as a sergeant, as a corporal, think my evidence should go before this Court. I can s I was in charge of you from the 25th November until the done what you were told and done a damn good job at that

Cross-examination by the prosecutor.

Q47 - You said, Cpl. Harrod, that you were acquainted with the accus the end of March, 1940?
A47 - I don't think I could say anything for the man from that time on. Until that time anything I asked him to do, he did it. His soldi was fine, sir.
Q48 - Have you known anything about him since 31st March, 1940?
A48 - Just a few months, sir, during April and May.
Q49 - What year?
A49 - 1940.
Q50 - When did your acquaintance with the accused end?
A50 - It would be just after the battalion went to Dover.
Q51 - You were with the accused until that time?
A51 - Yes, sir.
Q52 - When would that be?
A52 - About the 24th May, 1940.

Second witness, B-72594, Sgt. Comins, E., No. 1 Can. Inf. Holding Unit, being duly sworn, is examined by the accused.

Q53 - (President) You are called as a witness to the character of Dunn, will you give us the particulars?
A53 - He enlisted with the 48th Highlanders and came to my platoon in December, 1939, and was a good soldier until taken on the boat. At the time he was taken into the platoon the company commander said he didn't want any God damn Jews in the company and from that time on when he got a chance to ride him he did. Coming over on the boat he was taken up on a charge of gambling -- having crooked dice -- and the charge was found to be false. When he landed in Glasgow he attempted to get off the boat and was placed under arrest. He was placed in my custody from Glasgow to Aldershot. At different times the company commander and C.S.M. stated they didn't want to have anything to do with a Jew and they would ride him out the best way they could. The night before the unit went to Dover he got drunk and his story was that he thought he was giving himself up to the 48th guard-room and it was the R.C.R. guard-room and he was handed over to the reinforcements and then was up on a charge of desertion.
Q54 - In the winter of 1940, in Aldershot, was I sick then?
A54 - Yes.
Q55 - What was wrong with me then?
A55 - As far as I can recall it was pleurisy.
Q56 - A year ago last winter, is that correct?
A56 - Yes.
Q57 - Can you recall me working with plasters on my chest and back and kidneys for weeks and weeks?
A57 - Yes, for about two weeks that I know of.
Q58 - The day the regiment was going to leave for Dover and I wasn't around, what was the statement made by the commanding officer; what order did he give the men?
A58 - That if Dunn was seen he was to be shot on sight.
Q59 - Don't you think that in spite of quite a bit of racial prejudice I soldiered until that time?
A59 - Yes. I might say that while he was carrying the plasters he had to carry on the fatigues and duties the same as other soldiers. That was orders from the commander.

Cross-examination by the prosecutor.

Q60 - I understood you to say that your knowledge ends just about the 24th, or thereabouts, of May.
A60 - I wouldn't say about anything from then on as he was away from the unit. I can only speak of actual happenings while in my section and platoon, sir.

the rank of corporal in March, Dunn was a good soldier and done all he was told to the best of his ability. From that time on I couldn't say, sir.
Q46 - You were in charge until last May?
A46 - I was in charge but not as a sergeant, as a corporal, and I do not think my evidence should go before this Court. I can state that while I was in charge of you from the 25th November until the 31st March you done what you were told and done a damn good job at that time.

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A47 - I don't think I could say anything for the man from that time on. Until that time anything I asked him to do, he did it. His soldiering was fine, sir.
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A48 - Just a few months, sir, during April and May.
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A49 - 1940.
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Second witness, B-72594, Sgt. Comins, E., No. 1 Cdn. Inf. Holding Unit, being duly sworn, is examined by the accused.

Q53 - (President) You are called as a witness to the character of Dunn, will you give us the particulars?
A53 - He enlisted with the 48th Highlanders and came to my platoon in December, 1939, and was a good soldier until taken on the boat. At the time he was taken into the platoon the company commander said he didn't want any God damn Jews in the company and from that time on when he got a chance to ride him he did. Coming over on the boat he was taken up on a charge of gambling -- having crooked dice -- and the charge was found to be false. When he landed in Glasgow he attempted to get off the boat and was placed under arrest. He was placed in my custody from Glasgow to Aldershot. At different times the company commander and C.S.M. stated they didn't want to have anything to do with a Jew and they would ride him out the best way they could. The night before the unit went to Dover he got drunk and his story was that he thought he was giving himself up to the 48th guard-room and it was the R.C.R. guard-room and he was handed over to the reinforcements and then was up on a charge of desertion.
Q54 - In the winter of 1940, in Aldershot, was I sick then?
A54 - Yes.
Q55 - What was wrong with me then?
A55 - As far as I can recall it was pleurisy.
Q56 - A year ago last winter, is that correct?
A56 - Yes.
Q57 - Can you recall me working with plasters on my chest and back and kidneys for weeks and weeks?
A57 - Yes, for about two weeks that I know of.
Q58 - The day the regiment was going to leave for Dover and I wasn't around, what was the statement made by the commanding officer; what order did he give the men?
A58 - That if Dunn was seen he was to be shot on sight.
Q59 - Don't you think that in spite of quite a bit of racial prejudice I soldiered until that time?
A59 - Yes. I might say that while he was carrying the plasters he had to carry on the fatigues and duties the same as other soldiers. That was orders from the commander.

Cross-examination by the prosecutor.

Q60 - I understood you to say that your knowledge ends just about the 24th, or thereabouts, of May.
A60 - I wouldn't say about anything from then on as he was away from the unit. I can only speak of actual happenings while in my section and platoon, sir.

Lieut. H.M. Howell, No. 1 Cdn. Inf. Holding Unit, is duly sworn.

Q61 - Have you any evidence to produce as to the character and particulars of service of the accused?
A61 - Yes, sir, A.F.B. 296 and M.F.M. 6.
Q62 - Is the accused person named in the statement which you have heard read?
A62 - Yes, sir.
Q63 - Have you compared the contents of the above statement with the regimental books?
A63 - I have, sir.
Q64 - Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A64 - They are, sir.

The accused declines to cross-examine.

Q65 - Do you wish to address the Court?
A65 - (Accused) Gentlemen, you all know there are very few Jews in the [redacted] ARMY, or any other army. I have been in business for myself all my life. I sold my business to join the army because I thought it my duty. I wanted to do my bit to help lick Jerry. I came over and as soon as the company commander saw me he said "You are Jewish" and I said "Have you any objection?" I have tried to soldier as you have heard in the evidence of Sgt. Comins and Cpl. Harrod and all I can say is this -- I am sick. I know I am guilty of absence without leave. I am not asking to be let go through the window or through the door, but I have been in detention since March 12th. Take a look at me now and look at what I was like when I came over. I came over here to soldier and I want to do my bit the same as anyone else. That is all I can say, sir.

The Court is closed for the consideration of the sentence.

Capt. Kennedy
Ft. P.F. Cog
from C.M.O.

Quam H. 15.5.41
Bookout N.R.
Marshall G.A.E.

Trial camp
101 at 1000 hours
17.5.41. Please
advise your pleas
in each case.

1700 hrs

[illegible]

17 May 1941

IN THE CASE OF B-73618 Pte. Dunn,H.

TO: The Convening Officer.

In the case above mentioned, this man pleaded guilty and subsequently in his evidence in mitigation he stated that he had not been given a copy of the Summary of Evidence and, therefore, had not had time to prepare his defence. It was then realized that he should have pleaded Not Guilty and the case would have been proceeded with under the new plea, except that R.P. 19A had not been complied with, in preparation for the Court-Martial. It is also pointed out that the Defending Officer wasn't available to clarify the situation.

(G.W. SMART) Major
President

CHARGE-SHEET

The accused, No. B-73518 Pte. Dunn, H., (48th Highlanders of Canada Regiment), on the strength of No. 1 Canadian Infantry Holding Unit as a reinforcement, a soldier of the Canadian Army (Overseas), is charged with:-

First charge Sec 16(4) Army Act

Breaking out of barracks--

in that he

at Camp 101, Witley, Surrey, at 1800 hours on the 15th January 1941, broke out of barracks, when under open arrest.

Second charge Sec 15(1) Army Act

When on active service, absenting himself without leave--

in that he

at Camp 101, Witley, Surrey, absented himself without leave from 1800 hours on the 15th January 1941, until 1530 hours on the 12th March 1941.

..... Lt-Colonel
(L.W.W. Slack) Commanding Officer
No. 1 Cdn. Infantry Holding Unit

Witley, Surrey,
13th March, 1941.

SUMMARY OF EVIDENCE

In the case of No. B-73518 Pte. DUNN, H.,
(48th Highrs), #1 Cdn. Inf. Hldg. Unit.

The Commanding Officer directs that the evidence shall be taken under oath.

1st Witness — Lieut. E.J. RIDER, Assistant Officer i/c Records, No. 1 Cdn. Infantry Holding Unit, having been duly sworn, states:

I am Assistant Officer in charge of Records, No. 1 Canadian Infantry Holding Unit, and as such produce the following document in evidence:

Confession of the accused, B-73518 Pte. Dunn, H., dated 12th May, 1941.

This document refers to No. B-73518 Pte. Dunn, H., whom I now recognize.

E.J. Rider Lieut.

(The accused declines to cross-examine this witness)

Certified that Rules of Procedure No. 4 (c), (d) and (e), have been fully complied with.

A.D. Powell Lieut.
Officer taking Summary.

Witley, Surrey,
12th May 1941.

CONFESSION

In the case of B-73518 Pte. DUNN, H.,
(48th Highrs), #1 Cdn. Inf. Hldg. Unit.

The accused B-73518 Pte. DUNN, H., having been duly cautioned and sworn, states:

I went absent on January 15th, 1941, at about 1800 hours and during my absence was in uniform at all times.

When I felt well enough, I gave myself up voluntarily and arrived here at the main gate by bus from London on March 12th at about 1530 hours, after paying my own fare, and reported to my Company Commander.

H. Dunn

I certify that the above statement was made in my presence and was entirely voluntary.

Witley, Surrey,
12th May, 1941.

MEDICAL OFFICER'S CERTIFICATE

I certify that this day I have examined No.B-73518 Pte. DUNN, Henry, , and find him fit to stand trial by Court-Martial.

H.C. Johnston Capt. R.A.M.C.
Medical Officer,
No. 1 Cdn. Inf. Holding Unit

Witley, Surrey,
17th May 1941.

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
				D.I.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th 30 D.I. day of May, 1941.

Signed this ~~12~~th 30 D.I. day of May, 1941.

David Ivor, Lieut.
David Ivor, Lieut.,
Officer i/c Records,
No. 1 Cdn. Inf. Hldg. Unit.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B-73518 Pte. DUNN, Henry, of the (48th Highlanders of Canada) No. 1 Cdn. Inf. Holding Unit

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets, are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Para. 664, R.R., 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, pronounce being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTIONS.—If the charge is for dressing, note the entries for dressing-notes must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.	*Since Enlistment.
For Absent without leave	2 times	2 times
For Absent from quarters	1 time~~x~~	1 time~~x~~
For Conduct to the prejudice of good order and military discipline.	2 times	2 times
For	times	times

Number of instances of gallantry or distinguished conduct, Nil.

~~—or—~~

D.I.
~~There are no entries in the Conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted.~~ D.I.

~~—or—~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time,

D.S. ~~or,~~

~~The accused at the present time is under sentence for~~

~~beginning on the~~ ~~day of~~ D.S.

4. The accused has been in confinement, awaiting trial on the present charges for D.S. D.S. nil days in Civil Custody,

and ~~66~~ D.S. 22 D.S. 61 days in Military Custody.

Total ~~66~~ D.S. 22 D.S. D.S. 61 days.

Of which nil D.S. ~~32~~ days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper D.S. is 35.

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper D.S. is 24th Nov. 1939.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 17½ months.

8. The accused is entitled to deferred pay or gratuity in respect of 17½ months' ~~years~~ service.

9. The accused is entitled to reckon 17½ mos ~~years~~ D.S. service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward ~~(or is in possession of or entitled to~~

11. ~~(If the accused is a warrant officer.)~~ The accused before he was made a warrant officer last held the regimental rank of D.S.

12. (*If the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion.
In the rank of	years,	
In the rank of	years,	
~~In the rank of~~	years,	D.S.

(INSTRUCTIONS.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked 5, , signed by the president, and annexed to the proceedings.

Lieut-Colonel

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name B-73518 Pte. DUNN, H. (48th Highrs. of Can) of the No. 1 Cdn. Infantry Holding Unit.

Note.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted

(Description of Court by which tried, or statement that charge is dispensed with Trial)	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
District Court-Martial	19th and 20th July 1940 at Bordon, Hants, England.	Sec. 16(4), Army Act -- Stealing property, a sum of money exceeding one pound, from and belonging to the Navy, Army and Air Force Institutes, at Bordon, Hants, at about 2130 hours on the 28th June 1940.	60 days' detention	Nil.
Field General Court-Martial	14th January 1941, at Witley, Surrey, England.	Sec. 15(1), Army Act -- When on active service, absenting himself without leave from New Martinique Barracks, Bordon, Hants, from 2200 hours on the 16th December 1940 until 1120 hours on the 2nd January 1941.	60 days' detention	Nil.

D.S.

(*Continued overleaf.*)

No. [illegible]/3518 Name Dunn, H. Sqn., Battery, or Company "C" Corps 48th H. of Can. Date of enlistment 26-11-39 O.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 123)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				hrs. 16-12-40 to 1120 hrs. 2-1-41. Found guilty and sentenced to 60 days detn. from 14 Jan. 41. The G.O.C. Cdn. Base Units, confirmed the finding of the court, which is promulgated hereby.					60 days pay F.R.I.149(1)(c) Forf.11 days pay F.R.I.149(1)(b) Total 88 days pay

CERTIFIED TRUE COPY:

....David Ivor, Lieut....
David Ivor, Lieut.,
Officer i/c Records,
No. 1 Cdn. Inf. Holding Unit.

12th May 1941

(P.T.O.)

[illegible]3518 Name Dunn, H. Sqn., Battery, or Company "C" Corps 48th H. of Can. Date of enlistment 26-11-39 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 100M—8-39 (1702) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. two Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed 26-5-40.		"R.B. Meredith, Lt."			
ordon Hants	19-6-40	Pte		A.W.L. from 2200 hrs. 19-6-40 to 1100 hrs. 20-6-40		Awarded 168 hrs. detn.	21-6-40	Lt-Col L.W. Slack	W.Forf.1 days pay FR&I 149(1)(a) Forf. 7 days pay FR&I 149 (1)(b)
ldershot	24-5-40	Pte		(1) A.W.L. from 2345 hrs. 23-5-40 to 1100 hrs. 24-5-40 (2) A.W.L. from his quarters 23-5-40 during parade hours (3) Cond. to the prej. of good order and Mil. Discipline in that he urinated on the barrack-room floor.		Awarded detn.	25-5-40	O.C.	"R.M."

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon Hants	20-6-40	Pte		A.W.L. from 2200 hrs. 19-6-40 to 1100 hrs. 20-6-40 A.A. Sec. 15(1)	L/Cpl. Soutar	Awarded 168 hrs. detn.	21-6-40	Lt-Col L.W. Slack	W.
Bordon Hants	20-7-40	Pte		Having been tried by a D.C.M. on July 19/40 and 20-7-40 is found guilty of theft from the N.A.A.F.I.		(1) Awarded 60 days detn. (2) Under close arrest from 28-6-40 to 19-7-40		D.C.M.	Forf. 82 days pay
Bordon Hants	3-12-40	Pte		Cond. to the prej. of good order and Mil. Discipline A.A. Sec. 40	Sgt. Comey	Awarded 7 days C.B.	4-12-40	Lt-Col. L.W. Slack	W.
Witley Surrey	4-1-41	"		By proceedings of a F.G.C.M. convened by Brig. L.F. Page Cmdg. Cdn. Base Units was charged under A.A. Sec. 15(1) for A.W.L. from 2200		60 days detn.	14 Jan. 41	F.G.C.M.	Forf. 17 days pay F.R.I.(1) 191 Forf.

B-73518 Pte. Dunn, H.
No.1 Cdn Inf Hldg Unit.

3 Aug

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this 18th day of July, 19 41.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY.

, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~XXXX

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-73518 PTE. DUNN,H. No.1 Cdn Inf Hldg Unit.	First Charge A.A. sec 15(1) See charge sheet attached.	Guilty	Guilty Six months inprisonment with hard labour.	I confirm the finding & the sentence as the Court but commute the sentence to one of 6 months DE Con. B

* Question to be asked of accused, if he pleads not guilty (R. of P. 30 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) L. F. Page. Major-General (Signed) [signature] President.
Commanding Cdn Base Units, Cdn Army.
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23rd day of July, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~XXXXXXXXXXXX~~ Court Stenographer
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed [signature] day of July 19 41.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 362 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 370 of 1918 have been complied with.~~

Signed this day of 19
~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~* (I direct that the soldier named in the margin be not committed to prison until further order.)~~

Signed this 26th day of July 19 41.
L. F. Page. Major-General
Confirming Officer.

Promulgated and extracts taken in the case of B-73518 Pte.DUNN,H. (48th)
(*a*) (Dated) 2 August 41 (Signed) [signature] LIEUT.-COL.
L. W. W. BLACK, OFFICER COMMANDING No. 1 CDN. INFANTRY HOLDING UNIT.

Promulgated and extracts taken in the case of
(Dated) (Signed)

Promulgated and extracts taken in the case of
(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE-SHEET

The accused No. B-73518 Pte. Dunn, H. (48th Highlanders of Canada) on the strength of No. 1 Cdn. Inf. Hold. Unit as a reinforcement, a soldier of the Canadian Army (Overseas), is charged with:-

FIRST CHARGE When on active service, absenting himself without leave--
SECTION 15(1) ARMY ACT

in that he

when in lawful custody and under escort at Bordon, Hants absented himself without leave from 1535 hours 18 June, 1941 until he surrendered himself to Headquarters, Canadian Provost Corps, London Area, in London at about 2325 hours 8 July, 1941.

L.W. Slack Lt-Col.
(L.W.W. Slack) Officer Commanding
No. 1 Cdn. Inf. Hold. Unit

Witley, Surrey
14 July, 1941

To be tried by Field General Court Martial

L. F. Page
(L.F. Page) Major-General
Commanding Cdn Base Units.

Bordon, Hants
This 16th day of July 41.

22 July 1941

I hereby certify that I have this day examined B-73518 Pte Dunn H. and find him fit to stand trial by Court-Martial.

H. C. Johnson
Capt R.C.A.M.C.

G. R. Matthews Maj'n

D/60

CHARGE

Army Form B 252
(See King's Regulations)

48th. Highlanders of Canada Regiment

No I Inf. Holding Unit. Battery / Squadron / Troop or / Company

CHARGE against No B-73518 Rank Pte.

Name Dunn, H.

Place London Date of Offence 8-July-41

OFFENCE W.O.A.S. (I) Absent without leave from 103 Dunn 48-6-41 until he surrendered to the Canadian Prov. Corps at 30-Henrietta Street, London, at about 2325hrs. on the 8-July-41.
(2) Improperly Dressed i/e he was without his respirator anti-gas and steel helmet at the same time date and place.

Lieut
E. [illegible] for D.A.P.M.
CANADIAN MILITARY POLICE
LONDON AREA.

Names of Witnesses :—

Sgt. Ferguson, W.J. Canadian Provost Corps.

Pte. Keenie, P. Canadian Provost Corps,

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

[illegible] Adjutant.

P.T.O.

Statement of **EVIDENCE** in the case of
B-73518 Pte. Dunn, H.
No I Inf. Holding Unit.

Sir,

At London on the 8-July-41 at about 2325 hrs. I was on duty at Canadian Provost Corps Hqrs. in company with Pte. Keenie,P. when the a/m soldier came to me and declared himself as being an absentee, He was dressed in fatigue dress and was without a respirator anti-gas and steel helmet. I placed him under arrest and detained him in the cells to await escort back to his unit.

London
8-7-41 ..... Sgt.
(M-20806 Ferguson,W.J.)

Sir,

I have read over and corroborate the above statement.

London
8-7-41 ..... Pte.
(H-18032 Keenie,P.)

REMARKS

B.73518 Pte Dunn, H., No.1 Cdn Inf Holding Unit tried by Field General Court Martial at Witley, on the 22nd day of July, 1941.

The order convening the Court, the charge-sheet, summary of evidence and medical certificate are laid before the Court.

Prosecutor - Lieut H.M., Howell
Defending Officer - Lieut Wilson

At 1000 hrs the Trial commences.

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No sir.

The President and members are duly sworn.

Q2 - Do you object to P.38244 Sgt. Rice, W.A., H.Q., C.B.U., acting as Court Stenographer?
A2 - No sir.

The Court Stenographer is duly sworn.

The charge-sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon the charge in the above mentioned charge-sheet.

Q3 - Are you guilty or not guilty of the charge against you, which you have heard read?
A3 - Guilty, sir.

R.P. 35 (b) has been complied with by the Court.

Q4 - Do you wish to make any statement in mitigation of punishment?
A4 - No sir.
Q5 - Do you wish to give evidence yourself or to call any witnesses as to character?
A5 - No sir.

Lieut H.M. Howell is duly sworn.

Q6 - Have you any evidence to produce as to the character and particulars of service of the accused?
A6 - Yes sir, A.F.B. 296 and M.F.M.6.
Q7 - Is the accused the person named in the statement which you have heard read?
A7 - Yes sir.
Q8 - Have you compared the contents of the above statement with the regimental books?
A8 - Yes sir.
Q9 - Are they true extracts from the regimental books, and is that statement of entries in the conduct sheets a fair and true summary of those entries?
A9 - Yes sir.

The accused declines to cross-examine.

10 - Do you wish to address the Court?
11 - (Defending Officer) - I will not offer any justification for Pte Dunn's action in going A.W.L., it was done possible on the spur of the moment, but he now realizes it was a mistake and regrets his action. However in determining his punishment I would like you to consider these things:

First, he paraded himself voluntarily. Secondly Dunn contracted V.D. approximately 13 years ago. The medical authorities do not consider he is affected mentally, but Dunn is definitely of neurotic temperament, which I think in some way, is responsible for his record of crime in the Army.

The Court will close for the consideration of the sentence.

SUMMARY OF EVIDENCE

In the case of B-73518 Pte. Dunn, H. (48th H. of C.), No. 1 Cdn. Inf. Hold. Unit.

The Commanding Officer directs that the evidence shall be taken under oath.

1st Witness C-5615 Pte. Pruner, E.H. (H. & P.E.), No. 1 Cdn. Inf. Hold. Unit having been duly sworn, states:

I am a member of the Regimental Police of No. 1 Cdn. Inf. Hold. Unit and as such was on duty on the 18th June, 1941. I was acting as escort for Pte. Dunn, H. to go to the Canadian Medical Centre at Bordon. While at the Canadian Medical Centre at about 1535 hours Pte. Dunn was in the line-up awaiting treatment. My attention was attracted for a moment by one of the Medical Officers who spoke to me, and after I turned around again Pte. Dunn was gone. I conducted a search for him in the hall and in the latrene but was unable to find him. I reported his absence to the Canadian Provost Corps at Bordon.

E.H. Pruner

(The accused declines to cross-examine this witness)

2nd Witness M-20808 Sgt. Ferguson, W.J. Canadian Provost Corps will prove at the trial that the accused surrendered himself to him at the Canadian Provost Corps, Headquarters, London at 2325 hours 8 July, 1941.

The accused is duly cautioned (R.P. 4(e)) and declines to make any statement.

Certified that Rules of Procedure No. 4 (c), (d) and (e) have been fully complied with, and Rules of Procedure (f) and (g).

.....Lieut.
(Officer taking Summary)

Witley, Surrey
15 July, 1941

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified True Copy of M.F.M.6.					
Witley, Surrey 14 July, 1941				(R.J. Rider) Officer i/c Records No. 1 Cdn. Inf. Hold. Unit	R.J. Rider Lieut.				

No. B73518 Name Dunn, H. Sqn., Battery, or Company "C" Corps 48th H. of C. Date of enlistment 26-11-39 G.C. Badges Service or Proficiency Pay Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

M.F.M. 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous Sheet destroyed 26-5-40	"R.D. Meredith"	Lieut.			
Bordon Hants	10-6-40	Pte.		A.W.L. from 2200 hrs. 10-6-40 to 1100 hrs. 26-6-40.		Awarded 168 hrs. detn.	21-6-40	Lt-Col. L. Slack	F. & F. Forf 1 days pay FRAI 145(1)(a) "RM" For 7 days pay FRAI 149 (1) (b) "RM"
Aldershot	24-5-40	Pte.		(1) A.W.L. from 2345 hrs. 23-5-40 to 1100 hrs. 24-5-40 (2) A.W.L. from his quarters 21-5-40 during parade hours. (3) Cond. to the prej. of good ord^er and Mil. Discipline in that he urinated on the barrack-room floor.		Awarded detn.	7-5-40	O.C.	

FTD:

No. Name Sqn., Battery, or Company Corps Date of enlistment G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 132) 500M—8-39 (1707) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				to 60 days detn. from 14 Jan. 41 The G.O.C. Cdn. Base Units, confirmed the finding of the court which is promulgated hereby.				"D.I."	Forf. 11 days pay FR&I 149 (1)(c) Total 68 days pay.
Witley	15-1-41	Pte.		A.W.L. from 1800 hrs. 15-1-41 to 1530 hrs. 12-3-41. AA Sec. 15(1)	F.G.C.M.	9 months detn.	30-5-41	F.G.C.M.	
The finding and sentence of the Court were confirmed by the G.O.C. Cdn. Base Units, on 7-6-41, who remitted three months of the sentence.						Forf. 79 days pay F.R.&I. 149(1)(C) Forf. 56 days pay F.R.&I. 149(1)(a) Forf. 184 days pay F.R.&I. 149(1)(b) Total forf. of pay 319 days.			"EJR"

EJR (P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon Hants.	20-6-40	Pte.		A.W.L. from 2200 hrs. 19-6-40 to 1100 hrs. 20-6-40. AA Sec. 15(1)	L-Cpl. Soutar	Awarded 168 hrs. detn.	21-6-40	Lt-Col. L.W.W. Slack	
Bordon Hants	20-7-40	Pte.		Having been tried by a D.C.M. on July 19/40 and 20-7-40 is found guilty of theft from the NAAFI		(1) Awarded 60 days detn. (2) Under close arrest from 28-6-40 to 19-7-40		D.C.M.	Forf. 82 days pay.
Bordon Hants.	3-12-40	Pte.		Cond. to the prej. of good order and Mil. Discipline. AA Sec. 40	Sgt. Comey	Awarded 7 days C.B.	4-12-40	Lt-Col. L.W.W. Slack	
Witley Surrey	14-1-41	Pte.		By proceedings of a F.G.C.M. convened by Brig. L.F. Page Cmdg. Cdn. Base Units was charged under A.A. Sec. 15(1) for A.W.L. from 2200 hrs. 16-12-40 to 1120 hrs. 2-1-41. Found guilty and sentenced		60 days detn.	14 Jan. 41	F.G.C.M.	Forf. 17 days pay F (1)(a) For 60 days pa FR&I 149(1 (c)

EJR

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
EJR				

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22 nd day of July, 1941

E.J. Rider

(E.J. Rider) Officer i/c Records
No. 1 Cdn. Inf. Hold. Unit

Lieut.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B-73518 Pte. Dunn, H. of the 48th H. of C. No. 1 CIHU

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For A.W.L.	nil	times	3	times.
For Con. to the prej.	1	times	2	times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct, nil

or,

~~There are no entries in the Conduct sheets of the accused.~~ EJR

~~2. The accused has not been previously convicted.~~ EJR

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

3. ~~The accused is not under sentence at the present time.~~ EJR.

or,

The accused at the present time is under sentence for 6 months detn.
beginning on the 30th day of May, 1941.

4. The accused has been in confinement, awaiting trial on the present charges

for n11 days in Civil Custody,

and n12 days in Military Custody.

Total n11 days.

Of which n11 days were spent in hospital ~~(state if service or non-service)~~ EJR

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 36

6. The date of his ~~[illegible]~~ EJR specified in his ~~[illegible]~~ attestation paper is 25 Nov. 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 20 months

8. The accused is entitled to deferred pay or gratuity in respect of 20 months ~~[illegible]~~ service.

9. The accused is entitled to reckon20 months ~~[illegible]~~ service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [illegible]

~~11. If the accused is a warrant officer.~~ The accused before he was made warrant officer last held the regimental rank of

12. *(In the case of an officer.)* The accused holds in the army the rank of , dated , and in his regiment (or corps or department) the rank of , dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of , years,

In the rank of , years,

In the rank of , years.

(Instruction.—*If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name B-73518 Pte. Dunn, H. of the 48th Highlanders of Canada, No. 1 C.I.H.U.

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
D.C.M.	20 July, 1940 Bordon, Hants	Theft from the N.A.A.F.I.	60 days detn.	nil
F.G.C.M.	14 Jan. 41 Witley, Surrey	A.A. Sec. 15-1 A.W.L. from 2200 hrs. 16-12-40 to 1120 hrs. 2-1-41	60 days detn.	nil
F.G.C.M.	30 May, 1941 Witley, Surrey	A.W.L. from 1800 hrs. 15-1-41 to 1530 hrs. 12-3-41. A.A. Sec. 15(1)	9 months detn.	3 months

EJR

EJR

(Continued overleaf.

58-146

Pte. Dunn, J. J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B70322 Pte James Joseph DUNN SD&G Highrs att 1 Cdn Disciplinary Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 12(1)(a)	GBC Not-Guilty		The Court allows the Special plea on the charge of Desertion, but finds the accused Guilty of AWL from 0800 hrs 9 Nov 44 until apprehended at 0730 hrs 6 Mar 45 GBC
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1) GBC

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for a period of two years.

(Sgd) ..... 12 Apr 45 (Sgd) "George B N Cox" Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~(1) GSNG
(1. AA 57A. Delete if not used.)

(Sgd) "G S N Gostling"
Date 16 Apr 45 (G S N Gostling) Brigadier
Commanding 2 Cdn Base Hft Gp
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B70322 Pte James Joseph DUNN	22 Apr 45	

CR # 103/144Last
d/20 Apr 45

"J Medhurst" ,Lt-Col
Comdg, 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 53-148

RECEIVED 15 May 45 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL CFA96 (In lieu of AFA91) 40/P & S. Edn (1944) 4/38B

Convened by Order of Brigadier G S N Gostling, MC Comd 2 CBBG dated 9 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-70322	Pte	James Joseph	DUNN	SD&G Highrs att 1 Cdn Disciplinary Centre

Certified true Copy
W. B. Beale Maj

Case See 1 Cdn HQ 21 Army Sept

PROCEEDINGS REVIEWED

BRANCH C.M.H.Q.

Cdn Sec 21 Army Sept 8 May 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date) 12 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 29/123

A1. The President, Members, ~~waiting Members~~, JA, if any, ~~and Offrs under instr, if any~~, assemble, and the Court is closed. GBC

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp. 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See list of Convening Offrs, CF A65, for oaths and instrs on how to record addresses, evidence etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 72-74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~not~~, amenable to military law, and each charge discloses an offence.(4) GBC

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1440C hours trial commences. GBC

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 562(c). Delete, if not applicable.)

A5. ~~Accused to accused: Do you object to ..... as interpreter? Ans .....~~ } GBC
~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans ..... The shorthand writer is sworn.(1)~~ }

(1. RP 71. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 23, 71, 118, MML p 742.)

A7. The President, Members, JA, if any, ~~and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc: GBC

President	Major	GBH COX	CAC att 1 Cdn Disciplinary Centre	
Member	Major	AE Lefroy	Seaforth Highrs att 1 Cdn Dis Centre	
Member	Captain	JB Cartmel	RCA Att 1 Cdn Dis Centre	
Judge-Advocate	~~Captain~~	~~KH Griffin~~	~~RCOA HQ 2 C B R G~~	GBC
Prosecutor	Captain	JH Labrie	R de Mais Att 1 Cdn Dis Centre	
Defending Offr	Captain	ND Bowler	R S R Att 1 Cdn Dis Centre	

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Comm Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (5) and fn 2 were not followed. See D1 p 2.)

A8. The accused B-70322 Pte James Joseph DUNN before arraignment make(s) ~~no objection~~ plea GBC ~~to the~~ GBC see statement as to charge, recorded and attached as exhibit "A" GBC

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in ARI rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule. GBC

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 5 GBC

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*I. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. N/A (5)
(*I. RP 37(B). 2. RP 37(D) fn 6. 3. RP 25(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement(s) (The Court decides not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*I. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the pleas of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*I. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex D , initialled and read aloud by the President.(1)
(*I. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*I. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*I. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES. B/C

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans..... (1)
(*I. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*I. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*I. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*I. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*I. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*I. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*I. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*I. AA 54(3) (c), RP 42, 120(A). 2. AA 54(3), RP 43, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO
(*I. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E and Ex F respectively.(3)
(*I. MFB 253 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes in mitigation of punishment after Ex C & F"
(*I. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*I. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and then JA, if any.~~ B/C
(*I. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

21 Nov 45

J.A.G. Rev

Original proceedings despatched
Bomber to DND.

This H. 10/Dunn, J J 11

Dated 16 Nov 45

J. J. Kerr
Capt.

CHARGE SHEET

GBC

The accused, B-70322 Pte James Joseph DUNN, SD & G Highlanders, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 12(1) (a)
Army Act

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field at 0800 hrs on 9 Nov 44 absented himself from his unit until apprehended at ERMONT near Paris at 0730 hrs on 6 Mar 45.

(Total absence: 116 days 23 hrs 30 minutes)

In the Field
[illegible] Apr 45

"A O Hood"
(A O Hood) Lt Col
Commanding
1 Cdn Disc Centre

To be tried by Field General Court-Martial

In the Field
9 Apr 45

"GSN Gostling"
(G S N Gostling) Brig
Comd
2 Cdn Base Aft Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B70322	Pte		James Joseph	DUNN	SD & G Highrs att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 9 Apr 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

GSN

PRESIDENT.

Major	G B H Cox	CAC att 1 Cdn Disciplinary Centre
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Major	A E	LEFROY	Seaforth Highrs att 1 Cdn Disciplinary Centre
Capt	GB	CARTMEL	RCA att 1 Cdn Disciplinary Centre
(Rank.)	(Named or detailed. RP 106.)		(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.) "G S N Gostling" (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Dat 9 Apr 45 (G S N Gostling) Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 2) 40/P&S/1697 (6143) (See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 118 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 86(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 562(*a*).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 567.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy as here of original see KR Can* 560. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*ii*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 52(9), *RP* 118(C), *MML p* 739.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Ex "A" SSC

MEDICAL OFFICER'S CERTIFICATE (CR(Can) para 587)

I certify that I have this day examined B70322

Pte Dunn JJ and in my opinion he is fit/unfit to undergo

trial by Court Martial.

Station 1 Cdn Disciplinary Centre "AA Toms" Capt

Medical Officer

Date 12 April/45 1 Cdn Disciplinary Centre

Unit

Case of B70322 Pte DUNN J.J.

Ex 'A' Defence submits special plea, signed by President and attached.

Capt R G Stagg, sworn states:

I am attached to admin staff 1 Cdn Disc Centre and as such have access to documents and records I tender a certified true copy of a charge sheet in my possession relating to C79271 Pte Sullivan RG showing AWL from 0800 hrs 9 Nov 44 until app 0730 hrs 6 Mar 45.

Pte Sullivan has already been dealt with on this charge by an FGCM under AA 15 (1) (a).

I also tender a certified true copy of a letter in my possession showing that Pte Dunn and Pte Sullivan were apprehended together.

R P 83 (b) complied with

Prosecution objects to the acception of this document on the grounds that they have no bearing on the charge or evidence against the accused and it is only a coincidence if Pte Dunn and Pte Sullivan are in the same house when arrested.

Court closes to consider special plea.

Exhibit "A" GBC

Statement as to charge

Submission by D.C.

I feel it my duty on behalf of the accused to bring to the Court's attention that the accused was with another soldier during his absence, who has since been brought to trial and sentenced on the charge of Absence Without Leave. This soldier left at the same time, from the same Unit and was apprehended along with the accused in Ermot, France. I submit that it would not be fair to the accused to proceed with the trial on a desertion charge, simply because it took a little longer to produce the documents relating to his absence. I ask that the Court see fit to change the charge to Absence Without Leave.

"N D Bowler" Capt

Defending Officer

Court re-opens,

The court allows the Special plea on the grounds that it has been established that Pte DUNN J.J. and Pte Sullivan R.G. went AWL from the same Regt at the Same time and were together when apprehended at the same ~~time~~ place. Pte Sullivan R.G. has already been arraigned and sentenced by a F.G.C.M. for a charge of A.W.L. under Section 15 (1)(a) AA. Therefore it is felt that in due justice to the accused he should be tried under the same section. The documents tendered by the witness for the defence are therefore accepted by the Court. The charge sheet in the case of Pte Sullivan R.G. is identified as exhitit "B", signed by the President and attached to the proceedings. The letter re-Pte Sullivan and DUNN, is identified and attached as exhibit "C" having been signed by the President. The special plea as to the charge of desertion is accepted, but the trial will proceed as to a finding of A.W.L.

The accused elects to plead guilty to a charge of A.W.L.

Exhibit "C"

GBC

Plea in Mitigation

B70322 Pte DUNN J.J.

The accused is 28 yrs of age, enlisted in April 42 and arrived overseas in Feb 44. He went into action, Jul 44 and served 4 months of the toughest action of this war.

At the time of going absent, the accused had been sent to the cookhouse as butcher and, being somewhat browned off about this, took the wrong course and went absent. He regrets his mistake, which is his first crime since enlistment, and desires to be returned to the front line again.

I ask that the Court consider this mans excellent record and see fit to award the minimum sentence.

"N D Bowler" Capt

Defending Officer

Exhibit "C" GBC

CANADIAN SECTION GHQ 1 ECHELON
21 ARMY GROUP

520/21 A Gp/1/2 (AG 11)
21 Mar 45

1 Cdn Dis Centre

Discipline
B70322 Pte Dunn JJ
C79274 Pte Sullivan RJ
SD & G Highrs

1. The m/n soldiers were apprehended in a house on the outskirts of Paris where they had resided for some time with 3 Brit soldiers. It was considered for a period that the soldiers were involved in black market and theft but however, the case was investigated and the soldiers were absolved from any connection in black market activities.

2. It is understood that Ptes Dunn and Sullivan have been despatched to 1 Cdn Dis Centre in connection with AWL charges.

(J T Harvey) Major
DAAG (Dis)
Cdn Sec 1 Ech HQ 21 A Gp

DALS

CERTIFIED TRUE COPY
"Paul W Fess" Capt

C H A R G E S H E E T

"Exhibit "B"

GBC

The accused, C-79271 Pte R J SULLIVAN, SD & G Highlanders, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 0800 hrs 9 Nov 44 until apprehended at ERMONT near PARIS France at 0730 hrs 6 Mar 45.

(Total absence: 116 days 23 hrs 30 minutes)

In the Field
29 Mar 45

(A C Hood) Lt Col
Commanding
1 Cdn Disc Centre

To be tried by Field General Court Martial

In the Field
Mar 45

(G S W Gostling) Brig
Comd
2 Cdn Base Sft Gp

Certified True Copy
"Paul W Fess" Capt

(1) Exhibit 'D'

GBC

Summary of Evidence in the case of H-70322 Pte James Joseph DUNN, S D & G Highlanders, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Deserting His Ma esty's Service

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 68 dated 28 Nov 44

Exhibit "B" - Certificate of apprehension dated 6 Mar 45

Q. [redacted] wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

"Maurice Rousseau" Capt
(Maurice Rousseau) Capt
Officer detailed to take Summary of Evidence.

Dated in the Field
Apr 45

Exhibit "A"
"M Rousseau" Capt

TO: Officer Commanding
1 Cdn Disciplinary Centre
Cdn Army O/S

29 MAR 45

EXTRACTS FROM: UNIT SD&G Highrs

Part II Order No. 68 28 dated Nov 44

ABSENT WITHOUT LEAVE

AWL from 0800 hrs 9 NOV 44 Still absent 0800 hrs 17 NOV 44 (8th day)
B70322 Pte DUNN J J

"MJ Fenelon" Capt

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT SECTION 103(1)(i)

I certify that No. B-70322...Rank..Pte..Name.DUNN.James.J.....

of Stormont.Dundas.and.Glengarry.Highrs unit was arrested at ERMONT...

near.Paris.....(place) at.0720..hrs on 6th.Mar.45

(date). He was dressed in uniform/xxxxxxxxxxxxxxx

Date..... Signature of Provost Marshal, APM, or other officer into whose custody the a/m person was taken on arrest.

Signature & Rank.G.C.Stoake.Capt.....

Unit or appointment.DAPM...British.Army.Staff.Paris

NOTES

1. This certificate must be signed personally by the officer concerned.
2. In no circumstances may it be signed by one officer 'for' another or by anyone not holding commissioned rank.
3. In no circumstances should the place of apprehension be described as 'In the Field'. The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
B-70322	Pte	DUNN J J	S D & G HIGHLANDERS

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

* Strike out if not applicable

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For NIL entries on MFM 6 .... times

For .... times

For .... times

For .... times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* The accused at the present time is under sentence for .....nil.....

beginning on the ..nil..... day of .....

4. The accused has been awaiting trial on the present charges for .nil days in civil custody; and for nil.. days in military custody, making a total of ..... days of which .nil.. days were spent in hosp.

5. The present age of the accused is 28 yrs 6 mons old

6. The date of his ~~assumption~~ calling up for Nil service is 13 May 42

7. The service which the accused is allowed to reckon is N/A.....

8. The accused is in possession of # CVSM & Clasp

State the military decorations (if any) held by accused.

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date -

	N/A	Date of Promotion
In the substantive rank of	.....	.....
In the war substantive rank of	.....	.....
In the acting rank of	.....	.....

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Army Form B.296 (War)

... A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended

NO RECORD OF CONVICTIONS BY COURT MARTILA ON MFM 6

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 12th April day of AA

"J. Gibb" Capt

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended

NO RECORD OF CONVICTIONS BY COURT MARTILA ON MFM 6

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 10th April..... day of AA.....

"JA Dibb" Capt.....

Exhibit "F"

No B70322 Name DUNN JJ | Sqn, Battery, or Company | Corps CIC | Date of enlistment 13 May 42 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Nil ENTRIES					
Duplicate 17 Feb 44	created fro not available.	MFM 4		30 Mar 45 Record of Conduct in Canada prior to TOS Cdn Army Overseas					
				RSC Williams Lt Officer ic Recds X Cdn Sec 2 Ech HQ 21 A Gp					
				CERTIFIED TRUE COPY OF MFM 4 IN MY POSSESSION "JA Dibb"Capt					

(PTO)

QQQ-67
CPL DUNN JR

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.83796 CPL JOHN RUTHERFORD DUNN TBN 2CBRD.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence here if applicable, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be reduced to the ranks; to suffer field punishment for 90 days and to forfeit all ordinary pay for a period of 90 days.

(Sgd) P.J.S. Biddlecombe Judge-Advocate, if any. 12 June 44 Date awarded. (Sgd) J.K. McCullagh Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (*) (1. AA 57A. Delete if not used.)

(Sgd) C.W. Haseldine MGen COMMANDER

Date 12 June 44 Commanding 1 CDN BASE RET GROUP Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B 83796 Cpl Rutherford Dunn	14 Jun 44	[illegible] a/Adj't

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECEIVED 7 JUL 1944 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160 [illegible]

FIELD GENERAL COURT-MARTIAL

CFAMS (1) (Intl of AFA3) 40-P-A-S-1(108 (2004)

Convened by Order of BRIG. E.W. HALDENBY Comd 1 CBRGP. dated 10 JUN 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.83796	CPL	JOHN RUTHERFORD	DUNN	RCASC 7 CDN BASE RET BN 2 CBRD.

PROCEEDINGS REVIEWED

[illegible] Major

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) ITALY on (*date*) 12 JUN 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 118, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to [illegible] as interpreter? Ans [illegible]

The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer? Ans [illegible]
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans [illegible] (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 98(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	J.K. McCULLAGH	RCA	2 CDN REALLOCATION CENTRE
Member	CAPT.	R. PAQUETTE	CIC	2 CDN REALLOCATION CENTRE
Member	LIEUT.	A.G. BOYD	CAC	2 CDN NETD
Judge-Advocate	CAPT.	W.B. BATE	ADJA	HQ 1 CBRGP.
Prosecutor	LIEUT.	C.N. GORE	RCASC	7 BN 2 CBRD.
Defending Offr	CAPT.	R.E. NEELANDS	RCE	7 BN 2 CBRD

Questions by President: Is the Prosecutor a lawyer? Ans [illegible] Is the Defending Offr a lawyer? Ans [illegible] (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 1 were not followed. See Dif p 3.)

A8. The accused [illegible] before arraignment make(s) (no) (a) plea. [illegible] (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (G)), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO SIR .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Witness whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex **A** , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by continuing with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. .....
Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the Finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (d), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Yes, I would like to call character evidence.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex I and Ex J respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or state anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. Where several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 99, 118, 119(A), KR Can 308, 330, 343-56A, Overseas RO 309, 2313, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B83796 Corporal John, Rutherford, DUNN, Royal Canadian Army Service Corps, 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
Section 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field in Italy did absent himself without leave from approximately 0800 hours on the 1st day of June, 1944 until approximately 1800 hours on the 3rd day of June, 1944, when he reported to the Unit Guard Room. Total time absent 2 days and 10 hours, approximately.

.....

(J D Macbeth) Lt-Col,
Officer Commanding,
7 CBRBn, 2 CBRD, CMF.

In the field
this 6th day of June, 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In Italy
In the Field
10 June 44

(E.W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Group
Cdn Army - C M F

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2865)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-83796	Cpl.		John Rutherford	DUNN	RCASC 7 Cdn Base Rft Bn.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (*date*) 10 June 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by ~~Field~~ General Court-Martial ". GWH

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary ~~General~~ Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ GWH
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ GWH
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.K. McCullagh - RCA	2 Cdn Reallocation Centre

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	R. Paquette	2 Cdn Reallocation Centre
Lieutenant	A.G. Boyd - CAC	2 Cdn NETD

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut	to be detailed by O.C.	2 Cdn NETD

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Captain	W.B. Bate - ADJA	HQ 1 CBRGp

On Active Service in the Fd

in Italy (Country.) — G W Hardenby (Signed personally. RP 105 fn 2.) — Brigadier (Rank.)

Date 10 June 1944 — Commanding HQ 1 Cdn Base Rft Group. Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 269.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the *para* in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, *etc.* (*As to admitting in evidence a certified copy in lieu of original see KR Can 550. As to certified copies of regimental books see AA 162 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 8 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

7 CANADIAN BASE REINFORCEMENT BATTALION

Certified that I have examined B 83796 Corporal DUNN, J R (Royal Canadian Army Service Corps, and in my opinion find him ..fit..... to undergo trial by Field General Court Martial.

In the Field
this 12 day of June 1944

W. B. Spafford Capt.
(Medical Officer)
7 Cdn Base Rft Bn., 2 CBRD.

E. 1.

First Witness Def. | Major W.J. Berk ECASC. 7 Bn 2CBRD duly sworn, is exam. by Defend. Offr.

(see p. E1(A) attached.

No. cross-exam.
R.P. 83(B) complied with

Statements by Col. S.A. Lee Comd. 2CBRD and Capt. W.B. Spafford M.O. - 7 Bn admitted by the Court and marked F. & E. respectively

E. 3.

The accused, B.83796 Cpl. Dunn J.E, in mitigation of punishment states:-

I am extremely sorry to have caused this trouble and there will be no recurrence of it.

Defend Offr - Plea in Mitigation.
(attached & marked as Ex. K).

E.I.(A)

Re B 83796 Cpl Dunn J R

comparatively brief

During the period Cpl Dunn has been with E Coy, 7 Bn, I have had a good opportunity of observing his demeanour and the quality of his work.

He is a man of good breeding and of superior education - a triple sensitive which makes it difficult for him to find interests in common with those of a lesser mould.

Upon his return from absence I arranged an interview for him with our M.O. who confirmed my opinion and stated he thought he would be better employed in a Echelon or at similar work.

The reports given me by my C S M and senior n.c.o's have all been favourable ones.

He held a responsible position in civilian life - has latterly been employed in Bn Records office and has done a good job.

He is Clerk Gr "C" is a capable clerk and I should regret to see the unit deprived of his services. He has assured me that he will not err again and I believe him.

My hope is that the Court will take a lenient view of this offence.

W J Beck
Major

Ex. K.

Plea in Mitigation of Sentence in the case of

B-83796 Cpl. Dunn J.R.

Cpl. Dunn enlisted into the Army on 5 Sept. 39. Prior to enlistment he was employed for nine years by the Borden Milk Co. where he built up a reputation for reliability and efficiency which resulted in his being made Eastern Manager of that firm.

Since his initial period of training he has been employed almost continuously as a clerk, and during 1942&1943 he worked for for 15 months as corporal clerk for the D.A.&Q.M.G. -E- Group C.R.U.

His crimes during his military service have all been case of A.W.L. for relatively short periods, and attantion is drawn to the fact that he has not been on charge for the past 12 months.

Cpl. Dunn was recently discharged from hospital where he spent 5½ months suffering from a sceptic leg. His physical condition was considerably ~~lowered~~ weakened in hospital where he lost 20 pounds in weight. He is naturally of a nervous and highly strung temperment which condition was undoubtedly accentuated by his confinement in hospital. The offense for which the accused is charged is entirely due to a drinking episode which resulted in a temporary lapse of willpower due to an unsteady state of nerves brought on by his long confinement in hospital.

It is felt that the court would be well advised to consider the long and valuable service and high character ~~of the~~ of the accused when deciding the sentence and that the utmost leniency for this offense be shown.

12 June 44

R S Peerlands Capt
Defending Officer

E. H.

Summary of Evidence in the case of B 83796 Corporal John Rutherford DUNN, Royal Canadian Army Service Corps 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the Summary of Evidence be taken upon oath.

FIRST WITNESS for the prosecution

F 28092 Sergeant Frank George GRAN, RCASC, 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, having been duly sworn states

"I am Sergeant Gran F G, Orderly Sergeant of "E" Company, 7 CBRBn. At 0800 hours on the morning of 1 June , 1944 I took "E" Company parade . I called the roll and Corporal Dunn failed to answer his name. I took the men down to the Guard and Corporal Dunn was still not present. I came back and asked Corporal Gibson to locate Corporal Dunn, which he could not do, and I had to replace him. On roll call at 1330 hours on 1 June, 1944 and at 2200 hours, Tattoo roll call, Corporal Dunn still was not present. He did not answer his name on Roll Calls on the 2nd and 3rd of June. He reported to "E" Company Orderly Room at 1800 hours on 3 June, 1944 and was placed under open arrest."

The foregoing statement is read back to this witness in the presence and hearing of the accused.

The accused declines to cross-examine this witness.

F G Gran

(F G Gran) Sergeant.

SECOND WITNESS for the prosecution

B 90887 Corporal Charles Herbert GIBSON, Royal Canadian Army Service Corps, 7 Canadian Base Rft Bn, 2 Canadian Base Reinforcement Depot, a soldierof the Canadian Army Overseas, having been duly sworn states

"I am Corporal Gibson C H. On the 1st day of June 1944, at Reveille I warned the accused for Corporal in charge of the Guard. At 0830 hours, Sergeant Gran reported him not present at the guard. I was ordered to find Corporal Dunn and failing to do so I replaced Corporal Dunn as NCO in charge of the Guard. The next time I saw Corporal Dunn was on the 3rd of June, 1944 when he reported in to "E" Company Orderly Room."

The foregoing statement is read back to this witness in the presence and hearing of the accused.

The accused declines to cross-examine this witness:

C H L Gibson

(C H Gibson) Corporal

(Continued on Page Two)

WARNING TO THE ACCUSED - You may make a statement or give evidence on oath but you do not have to make a statement or give evidence on oath unless you wish, but if you do, it will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on oath and reserves his defence.

Rules of Procedure 4 (C) (D) (E) and (F) have been complied with.

I CERTIFY that the foregoing Summary of Evidence consisting of two pages was taken down in writing by me in the presence and hearing of the accused this 6th day of June, 1944.

A H Gilpin

(A H Gilpin) Lieutenant
Officer detailed
to take the Summary of Evidence.

F

W.B.Ro.
[illegible]

I desire to give character evidence in the case of Cpl R S Dunn. J.R.

He was my Confidential Clerk for many months in the UK. I found him honest, trustworthy and a good soldier.

I would have no hesitation in employing him in the same capacity again.

[illegible]

Colonel

12 June 44

G.

7 Btn., #2 C.B.R.D.,
8 Jun 44.

Capt R.E. Neelands,
Defending officer.

Cpl Dunn

1. The above mentioned N.C.O. has been interviewed by me on two occasions. I have found him to be of superior intelligience and has a straightforward and sincere manner.

2. I have observed that he is a nervous individual. He has a fairly noticeable tremor. In spite of this I feel he has a reasonably stable temperment and I understand from his company Commander that he does his work well.

3. He readily admits that his previous offences are the result of drinking but he claims that he is able to stop drinking entirely and is prepared to do so now. I feel that he can make good his promise.

4. In such a case this man would be of more value working as a clerk in a rear area than serving time in detention.

5. For your consideration.

W.B. Spafford ....Capt M.C.,
(W.B. Spafford) 7 Btn #2 C.B.R.D.

7 CANADIAN BASE REINFORCEMENT BATTALION

Received this 7 day of June, 1944

(a) One copy of Summary of Evidence

(b) One copy of Charge Sheet.

I have no preference for any particular officer to act as my defence and will accept whoever is delegated.

Signed by the accused - .....

Witnessed by - .....

LIST OF WITNESSES FOR THE DEFENCE

NIL

LIST OF WITNESSES FOR THE PROSECUTION

FIRST WITNESS - P 28092 Sergeant Cran F G. RCASC, 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot.

SECOND WITNESS - B 90887 Corporal Charles Herbert GIBSON, RCASC, 7 Canadian Base Reinforcement Battalion, 2 Cdn Reinforcement Depot.

LIST OF WITNESSES FOR THE DEFENCE

NIL

LIST OF WITNESSES FOR THE PROSECUTION

FIRST WITNESS - F 28092 Sergeant Cran F G, RCASC, 7 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot.

SECOND WITNESS - B 90887 Corporal Charles Herbert GIBSON, RCASC, 7 Canadian Base Reinforcement Battalion, 2 Cdn Reinforcement Depot.

No B-83796 Name DUNN, J R | Sqn, Battery, or Company | Corps R C A S C | Date of enlistment 5 Sept 39 | GC Badges | Service or Proficiency Pay | MFM.6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet 2 Dec 39 | No and date of last drunk NIL | Period not reckoning towards freedom from extra fine N/A | Sheet No 1. | Signature OC Company, etc Ex. J. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of order dispensing with trial	By whom awarded	Remarks
Field	24 Jul 40	A/Cpl		AA Sec 15(1) AWL 33 Hrs 30 Min	S/Sgt Christie Sgt Potten	Reverted to rank of Pte.	26 Jul 40	Lt Cpl Jones	Forf: 2 days pay.
Field	1 Aug 40.	Pte		A A 15(1) AWL 111 Hrs	Cpl Cummings Cpl Boone Sgt Potten	10 days detention	7 Aug 40	Lt Col Jones	forf: 5 days pay.
Field	19 Oct 40	Pte		A A 15(1) AWL 2 Hours 30 Min	S/Sgt Innes	Admonished 7 days C B	18 Oct 40	Major S H Coombs	
Field	19 Dec 40	L/Cpl		A A 15(1) AWL 10 days 2 hrs 45 Min. (Second charge) AA 51(1) AWL 2 days 8 hrs., 30 Min.	RSM FARMER Cpl Ledrew Sgt Owen	XXXX Reverted to Pte.	8 Jan 41	Lt Col Jones	For: 14 days pay.
Field	27 Jan 41	Pte		A A Sec 15(1) AWL 2 days 5 Hrs 15 Min	Cpl Scott Cpl Reid	28 days Detention	31 Jan 41	Lt Col Jones	Forf: 3 days pay.
Field	6 Jun 41	Pte		AA 15(1) AWL 33 Hours 30 Min	Sgt Barry Cpl Reid	7 days Det.	9 Jun 41	Lt Col Coombs	Forf: 2 days pay.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19 Aug 41	Pte		A A 15(1) AWL 30 days 1H Hrs 15 Min	CSM Maddick	28 days F P	9 Sept 41	Lt Col Coombs	Forf: 21 days pay
Field	10 Oct 41	Pte		A A 15(1) AWL 0days 23 Hrs 45 Min	CSM Maddick Cpl Smith Cpl Brunke	120 Days Det. (Earned 40 days Remission)	20 Nov 41	F G C M Lt Col Coombes	Forf: 10 days pay.
Field	17 Aug 42	A/Cpl		A A 15(1) AWL 11 Hrs	CSM Murphy	Severe Reprimand	19 Aug 42	Col Little	Forf: 1 days pay.
Field	14 Apr 43.	Cpl		A A 15(1) AWL 1400 Hrs 14 Apr 43 to 0730 Hrs 15 Apr 43 absent 17 Hrs 30 Min	SQMS Locke A/Cpl Moss	Severe Reprimand	15 Apr 43	Major T Mackie	Forf: 1days pay.

CERTIFIED TRUE COPY FROM REGIMENTAL BOOKS HELD IN MY CUSTODY:.....

(W J BECK) Major
Officer Commanding,
"E" Coy 7 CERBn.

Ex. I.

R.S.B.

ARMY FORM B.213.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 83796	Corporal	John Rutherford DUNN	(RCASC) 7 CBRBn, 2 CBRD, CMF.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial the summary must be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not appended to the proceedings.

† See para. 671, K.R., 1940.

* The accused's term related should correspond with the words to appear in the indictment. Where the accused is charged with an attempt to desert, and to any subsequent service will be given.

‡ Or "undetailed conduct."

Instructions.—If the charge is for offences from the battle list (Consequential Loss) is stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	AA Sec 15 (1) NIL	time X 9 times X
For	N/A	times. N/A times.
For	N/A	times. N/A times.
For	N/A	times. N/A times.
For	N/A	times. N/A times.

XXXX

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B83796 Rank CORPORAL Name John Rutherford DUNN of 7 CBRBn, 2CBRD Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
~~N/A~~	~~N/A~~	~~N/A~~	~~N/A~~	~~N/A~~
FGCM	Field 20 Nov 41	AA Sec 15 (1) AWL for 9 days 23 hours and 45 minutes.	Sentenced to undergo detention for 120 days	40 days remission

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7th day of June, 1944.

(J M Tierney) Capt & Adjutant,
7 CBRBn, 2 CBRD.

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17. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of Corporal for two years, 6 May, 1942

In the rank of N/A years N/A

In the rank of N/A years N/A

(Note.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except this in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs inserted amended accordingly.)

B.P.S 796 Pte Dunn, J.R.

Correspondence to be PINNED here.

PROCEEDINGS REVIEWED

13/12/41

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this eighteenth day of November, 1941.

Whereas it appears to me, the undersigned, an officer in Command of Corps Royal Canadian Artillery, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*~~I am unable to appoint:~~

*~~(a) Three Officers to form the Court.~~

*~~(b) A Field Officer as President.~~

*~~(c) Three Officers having more than one year's service.~~

~~for the following reasons, namely:~~

President.

Rank.	Name.	Regiment.
Major	W.J. Andrew	1 Cdn Med Regt

Members.

Rank.	Name.	Regiment.
Captain.	G. Vaughan.	Can Corps Pet Park.
Lieut	G.H. Jones	Can Corps Tp Amm Coy

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed. H O N Brownfield

(H.O.N. Brownfield) Brigadier

~~Commanding~~ A/C.C.R.A. Cdn Corps

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.83796 Pte Dunn, J.R. C.T. Sup Col R.C.A.S.C.	1st Charge Section 15(1) Army Act	Not Guilty	Guilty of being A.W.L. Punishment awarded 120 days Detention	Confirmed H.O.N. Brownfield

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No.
Answer (to be recorded on separate sheet if necessary):—

(Signed) H.O.N. Brownfield (H.O.N. Brownfield) Brigadier
~~[illegible]~~ A/C.C.R.A. Cdn Corps
Convening Officer (c)

(Signed) W. J. Andrew Maj. 1st Med Regt. R.C.A.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 20th. day of Nov. 41, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 20th day of Nov. 1941.

W. J. Andrew Maj.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

~~Signed this day of 19~~

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 27th day of November 1941.

H.O.N. Brownfield BRIGADIER
Confirming Officer
(H.O.N. Brownfield)
A/C.C.R.A. Cdn Corps

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of B83796 Pte Dunn, J.R.

(Dated) 1 Dec 41 (Signed) [illegible] Lt. Col.
Commanding Cdn. C.T. Sup. Col.
R.C.A.S.C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

"C" W.J. Andrews

CHARGE - SHEET

The accused No. B.83796, Pte. Dunn J.R. of the Cdn. C.T.Sup.Col., R.C.A.S.C., a soldier of the Canadian Army Overseas is charged with;-

1st CHARGE
SEC 15(1)
ARMY ACT

When on active service absenting himself without leave. In that he in the field at 2300hrs. 10 Oct. 41, absented himself from Corps Troops Supply Column, R.C.A.S.C., until he surrendered to his unit at 2215 hrs. 20 Oct. 41. Time absent; 9 days 23 hours 45 minutes.

S.H. Coombs
B.Col

(S.H.Coombs)Lt.Col.
Commanding C.T.Sup.Col.
R.C.A.S.C.

Effingham
23 Oct. 41.

To be tried by a Field General Court Martial.

Field
18 Nov 41.

H.O.N. Brownfield
(H.O.N. Brownfield) Brigadier
A/C.C.R.A. Cdn Corps

FIELD GENERAL COURT MARTIAL PROCEEDINGS

Re. B.83796, Pte. Dunn, J.R. of the Cdn.

C.T.Sup.Col., R.C.A.S.C.

President:- Major W.J. Andrews — The Field General Court Martial as convened by Brigadier H.O.M. Brownfield, A/C.C.R.A., Cdn. Corps is present.

Is the accused ready?

Prosecutor:- Capt. J.H. Heffernan — Yes Sir.

President:- Bring him in and we will swear the court in.

I have here Army Form AFA.3, a form for proceedings of a Field General Court Martial on Active Service.

On Active Service, this twentieth day of November, 1941, whereas it appears to me, the undersigned, an officer in command of Cdn. Corps. Royal Arty., on Active Service, that the persons named in the annexed schedule, being subject to Military Law have committed the offences in the said schedule mentioned. And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; I hereby convene a Field General Court Martial to try the said persons, and to consist of the officers hereunder named.

President -- Major W.J.Andrews, 1 Cdn. Med. Regt.

Member -- Capt. Washorn, Cdn.Corps Pet. Park.

Member -- Lieut. G.H. Jones, Cdn. Corps Amn. Coy.

B.83796, Pte. Dunn, J.R. have you any objections to any member of the court named.

Accused:- B.83796, Pte. Dunn, J.R. — No sir.

The President, two Members, Capt. J.S.Rogers, Capt. H.E. Short, Learners, and B.84513, Sgt. Corry, E.N. Court Clerk, were all duly sworn in.

President:- I will now proceed with the arraignment of the accused Pte. Dunn, J.R.

Herewith is the charge sheet:- The accused No. B.83796, Pte. Dunn, J.R. of the Cdn. C.T.Sup.Col., R.C.A.S.C. a soldier of the Canadian Army Overseas is charged with:- When on active service absenting himself without leave In that he in the field at 2300hrs. 10 Oct. 41, absented himself from Corps Troops Supply Column, R.C.A.S.C., until he surrendered to his unit at 2215hrs. 20 Oct. 41. Time absent; 9 days 23 hours 45 minutes.

Pte. Dunn you have heard the charge preferred against you. Do you understand the charge,

Accused;- Yes sir.

President;- How do you plead?

Accused;- Not guilty sir.

President;- Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence.

Accused;- No sir.

1st. Witness - C.11400, Cpl. Brunke, A.F. Cdn. C.T.Sup. Col., R.C.A.S.C., having been duly sworn;

Prosecutor;- You are called here today to give evidence in the case of Pte. Dunn,J.R.

Do you know Pte. Dunn?

Witness;- Yes sir.

Prosecutor;- Do you see the accused in court?

Witness;- Yes sir, and pointed to the accused.

Prosecutor;- Is there any evidence you can give to assist this court in the case against one Pte.Dunn, during the month of October.

Witness;- Sir, I C.11400, Cpl.Brunke, on the night of 10 Oct. 41, called the roll at Tattoo. I found the accused Pte. Dunn was absent from his quarters. I then reported this matter to my Echelon Orderly Room.

President;- What time is Tattoo?

Witness;- 2300hrs. sir.

President;- Is it possible Pte. Dunn could have had a pass?

Witness; I checked the records on that sir.

President;- Could he have been within the unit lines?

Witness;- He would still be absent from his quarters.

Prosecutor; What is the name of his billets?

Witness;- Grove House, sir.

Prosecutor;- Is that the billet Pte. Dunn should have reported to?

Witness;- Yes sir.

Prosecutor;- Was he absent from Grove House at that time and date?

Witness;- Yes sir.

President;- How is tattoo roll taken?

Witness;- Beds are checked, sir.

President;- Are the men who are asleep at that time wakened?

Witness;- No sir, just beds checked.

President;- Did you know Pte. Dunn's bed?

Witness;- Yes sir.

President;- Was Pte. Dunn's bed prepared or made down?

Witness;- I don't remember that sir.

2nd. Witness - B.83843, Cpl. Smith, F.A. Cdn.C.F.Sup. Col., R.C.A.M.C., having been duly sworn;

Prosecutor; You are called here to give evidence in a case against Pte. Dunn.

Do you know Pte. Dunn?

Witness;- Yes sir.

Prosecutor;- Can you see Pte. Dunn in court?

Witness;- Yes sir, and pointed to the accused.

Prosecutor;- Is there any evidence you can give to assist this court in connection with any incident concerning Pte.Dunn during the month of October?

Witness; At 2215hrs. on 20 Oct. 41, Pte. Dunn J.R. reported to me. Acting as Echelon Orderly Sergeant I told him he would be on charge and placed him under open arrest. I then reported the incident to my Echelon Orderly Room.

Defending Officer; You say you placed him under open arrest?

Witness; Yes sir.

Defending Officer; Is it not customary to place a man returning from A.W.L. under close arrest?

Witness;- That depends on the condition of the man sir. Pte. Dunn was sober and properly dressed at that time.

President; What actual words did Pte. Dunn use when he reported to you?

Witness; Here I am.

President;- Did he say he was reporting in from A.W.L.?

Witness;- He seemed to understand that I knew he had been A.W.L.

President;- Did you know what date Pte. Dunn had gone A.W.L.?

Witness;- No sir.

President;- He may have just gone the day before then?

Witness;- I knew he had been gone quite a few days sir. I had heard it throughout the Echelon.

President;- Did he tell you what day he had gone away?

Witness;- No sir.

Prosecutor;- That is all.

President;- Have you any further evidence to help prove to this court that the accused was not within the Camp Area or help to prove that he had not reported in between the times already mentioned.

Prosecutor;- Yes sir.

3rd. Witness -- B.83869, C.S.M. Maddick, A.J. Cdn. C.T. Sup.Col., R.C.A.S.C., having been duly sworn.

You are called here today to assist this court in the case against one Pte. Dunn.

You are C.S.M. of No. 2 Echelon?

Witness;- Yes sir.

Prosecutor;- Do you know Pte. Dunn?

Witness;- Yes sir.

Prosecutor;- Do you see him in court?

Witness;- Yes sir, and pointed to the accused.

Prosecutor;- Can you say if Pte. Dunn has been absent without leave recently?

Witness;- Recently sir.

Prosecutor;- During October?

Witness;- He was absent from 10 to 20 October.

Prosecutor;- Did you see Pte. Dunn around the Camp Area ~~during~~ BETWEEN the 10 and 20 October?

Witness;- No sir.

Prosecutor;- How did you know he was absent?

Witness;- By tattoo and reveille reports - also parades.

Prosecutor;- Would you have known if Pte. Dunn had reported around the Camp area during that time?

Witness;- Yes sir.

Prosecutor;- How would you have known?

Witness;- He would have been placed under arrest.

Prosecutor;- Do you visit your Echelon billets and keep in contact with your N.C.O's.?

Witness;- All the time sir.

Prosecutor;- You did not see Pte. Dunn during your visits?

Witness;- I did not see him sir.

Prosecutor;- What job had Pte. Dunn been performing?

Witness;- Orderly Room clerk.

Prosecutor;- Was he performing this job at the time of alleged absence?

Witness;- Just previously let out.

Prosecutor;- You are sure Pte. Dunn was not around camp during 10 and 20 Oct.

Witness;- He was not sir.

Prosecutor;- He did not answer any roll calls during that time?

Witness;- He did not sir.

President;- Had his [redacted] kit been turned into Q.M.Stores?

Witness;- Yes sir.

President;- When?

Witness;- Two days after he went A.W.L.

President;- Was his bed and blankets turned in?

Witness;- No sir they were left in the room.

President;- You are sure his kit was turned in?

Witness;- Definitely turned in sir.

Prosecutor;- That is all.

President;- Pte. Dunn, you have heard the evidence. There is one of three things you may do;-
(1) Make a statement under oath.
(2) Make a statement NOT under oath, but which will not carry as much weight as one made under oath.
(3) Say nothing at all.

Accused;- I would like to make a statement sir.

President;- Under oath?

Accused;- No sir.

On 6th October I returned to my Echelon and found I had been relieved of my previous duties as orderly room clerk. I was detailed for fatigue duties which work I found very uninteresting after being used to taking an active part of duty.
On the 7th October I was paraded to my Officer Commanding and was severely criticised regarding some personal debts I had incurred and was given to 10 Oct. to fix these up.
I had a friend in London whom I tried to contact on 10 Oct. regarding these debts. I arrived in London but found I would be unable to make contact with this friend until 20 Oct. I remained in London and after arranging matters re these debts I returned to my billets.
I am sorry to have caused all this trouble and would like the opportunity to carry on as a worthy soldier from now on.

President:- The court is closed for the consideration of the finding.

President:- The court is re-opened.

Have you any evidence of character to produce?

The Prosecutor having been duly sworn produced the following documents;

"a" -- Certified true copy of the accused's conduct sheet. (M.F.M. 6)
"b" -- Statement as to Character and Particulars of Service of Accused. (A.F.B. 296)

Defending Officer I wish to speak on the accused's behalf;

At the outbreak of war Pte. Dunn had a very good position with Gordon's Milk Co., which he left to Join Up and fight for his Country.
With the constant changing of jobs and spare time on his hands had led him to drift somewhat.
Regarding the debts which he had incurred it is quite true he was paraded before his Officer Commanding regarding same. He had to do something about these debts with a result went to London to contact this friend and I think these debts have since been looked after.
I have never met the accused before this date but find him to be a gentleman with not a bad character.

President:- I will close this court to consider sentence.

21/11/41. HTC.

SUMMARY OF EVIDENCE IN THE CASE OF B.83796 Pte. Dunn J.R. of Corps Troops Supply Column, R.C.A.S.C., Canadian Army (Overseas) Field, Effingham, Surrey.

The Commanding Officer, Lt.-Colonel S.H.Coombs, of the Corps Troops Supply Column, R.C.A.S.C., C.A. (O) directs that the evidence shall be taken on oath.

B.84513, Sgt. Corry, E.W. having been duly sworn, acted as stenographer.

1st. WITNESS;

C.11400, Cpl. Brunke, A.F. Cdn. C.T. Sup.Col., R.C.A.S.C., having been duly sworn states;

I, C.11400, Cpl. Brunke, on the night of 10 Oct. 41, called the roll at tattoo, 2300hrs. I found that the accused Pte. Dunn, J.R. was absent from his quarters. I then reported this matter to my Echelon Orderly Room.

(Signed) A.F. Brunke Cpl.
Cdn.C.T.Sup.Col. RCASC.

The accused was asked but declined to question the witness.

2nd. WITNESS:

B.83843, Cpl. Smith, F.A. Cdn. C.T.Sup.Col., R.C.A.S.C., having been duly sworn states;

At 2215hrs. on the 20 Oct. 41, Pte. Dunn, J.R. reported to me that he had arrived back from being absent without leave. Acting as Echelon Orderly Sergeant I told him he would be on charge and placed him under open arrest. I then reported the incident to my Echelon Orderly Room.

(Signed) F.A. Smith Cpl.
Cdn.C.T.Sup.Col. RCASC.

The accused was asked but declined to question the witness.

The accused soldier was duly cautioned in accordance with R.P. 4 (E).

Do you wish to make any statement or to give evidence upon oath? You are not oblidged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused soldier declined to make a statement.

John R Dunn
B.83796, Pte. Dunn, J.R.

I hereby certify that the foregoing Summary of Evidence was taken down by me at Col. H.Q., Cdn. C.T.Sup.Col., R.C.A.S.C., Effingham, Surrey, this 23rd. day of October, 1941 in the presence of the accused. Rules of Procedure 4 (C) (D) (E) and (F) have been complied with.

W.H.Heffernan
Captain
(W.H.Heffernan)
Officer taking Summary.

I, B.83796, Pte. Dunn, J.R. of Corps Troops Supply Column, RCASC, C.A. (O) wish the services of a defending officer at my trial. I would like the services of some officer.

List of Witnesses.

C.11400, Cpl. Brunke, A.F. Cdn. C.T.Sup.Col.

B.83843, Cpl. Smith, F.A. Cdn. C.T.Sup.Col.

M E D I C A L C E R T I F I C A T E

This is to certify that I have today examined B.83796, Pte. Dunn, J.R. and find him mentally and physically fit to undergo trial by Court Martial.

H. [illegible] Capt.
R.C.A.M.C.
M.O. C.T. Sup. Col. R.C.A.S.C.

Field
20 Nov. 41.

B. 83796

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B.83796	Pte.	Dunn J.R.	Cdn.C.T.Sup.Col., R.C.A.S.C.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For Act contrary to Sec. 15 (1) of the Army Act.	4 times	7 times.
For Act contrary to Sec. 19 of the Army Act.	1 times	1 times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges, for 0930hrs. 21.10.41. days in civil custody, and ..... days in military custody, making a total of ..... days, of which ..... days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 34 years

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper is 5 Sep. 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is NA

8. The accused is entitled to deferred pay or gratuity in respect of NA service.

9. The accused is entitled to reckon NA service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). NA

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer held the regimental rank of NA

12. (*In the case of an officer.*) The accused holds in the army the rank of NA dated ....., and in his regiment (*or* corps *or* department) the rank of NA dated NA

(7*16)(43) W1.8024/1672 75,000 12/40 A.& E.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ____ Rank ____ Name ____ of ____ Regiment (or as the case may be)

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispositions with trial, must be given.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		-NOT APPLICABLE-		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 24 day of October 1941.

(S.H.Coombe) Lt.Col.
Commanding C.T.Sup.Col. R.C.A.S.C.

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ____ years.

In the rank of ____ years.

In the rank of ____ years.

NA

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court martial the information may be obtained from such sources as are available and the paragraphs completed accordingly.)

"A" w.gu.

O. T. SUP. COL.
27 OCT 1941
R. C. A. S.

No. [illegible] Name Dunn J.R. Sqn., Battery, or Company Corps Date of enlistment 5/9/39 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 500M—8-39 (1703) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fines Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
oronto	2/12/39	Pte.		A.A. 15 (1) was A.W.L. 13½hrs.	Sgt. McKee	5 days C.B. 1 days pay	4/12/39	Capt. E.Partington	
Field	24/7/10	Cpl.		A.A. 15 (1) was A.W.L. W.O.A.S. 33½hrs.	S/Sgt.Christie/ Sgt.Potten	Reverts to Rank of Pte 2 days pay	26/7/40.	Lt.Col.Jones.	
Field	1/8/40.	Pte.		A.A. 15 (1) was A.W.L. W.O.A.S. 111 hours	Cpl.Cummings Cpl.Boon Sgt.Potten	10 days Detention	7/8/40.	V.R.Jones Lt. Col	
ld	17/10/40	Pte.		A.A. 19 DRUNKENNESS (1)	S/Sgt. Innes	Admonished 7 days C.B.	18/10/40	Maj. S.H.Coombs	

(P.T.O.)

"A" W.D.

No. [redacted] Name Dunn J.R. | Sqn., Battery, or Company | Corps | Date of enlistment 5/9/39 | G.C. Badges | Service or Proficiency Pay | Character

O.T. SUP. COL. 27 OCT 1941 R.C.A.S.

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra duty | Check No. | Signature O.C. Company, etc.

MFM 6 (A.F.B. 122) 100M—8.39 (7701) H.Q. 1771-45-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with same	By whom awarded	Remarks
Toronto	2/12/39	Pte.		A.A. 15 (1) was A.W.L. 13½hrs.	Sgt. McKee	5 days C.B. 1 days pay	4/12/39	Capt. E.Partington	
Field	24/7/10	Cpl.		A.A. 15 (1) was A.W.L. W.O.A.S. 33½hrs.	S/Sgt.Christie/Reverts to Sgt.Potten	Rank of Pte 2 days pay	26/7/40.	Lt.Col.Jones.	
Field	1/8/40.	Pte.		A.A. 15 (1) was A.W.L. W.O.A.S. 111 hours	Cpl.Cummings Cpl.Boon Sgt.Potten	10 days Detention	7/8/40.	V.H.Jones Lt. Col	
ld	17/10/40	Pte.		A.A. 19 DRUNKENNESS (1)	S/Sgt. Innes	Admonished 7 days C.B.	18/10/40	Maj. S.H.Coombs	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19/12/40		L/C.	A.A. 15 (1) was A.W.L. W.O.A.S. 10 days 2½hours A.A. 15 (1) was A.W.L. W.O.A.S. 2 days 8½ hours	Sgt.Owen RSM Farmer Sgt Owen Cpl.Ledrew	Reverts to rank of Pte. Forfeits 14 days pay	8/1/41	Lt.Col.V.R.Jones	
Field	27Jan 41		Pte.	A.W.L. from 0830hrs.27Jan 41 till 1345hrs. 29 Jan 41. Absent 2 days 5½hrs. Under close arrest 1 day. Charged under Sec 15(1)A.A.	Cpl.Scott H. Cpl.Reid A.	28 days Det. Forfeits 31 days pay	31 Jan 41	Lt.Col.V.R.Jones	
Field	6.6.41.		Pte.	W.O.A.S. Absenting himself without leave from 1030hrs. 6.6.41, to 2000hrs.7.6.41(when he returned to billets. Contrary to Sec. 15(1) A.A. Time absent 33hrs. 30 min.	Sgt.Berry Cpl.Reid A.	7 days Detention	9.6.41	S.H.Coombs Lt.Col.	

(Sheet 2)

C.T. SUP. COL. 27 OCT 1941 C.A.S.C.

B8/796 Name DUNN J.R. Sqn., Battery, or Company Corps Date of enlistment G.C. Badge Service in Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature C.C. Company, &c. Character

H.F.M. 6 (A.F.B. 122) 9000-4-39 (1703) W.G. 1772-45-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19.8.41	Pte.		W.O.A.S. Absenting himself without leave in that he Effingham absented himself without leave from 0800hrs. 19.8.41 till 2215 hrs. 8.9.41. when he reported to the Orderly Officer. Total time absent 20 days 14 hours 15 minutes. Cont. to Sec 15 (1) A.A.	C.S.M. Maddick Documentary	28 days Fiel Punishment Forfeits 21 days pay. Total forfeure 49 days	9.941	Lt.Col.S.H.Coombs	

CERTIFIED TRUE COPY.

(S.H.Coombs) Lt.Col.
Commanding Sup.Col.
C.A.S.C.

(P.T.O.)

Y-130
GNR DUNN W.D.

Y-130 A

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this fourteenth day of February 1943, 19 .

Whereas it appears to me, the undersigned, an officer in Command of 5 Cdn Armd Div Arty, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*and that it is not practicable to delay the trial for reference to a superior qualified officer.~~ } RDGM

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

~~*I am unable to appoint:—~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~*(3. Three Officers having more than one year service.)~~

~~for the following reasons, namely:—~~ } RDGM

Proceedings Reviewed

L Morrison Capt

for Reviewing Officer

2 Mar 43

President.

Rank.	Name.	Regiment.
Major	W.R. Gilchrist	17 Cdn Fd Regt

Members.

Rank.	Name.	Regiment.
Capt.	G.E. Madden	17 Cdn Fd Regt
Capt	F.J. Whitcroft	8 Cdn Army Fd Regt
Lieut.	Waiting Member E.A. Hierlihy	5 Cdn Lt AA Regt
Capt.	Judge Advocate G.M. Morrison	Nth N S Highrs att HQ 5 Cdn Armd Div

*Signed R.O.G. Morton (R.O.G. Morton) Brig

Commanding 5 Cdn Armd Div Arty

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
G-50558 Gnr William Dennis DUNN 4 Cdn A Tk Regt	First Charge Sec 15(1) Army Act When on active service absenting himself without leave. (See Charge Sheet attached.)	Guilty	Guilty. To undergo detention for a period of seventy (70) days. 16 Feb 43. W.R. Gilchrist Major R.C.A. President	Confirmed RDG Confirmed RDG

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
~~Answer~~ (to be recorded on separate sheet if necessary):—

(Signed) R.O.G. Morton ~~(R.O.G. Morton)~~ Brig
Commanding 5 Cdn Armd Div Arty
Convening Officer (e)

(Signed) W.R. Gilchrist (W.R. Gilchrist) Major
President.

G. Williamson Capt. Judge Advocate

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 16th day of February, 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court & Judge Advocate.
2. The witnesses
*(3. ~~The interpreter~~) ~~[illegible]~~
*(4. ~~The officers under instruction~~) ~~[illegible]~~

were duly sworn.

* Omit if not applicable.

Signed this 16th day of Feb 1943.

G. Williamson Capt. Judge Advocate

W.R. Gilchrist
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 282 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the officer named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 19 day of Feb 1943.

R.O.G. Morton Brig
Confirming Officer.

CRA 5 CDN ARMD DIV

Promulgated and extracts taken in the case of G 55058 Gnr William Dennis Dunn

(a) (Dated) 20 Feb 43 (Signed) W.R. Phipps Capt RCA
4 Cdn. Anti Tank Regiment R.C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Lieutenant Maj. RCA
Prisoner

CHARGE SHEET

The accused, G-50558, Gnr William Dennis DUNN, 4 Anti-Tank Regiment, RCA, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 15(1) AA

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field on 17 Jan 43, absented himself without leave from his regiment, 4 Anti-Tank Regiment, RCA, from 2300 hours on said 17 Jan 43 until he surrendered himself at his Unit guardroom at 2100 hrs, 5 Feb 43.

In the Field,
10 Feb 43

J. H. McNaland
(J.H. McNaland) Lt-Col
Comd 4 A Tk Regt, RCA

To be tried by Field General Court Martial

R.D.S. Morton
Brig
CRA 5 Cdn Armd Div

In the field
14 Feb 43

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No. 950556, Gnr William Dennis DUNN of 4 Anti-Tank Regiment, RCA and in my opinion he is .fit..... to undergo trial by court-martial.

Station: In the Field

Date: 16 Feb 43

Ralph C Bird Capt
M.O. 4 A Tk Regt RCA

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT The Field
ON THE 16th DAY OF Feb. 1943

Accused G-5055-8 Gnr. William Dennis Dunn Unit 4 Anti Tank Regt.

The order convening the court and charge-sheet are laid before the court who satisfy themselves as provided by Rs.P.22 & 23.

The accused is brought before the court.
The medical certificate is laid before the court, signed by the president and attached to the proceedings.
The order convening the court is read by the President and the accused having no objection to the President or any member of the court, the court is duly sworn.
The judge Advocate is sworn
The following constitute the court:

President Maj. W.R. Gilchrist Unit 17 Cdn Fd Regt.

Members Capt. G.E. Madden Unit 17 Cdn Fd Regt.

Capt F.J. Whitcroft Unit 8 Cdn Army Fd Regt.

Judge Advocate - Capt G.M. Morrison Hq 5 Cdn Armd Div
The officers under instruction are duly sworn.

Prosecutor Lt N.B.S. Worden Unit 4 Anti Tank Regt.

Defending Officer Lt E.A. Llewellin Unit 4 Anti Tank Regt.

The charge-sheet is signed by the President, and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P.35 (B) is complied with.
The accused does not desire to make a statement in reference to the charges.
The summary of evidence is read, signed by the president, and attached to the proceedings.
The Prosecutor is sworn and produces M 75555 and M.F.M.6.
The court complies with R.P.46 (B).

Pursuant to R.P.37 THE ACCUSED:

(a) ~~Makes a statement in mitigation of punishment.~~
(b) Calls witnesses as to character, or
(c) ~~Calls witnesses in mitigation of punishment:~~
(d) Addresses the court by His Defending Officer, or
(e) ~~In person.~~

The court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE AND ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER:

See evidence of Capt J. de Mc Lemont and statement of Defending Officer attached.

(To be signed by President and attached to AFA3)

(Over)

Gunn

Capt J.W. McLimont. Bty Capt. 49 Bty. 11 Ante-Tank Regt having been duly sworn states:

The accused was my batman for over a year. I found him honest and he was a good average soldier. I have no fault to find with him. He was not my batman when he went A.W.L.

R.P. 83(B) complied with.

1 Defending Officer's Plea Gunn.

This day I am called upon to defend
Gnr Gunn by trying to get the Court
to consider this case as one of the
many troubles our men get into
through lack of something to do.
Such as action and get you to
case the sentence which you may
pass on Gnr Gunn.

Gnr Gunn left this camp for
Hagwards Heath when decided to
visit for the afternoon his girl
friend whom he had permission
to marry in the near future.
When arriving at her home he found
her in trouble with her mother
who had put her out of her home
so the girl accompanied Gnr Gunn,
who was on his way home, as far
as London. As Gnr Gunn was
about to leave her, he asked if she

knew where she was going to
stay. On finding she didn't, he
like a gentleman said he would
stay with her until she got a
place. For two nights not being
able to find a place to stay they
had to take shelter in a tube. They
hunted through London for days
before finding a good boarding
house.

We teach our men in the army
honour. What greater honour or
gentlemanly could a man do than
get himself in trouble for the sake
of helping someone out of trouble
as Mr Munn did?

Let any of us put ourselves in
this place. Wouldn't we not all
do the same deed for one we
love? We would have to be a
gentleman. I'm closing I wish
the Court to consider Mrs Plummer's
case as one of a very quiet
soldier of good character, who
was only trying to help his
future wife out of trouble,
and not beat the army.

H. E. Whitney

Summary of evidence in the case of G-50558, Gnr William Dennis DUNN, 4 Anti-Tank Regiment, RCA, Canadian Army Overseas, charged with Absence Without Leave from 17 Jan 43 to 5 Feb 43.

The Commanding Officer directs that the evidence be taken on oath.

First Witness

B22096, Sgt Guenther, H.F., 4 Anti-Tank Regiment, RCA, sworn, states:

I am troop Sgt of "G" troop, 49 A Tk Bty, 4 A Tk Regt, RCA, in which troop the accused serves. On 18 Jan 43 I was Bty Orderly Sgt. Gnr Dunn was absent from all roll calls on that date. I called the roll of "G" troop on Tuesday morning, 19 Jan 43, at morning parade at 0900 hrs. Gnr Dunn was absent. Gnr Dunn was absent from "G" troop from that time until 5 Feb 43 when I went on leave.

The accused declines to cross examine this witness.

H.F. Guenther

(B22096, Sgt Guenther, H.F.)

Second Witness

W55, A/L/Sgt O'Rourke, J.E., 4 Anti-Tank Regiment, RCA, sworn, states:

On 17 Jan 43, I was battery orderly Sgt and took the tattoo roll call at 2300 hrs. Gnr Dunn was not in his bed and did not answer roll call. On 5 Feb 43, I was Sgt of the Guard. Gnr Dunn reported to me at 2100 hrs properly dressed and sober. I placed him under close arrest.

The accused declines to cross examine this witness.

J.E. O'Rourke

(W55, A/L/Sgt O'Rourke, J.E.)

Third Witness

B22001, BSM Tenute, F.J., 4 Anti-Tank Regiment, RCA, sworn, states:

I am BSM of 49 Bty, 4 A Tk Regt RCA. On Sunday, 17 Jan 43, at about 1400 hrs, I proceeded to Haywards Heath in charge of the liberty vehicle in which Gnr Dunn was a passenger. At 2235 hrs, 17 Jan, the liberty truck returned from Haywards Heath. Gnr Dunn was not among the passengers. All passengers had been previously warned of the time and place the vehicle would leave Haywards Heath. On 18 Jan at Bty parade, 0830 hrs, Gnr Dunn was reported absent. I was present with the Bty until the evening of 21 Jan, during which period Gnr Dunn was absent. I returned from leave on 1 Feb and from that day to 5 Feb, Gnr Dunn was absent from the Bty. Guard Comd reported to me that evening that Gnr Dunn had returned and had been placed under close arrest. I initial all passes issued by the Bty. No pass was issued to Gnr Dunn covering this absence.

The accused declines to cross examine this witness.

F.J. Tenute

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence".

The Accused: I have nothing to say at this time.

W A Dunn
(J50558, Gnr Dunn, W.A.)

The accused declined to call witnesses in his own behalf.

I certify that R.P. 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this 12th day of February, 1943.

N E Phipps
(N.E. Phipps) Capt RCA

Sheet Destroyed 20 Jan 43 Last Entry Nil Case of Drunkenness Nil

No. G50558 Name DUNN, W.D. Sqn., Batty., or Company Corps R.C.A. Date of enlistment 18 July 1941 G.C. Badges Service of Proficiency Pay N/A

Date of last entry in Company Conduct Sheet entered N/A No. and date of last drafts N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 1 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20 Jul 42	Gnr.		AWL-AA15(1) AWL 0700 hrs 20 Jul 42 to 1730 hrs 22 Jul 42 (Absent 59 hrs).	Bdr McNeil L/Sgt Pearson, C.	7 days C.B. 3 days Pay FR&I 149(2)	28 July 1942	Lt-Col T.Y. Wills	Forf 3 days pay FR&I 149(1)(a)
Field	12 Oct 42	Gnr.		AWL - AA15(1) AWL from 0200 hrs 12 Oct 42 till 2330 hrs 12 Oct 42 (Absent 21 hrs 30 mins)	Capt J.W. McLimont Sgt Mussen H	14 days C.B. Forf 6 days pay FR&I 149(2)	13 Oct 42	Major W.F. McMullen	Forf 1 days pay FR&I 149 (1)(a) JWMcL
Field	8 Jan 42	Gnr.		Conduct to the prejudice of good order and military discip- line. A.A. Sec 40. Did have a dirty rifle in his possession.	Lt. D.M. Nichol L/Sgt Lockhart, F.	7 days C.B.	9 Jan 42	Capt J.W. McLimont	JWM

Certified true copy

(N.E. Phipps) Capt ✓
Adjt 4 A Tk Regt RCA

Army Form B. 122.

M.F.B. 155
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
950554	GNR	DUNN, W. D.	4 A TK REGT RCA

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Sec 15(1) AA	two times	Sec 15(1) AA	two times
For	Sec 40 AA	one time	Sec 40 AA	one times
For		times		times
For		times		times
		times		times

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

3. The accused is not under sentence at the present time.

or,

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 11 days in military custody, making a total of 11 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 23 years

6. The date of his attestation specified in his record of service is 23 years

7. The service which the accused is allowed to reckon towards discharge is 1 year 207 days

8. The accused is entitled to reckon 1 year 207 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or military reward

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... dated N/A, and in his regiment (or corps), the rank of ..... dated .....

Permanent Force unit

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— N/A Date of promotion.

In the rank of N/A years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number G50558 Rank Army Gnr

Name DUNN, W. D. of 4 A TK REGT RCA Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 16th day of February, 1943 (N.E. Phipps) Capt Adjt 4 A Tk RegtRCA

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

I desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court-Martial.

I desire the services of Lieut. Edis A. Flewwelling, 4 Anti-Tank Regiment, RCA, if he is available.

W D Dunn

(C50558, Gnr Dunn, W.D.)

DD-39

SGT. DUNNIGAN F.

DD-39

Correspondence to be PINNED here.

Army Form A.3. A2.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

W.J. Bailie Major

PROCEEDINGS.

"A."

Order convening the Court

On Active Service, this 22 day of APRIL, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Corps R.C.A.M.C., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named, appointed and detailed hereunder.

* Omit if not applicable

*[I am unable to appoint:—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

*(3. Three Officers having more than one year's service.)

for the following reasons, namely:—]

(15)

Proceedings Reviewed

[signature] for [illegible] 11 May 43

President.

Rank.	Name.	Regiment.
Major	W.J. Bailie	51 Cdn Corps Tps Coy R.C.A.S.C.

Members.

Rank.	Name.	Regiment.
Captain	WCR Sergent	44 Cdn Gen Tpt Coy, R.C.A.S.C.
Lieutenant	T.G. Williams	1 Cdn M.A.C., R.C.A.S.C.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] (E.A. McCusker) Brigadier D.D.M.S. 1 Cdn Corps.

Commanding *Convening Officer.*

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding [illegible] if Convicted [illegible]	How dealt with by Confirming Officer (d)
B.84490 Sergeant Frank DUNNIGAN 41 Cdn Gen Tpt Coy (Inf Div) R.C.A.S.C.	First Charge Sec. 19 Army Act (See Charge Sheet attached)	Not Guilty	Court [illegible] B84490 Sgt Dunnigan Not Guilty	27 Apr 43 I confirm findings of court and the sentence E. A. McCusker Brig. DDMS 1 Cdn Corps.
	Second Charge Sec. 40 Army Act (See Charge Sheet attached)	Guilty	Guilty	
	Third Charge Sec. 40 Army Act (See Charge Sheet attached)	Guilty	Guilty Severe Reprimand	
			W.J. Bailie Major 24 Apr 43	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— NO

(Signed) E. A. McCusker (Signed) W.J. Bailie Major
(E.A. McCusker) Brigadier
Commanding DDMS 1 Cdn Corps.
Convening Officer (c) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 24 day of April 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(~~3. The interpreter~~)
*(~~4. The officers under instruction~~)
were duly sworn.

* Omit if not applicable.

Signed this 24 day of April 1943

W.J. Bailie Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

Cancelled
~~W.J. Bailie Major~~
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ E. A. McC.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 27 day of Apr. 1943.

E. A. McCusker Brig.
Confirming Officer.
DDMS 1 Cdn Corps.

Promulgated and extracts taken in the case of B 84490 Sgt Dunnigan
(a) (Dated) 7 May 1943 (Signed) [illegible]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, B-54490, Sergeant Frank Dunnigan 41 Cdn Gen Tpt Coy(Inf Div) R.C.A.S.C., a soldier of the Cdn Army Overseas is charged with While on Active Service:-

FIRST CHARGE Sec. 19 Army Act.

DRUNKENNESS, in that he at Field on 15 Apr 43 was drunk.

SECOND CHARGE Sec. 40 Army Act.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, in that he at Field on 15 Apr 43 did operate a W.D. motorcycle No. CC 4221319 without proper authority for private purposes thereby incurring costs to the approximate amount of 2s. 5d. for petrol.

THIRD CHARGE Sec. 40 Army Act.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, in that he at Field on 15 Apr 43 when stopped by D-72023, L/Cpl. O'Malley, V.J. for questioning was in improper possession of a Transport Work Ticket No. 6 81 which had been altered.

Field
17 Apr 43

(A.J. Labrie) Major,
O.C. 41 Cdn Gen Tpt Coy(Inf Div)
R.C.A.S.C. C.A.O.S.

To be tried by Field General Court Martial.

(R.A. McCuaig) Brigadier
D.D.S.T. 1 Cdn Corps.

In the field.
22 Apr 43.

MEDICAL OFFICER'S CERTIFICATE

I certify that I have examined this date

No. 384490 Sgt. DUNNIGAN F

of 41 Cdn. Gen. Tpt. Coy., R.C.A.M.C., and that

he is FIT to undergo trial by Court-Martial.

24 Apl 43.

"2"

W. F. Gough Capt. Reams.

W. F. Bailie Major

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a F.G. Court-Martial held at 47 Cdn Gen Tr Coy RCASC

on the 24 day of April 19 43 by order of

~~DDST~~ Brigadier E.A. McCusker

Commanding ~~RCASC~~ HQ 1 Cdn Corps. RCAMC

dated the 24 day of April 19 43

President.

Bailie Major
31 Cdn CT Coy RCASC

Members.

Capt. W.C.R. Serjent. 44 Gen Tpt Coy RCASC
Lieut. T.G. Williams 1 Cdn MAC RCASC

, Judge Advocate.

Trial of* B 84490 Sgt Frank Dunnigan.
41 Cdn Gen Tpt Coy RCASC

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. W. Van Vliet 41 Cdn Gen Tpt Coy

Counsel‡ or defending officer† Capt G.M. Manley RCASC

At 1100 o'clock the Trial commences.

The order convening the Court is read, and is marked A2 signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* NO

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

QUEEN WATERFORD, WINDSOR, 1943. K.A.H. 1943. 6651-11. Form A 2.20

The President and members ~~and judge advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (3) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Guilty *Answer.*

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

The accused having pleaded Guilty to second and third charges, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

*Instruction. (See R. P. 39 (A).)

Proceedings on Plea of Not Guilty.

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No.

~~The prosecutor makes an opening address (hands in a written address which is read, marked , signed by the President, and annexed to the proceedings).~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. D 72023 L/Cpl. O'Malley V.J. No 11 Coy, Edn Provost Corps.

being duly sworn, is examined by the prosecutor.

Q. State the time and condition in which Sgt. Dunnigan was found.

A. At about 1830 hrs 15 Apr 43 I noticed Sgt. Dunnigan, whom I recognise, apparently having difficulty parking his M/C in front of the White Hart Tavern in Epsom. When he stepped off the M/C he staggered. I approached him and told him he was in no shape to drive the M/C. He said he was O.K. and just going to look for a friend. He smelled of liquor and on questioning admitted that he had had a few beers. He was drunk and in no shape to drive the M/C. I took him from there to the police station and he was kept there until escorted to Jermin Hall guard room by Sgt. Miller. I had to take both him and the M/C to the civil police station. He stopped to talk to women on the way. I had to go back to get him.

Q. Did he appear to know the women?

A. Yes.

(Question and answer objected to by defence: objection sustained).

Q. Did you ride the M/C yourself?

A. Yes.

Q. When you threw your leg off the saddle do you stagger to get your balance sometimes?

A. Yes sir.

Q. On what opinion do you state he was drunk?
A. He staggered: was unsteady and smelled of liquor.
Q. Have you ever had one glass of beer?
A. Yes
Q. Do you smell of liquor after one glass?
A. I expect so.
Q. Would you be drunk.
A. No.
Q. You further stated the accused was told to march down the street while you took the M/C. Would you do that with a drunken man?
A. Depends on how drunk he was.
Q. Are you instructed in any way how to judge drunkeness?
A. No sir. We use our own judgment.
No cross examination.
R.P. 83 (B) complied with.

Second Witness for the Prosecution | D. 106651 Sgt. Miller M.G., No 11 Coy, Cdn Provost Coy

being duly sworn is examined by the prosecutor:

Q. Give the time and condition in which the accused was found.
A. On Apr. 15 at approx 1900 hrs I was detailed by Sgt. Barber to go to Epson police station as L/Cpl O'Malley had a sergeant in custody there. I proceeded to Epson police station where I met L/Cpl. O'Malley and Sgt. Dunnigan, the accused whom I recognise. The accused was sitting on a table in the police station. I told L/Cpl. O'Malley to drive the vehicle back to barracks. Sgt. Dunnigan's eyes were blurred. On getting off the desk he stumbled and on walking from the desk to my jeep he was unsteady on his feet. His breath smelt badly of liquor. It was after Sgt. Dunnigan got up from the table that I ordered L/Cpl. O'Malley to take the M/C back to barracks. I handed Sgt. Dunnigan to Sgt. Lewis who was in charge of the guard at the time.

Cross-examined.

Q. You told the Court and in the Summary of Evidence stated that Sgt. Dunnigan's breath smelled of liquor. Do you drink?
A. No sir.
Q. If I had a glass of beer, could you tell me if my breath would smell strongly of liquor?

A. Not from one glass, etc.

Q. I could rely on your, say smelling your breath to tell exactly how much liquor I had been drinking?

A. Not very well sir. I am no authority on that.

Q. Could you tell that he had been drinking quite apart say the smell of his breath?

A. Yes sir.

Q. What do you mean by "eyes were blurred"?

A. Eyes were foggy.

Q. How close did you get to the accused?

A. Within arms length.

Q. Is it correct Sgt. Dunnigan was sitting with his feet off the floor?

A. Yes sir.

Q. On your order he jumped down?

A. He moved his leg over and got down.

Q. He staggered?

A. He was very unsteady.

Q. Was this much of a stagger?

A. No sir.

Q. Did Sgt. Dunnigan answer nothing appear to be unusual?

A. He answered in the normal way.

No re-examination.

R.P. 83(B) complied with.

D

The prosecution is closed.

Defence.

R. P. 40 (A) complied with.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes.

Question. Do you intend to call any other witness in your defence?

Answer. No. Yes.

Question. Is he a witness as to character only? *Answer.* No.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says:†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

First Witness for the Defence { P. 2798 S/Sgt. Chapman, C.B. 41 Edn. Reen. Sqt. Coy.

being duly sworn is examined by the Defending Officer, -

Q. I believe that on the afternoon or evg. of 15 Apr 43 you were seen by Sgt. Dunnigan. What time was that?

A. Approx. 1730 to 1800 hrs.

Q. Where was that?

A. At Sunnyside billets, Heatherhead sir.

Q. How long was Sgt. Dunnigan with you?

A. Approx. half an hour

Q. Was it purely personal business?

A. It was purely business concerning composite platoons.

Q. Did Sgt. Dunnigan appear other than normal? Was he drunk?

A. He was not drunk.

Q. He left Sunnyside at approx 1800 hrs?

A. Yes sir.

Q. How long would it take to get from Sunnyside to Epsom?

A. About 15 or 20 minutes.

Cross examined:

Q. This was a business trip for what purpose?

A. It was regarding confirmation of N.C.O's and business that cannot be discussed over the phone.

Q. Has it been the practice of Sgt. Dunnigan to contact you in this respect?

A. Yes sir.

No re examination

R.P. 93(B) complied with.

Second Witness for the Defence { B. 844490 Sgt. Dunnigan J., 41 Edn Reen Sqt Coy, the accused

being duly sworn is examined by the Defending Officer -

Q. At what time did you arrive at the composite platoon billets?

A. Between 1700 to 1730 hrs - close to 1730 hrs.

Q. You talked over business matters. Did you stay very long?

A. About half an hour.

Q. What time did you leave the composite platoon billets?

A. Close to 1800 hrs.

Q. How long did it take you to get to Ypres?

A. About 15 or 20 minutes.

Q. How long had you been in Ypres when accosted by the provost?

A. I had just arrived.

Q. You, I believe, had something to drink. Could you tell the Court what time that was?

A. A couple of glasses at dinner time.

Q. Were you slightly intoxicated?

A. No sir. I am positive I was not drunk.

Q. Had you anything to drink between lunch and the time in Ypres?

Q. Yes sir. I had one glass of beer at Locthehead.

No Cross-examination.

R.P. 83 (B) complied with.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been previously made.

*~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.~~

The accused 38'4490 Sgt. Frank Dunnigan 41 Bde Sig Tpt Coy RCASC is found guilty of Second Charge and Third Charge.

†The summary (~~or abstract~~) of evidence is read, marked G signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. Yes. I rely on my defending officer.

~~The accused in mitigation of punishment says~~ — ~~[or hands in a written statement, which is read, marked~~ X ~~, signed by the President, and attached to the proceedings.]~~

The Defending Officer hands in a written statement, which is read, marked H, signed by the President and attached to the proceedings.

Instructions.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

I wish to call character evidence.

Answer.

Evidence as to character.

First Witness for the Defence } P 2798 S/Sgt. Chapman C.B., 41 Cdn Gen Tpt. Coy.

already sworn is examined by the Defending Officer -

Q. There has been some difficulty in the past with regard to confirmation of ranks in the composite platoons. Is that correct?

A. Yes sir, due to the fact that the W.E of the platoon had not been authorized.

Q. In an effort to straighten this out, with whom did you deal?

A. Sgt. Dunnigan.

Q. How much business and how much pleasure was discussed?

A. Mostly business and the rest pleasure.

Q. How did you find Sgt. Dunnigan's work?

A. Very good sir.

Q. Would he go on benders?

A. No sir.

No cross-examination.

R.P. 83(B) complied with.

DD 2.

Third Witness for the Defence } Major E.A. Lucas, S. Sup. O., HQ. Coast 2 Can. Corps Inf. Coln.

being duly sworn is examined by the Defending Officer –

Q. Will you tell the Court what you know of this accused?

A. The accused was Cpl. in the composite platoon of 41 Can. Mtn. Inf. Coy. when I took over in June 42. Shortly after that time my S/Sgt. was transferred to Q.M. stores, and I canvassed the coy to find the most suitable Cpl. to take his place. The accused was suggested to me and was eventually brought to the orderly room to fill the S/Sgts position. He was on probation for a few weeks and proved himself very satisfactory. Eventually I promoted him to Sgt. He carried out his duties as Admn. Sgt. for the coy with efficiency. I found him to be conscientious, honest and a hard worker. He has done more than the average N.C.O. is called upon to do in his position and he has worked long hours. At one time I was afraid that he was overworking himself. I laid it on with the adjt. that he would be forced to take one day off per week. During my command of the coy I have had three coy inspections and each time the coy received an excellent report on the orderly room administration.

No cross-examination
R.P. 83(B) complied with.

Fourth Witness for the Defence } Lieut. Mc. T. Peters, 41 Can. Mtn. Inf. Coy.

being duly sworn is examined by the Defending Officer.

Q. You were Adjt. of the coy for the past few weeks?
A. Yes sir. Since 10 hrs.
Q. Would you tell the Court about the character of Sgt. Dunnigan for the time that you have known him?
A. I have known Sgt. Dunnigan since approx. the middle of May 42. He has served under me both in our composite platoon and at our HQ. as a Cpl and a sgt. I have always found him to be a most reliable N.C.O. I assisted in his recommendation

for promotion to the rank of Sgt. During the periods he has worked for us there have been numerous occasions which called for working unduly long hours for considerable stretches of time. Sgt. Cunningham has always cheerfully volunteered his time even to the extent of doing some of the Clerks' and Jr. N.C.O's work to enable them to have a bit of free time. Sgt. Cunningham's office has always been found in excellent shape on inspection. The men working under him and with him appear to regard him most favourably.

No cross-examination.

R.P. 83(R) complied with.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

B84490 Sgt Frank Dunnigan 41 Cdn Gen Tpt Coy RCASC

WJB ~~be severely reprimanded~~ [illegible] on the second and third charges, and not guilty on the first charge

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

*Evidence characters.

*The Court being re-opened, the accused is again brought before it.

WJB Capt. W. Van Vliet is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked 1/14 1/2 signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused. none. WJB

Question to the accused.

Do you wish to address the Court? *Answer.* Yes. No. WJB

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused

Sentence.

The Court finds that B 84490 Sgt Dunnigan, Frank, is not guilty on the first charge.

On the second and third charges Sgt Dunnigan pleaded guilty and the circumstances, and evidence brought out, the Court feel that a sentance of "Severe Reprimand" is a just sentance.

W J Bailie Major
24 Apr 43

SUMMARY OF EVIDENCE IN THE CASE OF

B-84490, Sergeant Frank Dunnigan, 41 Cdn Gen Tpt Coy(Anf Div)

R.C.A.S.C.

The Officer Commanding directs that the evidence be taken on oath.

First Witness for Prosecution - D-72023, L/Cpl. O'Malley, V.J. No. 11 Provost Coy., Cdn Provost Corps, having been duly sworn states: I am D-72023, L/Cpl. O'Malley, No. 11 Provost Coy., Cdn Provost Corps. At approximately 1830 hours on 15 Apr 43 I was coming along Ashley Road in Epsom when I noticed the accused, B-84490, Sgt. Dunnigan, F., whom I now recognize, attempting to park his motorcycle. I first noticed that the accused stopped further away from the curb than is normal when parking a motorcycle. Secondly I noticed that the accused was having difficulty with his jiffy stand. When the accused stopped off his motorcycle he staggered a bit. As he turned around, apparently to go into the White Hart Tavern at Epsom, I stopped him. I said, "Fellow, you are in no shape to drive that bike." I said this not knowing the accused was a Sgt. as he had on a riding coat. The accused answered, " I'm O.K.. I just want to stop here for a minute to look for a pal of mine." The accused smelled of liquor and admitted having had a few beers. Then the accused asked me if I would watch his motorcycle for him. I then asked him for his pay book which he showed me. Then, after finding from his pay book that he was B-84490, Sgt. Dunnigan, F., I said, " Sergeant, to say the least I'm surprised. You've put yourself in a devil of a spot and I notice from your paybook that you have a family." I then asked him if he had a work ticket. He showed me his log book with two work tickets which I recognize before me(marked Exhibit A and B). Neither one of these work tickets was made out for the accused, and only one (Exhibit A) was made out for the machine No. CC 4221319, that the accused was driving. I told the accused, "That puts another slant on the picture and I will have to put you under arrest and take you in." The accused asked me if he could arrange to contact his unit hwich he told me was located near Leatherhead, close to Epsom . I told him that I would see the Corporal in charge of my patrol. We were about one-half block from a civilian Police Station so I told him to walk ahead of me and I would follow on the motorcycle No. CC 4221319. About 100 yards from the Police Station, the accused, Sgt. Dunnigan, stopped to talk to a woman on the street and I had to get him and take him into the Police Station. Because he was a Sergeant and because he didn't cause any disorder I left him with the Civil Police and he promised to stay there until I could contact the Provost Corporal in charge of patrol. On my way out one of the Civil Police came up to me to tell me that the accused, Sgt. Dunnigan, was annoying them, so I phoned my Headquarters and had a truck come to get him. D-106651, Sgt. Miller took him in the truck from the civilian Police Station to No. 11 Provost Coy. Guard House. I drove the motorcycle No. CC 4221319 to the Guard Room and turned it over to the Guard.

Cross-examined by the accused.

Q. Cpl. O'Malley, I walked out of the civilian

Police Station and did contact you outside talking to a couple of the civilian Police. Is that right?

A. Yes. I was talking to the door guard.

Q. Isn't it possible that, rather than trying to annoy the civilian Police, I was wanting to re-contact you about getting in touch with my unit? The building was strange so don't you think that I might have had difficulty in finding my way around?

A. Yes, that is quite possible. I don't think you were trying to get away, but the police felt that they were being imposed upon by our presence.

The above statement was read back to the witness.

D/20 23 V. J S Malley

Second Witness for Prosecution - D-106851, Sgt. Miller, M.G., No. 11 Provost Coy., Cdn Provost Corps, having been duly sworn states:
I am D-106651, Sgt. Miller, M.G. of No. 11 Provost Coy., Cdn Provost Corps. On 15 Apr 43 at approximately 1900 hours, I was detailed by the Orderly Sergeant, Sgt. Barber, to go to Epsom to Epsom Police Station as L/Cpl. O'Malley had a Sergeant in custody there. I reported to the Police Station and ordered L/Cpl. O'Malley to drive motorcycle No. CC 4221319 to the Guard House. The accused, Sgt. Dunnigan, whom I now recognize, was unfit and incapable to drive this motorcycle. His breath smelled very badly of alcholic beverage and he staggered when he got up from a table at the civilian Police Station. I took the accused, Sgt. Dunnigan, to the No. 11 Provost Coy. Guard Room and turned him over to Sgt. Lewis who was in charge of the guard, at approximately 1945 hours on 15 Apr 43.

The accused declines to cross-examine the witness.

The above statement was read back to the witness.

D106651 Sgt M J Miller

Third Witness for Prosecution - Lieut. N.T. Peters, 41 Cdn Gen Tpt Coy(Inf Div)R.C.A.S.C. having been duly sworn states:
I am Lieut. N.T. Peters, the Administrative Officer of 41 Cdn Gen Tpt Coy(Inf Div)R.C.A.S.C. With respect to Transport Work Tickets, it is ordered that either the Officer Commanding or the Administrative Officer sign all Work Tickets for trips beyond unit area, except under exceptional circumstances, when the Coy. Duty Officer may sign them. I examined Exhibit "B", a Transport Work Ticket No. Q61, signed by myself. On this ticket I now notice an addition to the route namely "Epsom via Three Bridges", which I have no recollection of having seen before. I did not sign a Work Ticket for the accused, Sgt. Dunnigan, on 15 Apr 43, authorizing the accused to ride a motorcycle.

The accused delcines to cross-examine the witness.

The above statement was read back to the witness.

[signature]

Fourth Witness for Prosecution - Major A.J. Labrie, 41 Cdn Gen Tpt Coy(Inf Div)R.C.A.S.C. having been duly sworn states:
I am Major A.J. Labrie, Officer Commanding 41 Cdn Gen Tpt Coy(Inf Div) R.C.A.S.C. The system in effect for authorization of Transport Work Tickets is as follows: Work Tickets to be signed by three officers only - myself as O.C. - Lieut. R.T. Peters as Administrative Officer or the Duty Officer of the day. The Duty Officer of the day is to sign Work Tickets only in the absence of myself and Lieut. Peters, and in cases of emergency. I did not authorize or sign any Work Ticket to grant the accused, Sgt. Dunnigan, transport by motorcycle on 15 Apr 43.

The accused declines to cross-examine the witness.

The above statement was read back to the witness.

A.J. Labrie

Fifth Witness for Prosecution - Lieut. D.E. Lewis, 41 Cdn Gen Tpt Coy(Inf Div) R.C.A.S.C. having been duly sworn states:
I am Lieut. D.E. Lewis, 41 Cdn Gen Tpt Coy(Inf Div) R.C.A.S.C. On 15 Apr 43 I was Duty Officer for the unit. By powers invested in me by the Officer Commanding as Duty Officer, I could sign Transport Work Tickets for trips proceeding beyond unit area. On the 15 Apr 43 I did not sign a Transport Work Ticket nor in any other way authorize the use of a vehicle by the accused, Sgt. Dunnigan, whom I now recognize.

The accused declines to cross-examine the witness.

The above statement was read back to the witness.

D.E. Lewis

Sixth Witness for Prosecution - L-7366, Pte. Gagnier, J.F. 41 Cdn Gen Tpt Coy(Inf Div) R.C.A.S.C. having been duly sworn states:
I, L-7366, Pte. Gagnier, J.F., 41 Cdn Gen Tpt Coy(Inf Div) R.C.A.S.C. was using motorcycle No. CC 4221319 on 15 Apr 43. I parked motorcycle No. CC 4221319 in front of the Coy. Orderly Room, in the motorcycle park at 1530 hours, 15 Apr 43. I had Transport Work Ticket No. Q81, which I see before me marked Exhibit "B". I had just completed the Coy. M.T. run to Wych Cross as shown on Transport Work Ticket No. Q81. I gave my Log Book and the Transport Work Ticket to the accused, Sgt. Dunnigan, whom I now recognize. The Transport Work Ticket No. Q81, which I see before me has had an addition since I handed it to the accused on 15 Apr 43, namely " Epsom via Three Bridges". I notice that the number of the motorcycle shown on Transport Work Ticket No. Q81 is CC 1040319 whereas the number of the motorcycle I was using is CC 4221319. This is due to an error by myself in originally making out the Work Ticket. I went out on pass at 1700 hours 15 Apr 43 and did not hear of nor see the motorcycle again that day. At approximately 0900 hours 16 Apr 43, I was detailed by the Coy. Orderly Room to go to No. 11 Provost Coy at Mickleham to bring back a motorcycle, No. CC 4221319. I recognized the motorcycle No. CC 4221319 as the one I had used the day previous and returned with it to 41 Cdn Gen Tpt Coy(Inf Div) R.C.A.S.C.

The accused declines to cross-examine the witness.

The above statement was read back to the witness.

J.F. Gagnier

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declined to make any statement or to give evidence on oath.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of four pages was taken down by me in the presence of the accused and that Rules of Procedure 4(C), (E), (F) and (F) have been complied with.

(W. Van Vliet) Capt.
41 Cdn Gen Tpt Coy(Inf Div)
R.C.A.S.C.

Field
17 Apr 43

"G"

A.J. Bailie Major

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declined to make any statement or to give evidence on oath.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of four pages was taken down by me in the presence of the accused and that Rules of Procedure 4(C), (D), (E) and (F) have been complied with.

(A. Van Vliet) Capt.
41 Cdn Gen Tpt Coy(Inf Div)
R.C.A.S.C.

Field
17 Apr 43

"G"

LIST OF EXHIBITS

IN THE CASE OF

B-84490, Sergeant Frank Dunnigan, 41 Cdn Gen Tpt Coy(Inf Div)RCASC

EXHIBIT "A"

Transport Work Ticket No. U -

EXHIBIT "B"

Transport Work Ticket No. Q 81

A.J. Labrie

(A.J. Labrie) Major,
O.C. 41 Cdn Gen Tpt Coy(Inf Div)
R.C.A.S.C.

Field
19 Apr 43.

W.B. Bailie Major

To: O.C.
41 Cdn Gen Tpt Coy(Inf Div)
R.C.A.S.C.

With reference to my pending trial by

Field General Court Martial.

I wish that an officer be assigned to

act as defending officer.

If Capt. G.W. Manley, 41 Cdn Gen Tpt Coy(Inf Div)R.C.A.S.C. is available, I wish that he may be assigned for this purpose.

F. Dunnigan

(F.Dunnigan) Sergeant,
41 Cdn Gen Tpt Coy(Inf Div)
R.C.A.S.C.

Field
19 Apr 43.

W.B. Leslie Major

LIST OF WITNESSES FOR THE PROSECUTION

IN THE CASE OF

B-84490, Sergeant Frank Dunnigan, 41 Cdn Gen Tpt Coy(Inf Div) R.C.A.S.C.

Major A.J. Labrie, O.C. 41 Cdn Gen Tpt Coy(Inf Div)RCASC

Lieut. D.E. Lewis, 41 Cdn Gen Tpt Coy(Inf Div)RCASC

Lieut. N.T. Peters, 41 Cdn Gen Tpt Coy(Inf Div)RCASC

D-72023, L/Cpl. O'Malley, V.J., 11 Provost Coy. Cdn Prov. Corps

D-106651, Sgt. Miller, M.G. 11 Provost Coy., Cdn Prov. Corps

L-7396, Pte. Gagnier, J.F. 41 Cdn Gen Tpt Coy(Inf Div)RCASC

LIST OF WITNESSES FOR THE DEFENCE

IN THE CASE OF

B-84490, Sergeant Frank Dunnigan, 41 Cdn Gen Tpt Coy(Inf Div) R.C.A.S.C.

NIL.

A.J. Labrie Major

Army Form G 3518
40/P & S/00

TRANSPORT WORK TICKET

EXHIBIT A

Make of Vehicle: H.D. Class: Solo W.D. No. CC4221319 Date: 14 April 43 No. U

Unit: 41 Cdn Lt Section: H.Q. Driver's Name: Geddes Hour of Parade:

For whom journey is performed. (1)	FULL Details of load and service. (2)	ROUTE From (3)	ROUTE To (4)	ROUTE Via (5)	Signature of person authorising journey. (6)	TIME TAKEN. From (7)	TIME TAKEN. To (8)	Miles run. (9)
Dale 14 April 43	M/C - L/S.	Coy H.Q.	Officers Quarters	Forest Row	A 6 W Allison Ct	2400		
					B			
					C			
					D			
					G			
					H			
					K			

W. Bailie Major

TOTAL

SPEEDOMETER READINGS.

Miles

(10) In

(11) Out

Mileage

PETROL. Galls.

(12) Held at Start

(13) *Add*—Amount drawn

(14) *Deduct*—Remains on completion

(15) Quantity Consumed

(16) TOTAL hours out on duty

(17) *Signature of Driver* Geddes

(18) *Countersigned*

Rank

EXHIBIT - B

TRANSPORT WORK TICKET

Army Form G 3518
40/P & 8/400

W.D. No. AC1040319 Date 15 April 43 No. U Q 81

Make of Vehicle Harley Davib Class Solo

Unit 41 CGT Coy Section HQ Driver's Name E A GNIER JF Hour of Parade 0800

For whom journey is performed. (1) OUT	IN	FULL Details of load and service. (2)	ROUTE From (3)	Via (4)	Via (5)	Signature of person authorising journey. (6)	TIME TAKEN. From (7)	To (8)	Miles run. (9)
15 April 43 2526		DR Duties	Coy HQ	Whitehead Cross	Ret.	A [signature]	1630		
						B			
						C			
						D			
						E			
						F			
						G			
						H			
						K			
								TOTAL	

W J Bailie Major

SPEEDOMETER READINGS.

	Miles
(10) In	
(11) Out	2526
Mileage	

PETROL. Galls.

(12) Held at Start	
(13) *Add*—Amount drawn	
(14) *Deduct*—Remains on completion	
(15) Quantity Consumed	

(16) TOTAL hours out on duty

(17) *Signature of Driver*

(18) *Countersigned*

Rank

was his C. O. until the end of the year. Could anybody have a better knowledge of the man than the Commanding Officer and the Adjutant with whom he was in close association for so long?

I only ask, gentlemen, and I ask from the bottom of my heart, Sgt. Dunnigan made a foolish mistake and is sorry for it. He had pleaded guilty of the two charges he felt guilty of and is prepared to pay for this one foolish mistake. Give him the chance he is worthy of. Don't believe for one minute that he has not learned his lesson. I assure you, he will appreciate your thoughtfulness and give of his best to the Can. Army.

"H"

W. J. Bailie
Major

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-84490	Sergeant	Frank Dunnigan	41 Cdn Gen Tpt Coy(Inf Div R.C.A.S.C.

1. The following is a fair and true summary of the entries in the Field Service ~~and General Regimental and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Sec. 40 A.A.	Nil times	one times
For	times	times
For	times	times
For	times	times
For	times	

Number of instances of gallantry or distinguished conduct

or

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~A.F.A. 73~~ Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time

or

~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in ~~Air Force~~ civil custody, and three(3) days in military custody, making a total of three(3) days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 31 yrs.8 mths.12 days ~~attestation paper~~

6. The date of his ~~enrolment~~ attestation specified in his record of service is 16 Sep 39 ~~attestation paper~~

7. The service which the accused is allowed to reckon towards discharge is N A.

8. The accused is entitled to reckon Nil years service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military military possession of or entitled to). State any air force decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated , and in his regiment (or corps), the rank of dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

19 Sep 42 Date of promotion.

In the rank of Sgt. 7 months years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number R-84490 Rank Sergeant Unit Name Frank Dunigan of 41 Cdn Gen Tst Coy(Inf Div) Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and the cases in which trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	10 Jul 41 Field	Sec. 17 A.A.	6 months Detention Forfeits 140 days pay FR&I 149(1)(a)	2 months

"A"

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this (19) nineteenth day of April, 1943 Lieut. & Adj.

for O.C. 41 Cdn Gen Tst Coy R.C.A.S.C.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

No. B84190 Name Dunnigan, F. Sqn., Battery or Company Corps No. 41 Cdn. Gen. Tpt. Coy. Date of enlistment 19 Sep 39 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 132)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. [illegible] Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
SHEET DESTROYED ON 18 May 43 LAST ENTRY 10 Jul 41 NUMBER OF CASES OF DRUNKENNESS Nil (Auth: Os.R.O.2084)									

19 Oct. 43

Certified true copy of original sheet in my

[illegible] Lieut. & Adj.

~~for OC~~ 41 Cdn Gen. Tpt. Coy., R.C.A.S.C.

"72"

W.H. Bailie Major

(P.T.O.)

Original 270 B

270 B

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Seventh day of ~~JUNE~~ July, 1941.

Whereas it appears to me, the undersigned, CHIEF ENGINEER, CANADIAN CORPS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial;

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder:

* Omit if not applicable.

President.

Rank.	Name.	Regiment.
Major	J.M.LAING	R.M.R. (MG)

Members.

Rank.	Name.	Regiment.
Captain		8th. A. Fd. Regt. RCA.
Lieut.		R.C.A.S.C.
Judge Advocate	Major A.W. Embury	D.J.A., Cdn. Corps.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (C.S.L.Hertzberg) Brigadier,
Chief Engineer, Cdn. Corps.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
No.B.84490 Private DUNNIGAN, Frank, Cdn. Corps. Amn. Pk. RCASC, att. Cdn. Cps.Tps. Amn. Coy.	(As per ~~Charge~~ Insert Sheet attached)	[illegible]	6 months imprisonment with hard labour.	Finding confirmed Sentence commuted to six months detention [illegible]

Signed in the field this 10 July 41.

[illegible] Maj.

[illegible] Judge Advocate

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [illegible] (C.S.L.Hertzberg) Brigadier
~~[illegible]~~ Chief Engineer, Cdn. Corps.
Convening Officer (e)

(Signed) [illegible] Maj.
[illegible] Judge Advocate *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10th day of July 41, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses & Judge Advocate
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

Omit if not applicable.

Signed this 10th day of July 1941.

[signature]

President of the Court Martial.

[signature]

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison until further orders.~~)

To be omitted as penal stude or imprisonment having n awarded, the firming Officer her has no thority to com t to prison, or ving such thority, commends spension.

Signed this fourteenth day of JULY 1941.

[signature]

Confirming Officer.

Promulgated and extracts taken in the case of B. 84490, Pte Dunnigan, Cdn. Corps Amm. Park Pitt Corps Troops Amm. Coy. R.C.A.S.C.

(a) (Dated) 15 July 1941 (Signed) [signature]

Adjt. for Major, O.C.
Canadian Corps Troops Amm. Coy.
R.C.A.S.C., C.S.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

SCHEDULE

Number, Rank(a) Name and Unit of Accused (b)	Offence charged	Plea	Finding and if convicted, sentence (c)	How dealt with by Confirming Officer (d)
No.B.84490 Pte. DUNNIGAN, F. Cps.Amn. Pk. R.C.A.S.C.	1st.Charge Sec.17 Army Act.	Guilty	Guilty of fraudulently misapplying	
	In the alternative to the 1st.Charge the the following 63 charges			
	2nd.Charge. Sec.25(1) Army Act.	withdrawn		
	3rd.Charge Sec.25(1) Army Act.			
	4th.Charge Sec.25(1) Army Act.			
	5th.Charge Sec.25(1) Army Act.			
	6th.Charge Sec.25(1) Army Act.			
	7th.Charge Sec.25(1) Army Act.			
	8th.Charge Sec.25(1) Army Act.			
	9th.Charge Sec.25(1) Army Act.			
	10th.Charge Sec.25(1) Army Act.			
	11th.Charge Sec.25(1) Army Act.			
	12th.Charge Sec.25(1) Army Act.			
	13th.Charge Sec.25(1) Army Act.			
	14th.Charge Sec.25(1) Army Act.			
	15th.Charge Sec.25(1) Army Act.			

16th.Charge
Sec.25(1)
Army Act.

17th.Charge
Sec.25(1)
Army Act.

18th.Charge
Sec.25(1)
Army Act.

19th.Charge
Sec.25(1)
Army Act.

20th.Charge
Sec.25 (1)
Army Act.

21st.Charge
Sec.25 (1)
Army Act.

22nd.Charge
Sec.25(1)
Army Act.

23rd.Charge
Sec.25(1)
Army Act.

24th.Charge
Sec.25(1)
Army Act.

25th.Charge
Sec. 25(1)
Army Act.

26th.Charge
Sec.25(1)
Army Act.

27th.Charge
Sec.25(1)
Army Act.

28th.Charge
Sec.25(1)
Army Act.

29th.Charge
Sec.25(1)
Army Act.

30th.Charge
Sec.25(1)
Army Act.

31st.Charge
Sec.25(1)
Army Act.

32nd.Charge
Sec.25(1)
Army Act.

33rd Charge
Sec. 25(1)
Army Act.

34th Charge
Sec. 25(1)
Army Act.

35th Charge
Sec. 25(1)
Army Act.

36th Charge
Sec. 25(1)
Army Act.

37th Charge
Sec. 25(1)
Army Act.

38th Charge
Sec. 25(1)
Army Act.

39th Charge
Sec. 25(1)
Army Act.

40th Charge
Sec. 25(1)
Army Act.

41st Charge
Sec. 25(1)
Army Act.

42nd Charge
Sec. 25(1)
Army Act.

43rd Charge
Sec. 25(1)
Army Act.

44th Charge
Sec. 25(1)
Army Act.

45th Charge
Sec. 25(1)
Army Act.

46th Charge
Sec. 25(1)
Army Act.

47th Charge
Sec. 25(1)
Army Act.

48th Charge
Sec. 25(1)
Army Act.

49th Charge
Sec. 25(1)
Army Act.

withdrawn

50th, Charge Sec. 25(1) Army Act.		
51st, Charge Sec. 25(1) Army Act.		
52nd, Charge Sec. 25(1) Army Act.		
53rd, Charge Sec. 25(1) Army Act.		
54th, Charge Sec. 25(1) Army Act.		
55th, Charge Sec. 25(1) Army Act.	withdrawn	
56th, Charge Sec. 25(1) Army Act.		
57th, Charge Sec. 25(1) Army Act.		
58th, Charge Sec. 25(1) Army Act.		
59th, Charge Sec. 25(1) Army Act.		
60th, Charge Sec. 25(1) Army Act.		
61st, Charge Sec. 25(1) Army Act.		
62nd, Charge Sec. 25(1) Army Act.		
63rd, Charge Sec. 25(1) Army Act.		
64th, Charge Sec. 25(1) Army Act.		

Signed _____ Signed _____
(C. J. L. Hertzberg) Brigadier
Chief Engineer, Cdn. Corps.
Convening Officer.

President.

CHARGE SHEET

The accused, No. B64490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

1st Charge
Sec.17 A.A.

When on active service, when concerned in the care of public property, embezzling the same,

in that he

in the Field, in England, between the 1st day of September 1940 and the 18th day of January 1941, when as Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C., he was concerned in the care of public property, that is to say, monies entrusted to him for pay purposes, applied from said monies the sum of One Hundred and Twenty Pounds (£120.0.0) to his own use, with intent to defraud,

or, in the alternative to the first charge, the following charges:

2nd Charge
Sec.25(1)A.A.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 10th day of September, 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C., and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 84 to the effect that he had paid No.L7622, Private Magwood, R.H. the sum of £4.0.0, whereas, as he well knew, he had paid the said Private Magwood only £1.0.0, and with intent to defraud.

(J.Y.Bisson), Major,
Officer Commanding,
Cdn Corps Tps Amm Coy.,
R.C.A.S.C., C.A.(Overseas).

20 Jun 41

Milton Mount College,
North Park, Sussex.

THESE AND THE FOLLOWING SIXTY TWO CHARGES TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

7 July 41

(C.S.L. Hertzberg.) Brigadier,
Chief Engineer, Cdn. Corps.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

3rd. Charge Sec. 28 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 10th day of September 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls [illegible] the amounts paid by him from monies [illegible] to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 84 to the effect that he had paid No. L7090 Private McDonald, L the sum of £4.10.0, whereas, as he well knew, he had paid the said Private McDonald only £1.10.0 and with intent to defraud.

(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun 41
Pilgrim Admit College,
North Frank, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

4th Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 10th day of September 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 84 to the effect that he had paid No.L7744 Private White, M.W. the sum of £4.0.0, whereas, as he well knew, he had paid the said Private White only £1.0.0, and with intent to defraud.

J G Bisson
(J.G. Bisson) Major,
Officer Commanding,
Cdn. Corps Ins. Amm. Coy.
R.C.A.S.C., C.A. (Overseas)

Date: 20 Jun 41
Milton Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

5th. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowlingly making a false statement,

in that he

in the Field, in England, on or about the 25th day of September 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 91 to the effect that he had paid No. L7388 Private Craig, T.R. the sum of £4.0.0, whereas, as he well knew, he had paid the said Private Craig only £1.0.0, and with intent to defraud.

J G Bisson
(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Tps. Amm. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20. Jun 41
Wilton Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-84480, Pte. DURNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

6th Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 25th day of September 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, and make an entry in acquittance roll No. 91 to the effect that he had paid No. L7487 Private Douglas, S.J. the sum of £4.0.0, whereas, as he well knew, he had paid the said Private Douglas only £1.0.0, and with intent to defraud.

(J.G. Bisset), Major,
Officer Commanding,
Cdn. Corps Ammn. Park.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun 41
Bramber Manor Cottages,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-54620, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

7th. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 25th day of September 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 91 to the effect that he had paid No. L7743 Private King, D.M. the sum of £4.10.0, whereas, as he well knew, he had paid the said Private King only £1.10.0, and with intent to defraud.

J.G. Bisson
(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Tps. Amm. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 20 Jun. 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

8th. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 25th day of September 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 91 to the effect that he had paid No. L7392 Private Parkinson, JD the sum of £4.0.0, whereas, as he well knew, he had paid the said Private Parkinson only £1.0.0, and with intent to defraud.

J.G. Bisson

(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 20.Jun.41
Wilson Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-844290, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

9th. Charge Sec. 28 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 25th day of September 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 91 to the effect that he had paid No. L7731 Private Phipps, W.J. the sum of £5.0.0, whereas, as he well knew, he had paid the said Private Phipps only £2.0.0, and with intent to defraud.

(J.G. Bisset), Major,
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 29. Jun. 41
Wilton Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

10th.Charge Sec. 35 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 25thday of September1940 , when Pay Sergeant of 32 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 91 to the effect that he had paid No.L7529 PrivateThompson,JM the sum of£4.0.0 , whereas, as he well know, he had paid the said PrivateThompson only£1.0.0 , and with intent to defraud.

(J.G. Bisson) Major,
Officer Commanding,
Can. Corps Ammn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date.20Jun.41
Bilton Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. E-84400, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

11th Charge
Sec. 25 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 11th day of October 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 98 to the effect that he had paid No.L7477 Private Bain, W.J. the sum of £3.10.0, whereas, as he well knew, he had paid the said Private Bain only £0.10.0 and with intent to defraud.

(J.C. Bisson), Major,
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date: 20.Jun.41
Milton Mount College,
Worth Park, Surrey.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

12th Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 11th day of October 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 98 to the effect that he had paid No.M20903 Private Edgar, W. the sum of £6.10.0 , whereas, as he well knew, he had paid the said Private Edgar only £5.10.0, and with intent to defraud.

J G Bisson
(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Ips. Amm. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 20.Jun.41
Filton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84400, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

13th. Charge Sec. 25 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 11th day of October 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 98 to the effect that he had paid No. M20849 Private Grant, J.A. the sum of £5.10.0, whereas, as he well knew, he had paid the said Private Grant only £2.10.0 and with intent to defraud.

J.C. Bisson Major,
Officer Commanding,
Cdn. Corps Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun 41
Wirral Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-84690, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

14th Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 11th day of October 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 98 to the effect that he had paid No. L7506 L/Cpl. Hallam, C.S. the sum of £4.10.0, whereas, as he well knew, he had paid the said L/Cpl. Hallam only £1.0.0, and with intent to defraud.

J.G. Bisson
(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Tps. Amm. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun 41
Milton Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. L-94490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with-

16th. Charge Sec. 25 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 11th day of October 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 98 to the effect that he had paid No. L7837 Private Massey, J. the sum of £3.10.0, whereas, as he well knew, he had paid the said Private Massey only £2.10.0 and with intent to defraud.

(J.G. Bisson) Major,
Officer Commanding,
Can. Corps Amn. Park, R.C.A.S.C., C.A. (Overseas)

Date 20 Aug 41
Queen Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

16th Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 28th day of October 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 108 to the effect that he had paid No. 17698 Private Graham, M. the sum of £3.0.0, whereas, as he well knew, he had paid the said Private Graham only £2.0.0, and with intent to defraud.

J.G. Blason
(J.G. Blason), Major,
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun 41
Bilsom Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

17th. Charge Sec. 35 (1) Army Act. When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 28th day of October 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 108 to the effect that he had paid No. L72868 Private Hague, W.J. the sum of £3.0.0, whereas, as he well knew, he had paid the said Private Hague only £2.0.0, and with intent to defraud.

(J.G. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

18th Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 28th day of October 1940, when Pay Sergeant of 15 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C., and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amount paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 108 to the effect that he had paid No.L7384 Private Huseby, G.D the sum of £3.10.0, whereas, as he well knew, he had paid the said Private Huseby only £2.10.0, and with intent to defraud.

Date.....
Milton Mount College,
Worth Park, Sussex.

(J.G. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

19th. Charge
Sec. 35 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 28th day of October 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C., and when it was his duty to ascertain the accuracy of acquittance rolls, namely the amounts paid by him from public funds to soldiers of the said Troop Carrying Company, did make an entry in acquittance roll No. 108 to the effect that he had paid No. L7571 Private Luten, E.H. the sum of £5.10.0, whereas, as he well knew, he had paid the said Private Luten only £5.0.0, and with intent to defraud.

(J.C. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Dated 20 Jun 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

208th. Charge
Sec. 26 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 28th day of October [illegible] when Pay Sergeant of 10 Troop Carrying Company, Canadian Corps Ammunition Park, R.C.A.S.C. it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from imprest funds to soldiers in the said Troop Carrying Company, and make an entry in acquittance roll No. 108 to the effect that he had paid No. L7366 Private Tolson, J. the sum of £3.10.0, whereas, as he well knew, he had paid the said Private Tolson only £3.0.0, and with intent to defraud.

(C.O. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amm. Coy.
R.C.A.S.C., C.A. (Overseas)

Dated 20 Jun 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

21st. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 28th day of October 1940, when Pay Sergeant of 22 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 108 to the effect that he had paid No. L7407 PrivateTopping, AT the sum of £2.10.0 whereas, as he well knew, he had paid the said PrivateTopping only £1.10.0 and with intent to defraud.

J.G. Bisson
(J.G. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 20.Jun.41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

22nd. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 28th day of October 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C., and then it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 108 to the effect that he had paid No. L7244 Private Young, T.G. the sum of £8.0.0, whereas, as he well knew, he had paid the said Private Young only £6.0.0, and with intent to defraud.

(J.G. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun. 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

23rd. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

In the Field, in England, on or about the 11thday of November 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C., and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 117 to the effect that he had paid No. L7496 Private Evans, L. the sum of £3.0.0, whereas, as he well knew, he had paid the said Private Evans only £2.0.0, and with intent to defraud.

J.G. Bisson
(J.G. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank. Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

24th Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 11th day of November [illegible]0, when Pay Sergeant of [illegible] Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C., and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 117 to the effect that he had paid No. L7412 Private Evans, W.T. the sum of £2.10.0, whereas, as he well knew, he had paid the said Private Evans only £2.0.0, and with intent to defraud.

J.G. Bisson
(J.G. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

20 Jun 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

25th. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 11th day of November 1940, when Pay Sergeant of 18 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 117 to the effect that he had paid No. L7134 Private Hassard, E the sum of £4.10.0, whereas, as he well knew, he had paid the said Private Hassard only £1.10.0 and with intent to defraud.

J.G. Bisson

(J.G. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amm. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun. 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

26th. Charge Sec. 25 (1) Army Act. When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 11th day of November 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 117 to the effect that he had paid No. L7616 Private Kinsman, HW the sum of £4.10.0, whereas, as he well knew, he had paid the said Private Kinsman only £1.10.0, and with intent to defraud.

(J.G. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

20 Jun 41
.....
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

27th. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 11th day of November 1940, when Pay Sergeant of 12 Troop Carrying Company, Canadian Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 117 to the effect that he had paid No. L7060 Sergeant Remphrey, AN the sum of £4.0.0, whereas, as he well knew, he had paid the said Sergeant Remphrey only £1.0.0, and with intent to defraud.

(J.G. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun 41
Milton Mount College,

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

28th. Charge Sec. 28 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 11th day of November 1940, when Pay Sergeant of 52 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C., and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 15 to the effect that he had paid No. L7708 Private Ross, C.A. the sum of £4.0.0, whereas, as he well knew, he had paid the said Private Ross only £1.0.0, and with intent to defraud.

(J.G. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

20.Jun.41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

29th. Charge Sec. 25 (1) Army Act. When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 11th day of November 1940, when Pay Sergeant of 18 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 117 to the effect that he had paid No. L7749 Private Watson, T. A. the sum of £5.10.0, whereas, as he well knew, he had paid the said Private Watson only £5.0.0, and with intent to defraud.

(J.G. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jan. 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank. Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

30th. Charge Sec. 25 (1) Army Act.

'When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 15th day of November 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 122 to the effect that he had paid No. L7266 Private Lepinskiy the sum of £3.10.0, whereas, as he well knew, he had paid the said Private Lepinskiy only £2.10.0 and with intent to defraud.

(J.G. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

3lst Charge Sec. 35 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowlingly making a false statement,

in that he

in the Field, in England, on or about the 15th day of November 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 122 to the effect that he had paid No. L7636 Private Low, R.C. the sum of £5.10.0, whereas, as he well knew, he had paid the said Private Low only £5.0.0, and with intent to defraud.

J.C. Bisset, Major,
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

32nd Charge
Sec. 26 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 15th day of November 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 122 to the effect that he had paid No.C11746 Private Russell,G. the sum of £3.10.0, whereas, as he well knew, he had paid the said Private Russell only £3.0.0, and with intent to defraud.

J.G. Bisson
(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Ammn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun 41
Wilton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

33rd.Charge Sec. 25 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowlingly making a false statement,

in that he

in the Field, in England, on or about the 15thday of November 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 12 to the effect that he had paid No. [illegible] Private Scheuerman, C the sum of £2.10.0, whereas, as he well knew, he had paid the said Private Scheuermanonly £2.0.0, and with intent to defraud.

(J.G. Bisson). Major,
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 20.Jun.41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

34th Charge Sec. 25 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowlingly making a false statement,

in that he

in the Field, in England, on or about the 15th day of November 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 122 to the effect that he had paid No. L7009 Sergeant Young, J.N. the sum of £5.10.0, whereas, as he well knew, he had paid the said Sergeant Young only £8.0.0, and with intent to defraud.

(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun 41
Milton Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

35th.Charge
Sec. 35 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 27thday of November 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 126 to the effect that he had paid No.L7245 Private Collins, J.the sum of£4.10.0 , whereas, as he well knew, he had paid the said Private Collins only £4.0.0, and with intent to defraud.

(W.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Tps. Amm. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 29.Jun.41
Milton Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

~~64th~~ Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 27thday of November 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, knowing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 126 to the effect that he had paid No.L7364 PrivateFerrier,ARthe sum of £4.0.0, whereas, as he well knew, he had paid the said PrivateFerrier only £1,0,0, and with intent to defraud.

(J.G. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

27thCharge Sec. 25 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 27thday of November 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 126 to the effect that he had paid No.M20674 Private Galavan,MA the sum of £4.0.0 , whereas, as he well knew, he had paid the said Private Galavan only £1.0.0, and with intent to defraud.

(J.G. Bisset) Major,
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date..20.Jun.41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

40th Charge
Sec. 86 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 27thday of November 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No.126 to the effect that he had paid No.L7607 Private Giverago, S. the sum of £14.10.0 whereas, as he well knew, he had paid the said Private Giveregoonly £4.0.0, and with intent to defraud.

(J.G. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Dated 20 Jun 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

30th. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 27thday of November1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 126 to the effect that he had paid No. L76828 PrivateHopkins, E. the sum of £5.10.0 whereas, as he well knew, he had paid the said Private Hopkinsonly £5.0.0, and with intent to defraud.

(J.G. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20.Jun.41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

40th. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 27th day of November 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 126 to the effect that he had paid No. L7422 Private Moulton, JL the sum of £3.10.0, whereas, as he well knew, he had paid the said Private Moulton only £2.10.0 and with intent to defraud.

J.G. Bisson
(J.G. Bisson), Major
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20. Jun. 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. E-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

41st.Charge Sec. 68 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 30thday of November 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 129 to the effect that he had paid No.M84237 Private Dodds, F.C.the sum of £4.0.0 , whereas, as he well knew, he had paid the said Private Dodds only £1.0.0, and with intent to defraud.

(J.G. Bisson), Major,
Officer Commanding,
Con. Corps Ammunition Park,
R.C.A.S.C., C.A. (Overseas)

Date..20.Jan.41
Friend Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. E-84400, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

42nd. Charge
Sec. 68 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 30thday of November 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. [illegible] to the effect that he had paid No. L7009 Sergeant Young, J.N. the sum of £8.10.0, whereas, as he well knew, he had paid the said Sergeant Young only £7.0.0, and with intent to defraud.

(J.G. Bisset), Major,
Officer Commanding,
Can. Corps Tpt. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 20. Jun. 41
Wiltan Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. E-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

43rd. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 11th day of December 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carry. Co. Company, did make an entry in acquittance roll No. 122 to the effect that he had paid No. L7586 Private Allen, N.M. the sum of £4.10.0, whereas, as he well knew, he had paid the said Private Allen only £4.0.0, and with intent to defraud.

J.G. Bisson
(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun 41
Wilton Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

44th. Charge Sec. 25 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowlingly making a false statement,

in that he

in the Field, in England, on or about the 11th day of December 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 132 to the effect that he had paid No. M80984 Private Bowden, S.L. the sum of $6.0.0, whereas, as he well knew, he had paid the said Private Bowden only $6.0.0 and with intent to defraud.

(J.G. Bisson). Major,
Officer Commanding,
Cdn. Corps Ps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 20.Jun.41
Milton Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

45th.Charge Sec. 25 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowlingly making a false statement,

in that he

in the Field, in England, on or about the 11thday of December 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. [illegible] to the effect that he had paid No. L7107 Sergeant Brownlee,FC the sum of £5.10.0, whereas, as he well knew, he had paid the said Sergeant Brownlee only £5.0.0, and with intent to defraud.

(J.C. Bisson). Major,
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date.20.Jun.41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. E-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

46th. Charge Sec. 65 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowlingly making a false statement,

in that he

in the Field, in England, on or about the 11th day of December 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 132 to the effect that he had paid No. L7363 Private Kreuger, H.J. the sum of £6.0.0, whereas, as he well knew, he had paid the said Private Kreuger only £6.0.0, and with intent to defraud.

(A.G. Bissell) Major,
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Dated 20. Jan. 41
Wilson Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

47th. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 11th day of December 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 132 to the effect that he had paid No. L7375 Private Madsen, H.O. the sum of £4.10.0, whereas, as he well knew, he had paid the said Private Madsen only £1.10.0 and with intent to defraud.

(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date..20.Jun.41
Milton Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

48th. Charge Sec. 25 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 16th day of December 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 137 to the effect that he had paid No. L7104 Sergeant Bates, R.E. the sum of £2.10.0, whereas, as he well knew, he had paid the said Sergeant Bates only £2.10.0, and with intent to defraud.

J.N. Bisson, Major,
Officer Commanding,
Cdn. Corps Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20.XII.41
Milton Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

49th. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowlingly making a false statement,

in that he

in the Field, in England, on or about the 16thday of December 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 12[illegible] to the effect that he had paid No.L7317 Corporal Beaver, E.B. the sum of £3.10.0, whereas, as he well knew, he had paid the said Corporal Beaver only £3.0.0, and with intent to defraud.

(J.G. Bisson) Major,
Officer Commanding,
Cdn. Corps Trps. Amm. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 20.Jun.41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

50th. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowlingly making a false statement,

in that he

in the Field, in England, on or about the 16th day of December 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 137 to the effect that he had paid No. L7553 Private Blender, J.D. the sum of £4.0.0 , whereas, as he well knew, he had paid the said Private Blender only £1.0.0, and with intent to defraud.

J G Bisson

(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Tpt. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun 41
Milton Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

51st. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 16th day of December 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 137 to the effect that he had paid No. L10168 Private Bowman, N.A. the sum of £4.10.0, whereas, as he well knew, he had paid the said Private Bowman only £1.10.0 and with intent to defraud.

J.G. Bisson

(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Tpt. Amm. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jan 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. E-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

52nd. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 16thday of December 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 137 to the effect that he had paid No. B83930 Private Daughen, F. the sum of £2.10.0 , whereas, as he well knew, he had paid the said Private Daughen only £2.0.0, and with intent to defraud.

J.G. Bisson
(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Tps. Amm. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 20.Jun.41
Pilgrim Mount College,
North Park, Sussex.

CHARGE SHEET

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

53rd. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 16th day of December 1940 , when Pay Sergeant of 12 [illegible] Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 137 to the effect that he had paid No. L7506 L/Cpl.Hallam, C.C. the sum of £3.10.0 , whereas, as he well knew, he had paid the said L/Cpl.Hallam only £3.0.0, and with intent to defraud.

J.G. Bisson
(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Ins. Amm. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 20 Jun 41.
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

54th.Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowlingly making a false statement,

in that he

in the Field, in England, on or about the 16thday of December 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 108 to the effect that he had paid No.B84490 Private Stone, H.S. the sum of £2.10.0, whereas, as he well knew, he had paid the said Private Stone only £2.10.0, and with intent to defraud.

(J.C. Bisson), Major,
Officer Commanding,
Cdn. Corps Tps. Ammn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 20.Jun.41
Milbrook Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

55th. Charge Sec. 25 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 16thday of December 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 184 to the effect that he had paid No. L7407 PrivateTopping, A.T. the sum of£5.10.0, whereas, as he well knew, he had paid the said PrivateTopping only £3.0.0, and with intent to defraud.

(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Tps. Ann. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 20. Jan. 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

56th. Charge
Sec. 35 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 16th day of December 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 129 to the effect that he had paid No.T7749 Private Watson, E.A. the sum of £2.10.0, whereas, as he well knew, he had paid the said Private Watson only £2.0.0, and with intent to defraud.

(J.C. Bisson), Major,
Officer Commanding,
Cdn. Corps Ammn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 20.Jan.41
Wilton Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

57th. Charge Sec. 25 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowlingly making a false statement,

in that he

in the Field, in England, on or about the 23rd day of December 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 127 to the effect that he had paid No.L7644 Private Brown, W.G. the sum of £4.0.0, whereas, as he well knew, he had paid the said Private Brown only £1.0.0, and with intent to defraud.

(J.C. Bisson), Major,
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date 30.Jun.41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

58th. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowlingly making a false statement,

in that he

in the Field, in England, on or about the 31st day of December 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 154 to the effect that he had paid No. 17383 Private Apperley, SET the sum of £4.10.0 , whereas, as he well knew, he had paid the said Private Apperley only £1.10.0, and with intent to defraud.

(J.G. Bisson). Major,
Officer Commanding,
Cdn. Corps Ps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 20 Jun 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

59th.Charge Sec. 25 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowlingly making a false statement,

in that he

in the Field, in England, on or about the 31st day of December 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 154 to the effect that he had paid No.L7635 Private Barrette,W. the sum of £4.10.0, whereas, as he well knew, he had paid the said Private Barrette only £1.10.0 and with intent to defraud.

(S.G. Bisson). Major,
Officer Commanding,
Cdn. Corps Ammn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date.20.Jun.41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

60th. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowlingly making a false statement,

in that he

in the Field, in England, on or about the 31st day of December 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 154 to the effect that he had paid No. L7600 Private Clark, S.A. the sum of £4.10.0, whereas, as he well knew, he had paid the said Private Clark only £1.10.0 and with intent to defraud.

J.G. Bisson
(J.G. Bisson). Major,
Officer Commanding,
Cdn. Corps Tps. Amm. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 28 Jun. 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

61st.Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowlingly making a false statement,

in that he

in the Field, in England, on or about the 31st day of December 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 184 to the effect that he had paid No.L7758 PrivateBoering,C.E. the sum of £4.0.0 , whereas, as he well knew, he had paid the said PrivateBoering only £1.0.0 , and with intent to defraud.

(J.G. Bisson) Major,
Officer Commanding,
Cdn. Corps Ppo. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date.20.XII.41
Milton Mount College,
North Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

6Dnd.Charge Sec. 25 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 31st day of December 1940, when Pay Sergeant of 32 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No.154 to the effect that he had paid No.L7641 Private Godbout, H. the sum of $4.0.0, whereas, as he well knew, he had paid the said Private Godbout only $1.0.0, and with intent to defraud.

(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date: 20.Jun.41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

63rd. Charge
Sec. 25 (1)
Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the 31st day of December 1940, when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C., and which it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 154 to the effect that he had paid No. L7323 Private Powell, R.W. the sum of £4.0.0, whereas, as he well knew, he had paid the said Private Powell only £1.0.0, and with intent to defraud.

J.G. Bisson
(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Tps. Amn. Coy.
R.C.A.S.C., C.A. (Overseas)

Date. 20 Jun 41
Milton Mount College,
Worth Park, Sussex.

CHARGE SHEET

The accused, No. B-84490, Pte. DUNNIGAN, Frank, Canadian Corps Ammunition Park, R.C.A.S.C., a soldier of the Canadian Army (Overseas) is charged with:-

64th. Charge Sec. 25 (1) Army Act.

When on active service, in a pay list acquittance roll, of the contents of which it was his duty to ascertain the accuracy, knowingly making a false statement,

in that he

in the Field, in England, on or about the31st day of December 1940 , when Pay Sergeant of 12 Troop Carrying Company, Corps Ammunition Park, R.C.A.S.C. and when it was his duty to ascertain the accuracy of acquittance rolls, showing the amounts paid by him from public funds to soldiers in the said Troop Carrying Company, did make an entry in acquittance roll No. 154 to the effect that he had paid No.M20783 PrivateSchneeman,C the sum of $4.0.0 , whereas, as he well knew, he had paid the said PrivateSchneemanonly $1.0.0, and with intent to defraud.

(J.G. Bisson), Major,
Officer Commanding,
Cdn. Corps Tps. Amm. Coy.
R.C.A.S.C., C.A. (Overseas)

Date.20.Jun.41
Milton Mount College,
North Park, Sussex.

Proceedings of a FIELD GENERAL COURT MARTIAL held in the Field on 10 JULY 1941 in the case of No.B.84490 Private DUNNIGAN, F. Cdn. Cps. Amn. Pk. R.C.A.S.C.

President:- Major J.M. Laing, R.M.R.(MG)

Member:- Capt. G.W. Hanna, 8 A.Fd. Regt. RCA.

Member:- Lieut.P.R.Wood, R.C.A.S.C.

Judge Advocate: Major A.W.Embury, D.J.A., Cdn. Corps.

Officers under instruction :-

Capt. K.R. Mackenzie, R.C.A.M.C.

Lieut. J.W.W. Cook. R.M.R. (MG)

Prosecuting Officer: Lieut. M.A. MacPherson, HQ, Cdn. Corps.

Defending Officer: Lieut. W.H.Heffernan, R.C.A.S.C.

Court Stenographer: No.B.93703 S/Sgt. Warren, J.F. Cdn.Corps.

The Order Convening the Court, the charge sheet and the Summary of Evidence are laid before the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

The trial commences at 1015 hours.

Q.1. J.A. Are you number B.84490 Private Dunnigan Frank?
A.1. Yes Sir.

The Judge Advocate read the Order convening the Court.

Q.2. Do you object to be tried by me as President, or by any of the Officers whose names you have heard read over?
A.2. No Sir.

The President and members of the Court and Judge Advocate are duly sworn.

Officers under instruction are duly sworn.

Q.3. Do you object to the Shorthand Writer, S/Sgt. Warren?
A.3. No Sir.

Shorthand Writer duly sworn.

Charge Sheet read over by the Judge Advocate.

Q.4. Are you guilty or not guilty of the First charge against you which you have heard read?

A.4. Defending Officer. Gentlemen of the Court, the accused pleads guilty, but at a later time I am going to discuss these charges. I am not going to call any witnesses but I am going to show the Court that the accused should not be convicted of these charges.

Q.5. J.A. Are you asking for an adjournment?
A.5. No Sir, I am entitled to speak on behalf of the accused, and I think the Court should deal with the accused according to the circumstances, in other words, the accused has pleaded guilty but I am going to show why the accused should not be convicted on these charges, and by so doing I am saving the Court a lot of time.

Q.6. J.A. What you mean is, that there are circumstances under which that money was taken which should be taken into consideration in mitigation of sentence.

A.6. What I am going to contend is that the accused, acting as Pay Sergeant, handled money, and the accused should not have been allowed to pay any men. I have served on the Field Cashier a questionaire and the answers are as follows:-

Defence Officer read the questionaire and the replies,

and that basis I am going to contend that the accused was doing these things and he was doing something that he should not have been allowed to be doing. I admit he took the money.

Q.7. J.A. Are you asking the Court to record a finding of not guilty?

A.7. I admit he is guilty, but I am entitled to argue.

Q.8. You cannot say that the Court cannot find him guilty.

A.8. No. Other facts are that he was arrested on the 6th. February and we are now at July 10th. Temptation was put in his way and he took this money for other reasons, and the responsibility was the Paymaster's.

Q.9. But this is an arguement in mitigation?
A.9. Surely.

R.P. 35(B) complied with. The Judge Advocate explained this Rule in detail and the accused stated that he fully understood it.

Prosecuting Officer :- I wish to withdraw the other 63 charges.

Judge Advocate read the Statement of the Paymaster, (Capt. Fairbank) and the Summary of evidence.

Q.10. J.A. Has this statement been checked as to total?
A.10. Capt. Gill. I have checked it Sir.
Q.11. Who are you?
A.11. I am the Auditor Sir.

J.A. One thing seems to be omitted from the statement, is that while he failed to account for the deficiencies, the accused does not say that he took the money and applied it for some other purpose.
The accused admitted the above on being asked.
I am going to advise the Court to accept the accused's plea of guilty in accordance with Section 56 Sub. para. 2. and to record a finding of guilty of "Fraudulently misapplying the sum of £120.0.0 (One hundred and twenty pounds)", instead of embezzlement.

Q.13. Do you wish to make any statement in mitigation of punishment?

R.P. 35(c), Charges Nos. 2 to 64 are withdrawn by the Prosecuting Officer.

A.13. May it please the Court, I will try to be as short as possible, but I want to put before the Court everything possible and I want to start with a sequence of events. This young man Dunnigan first worked in the Bank of Commerce for about two years, there seems to have been no complaint about his work there. Then he left there and went to Detroit where he worked for some time until his mother took sick when he came back. He got another job but after a time he was let out because it was slack. There was not much doing so he took a job at Child's restaurant in Toronto at twenty five cents per hour because he had to support his mother. The war came along and he enlisted in September 1939 and came over here in February 1940 and served under Captain Fairbank as Pay Sergeant and there had been no complaint about his work. Capt. Fairbank the Paymaster had been handing him money with which to pay certain men, and it is very significant that about this time the Air Raids started, and the accused was very nervous about these Air Raids and he started drinking whiskey to stimulate his nerves, and in order to get this he took the easy way out by misapplying the money. John Brown would come in for money and Dunnigam would put £1.0.0 on the Acquittance Roll and in the man's pay book and the equivalent in Canadian Funds would be left out of the Acquittance Roll. After the man had signed the Acquittance Roll and left, the amount was changed and the Canadian equivalent put on the Roll. During December he was doing a lot of drinking and this together with his carrying out this misappropriation of money was too much for him and he broke down, and tells the Pay Sergeant what he had done and told Sergeant Hyde the Pay Sergeant to tell the Paymaster. The amount of this is £120.0.0, there is a Court of Inquiry and the accused goes before the Court and he was told that if he helped them nothing would be done. The accused then arranged with the Sergeants of the Unit to pay the money but the Pay Force refused the offer.
His nerves were bad, and no one can tell how they would act under gun-fire and we cannot say how he would behave under the strain. -------
This is an important part so far as mitigation of punishment is concerned, the accused has been in

arrest since the 6th. of January, he has only been out of here about three times since, he had worked from August to January without leave, they ~~xxx~~ never saw fit to give him leave, and now we have him on July 10th. without leave and facing a Court martial and the stigma of it, and I say to the Court that this young man should not be given a heavy sentence. We have come into Court with clean hands; we admit the offenses, come with clean hands and ask for leniency. ----
I have here a letter which I addressed to the Corps Field Cashier asking certain questions and I have his replies to those questions, I am going to read them and then I will turn them into the Court.

Defence read the letter, (EXHIBIT "D") and the reply, EXHIBIT "E".

I would like to read to you Article 561 F.R.&.I.(O) referred to by Major Evans in his reply.

This man was under orders of the Paymaster, temptation was placed in his way, are you the Court of Officers going to send this young man to gaol?
We know that the N.C.O. of a Service Unit or any other Unit has to carry on if the Officer is killed, but there is nothing which says that the Pay Sergeant should take the place of the Paymaster.

I would like to read Para. 38 on page 23 of M.M.L.
(This para. 38 was then read by the Defending Officer.

Now this young man stands before you to-day; temptation was put into his way and if you send him gaol he is ruined.
Para 2(e) of my letter to the Field Cashier, I asked that question for the reason that a Paymaster gets $6.25 per day and Dunnigan was getting Sergeants' Pay and he was doing these duties from November to January on Sergeants' Pay.

Now I would like to read Article 580 F.R.&.I.(O).
(The Defending Officer laid great stress on the sentence commencing "The Officer who pays out the money".

Judge Advocate — Is it quite correct to say that? Captain Fairbanks says that he afterwards signed the Pay Books.

Defence. — I am coming to that Sir, now the next question (g) in the letter. (This was read to the Court). I file both these letters for the Court) EXHIBIT "D" and "E"

My contention is that if the Paymaster had checked the Acquittance Rolls with the Pay books the very first month he would have found them; there is negligence right there; he has allowed the Pay Sergeant to do his own duties.
Coming before a Court martial is quite a stigma on a man's character and reputation. This man has been doing a job over here and he has fallen foul of the law, but I think you should give him the benefit, you have sworn to try this case without partiality, favour or affection. He has paid for this, his has lost his stripes and has suffered mental strain because it is well known that he has been charged with this offense, and I ask you to ask yourselves, are we doing right in sending this man to gaol? I say no!
This young man worked in a Restaurant even when things were tough to support his mother and I ask you to

consider these things. He has been in arrest since January. He has been under a very great strain, the army put this temptation in his way and now want to send him to gaol. I am going to ask you to allow this young man to go free.

Court closed to consider the finding.

Court re-opened.

Pros. I wish to call Capt. Rollet.

Capt. Rollet, Adjutant Cdn. Corps Tps. Amn Coy. is duly sworn.

Q.14. You are Capt. Rollet, Adjutant of the Cdn. Corps. Tps. Amn Coy?
A.14. Yes Sir. I produce A.F.B. 296 and M.F.M.6.
Q.15. These purport to apply to the accused Private Dunnigan?
A.15. Yes Sir.
Q.16. Are they true extracts from the Regimental Books?
A.16. Yes Sir.

Q.17. To Defence, Do you wish to cross-examine?
A.17. No Questions.

A.F.B.296 was read by the Judge Advocate.

Q.18. What was the offense on 6 January?
A.18. Drunkenness.
Q.19. First offense, drunkenness, twenty seven days detention?
A.19. Yes Sir.
Pros. There was something about taking a car without permission.
Q.20. How many days has he been in confinement?
A.20. Capt. Rollet. He has not been in confinement at all Sir.

Q.21. Do you wish to make any statement?
A.21. He has nothing further to say Sir.

The Court closed to consider the sentence.

Summary of Evidence in the case of No.B-84490, Pte. Dunnigan, F., Canadian Corps Ammunition Park, R.C.A.S.C., Canadian Army (Overseas).

1st Witness for the Prosecution

Captain P.E.Fairbank, Royal Canadian Army Pay Corps.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence.

Statement by Capt. P.E.Fairbank, Paymaster, in the case of B-84490, Former Pay Sgt.Dunnigan,F.

1. Sgt. F. Dunnigan, who had been pay Sergeant since his enlistment in Canada, came overseas in that capacity with the Cdn. Corps Ammunition Park, R.C.A.S.C., and had been looking after the pay office work of the 12 Troop Carrying Coy., R.C.A.S.C., since their formation in September, 1940.

2. The 12th Troop Carrying Coy., had always been a considerable distance from the other units that I paid and it had been my custom to leave up to Fifty Pounds, (£50) with that Sergeant so that he could pay any men going on leave on short notice without delay or inconvenience.

3. In order that the men could have their pay books with them when they left it was the custom to enter the amounts they received in their pay books at the same time that they signed the Acquittance Roll and they received their money. I would then sign these entries on their return from leave or at the next regular pay parade.

4. On my visits to this unit, which usually amounted to two a week, I would check his cash and the Acquittance Roll he had been using. I did not, however, always check the amount that had been entered in the man's pay book with the amount he had signed for on the Acquittance Roll.

5. In January, 1941, when auditing the accounts of this unit, I found that, starting in September, 1940, it had been the habit of this Pay Sergeant to make the correct entry for the money paid out in the man's Pay Book and also on the Acquittance Roll which the man would sign and then make an alteration on the Acquittance Roll such as changing a 1 to 4, or adding ten shillings to an even number of pounds and then fill in the Canadian Equivalent for the increased amount in that column which had been left blank while it had been signed. In this way nothing irregular could be seen with the Acquittance Roll unless a close check with the pay book had been made.

6. The completed audit showed that approximately One Hundred and Twenty Pounds (£120) had been added to the Acquittance Rolls over and above the amount which had been paid to the men and charged to them in their pay books.

20 May, 1941

(Sgd.) P.E.Fairbank, Capt.,
Paymaster.

Having regard to the exigences of the service and the loss of time involved the attendance of this witness cannot in my opinion be readily procured.

R.C.P.Nickle, Lieut.,

The accused does not demand the attendance of this witness for cross-examination.

Other Witnesses for the Prosecution

The accused is advised that on his trial there will be called as witnesses, producing their Pay Books, to testify that the amount as shown in their Pay Books, was the amount received by them and the amount shown on the Acquittance Roll was not the amount received by them, those named and shown on the list attached and marked Exhibit "A"

Having regard to the exigences of the service and the loss of time involved the attendance of these witnesses cannot in my opinion be readily procured.

R.C.P.Nickle, Lieut.

The accused does not demand the attendance of these witnesses for cross-examination.

The accused, having been duly cautioned, in accordance with Rule of Procedure 4 (E), reserves his defence.

Certified that Rule of Procedure 4 (C) (D) (E) and (G) have been complied with.

Taken down by me in the presence and hearing of the accused this 20th day of May, 1941, at Milton Mount College, Worth, Sussex.

R.C.P.Nickle, Lieut.,
Cdn. Corps Amn. Park,
R.C.A.S.C., C.A.(O).

Statement by Capt. P.E.Fairbank, Paymaster,
in case of B84490, Former Pay Sgt. Dunnigan, F.

1. Sgt. F. Dunnigan, who had been pay Sergeant since his enlistment in Canada, came overseas in that capacity with the Cdn. Corps Ammunition Park, RCASC, and had been looking after the pay office work of the 12th Troop Carrying Coy., RCASC., since their formation in September, 1940.

2. The 12th Troop Carrying Coy., had always been a considerable distance from the other units that I paid and it had been my custom to leave up to Fifty Pounds, (£50-) with that Sergeant so that he could pay any men going on leave on short notice without delay or inconvenience.

3. In order that the men could have their pay books with them when they left it was the custom to enter the amounts they received in their books at the same time that they signed the Acquittance Roll and received their money. I would then sign these entries on their return from leave or at the next regular pay parade.

4. On my visits to this unit, which usually amounted to two a week, I would check his cash and the Acquittance Roll he had been using. I did not, however, always check the amount that had been entered in the man's paybook with the amount he had signed for on the Acquittance Roll.

5. In January, 1941, when auditing the accounts of this unit, I found that, starting in September, 1940, it had been the habit of this Pay Sergeant to make the correct entry for the money paid out in the man's Paybook and also on the Acquittance Roll which the man would sign and then make an alteration on the Acquittance Roll such as changing a 1 to 4, or adding ten shillings to an even number of pounds and then fill in the Canadian Equivalent for the increased amount in that column which had been left blank while it had been signed. In this way nothing irregular could be seen with the Acquittance Roll unless a close check with the pay book had been made.

6. The completed audit showed that approximately One Hundred and Twenty Pounds (£120-) had been added to the Acquittance Rolls over and above the amount which had been paid to the men and charged to them in their Paybooks.

P Fairbank

20 May, 1941 (P.E.Fairbank) Capt.,
Paymaster,

Exhibit "A"

Reg. No. & Name	No. A.R.	Shown as A.R.	Shown as P.B.	Difference
L7586 Pte Allen N.M.	132	4-10	4-0	-10
L7383 Pte Apperley G.E.T.	154	4-10	1-10	3-0
L7477 Pte Bain W.J.	98	3-10	-10	3-0
L7633 Pte Barrette W.	154	4-10	1-10	3-0
L7104 Sgt Bates R.E.	137	3-10	2-10	1-0
L7317 Cpl Beaver B.B.	137	3-10	3-0	-10
L7553 Pte Blender J.D.	137	4-0	1-0	3-0
M.20984 Pte Bowden R.L.	132	8-0	6-0	2-0
L.10168 Pte Bowman H.A.	137	4-10	1-10	3-0
L7644 Pte Brown V.G.	147	4-0	1-0	3-0
L7107 Sgt Brownlee P.C.	132	5-10	5-0	-10
L7600 Pte Clark S.A.	154	4-10	1-10	3-0
L7245 Pte Collins J.	126	4-10	4-0	-10
L7388 Pte Craig T.R.	91	4-0	1-0	3-0
B83930 Pte Daughen P.	137	2-10	2-0	-10
B84237 Pte Dodds F.C.	129	4-0	1-0	3-0
L7758 Pte Doering W.E.	154	4-0	1-0	3-0
L7487 Pte Douglas S.J.A.	91	4-0	1-0	3-0
M80903 Pte Edgar W.	98	6-10	5-10	1-0
L7496 Pte Evans L.	117	3-0	2-0	1-0
L7412 Pte Evans W.T.	117	2-10	2-0	-10
L7354 Pte Ferrier A.R.	126	4-0	1-0	3-0
M20574 Pte Galavan R.A.	126	4-0	1-0	3-0
L7607 Pte Giverego S.A.	126	14-10	14-0	-10
L7641 Pte Godbout H.	154	4-0	1-0	3-0
L7698 Pte Graham M.	108	3-0	2-0	1-0
M80849 Pte Grant J.A.	98	5-10	2-10	3-0
L7288 Pte Hague W.J.	108	3-0	2-0	1-0
L7506 L/Cpl Hallam C.G.	98	4-10	1-0	3-10
L7506 L/Cpl Hallam C.G.	137	3-10	3-0	-10
L7134 Pte Hassard E.A.	117	4-10	1-10	3-0
L7682 Pte Hopkins E.	126	5-10	5-0	-10
L7364 Pte Huseby C.D.	108	3-10	2-10	1-0
L7743 Pte King D.M.	91	4-10	1-10	3-0
L7512 Pte Kinsman H.W.	117	4-10	1-10	3-0
L7363 Pte Kreuger H.J.	132	8-0	6-0	2-0
L7266 Pte Lepinki F.J.	122	3-10	2-10	1-0
L7636 Pte Low R.C.	122	5-10	5-0	-10
L7571 Pte Luten E.S.	108	5-10	5-0	-10
L7375 Pte Madeen H.O.	132	4-10	1-10	3-0
L7622 Pte Magwood R.H.	84	4-0	1-0	3-0
L7337 Pte Massey J.	98	3-10	2-10	1-0
L7090 Pte McDonald L.	84	4-10	1-10	3-0
L7422 Pte Moulton J.L.D.	126	3-10	2-10	1-0
L7392 Pte Parkinson J.D.	91	4-0	1-0	3-0
L7731 Pte Phipps W.J.	91	5-0	2-0	3-0
L7323 Pte Powell H.W.	154	4-0	1-0	3-0
L7060 Sgt Remphrey A.N.	117	4-0	1-0	3-0
L7708 Pte Ross C.A.	117	4-0	1-0	3-0
C11746 Pte Russell G.	132	3-10	3-0	-10
M20783 Pte Scheuerman C.	122	2-10	2-0	-10
M20783 Pte Scheuerman C.	154	4-0	1-0	3-0
B84158 Pte Stone H.E.	137	2-10	-10	2-0
L7529 Pte Thompson J.M.	91	4-0	1-0	3-0
L7386 Pte Tolson J.D.	108	3-10	3-0	-10
L7407 Pte Topping A.T.	108	2-10	1-10	1-0
L7407 Pte Topping A.T.	137	2-10	2-0	-10
L7749 Pte Watson E.A.	137	2-10	2-0	-10
L7749 Pte Watson E.A.	117	5-10	5-0	-10
L7744 Pte White M.W.	84	4-0	1-0	3-0
L7009 Sgt Young J.N.	122	3-10	2-0	1-10
L7009 Sgt Young J.N.	129	8-10	7-0	1-10
L7844 Pte Young T.G.	108	8-0	6-0	2-0

£120-0

7 July 41

Corps Field Cashier,
Cdn. Corps.

Attention:- Major A.M. Evans.

Reference B-84490 Pte. Dunnigan, P.

1. I have been retained as defense counsel for Pte. Dunnigan who is appearing in a Court Martial on charges laid under section 17 of the Army Act, section 25 (1), of the Army Act. This letter is in the form of a demand for you to furnish the defense with certain information.

2. Sgt. Dunnigan was a Pay Sgt. under Capt. P.E. Fairbank and was paying the 12th Troop Carrying Co. with cash himself supplied by Capt. Fairbank.

(a) Is it the duty of a Pay Sgt. to pay out in cash monies to the troops without the Paymaster being present.

(b) Did Sgt. Dunnigan have the authority of your office to make these payments to this personnel.

(c) Did Capt. Fairbanks have the authority to delegate the right for Sgt. Dunnigan to make payments to the personnel of the 12th Troop Carrying Coy.

(d) Was you office at any time aware that Sgt. Dunnigan was making payments to the 12th Troop Carrying Coy., if so did you take any steps to revoke this authority if you knew it was not according to military orders.

(e) Was Sgt. Dunnigan in his capacity of paying the personnel as a paymaster receiving an Officers pay.

(f) Is it not the duty of the paymaster to check the entries on the acquittance roles with the pay books.

(g) Was the Paymaster authorized to leave cash in the custody of the Pay Sgt. to make payments to personnel receiving advances or going on leave without the knowledge and authority of the Field Cashiers Office.

3. Will you please let me have this information at your earliest convenience as this case is coming up for Court Martial on July 10, 1941.

(W.H. Hefferman, Lieut.)
Counsel for Pte. Dunnigan.

Address.

Lieut. W.H. Hefferman,
Counsel for Pte. Dunnigan,
Cdn. C.T.Sup.Col.
Glenrinnes,
Green Lane, Cobham, Surrey.

Corps Field Cash Office.

8 JUN 41.

Lieut. W.H. Hefferman,
Cdn. Corps Troops Supply Column.

R.84490 Pte Dunnigan F.

1. Reference your letter of the 7th. instant re the marginally named soldier.

2. Answer to your questions as set out in para. 2 of your letter are as follows :-

(a) No (Art.561 F.R. & I. (C)) (Para.796 K.R. Can).
(b) No
(c) No
(d) Not aware Pte Dunnigan was making cash payments.
(e) No
(f) As the Paymaster is personally responsible for cash advances to him, he must take every precaution to account for same (Art. 560 F.R. & I. (C)).
(g) No (See (a)).

(A.H. Evans) Major,
Corps Field Cashier, Cdns.

AHE/McG

MEDICAL CERTIFICATE.

I certify that I have examined No. B64490, Private Cunningham, P.,
of the Cdn Corps Amn Park, R.C.A.S.C., and find him medically
and mentally fit to undergo trial by Field General Court Martial.

In the Field
10 Jul 41

Medical Officer.

Canadian Corps T Medical Officer.

No. B84490 Name Dunnigan, F. Sqn., Battery, or Company Park H.Q. Corps 1st C.A.P.RCASC Date of enlistment 19Sep39 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 500M—8-39 (1703) H.Q. 1772-40-18

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
No entries from previous sheet destroyed 1 Apr 40 on confirmation in rank of Sgt. ref. Pt. II Order 9 para 1 31 July 40.									
				Reverts to Rank of Pte. at own request eff. 5 Jan 41.					
Field	6Jan	Pte		40 A.A. Committing an act contrary to Sec. 40 A.A.	Documentary	27 days detention and loss 27 days pay	8 Jan 41	P.M.E. Purcell Major	

[signature]
Certified true copy.

(P.T.O.)

Description of Court by which tried, or status of Officer dispensing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day day of July, 1931

Charles R. Reed Capt
Regt. Cdn. C.T.A.C.

"F"
Jas Manning
Major

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B-84490, Pte. Dunnigan, F. of the Cdn. Corps Amm. Park, R.C.A.S.C.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

Pres. Para. 064, K.R., 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	*Within last 12 months.		*Since Enlistment.	
For Section 40 A.A.	One	times	One	times.
For		times		times.
For		times		times.
For		times		times.

~~Number of instances of gallantry or distinguished conduct,~~

~~or,~~

~~There are no entries in the Conduct sheets of the accused.~~

2. The accused has not been previously convicted,

or,

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.~~

[illegible]

3. The accused is not under sentence at the present time,

~~or,~~

~~The accused at the present time is under sentence for~~
~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges

for days in Civil Custody,

and days in Military Custody.

Total days.

Of which days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ / attestation paper is 29 years

6. The date of his ~~commission~~ / attestation specified in his ~~record of service~~ / attestation paper is 19 SEP 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 year, 6 months

8. The accused is entitled to deferred pay or gratuity in respect of 1 year, 3 months years' service.

9. The accused is entitled to reckon One years' service for the purpose of determining his pension, &c.

10. ~~The accused is in possession of, or entitled to, no military decoration or military reward [or is in possession of or entitled to~~

11. ~~*(If the accused is a warrant officer.)* The accused before he was made a warrant officer last held the regimental rank of~~

12. ~~*(In the case of an officer.)* The accused holds in the army the rank of , dated , and in his regiment (or corps or department) the rank of dated~~

13. ~~The accused has served as a non-commissioned officer continuously, without reduction, to the present date.~~

~~Date of Promotion.~~

~~in the rank of , years.~~

~~in the rank of , years.~~

~~in the rank of , years.~~

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

Note.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer imposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(Continued overleaf.)

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

AH-148.
Gen. Dunning E.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F-77027 Gnr DUNNING, Ernest Ralph 2 CARU

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for one Hundred and Ten (110) days with recommendation to Mercy.

(Sgd) ..... Judge-Advocate, if any. Date awarded. 14 Jan 45 (Sgd) John Brownfield President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence, but remit one hundred (100) days detention. I therefore vary the sentence to read 10 days detention and confirm the sentence so varied.

~~I direct that the accused be not proceeded against further at this time.~~ (1) (1. AA 57A. Delete if not used.)

(Sgd) John Brownfield (J.H.N. BROWNFIELD) Brigadier,

Date 14 Jan 45 Commanding "C" Group, Cdn Reinforcement Units.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Officer

F 77027 Fus Dunning EA 17 Jan 45 [illegible]

Do-15 d/ 18 Jan 45 [illegible]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 25 JAN [illegible] BRANCH

RECORDED AT CMHQ IN AB 160 4M-148.

FIELD GENERAL COURT-MARTIAL

CFA60 (To take place of AFA81) 40/F & B/1698 (R1144) 4/38B

Convened by Order of Lt-Gen J.C. Stewart, CBE, DSO Comd "C" Group dated 30 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
F-77027	Gnr		Ernest Ralph	DUNNING	2 CARU

PROCEEDINGS REVIEWED

[illegible]

CONVENING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date(s)) 5 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summary by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to [illegible] as shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	E.B. Price	8 R.C.R.
Member	Capt	J Pollock	RCASC
Member	Lieut	A Gagnon	4 C.D.R.
~~Judge-Advocate~~			
~~Prosecutor~~	Capt	J Bagley	2 CARU
~~Defending Offr~~	Lieut	R.K. Dippie	2 CARU

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)

(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. 5

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of* [redacted] 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*b*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part II of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No, but I will call evidence and give a statement.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(1. *MFB* 355 *or AFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Only that I am of good character.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishments or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 1323, *MML p* 86, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 13*E*. *When accused already under sentence of imprisonment or detention see AA* 44(1) (*b*), 68(7), *KR Can* 564. 2. *RP* 50. *As to minimum hours arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused F-77027 Gnnner Ernest Ralph DUNNING "p" Training Wing, No 2 Cdn Arty Rft Unit, asoldier of the Canadian Army Overseas, is charge with:-

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

In that he,

1st Charge
Section 15(1)
Army Act

in the field, absented himself without leave from 2359 hrs 16 Aug 44 until surrendering himself at 1800 hrs 21 Dec 44. Absent 126 days, 18 hrs, 1 minute.

(Mackenzie Waters) Colonel RCA
Commanding Officer
No 2 Cdn Arty Rft Unit
Cdn Army (Overseas)

Huron Camp
Bramshott, Hants
28 Dec 44.

To be tried by Field General Court Martial

Brigadier
Commanding "B" Group, Cdn Reinforcement Units
(Convening Officer)

Bordon, Hants.
30 Dec 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-77027	Gnr		Ernest Ralph	DUNNING	2 CARU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) this date endorsed by me, (~~as by above mentioned Charge Sheet(s)~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable within the time limited by reference to the exigencies of the~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) Deputy Judge Advocate to the Court (b) Waiting Officer / (a) and (b) have not been appointed because~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I recommend that the Officer commanding~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.M. MILLER, ED	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	detailed by CO	2 CITR
Lieutenant	detailed by CO	4 CITR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (*Country.*)

(*Signed personally. RP 105 fn 2.*)

Brigadier (*Rank.*)

Dat 30 Dec 44

Commanding "C" Group, Cdn Rft Units.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA 9* (In lieu of APA 2) 60/P & D/2697 (61-68)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(E)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 16 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(*B*) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 86(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 86.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*E*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (on *matters other than on mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 563(*a*).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*ii*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(3), *RP* 118(*C*), *MML* p 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE
P.R. (Can) Para 557

I certify that I have this morning examined F-77027 Gnr Dunning, E.R. of 2 CARU and in my opinion, he is ~~unfit~~ fit to undergo trial by Court Martial.

2 CARU

8 Jan 45

(Medical Officer)

MEDICAL OFFICERS CERTIFICATE
F.R. (Can) Para 557

I certify that I have this morning examined F-77027 Gnr Dunning, E.B. of 2 CARU and in my opinion, he is fit ~~unfit~~ to undergo trial by Court Martial.

2 CARU

8 Jan 45

.....
(Medical Officer)

CASE OF

F.77027 Gnr DUNNING ER 2 CARU

CHARACTER WITNESS

Capt DD HARPER, 2 CARU, having been duly sworn, states:

I recognize the accused. In the fall of '41 I joined the 1st LAA Regt of which the accused was a member, and he was in my bty and I had him with me until the fall of '42. He was an excellent soldier as a DR and he worked for me in diff capacities while I was a Tp Comd and he was always our most trustworthy DR, and he often made long and dangerous journeys. He accepted his responsibility on the whole as being one of the better men in the bty ------ he was always clean about his machine and had one of the best machines in the bty as far as cleanliness about it went ----a matter of fact I always borrowed it when I wanted a MC. The accused was always regarded in the highest by all the other offrs he came in contact with also.

Q. Have you seen him since '42?

A. I haven't, but I have seen other offrs who have, particularly Capt CODY just recently, and he told me he was much surprised when I told him the accused was AWL, and he couldn't understand it, he being such a trustworthy lad in his opinion.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

PLEA IN MITIGATION
BY DEF OFFR
(NOTE ATT)

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

Monday 8th January.

Statement of the Defending officer in the case of the Court Martial of F 77027 Gnr. Dunning E.R.

There have been brought forward (4) character witnesses in this man's defense both have testified under oath that for certain periods of time prior to this man's offense he was a good and reliable soldier. To further back up their statements there is his exceptional crime sheet. The award of a good conduct stripe in 41 which has up to now remained secure. However, recently certain changes took place, certain factors, these have caused the plight of the soldier that now exists. Let us examine these factors that caused this man to want to go A.W.L. made him willing to go A.W.L. and to stay A.W.L. Before going into these factors let us deal very shortly with

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his history.

He came over here in Dec of 40 having enlisted in July of that year. He remained in a light A.A. Battery until Sept of 43. At that time he volunteered for a signal course to become a Dr. Operator in his Battery. After 3 months of this course he was found to be unable to absorb the difficulties of Buzzer reading and was returned to his Holding Unit. Whilst At # 3 CARU he was given permission to marry and did so in Feb of 44. It was about this time also that he was boarded L4 on account of an M.C. accident sustained while he was still with his Regt. He was informed that he would be going back to Canada shortly after his reboard - thus his family matters were arranged accordingly. 2 months later he was told there would be a delay in his going to Canada. In May he was sent

71 CFA 170 PLEASE WRITE ON BOTH SIDES

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out as a Driver to 3 Div H.Q. followed by another job at Army H.Q.
It was while on this job on 16 Aug that he went A.W.L.

Now come our factors for this decision to go A.W.L. Firstly - General Anxiety for his wife's health - Secondly - The collapse of his sense of responsibility towards the Army.

The first case. - Anxiety for his wife's health - caused by the condition of the flat she lived in some months previously it had been damaged - she had put up with this, being fairly strong and of the constant opinion that she would be going to Canada. However "Canada" did not materialize and she found herself "expectant". She put up with a cold, drafty, heating room because she had to - she was unable to get anything else. Combined with this she lived in Bromley - on the very path of the Buzz bombs.

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Dunning had not seen his wife since ~~[illegible]~~ before May. While on Command he was unable to get any kind of pass to even see his wife. Eventually accepting the responsibility of a Husband and potential Father, he made his decision to help his wife while she was going through this period. He did this by changing her residence and being with her as much as he could without letting her knows he was A.W.C. or even become suspicious. Realizing however that if he ~~[illegible]~~ returned he'd not be able to help her or be with her at all in her pregnancy nor be any comfort during the Bunny Bombing, he remained A.W.C. till apprehended by the civil police.

To deal with the factor that enabled him as a soldier to make this decision we have the fact that he was categorised, unable to go into action. The only one of 4 ~~[illegible]~~ sons eligible for active service who was not

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going to see it. He was the oldest. He'd joined up first - Now, due to a mere accident, he had been barred from it. From this his main aim in joining the army had been taken from him. The Army offered nothing else for him. Secondly and akin to this, what work was he doing? - before May of 44 and after the termination of his signal course he was only used on Miscellaneous fatigues; picking up paper, cleaning, and sweeping. This was followed by a temporary tour of driving and was again to be replaced by fatigues. Thirdly that for 2 months he had waited expectantly to go home. His wife had made arrangements - sold furniture. He had been informed of a delay but still waited - not until he was sent out ~~of~~ on another job did he realize what a ~~[illegible]~~ distant hope seemed to exist for him to return to his

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normal, natural & useful form of life.

From these facts he felt that he no longer was a soldier and his domestic worries overruled all reasons why he should continue to be one.

Bearing in mind these facts there are certain considerations I wish to bring forward. Firstly that of this man's present medical category L4 S5. In brief his family history is ~~that~~ one monumented by the stepmother station, and its lack of letters, parcels and interest. This last letter was received in Feb of last year. This brothers and sisters' feel no family bond. This wife has had one letter from the family as a whole and has never seen them. That is more or less the background of his S5. The foreground is one of his present trials.

I took the defender back to the Psychiatrist to see if he was thought to

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be fit for this trial. the decision you see. However we must bear in mind what reasoning power this man has had if he is now S.S. No one can really say - but obviously an unbalanced mind is not likely to produce balanced actions. Further who is to say how and why this S.S really exists or when it existed - let us be sure we are not punishing a man for a mental injury sustained while he was in the army. I submit the Psychiatrists report as Appdx A.

Now I must go into this situation from the wife's point of view. As I said Dunning did not tell her that he was A.W.C. for fear it'd make her worry. I have interviewed the wife and found that this was the case. (I would have brought the wife as a witness but she has been sent to Hospital early - I submit a Doctors certificate as to Dunning's wife's condition as App B). The wife did suspect and on enquiring always was given a lie.

7/7 4/71 CFA 170

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However Dunning had to live, and by fair means & foul he did so on his wife's savings and army allowance, also making use of some food coupons. His wife became rather bitter and mistrusting and one day after a somewhat bitter argument over this matter with her husband she made a secret enquiry at the police station - this led to his apprehension. Unfortunately due to their current finances of being unable to ~~[illegible]~~ live on her allowance alone, this was the only solution - However after his giving this information she received a letter from Acton telling her that the allowance had been cut and she was to be forfeit approx 4 months allowance.

Now I come to our ~~[illegible]~~ ~~[illegible]~~ Second consideration. Dunning had never realized that his wife's allowance would be stopped while he was A.W.L. therefore he thought his wife would be alright financially. Mrs Dunning didn't know he was A.W.L. nor did she know this fact. Had the declaration of

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his being A.W.L. him declared at the earnest time, about 3 of those months would never have existed as A.W.L.

The Declaration of Dennis's A.W.L. was posted in D.O. 258 on 5 Dec 44. and thus financially no charge took place in the Dennis account till that date.

The third consideration I would like to present is what would such a severe punishment have on Denis personally and on his family.

From the Psychiatrists report as stated - "a long term imprisonment would be detrimental to his future health". Physically. And on his family will fall the financial burden. His wife at present is destitute and entitled to the Canadian Government of $70 - the happy thought during her confinement for the future she intends to send the baby to a home and go back to work as soon as possible. In spite of this

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She hopes to carry on as Dunnings wife. How this family can exist as such is a severe enough problem without the further financial burdens of this man's punishment.

So far I have referred to this case in the light of the particular to stray to the light of generalities you are faced with a ~~certain~~ decision.

Is this punishment to be meted out: as an example to prevent other Canadian soldiers in following this course? ~~[illegible]~~ or as an example to show our men whose main purpose in life is to be demobilized (due to circumstances that they cannot control) that ~~their~~ each and every one of their cases will receive the understanding and sympathy that you have found and is due after three many years of ~~[illegible]~~ voluntary abnormal ~~[illegible]~~ living

PLEASE WRITE ON BOTH SIDES

J Bagley Capt.
2 CHRU.

Form 24 Hosp.
(Farnborough).

App A

KENT COUNTY COUNCIL.

PUBLIC HEALTH DEPARTMENT.

THE COUNTY HOSPITAL.
FARNBOROUGH.
KENT.

Date 3 : 1 : 1945.

This is to Certify that Mrs Mary Dunning

was admitted on expects to be confined approx Jan: 19th 1945, and has been urgently

and {discharged on / is still an inpatient} recommended to be admitted as soon as possible

(Signature) [signature] Robinson MRCOG FRCS.
Medical Superintendent.

[illegible]

MEDICAL UNIT
DEPARTMENT OF Neuropsychiatry App. B O.P.D. 22 Cdn. Gen. Hosp.

No. F77027 Rank Gunner Name DUNNING E.R. Unit 2 C.A.R.U.

Enlisted June 1940 Overseas December 1940

REPORT Age 30 Pulhems 1141111 Date 29 December 1944

Complaints (1) Nerved up when someone shouts at him
(2) Home worries
(3) Losing weight

History Father is apparently is an unstable person because he left his family several months ago.

Personal History No very early neuratic traits, although states he has always been somwhat nervous and excitable under moderate stress. Schooling was grade 8 at 16, [illegible] at this time and he stayed at [illegible] house. States he worked as a garage mechanic prior to enlistment, not much detail could be obtained here and I wonder about his general efficiency. Claims moderate habits and no civilian crime record.

Present Conditions For about a year claims he has been worried about a younger brother and sister at home who were going to school. Father left them and has not been heard of for at least a year. These children are now being looked after by the grandmother. He also sustained a M.C. accident in July 1944 in which he hurt his right leg, states he is an L-4 for bad knee. Says he has been nervous since then and does feel much like going work. This summer he asked for leave to visit his wife who had been bombed out, but this was refused and he went A.W.L. is charged with 196 days A.W.L. States he is restless startles at the least noise and is losing weight. Has felt bitter towards the army. Has appeared very tense to his M.C. and cried when talking over his troubles.

Examination Shows a thin pale soldier of the asthenic type quite tense to-day and has a depressed look. M score is 21/72 but would say that his intelligence is better than this score indicates. Records indicate that he qualified as a L.A.A. Gunner. Obviously this soldier is fundamently unstable and now has a rather severe anxiety state over family worries and a accident in July 1944. I feel that this soldier usefullness to the Canadian army Overseas, largely at an end, he has used very poor judgement

Diagnosis Psychoneurosis, anxiety state.

Recomdation Reboard to M-1 S-5. Fit to stand trial. Due to present nervous reaction a long term of imprisonment would be detrimental to his present health. [illegible]

(G.N. Telfer) Major
22 Cdn. Gen. Hosp.
Cdn. Army Overseas

AJLS/gj

Certified true copy

[illegible] Solway Capt. RCAMC
Medical Officer,
No. 2 Cdn. Arty. Reinf. Unit

"Keep in touch with the folks at home"

THE SALVATION ARMY

ON ACTIVE SERVICE
WITH THE
CANADIAN FORCES

29 Dec 1944

App. C.

To whom it may concern

I served in 89 Coln LAA Bty with F 77027 Gnr DONNING E during 1941 and 42 and found him to be an honest reliable and sober soldier

I do not recall any occasion on which he was placed on charge

I remember him as a quiet respectable type and a good DR

Hm Rawlings Capt
2 CARU

witness as to signature

C 1143 Bde Burnette A. C.

SUMMARY OF EVIDENCE IN THE CASE OF F-77027
Gunner Ernest Ralph DUNNING, No 2 C.A.R.U., a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS for the Prosecution

Capt E.J.S. Hermon, Administrative Officer, "P" Training Wing, No 2 C.A.R.U., an officer of the Canadian Army Overseas having been duly sworn, states:-

"I produce:
(1) A certified true copy of Record of Declaration of a Court of Inquiry purporting to be signed by Major R.D. Mulholland, Administrative Officer, No 2 CARU, relating to the accused whom I now recognize. This document is marked exhibit "A" and annexed to the Summary of Evidence.
(2) CERTIFICATE OF SURRENDER Army Form O.1617, purporting to be signed by ???????? Officer of Police in charge of Bromley Station, relating to the accused whom I now recognize. This document is marked exhibit "B" and annexed to the Summary of Evidence."

E.J.S. Hermon Capt

The accused declines to cross-examine this witness.

The accused was cautioned as follows. "Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c), (d), (e) (f) have been complied with.

(C.W. Currie) Lt RCA
Assistant Administrative Officer
"P" Training Wing
No 2 Cdn Arty Rft Unit

Huron Camp
Bramshott, Hants
28 Dec 44

R/W Exhibit A

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at No 2 C.A.R.U. on the 5th day of December 19 44 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. F 77027 Gnr DUNNING, E.R.

5.9.9

DECLARATION.

The Court declare that No F 77027 Gnr DUNNING, E.R. illegally absented himself without leave at 2359 hrs on the 16th day of August 1944 and is still so absent on the 5th day of December 1944, he was deficient, and that he is still deficient of the following articles:-

DEFICIENCIES OF KIT OF F 77027 Gnr DUNNING, E.R.

ARTICLES	QUANTITY	100 Per Cent Value £ s d	75 Per Cent Value £ s d
Blouses BD	1	1 3 6	17 7½
Trousers BD	1	1 4 1½	18 1
Boots Ankle Prs	2	2 8 10	1 16 7½
Brass Button	1	2	1½
Brush Polishing	1	1 3	11
Drawers Woollen Prs	2	10 9	8 1
Forks Table	1	4	3
Holdall	1	10	7½
Knife table	1	8	6
Razor sets	1	1 10½	1 5
Shirts Angola	1	9 1	6 10
Vests Woollen	2	10 9	8 1
Socks Prs	1	1 6	1 [illegible]
Spoon Table	1	4	[illegible]
Towels Hand	1	1 5	1 [illegible]
Drawers C.S.	1	1 11	1 5½
Vest Gym	2	3 2	2 4½
Mugs Enamel	1	7	5½
Dressing F.F.	1	1 1	10½
Haversack	1	8	6
Tins Mess Set	1	1 7	1 2
Nets Cam	1	8	6
Brush Tooth	1	6	4½
Brush Shaving	1	1 8	1 3
Badge Cap Arty	1	4½	3½
Braces Prs	1	1 3	11
Comb Hair	1	2	1½
		7-16-6½	5-17-6

PRESIDENT : R.C.R. MOXLEY, Lieut RCA
No 2 Cdn Arty Rft Unit

MEMBERS : K.R. GREEN FIELD, Lieut RCA
No 2 Cdn Arty Rft Unit

J.H. ALLARD, Lieut RCA
No 2 Cdn Arty Rft Unit

Names of President and Members

Signature of Commanding Officer (Mackenzie Waters) Colonel RCA

CERTIFIED TRUE COPY

[signature]

ADM OFFR

Signature of Officer having custody of the Original Record.

(16948) Wt.[illegible] 150,000 1/41 A.& E.W.Ltd. Gp.[illegible]
(17908) Wt.[illegible] 200,000 3/42 " " Form/B113/58

Exhibit "B"

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

---

* Stations of Units and Depots are shown in the Monthly Army List.

† NOTE.—Special instructions apply in war for the disposal of absentees and deserters from the Army, who surrender to the civil police, e.g., such personnel will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops at the nearest military station. (A.K.I. 680/1940).

(27669) Wt.22801/3249 30,000 7/44 A.S.E.W.Ltd. Gp.698

907

I CERTIFY that the man whose personal description is given below surrendered himself to* R. 237 P. Revill at Bastin Road Hayes at (hour) 18.00 hrs on the 21st day of December as being No. 1574024 (Rank and Name) Fowale DUNNING. E.R. a deserter (~~or absentee without leave~~) from 2ND. C.A.R.U. and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 30 Height 5 Feet 11 Inches

Complexion Fresh Hair brown

Eyes brown

Marks ✓

In uniform or plain clothes uniform

Probable Date and Place of Attestation	19.6.40 Canada.
Probable Date of Desertion or beginning of absence, and from what place	1.12.44 A/C. England

Signature of Officer of Police in charge of Bromley Station

21/12/44 Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies only in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of No. .....

who surrendered to the Police at ..... on .....

Payable to .....

CERTIFIED that this statement of expenses is correct.

{Superintendent or Officer in charge of Police Station at .....

Date of Signature.

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
F-77027	Gnr	DUNNING, E.R.	2 CARU

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—A trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For	times	times
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct.

(a)

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, (a)

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 71 of the Army Act, are set out in the schedule hereto (b) (c) (d) (e)

3. The accused is not under sentence at the present time. (f) The period of the present war is under sentence to expire on the 31st day of

4. The accused has been in confinement, awaiting trial on the present charges, (g) (h)

in civil custody, and 18 days days in military custody, making a total of 18 days days.

5. The present age of the accused according to his ~~apparent~~ attestation paper is 31 years 83 days

6. The date of his ~~apparent~~ attestation specified in his ~~apparent~~ attestation paper is 19 Jun 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 204 days

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 204 days service.

9. The accused is entitled to reckon 4 yrs 204 days service for the purpose of determining his pension, etc.

10. The accused is in possession of a good conduct badge. (i) (j) (k)

11. (If the accused is a commissioned officer.) The accused before he was made a commissioned officer had held the following rank (l)

12. (In the case of an officer.) The accused holds on the date of this certificate the rank of and was granted that rank on the day of and is entitled to reckon for pay purposes service in that rank from the day of and service in the next lower rank from the day of

WT.23811/3168. 5,000. 3*. Ltd. Y11-3.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. F-77027 *Rank* Gnr Name Dunning, E.R. of 2 CARU Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8 **day of** Jan '45

H. J. S. Herman Capt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from each stamen in are available and the paragraphs concerned amended accordingly.*)

No. F77027 Name Dunning E.R. Sqn, Battery, or Company Corps RCA Date of enlistment 19 Jun 40 GC Badges Service or Proficiency Pay N/A 3/17 MFM 6 (AFB 122) 40/P&S/138 (5413)

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 1 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field				Awarded One Good Conduct Badge w.e.f 19 Jun 42					
				Certified true copy of MFM 6 as taken from MFM 4. (E.J.S. Hermon) Capt, RCA Administrative Officer "P" Training Wing No 2 Cdn Arty Rft Unit					
				Officer having custody of original MFM 6					

(PTO)

LIST OF WITNESSES

FOR THE PROSECUTION: Capt E.J.S. Hermon, RCA, Administrative Officer "B" Training Wing, No 2 CARU

FOR THE DEFENCE : NIL

LIST OF EXHIBITS

Exhibit "A" Certified true copy of Record of Declaration of a Court of Inquiry.

Exhibit "B" Certificate of Surrender Army Form O.1617

"P" NO | TRAINING 2 | WING CARU

Commanding Officer
No 2 C.A.R.U.

PW/5-4-5
28 Dec 44

F.G.C.M. F-77027 Gnr Dunning, E.R.

1. I acknowledge having duly received a copy of the Charge Sheet and a copy of the Summary of Evidence concerning my forthcoming trial by Field General Court Martial.

E R Dunning
F-77027 Gnr Dunning, E.R.

"P" NO | TRAINING 2 | WING CARU

Commanding Officer
2 C.A.R.U.

PW/5-4-5
28 Dec 44

FGCM F-77027 Gnr Dunning, E.R.

1. It is respectfully requested that an officer be appointed to defend me at my forthcoming trial by Field General Court Martial.

E R Dunning
F-77027 Gnr Dunning, E.R.

LLL-75 (Case #2)

SPR DUNNINGTON H-P

See Q-54 for lat. case

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B29201 SPR. DUNNINGTON H.P. RCE DET. 85 CON BR COY RCASC.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15 (1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kill, see RP 44 fn 6.)

At ~~present~~ earlier sentence for ~~beginning on (date)~~ (1).

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which NO days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

426 days detention. ~~From commencement, not to be interrupted by a P.D.D. on completion of sentence.~~

(Sgd) ~~[illegible]~~ 9 May 44 (Sgd) D. Rorison Maj

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6; 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the findings & the sent; I mitigate the sentence so that it shall read as follows: "I undergo ~~detention~~ detention for nine months" and I confirm the sentence as so mitigated.

~~I direct that the accused be not committed to [illegible]~~ (1. AA 57A. Delete if not used.)

Date 11 MAY 1944 (Sgd) W. G. H. Roaf (W. G. H. Roaf) Brigadier Commanding ~~Commanding Officer~~ A Type Comd

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B-29201 Spr DUNNINGTON HP	15 May 44	Alex Ferguson Major

15 May 1944 OC 85 CDN. BRIDGE CO. R.C.A.S.C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED IN CMHQ IN AB 160 4475

FIELD GENERAL COURT-MARTIAL

CPA86 (To face of AFA8) 40/P 26 8/1698 (4000) 4/38B

Convened by Order of W.G.H. ROAF (BRIG) Comd 9 TDS / CONARMY CAT 3 dated 2 MAY 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B29201	SPR.	SPR.	HAROLD, PALMER	DUNNINGTON	~~RCE DET~~ 85 CDN BR COY RCASC.

PROCEEDINGS REVIEWED

H.H. Matthews Capt 30 May 44

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS REVIEWED JAG BRANCH CMHQ 2 JUNE 1944 RECEIVED D J A G Rec GHQ 21 Army Gp Date 27 MAY 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 9 MAY 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~AA, if any, Judge-Advocate under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AAS, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1025 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused should be tried by court-martial instead of being dealt with summarily by the CO(2).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to [illegible] as interpreter? Ans~~ ~~The interpreter is sworn(1). Do you object to [illegible] as shorthand writer? Ans~~ ~~The shorthand writer is sworn(1).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 31, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~the if any Judge-Advocate under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	R.D. RORISON	45 CONARMY TPT COY RCASC
Member	CAPTAIN	R.D. FOSTER	64 CON ARMY TPT COY RCASC
Member	LIEUT	J.T. ROBERTSON	86 CON BR COY RCASC
Judge-Advocate			
Prosecutor	CAPTAIN	D.S. STEPHENS	85 CON BR COY RCASC.
Defending Offr	LIEUT	G.F.A. McLAUGHLIN (RCE DET)	85 CON BR COY RCASC.

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans NO (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See QL 2.)

A8. The accused B29201 SPR DUNNINGTON H.P. before arraignment made(s) (no) ~~no~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AAs to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~has considered~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B" and "C"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*b*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (if any). The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty on the ... charge(s). The accused is (not) so informed, and he (they) change(s) his (their) plea(s) on ... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. "A" initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, cf RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (ii).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above (as amended as relate to the charges dealt with under C2.
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 74 paras 12-14 and p 84 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CA 185. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 44(A) fn 1, 84(C). As to the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(B).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA 54(2) (a), RP 42, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. YES. WITNESS - 7138210 SGT. DOBSON CE. RHE DET. BY CONF 89 ROMLE.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy [illegible] of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(*1. MFB 355 or AFB 2067. 2. MFB 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. NO. BUT MY DEFENDING OFFICER WILL SPEAK FOR ME.
(*1. RP 37(C), 46(D). 2. Address, if and, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 142, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 343-346, Overseas RO 309, 2323, MML p 160, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 364. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 367. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

85 Cdn Bridge Coy
R.C.A.S.C.

CHARGE SHEET

The accused B-29201 Spr. Harold Palmer DUNNINGTON, RCE Detachment, 85 Cdn Bridge Coy, RCASC, a soldier of the Canadian Army Overseas is charged with, while on active service

FIRST CHARGE
Sec. 15 (1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE
(In that he)

In the field did absent himself without leave from the 85 Cdn Bridge Coy, RCASC from 0800 hrs 9 Dec 43 until he surrendered himself to P.C. Green, Clifton Gardens, London at about 0745 hrs on 29 Apr 44, thereby incurring costs of apprehension and return to his unit of £ 0-8-5.

(Absent 141 days, 23 hrs, 45 mins)

Field
30 Apr 44

(Alex Gagnon) Major
Officer Commanding
85 Cdn Bridge Coy
RCASC

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(W.G.H. Roaf) Brig
Comd A Tps
First Cdn Army

In the Field
2 May 44

CFA95 (In lieu of AFA3)
40/P&S/1697 (2862)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.29201	Spr	Spr	Harold Palmer	DUNNINGTON	RCE Det. 85 Cdn Bridge Coy, RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 2 May 44 endorsed by me, (or by an offr [illegible]), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to [illegible])~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd [illegible] for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned [illegible]~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	R D RORISON (Must be named. RP 106.)	45 Cdn Army Tpt Coy (Unit.)

MEMBERS.

Captain	R D FOSTER	64 Cdn Army Tpt Coy
Captain (Rank.)	E A ROOKE (Named or detailed. RP 106.)	47 Cdn Army Tpt Coy (Unit.)

WAITING MEMBER.

Lieut (Rank.)	J T ROBERTSON (Named or detailed, if any. RP 106.)	86 Cdn Br Coy (Unit.)

~~[illegible]~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.)

(W.G.H. Roaf)

Brigadier (Rank.)

Date 2 May 44

Commanding A Tps, First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, Note.)

Re-exam : Note.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP* 90(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 90.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 81.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 562(*a*).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 527.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 153 (1) (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

(vii) Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(8), RP 118(C), MML p 759.*)

3. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", unless otherwise directed.

I hereby certify that I have this date examined B-29201 Spr. DUNNINGTON, H.P. of 85 Cdn Bridge Coy RCASC, and in my opinion he is fit/~~unfit~~ to undergo trial by Field General Court Martial.

Field
9 May 44

(D. Cant) Capt.
Medical Officer
85 Cdn Bridge Coy RCASC

Capt. E. A. ROOKE, 47 Cdn Army Tps Coy not being available to serve owing to exigencies of the service. Lieut. J. T. ROBERTSON, 86 Cdn Br. Coy takes his place.

D Korican Maj.
President.

Ex "A"

I CERTIFY that the man whose personal description is given below surrendered himself to* PC 246D Green at Clifton Gdns. W9 at (hour) 7.45 a on the 29th day of April 1944 as being No. B29201. (Rank and Name) Pte. H. Dunnington. a ~~deserter~~ (or absentee without leave) from 9/12/43 and it appears to me from his confession that he is a ~~deserter~~ or absentee without leave.

* After the word " to " to be inserted the name and rank of the police officer concerned.

Age 27 yrs Height 5 Feet 7 Inches

Complexion dark Hair dark Eyes blue

Marks

In uniform ~~or plain clothes~~ In uniform.

This is exhibit "A" referred to in the summary of evidence in the case of B-29201 Spr Dunnington H.P. taken before me this 30 day of Apr 44.

D.S. Stephens, Capt.

Probable Date and Place of Attestation	9/5/40 Ontario
Probable Date of Desertion or beginning of absence, and from what place	9/12/43 RCE.

Signature of Officer of Police in charge of Paddington Station.

5-5-44 Date of Signature.

Army Form .O.1617
R.A.F. Form 1617.

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of No. ..... who surrendered to the Police at ..... on ..... Payable to .....

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at .....

Date of Signature.

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

(9816) Wt.81172/2051 12,000 2/39 A.&E.W.Ltd. Gp.498 Form/O.1617/11

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. B-29201 Rank Spr. Name Dunnington, H.P. Unit 85 Bridge Coy. R.C.A.S.C.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
29 Apr. 44	Escorts return fare from LONDON To Bursham		5	7
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Bursham		2	10
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	This is Exhibit "B" referred to in the summary of evidence in the case of B-29201 Spr. Dunnington H.P. taken before me this 30 day of Apr 44. D.S. Stephens, Capt. Total £		8	5

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

R. J. STINSON LIEUT. Capt.
ADMIN. OFFICER - D.P.M's BR. C.M.H.Q.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps.

Appx 'A'

WITNESS: M-59210 Sgt Dobson, C.E. of 85 Cdn Bridge Coy, RCASC, having been duly sworn states:

" I am M-59210 Sgt Dobson, C.E. RCE att to 85 Cdn Bridge Coy, RCASC. I have known Spr. DUNNINGTON since he was posted to the engineer platoon. He has always been ambitious and an industrious worker and has never caused or been in any trouble since his posting to the platoon. His work in the office has been very good. Any work he has undertaken has always been done in a very competent manner. His behaviour and dress on parades has always been good"

RP 838 is complied with.

APPX 'B'

Defending Officer submits this statement, in mitigation of punishment.

D Lorieon Maj.
President

DL

"I am Lieutenant Lloyd George MacDonald, R.C.E. Stores Officer 1 Cdn. C.R.E. Works...

I have known the accused Spr Dunnington both in Canada and in several years of his service in this country. He has worked well in 2 Cdn Road Construction Coy. and also as a Corporal Clerk in the Q.M. Office of 1 Cdn. Eng. Reinf. Unit. from 1940 to 1942. At all times he has been interested in his work and has proven himself a capable N.C.O. in the office. I have not s een Dunnington since he left 6 Cdn Const. Coy in 1943 and I felt deeply disappointed to hear that this man with his education and promising knowledge should be before a Court Martial."

[illegible] .....Lieutenant
Stores Officer,
1 Cdn C.R.E. Works.

8 May 44

Appx "C"

PLEA OF MITIGATION BY DEFENDING OFFICER

In making a plea for mitigation of sentence for the accused I would like to enlarge on his service overseas.

Spr. Dunnington came overseas in June 1940, since that time he has been in several Engineer units; 2 Cdn Road Construction Coy., 6 Cdn Construction Coy., and RCE Detachment 85 Cdn Bridge Coy RCASC. In these units he has been employed at work of a sedintary nature, which he was not emotionally adapted for. He has proven himself capable of doing his work in the units he has been with, but has lost interest as soon as he had learned all he could.

During his time overseas, he has tried to get transfered to a Parachute Battalion, but was turned down for medical reasons. He also tried to get to a field Coy., and on failing that, on a draft to Italy, but was not sucessful.

He left this Detachment on an overnight pass, having given thirty shillings to his Sgt to keep for him. I beleive any person with any intention of going A.W.L. would have taken the thirty shillings with him.

This mans crimes have all been absence without leave, and during the last year have increased both in frequency and length of absence. They have always been connected with abnormal use of liquor, suggesting an unstable nature. He is obviously of an extremely nervous temperment.

I suggest that either a Personnel Selection Officer or some competant Physchologist interview Spr Dunnington, to see if his troubles might not be lessened if he was given more active and exacting work in the Cdn Army.

9 May 44

G.F.K. McLaughlin Lieut RCE
Defending Officer

Summary of evidence
in the case of B 29201
Pte. Harold Palmer Dunnington
of the Engineer Detachment
AS Canadian Bridge Log
RCHSC, a medic of the
Canadian Army Overseas.
The Commanding Officer
directs that the evidence
be taken under oath

First witness M 59210, Sergt Dobson
C C of the Engineer
Detachment, AS Can.
Bridge Log RCHSC, having
been duly sworn
states

I am M 59210 Sergt Dobson
C C, Sergeant of the RCE
Detachment, of the AS
Can. Bridge Log RCHSC.
On the 9 Dec 1943 the
accused was a member
of this detachment. On
the 8 Dec 1943 the accused
was given an after duty
pass effective from 1700 hrs
8 Dec 1943 to 0730 hrs. 9 Dec
1943. At 0800 hrs. 9 Dec
1943 I called the platoon
roll and Pte Dunnington
did ~~not~~ answer his
name. He was warned

absent on the parade
state. At all mangment
roll calls until the
present date, Spr. Dunnington
has consistently failed to
answer his name, and
has no time been present
on parade or rather the
platoon lines.

The accused declined to cross
examine the witness

Second witness

Sent. J. S. Higgins
PS Can B Ridge Coy
RCASC, having seen
duly sworn states

I am Sen J. S. Higgins
adjutant, PS Can. B Ridge
Coy RCASC.

I hereby produce A Imp
Form 1617 being certificate
of apprehension of B 29201
Spr Dunnington at 0745
hrs at Clifton Gardens London
on the 29 April 1944 (marked
exhibit A)

I further produce C M H 2 Form
1000-SS being the cost of
transportation necessary to
return Spr. Dunnington
to his unit, which amounts
in all to the sum of £ 0-RS
(marked exhibit "B") and dated
29 April 1944

J Higgins

The certificate of appreciation referred to in the evidence of Lieut. J. S. Higgins in the case of B29201 Pvt Dunnington H.P. was read over to the accused marked exhibit H. signed by me and attached thereto

D. S. Stephens
Capt.

Statement of transportation expenses referred to by the witness Lieut. J. S. Higgins was produced and read over to the accused and marked exhibit "B" signed by me and attached hereto

D. S. Stephens
Capt.

The accused declined to cross examine the witness.

Question to the accused

Do you wish to make any statement or give evidence on oath? You are not obliged to say anything, or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by the accused

I do not wish to make any statement or give evidence at the present time.

R. Dunnington

I certify that the foregoing summary of evidence was taken by me in the presence and hearing of the accused, jointly and that rules of Procedure 4(c) (d) (e) and (f) have been complied with.

D. S. Hughes
Capt

Officer detailed to take the summary of evidence.

EXHIBIT "A"

ARY OF EVIDENCE in the case of B-29201 Spr. Harold Palmer, ington of the Engineer Detachment of the 85 Cdn Bridge Coy, SC, a soldier of the Canadian Army Overseas.

e Commanding Officer directs that the evidence be taken under th.

FIRST WITNESS M-59210 Sgt. Dobson, C.E. of the Engineer Detachment, 85 Cdn Bridge Coy, RCASC, having been duly sworn states:

"I am M-59210 Sgt. Dobson, C.E. of the R'C.E. Detachment of the 85 Cdn Bridge Coy RCASC. I am the Platoon Sergeant. On the 9th December, 1943 the accused was a member of this Detachment. On the 8th December, 1943 the accused was given an after duty pass effective from 1700 hours 8th December, 1943 to 0730 hours, 9th December, 1943. At 0800 hours, 9th December, 1943, I called the platoon roll and Spr. Dunnington did not answer his name, he was marked absent on the parade state. At all subsequent roll calls until the present date Spr. Dunnington has consistently failed to answer his name and has at no time been present on parade or within the platoon lines.

Sgd M-59210 Sgt. Dobson, C.E.

The accused declined to cross-examine the witness.

SECOND WITNESS Lieut. J.S. Higgins, 85 Cdn Bridge Coy RCASC having been duly sworn states.

"I am Lieut. J.S. Higgins, Adjutant of the 85 Cdn Bridge Coy RCASC. I hereby produce Army Form 1617 being certificate of apprehension of B-29201 Spr. Dunnington, H.P. at 0745 hrs at Clifton Gardens, London on the 29th April, 1944 (Marked Exhibit "A").

I further produce CMR Form 1000:55 being the cost of transportation necessary to return Spr. Dunnington to his Unit which amounts in all to the sum of £0-8-5. (Marked Exhibit "B") and dated 29th April, 1944.

Sgd. J.S. Higgins, Lieutenant

The certificate of apprehension referred to in the evidence of Lieut. J.S. Higgins in the case of B-29201 Spr. Dunnington, H.P. was read over to the accused, marked exhibit "A" signed by me and attached hereto.

Sgd D.S. Stephens, Capt.

Statement of transportation expenses referred to by the witness Lieut. J.S. Higgins was produced and read over to the accused and marked Exhibit "B", signed by me and attached hereto.

Sgt. D.S. Stephens, Capt.

The accused declined to cross-examine the witness.

QUESTION TO THE ACCUSED:

Do you wish to make any statement or give evidence on oath? You are not obliged to say anything, or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER BY THE ACCUSED:

I do not wish to make any statement or give evidence at the present time.

Sgd. B-29201 Spr. Dunning

I certify that the foregoing Summary of Evidence was taken down by me in the presence and hearing of the accused, jointly, and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

Signed by me in the Field this 30th day of April, 1944

(D.S. Stephens) Cpat.
Officer detailed to take the
Summary of Evidence

EXHIBIT "A" "Certificate of Apprehension"

I certify that the man whose personal description is given below surrendered himself to P.C. 246 Green at Clifton Gardens W-9mat (hour) 7145 a.m. on the 29th day of April as being No. B-29201 (Rank and Name) Private H. Dunnington a deserter (or absentee without leave) from 9th December, 1943 and it appears to me from his confession that he is a deserter or absentee without leave.
Age 27 Height 5 feet 7 inches
Complexion Dark Hair Dark Eyes Blue
In uniform or plain clothes - Uniform
Probable date and place of attestation - 9-5-40 Ontario, Canada
Probable date of desertion or beginning of absence and from what place - 9-12-43 RCE Horsham Sussex
Signature of Police in charge of - F. Brown, Lt. Station
29-4-44 Date of Signature.

This is Exhibit "A" referred to in the Summary of Evidence in the case of B-29201 Spr. Dunnington, H.P. taken before me this 30th day of April, 1944

Signed D.S. Stephens, Capt

EXHIBIT "B" "Transportation Voucher"

Expense Voucher No-1 Ref: K.R.& O (Can) 539
Reg No. B-29201 Rank Spr. Name Dunnington, H. Unit 85 Cdn Bridge Coy
The following expenses were incurred in apprehending and returning the m/n soldier to his unit from London

Date	Particulars	Amount
29 April 44	Escorts return fare from London to Horsham	0-5-7
	Prisoners single fare to London	
	Prisoners fare from London to Horsham	0-2-10
	Escorts and prisoners Expenses for bed, meals, Bus Fares	
	Total	0-8-5

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just

Signed R.J. Stinson, Lieut.
Officer issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps London

Stamped R.J. Stinson, Lieut
Adm. Officer-D.P.M's BR.
C.M.H.Q.

This is Exhibit "B" referred to in the Summary of Evidence in the case of B-29201 Spr. Dunnington, H.P. taken before me this 30 th day of April 44

Sgd. D.S. Stephens

I request the servdces of Lieut. C.F.A. McLaughlin of the Engineer Detachment 85 Cdn Bridge Coy, RCASC to defend me at my Court Martial.

Signed B-29201 Spr. Dunnington, H.P.

85 CDN BRIDGE COY
R.C.A.S.C.

LIST OF EXHIBITS in the case of B-29201 Spr. DUNNINGTON, H.P.

Exhibit "A" - A.F.O. 1617 dated 29 April 44

Exhibit "B" - C.M.H.Q. 1000:55 dated 29 April 44

LIST OF WITNESSES in the case of B-29201 Spr. DUNNINGTON, H.P.

1. M-59210 Sgt. Dobson, C.E. 85 Cdn Bridge Coy RCASC
2. Lieut. J.B. Higgins 85 Cdn Bridge Coy RCASC

EXHIBIT "C"

M.F.M. 6 (A.F.B. 122) 40/P & S/136 (2637)

No. B-29201 Name DUNNINGTON, H. Sqn., Battery, or Company | Corps RCE | Date of enlistment 9/5/40 | G.C. Badges | Service or Proficiency Pay 20c

Date of last entry in Company Conduct Sheet 11 Sep 41 | Forward date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Original sheet destroyed on completion of 6 months service in accordance with Overseas R.O. 319.									
Field	14 Nov 41	A/Cpl		A.A. 15 (1) AWL 8days, 20 hrs	Cpl Tyrrell L/Cpl Coull	Rev to perm rank of Sapper	24 Nov41	Lt-Col Barnes	Forf 9 days pay FR&I 149 (1)(a)
Field	18/5/42	Spr		A.A. 15 (1) AWL 16 hrs.	A/CQMS Hart	Forf 1 days pay	Capt Ward	Dep 2 days pay	
Field	10 Jul 42	Spr		A.A. 15 (1) AWL from 0800 hrs 10/ /42 until 1200 hrs 20/7/42 Absent 10 days, 4 hrs.	A/CQMS Hart L/Cpl Abbott	Admonished	Lt. Fleming	Forf 11days	pay FR&I149 1-a
Field	9 Sep 42	Spr		AWL from 0630 hrs 9 Sep 42 until 2300 hrs 29 Sep 42	Documentary	60 days Det 21 days pay FR&I 149 (1)(a) Tot. forf 84 days pay.	3 Oct 42	FGCM	60 days pay FR&I 149(1)(a) 3 days pay FR&I(1)(a)

P.T.O.

EXHIBIT "C"

No. B-29201 Name DUNNINGTON, H. Sqn., Battery, or Company | Corps RCE | Date of enlistment 9/5/40 | G.C. Badges | Service or Proficiency Pay 20a (A.F.B. 122) 40/P & S/136 (2637) | M.F.M. 6

Date of last entry in Company Conduct Sheet 11 Sep 41 | Normal date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Original sheet destroyed on completion of 6 months service in accordance with Overseas R.O. 319.									
Field	14 Nov 41	A/Cpl		A.A. 15 (1) AWL 8days, 20 hrs	Cpl Tyrrell L/Cpl Coull	Rev to perm rank of Sapper	24 Nov41	Lt-Col Barnes	Forf 9 days pay FRAI 149 (1)(a)
Field	18/5/42	Spr		A.A. 15 (1) AWL 16 hrs.	A/CQMS Hart	Forf 1 days pay	Capt Ward	Sep 2 days pay	
Field	10 Jul 42	Spr		A.A. 15 (1) AWL from 0800 hrs 10/ /42 until 1200 hrs 20/7/42 Absent 10 days, 4 hrs.	A/CQMS Hart L/Cpl Abbott	Admonished	Lt. Fleming	Forf 11days	pay FRAI149 1-a
Field	9 Sep 42	Spr		AWL from 0630 hrs 9 Sep 42 until 2300 hrs 29 Sep 42	Documentary	60 days Det 21 days	3 Oct 42	FGCM	60 days pay FRAI 149(1)(a) 3 days pay FRAI 149 (1)(a)

Tot. forf 84 days pay.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17-12-42	Spr		A.A. 15 (1) (WOAS) AWL 19 hrs, 15 mins.	L/Cpl Wilcox L/Cpl Robinson	7 days pay AA 46 (2)(c) 7 days C.B.	18/12/42	A/Capt P.N. Gross	Forf 1 days pay FRAI 149(1)(a)
Field	25-1-43	Spr		A.A. 15 (1) (WOAS) AWL 4 hrs, 1 15 mins.	L/Cpl Adams G.	1 days pay 3 days C.B.	26/1/43	Capt Gross	
Field	9-8-43	Spr		A.A. 15(1) AWL 11 days, 8 hrs, 45 mins.	Sgt March G.J.	28 days Field punishment	23 Aug 43	Major H.D. Duff	FRAI 149(1)(A) 28 days pay FRAI 149(1)(a) 17 days pay
Field	3 Oct 43	Spr		AWL from 2 59 hrs, 3 Oct 43 until 1400 hrs, 4 Oct 43. Absent 14 hrs, 1 min. A.A. Sec. 15 (1)	H-36400 Sgt Barron C.R. B-25851 A/L/Cpl Johnson M.H.	Forf 4 days pay.	5 Oct 43	CRCASC 1 AT Coln	1 days pay FRAI 149 (1)(a) 1 days pay FRAI 149(2)

Certified to be a true copy of the original document held in my possession

(J.S. Higgins) Lt & Adjt
85 Can Bridge Coy, RCASC

EXHIBIT "B"

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-29201	Spr.	DUNNINGTON, H.P.	RCE Detach 85 Cdn Bridge Coy RCASC

1. The following is a fair and true summary of the entries in the ~~Service and General~~ ~~Regimental and Squadron, Battery~~ ~~Conduct sheet~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	A.A. Sec 15 (1) 2 times	A.A. Sec 15 (1) 7 times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct Nil

~~xx~~

~~There are no entries in the conduct sheets of the accused~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted.~~

~~xx~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.A. 7~~ A.A. 7 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~xx~~

~~The accused at the present time is under sentence for xxxxxxxxx beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and ~~Air Force~~ 10 days in military custody, making a total of 10 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 2[illegible] yrs, 7 mos, 24 days, ~~attestation paper~~

6. The date of his ~~commission~~ attestation specified in his record of service is 9 May 40 ~~attestation paper~~

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The accused is entitled to reckon xxxxxxxx service for the purpose of determining his pension etc.~~

9. ~~The accused is in possession of or entitled to no air force decoration, or air force [illegible] possession of or entitled to~~ ~~military~~ ~~State any air force decoration or record~~ ~~military~~

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~ ~~Air Force~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force unit ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— ..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number B-29201 Rank Spr Name DUNNINGTON, H.P. of RCE Detach 85 Cdn Br Coy RCASC Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	Field	A.A. Sec 15 (1) AWL from 0630 hrs 9 Sep 42 to 2300 hrs 29 Sep 42. (Absent 20 days 16 hrs, 30 min.)	60 days Detn.	Nil

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30 day of Apr 44

No. 85 CDN. BRIDGE CO. R.C.A.S.C.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

54Q.

Spr. Dunnington, H.P.

O. H. M. S.

M. F. B. 270

B-29201 Spr. Dunnington, H.P.
6 C.C.C., R.C.E.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this second day of October, 1942,

Whereas it appears to me, the undersigned, an officer in Command of "F" Group, Canadian Reinforcement Units, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer;]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[I am unable to appoint:—

*(1) Three officers to form the Court;

*(2) A Field Officer as President;

for the following reasons, namely:—]

PROCEEDINGS REVIEWED

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	J.C.DAWSON,	(Gen.List) 1 C.D.I.R.U.

Members.

Rank.	Name.	Regiment.
CAPTAIN	C.H.Askwith	RH.C.(Bl.Watch) 2 C.D.I.R.U.
LIEUTENANT	J.E.Dumont,	R 22 R 1 C.D.I.R.U.
LIEUTENANT	WAITING MEMBER. A.F.Mackie,	Calg.Highrs. 2 C.D.I.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (J.P.ARCHAMBAULT) Brigadier,
Commanding "F" Group, Cdn. Reinf. Units.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-29201 Spr.Dunnington, Harold Palmer, 6 Cdn.Constr.Coy.,RCE.	FIRST CHARGE Sec. 15 (1) Army Act. (See Charge Sheet Attached.)	GUILTY	GUILTY TO UNDERGO DETENTION FOR SIXTY DAYS. 3 Oct 1942 J.Clanton Maj	Finding and Sentence Confirmed.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [signature] Brigadier (Signed) J.Clanton Maj
(A/C.F.ANCHAULT) Lt Col Jo 1 CDN I.R.U.
Commanding 3rd Group, C.R.E. President.
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 3rd day of Oct. 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
* ~~(3. The interpreter)~~ gel
* ~~(4. The officers under instruction)~~ gel

were duly sworn.

* Omit if not applicable.

Signed this 3rd day of Oct. 1942

J.Clanton Maj
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~ gel

~~Signed this day of 19~~ gel

~~*President of the Court Martial.~~ gel

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further order.~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 5th day of October 1942.

[signature] Brigadier
F Group, Can Roy Engrs
Confirming Officer.

Promulgated and extracts taken in the case of B-29201 Spr. Dunnington,H.P. No. 6 Cdn Constr. Coy.,R.C.E.

(*a*) (Dated) 6 October 1942. (Signed) [signature]
Adjutant, No. 6 Cdn Constr. Coy.,RCE

Promulgated and extracts taken in the case of

(Dated)..... (Signed).....

Promulgated and extracts taken in the case of

(Dated)..... (Signed).....

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] W. 28092 5316 75m 2/41 W. & Co. Ltd. Gp. 748-2

FORM OF DECLARATION FOR SUSPENSION OF RULES UNDER RULE OF PROCEDURE, 104

In my opinion military exigencies namely delay and expense render it inexpedient to observe the provisions of rule 4 (E) on the trial of B-29201 Spr. Dunnington Harold Palmer, by Field General Court Martial assembled pursuant to the order of the Convening Officer of "F" Group, Canadian Reinforcement Units.

Signed at Bordon, Hants,, this 2nd day of October 1942.

Brigadier,
(J.P. ARCHAMBAULT) Commanding, "F" Group,
Canadian Reinforcement Units.

The accused B.29201 Spr.Dunnington H.P.,No.6.Canadian Construction Company,Royal Canadian Engineers,a soldier of the Canadian Army Overseas,is charged with:-

CHARGE
Sec.15(1)
Army Act.

When on active service,did absent himself without leave,

in that he

at Smallfield,Surrey at 0630 hrs.9th.September 1942 did absent himself without leave until 2300 hrs.29th.September 1942.

Absent 20 days 16 hours 30 minuites.

Guildford,Surrey,
2nd.October 1942.

Mt Worth Capt.
_____Capt.,RCE.,
Officer Commanding
No.6.Cdn.Const.Coy.,R.C.E.

To be tried by Field General Court Martial

J.P. ARCHAMBAULT,BRIGADIER, Commanding "F" Group, Cdn.Reinf.Units , Convening Officer
Bordon,Hants 2nd Oct 42

23 OCT 1942
Royal Canadian Engineers
Bn. Orderly Room

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT ALGONQUIN CAMP ON THE 3 DAY OF OCT 42

TRIAL OF:- No. B 29201 SPR DUNNINGTON. H. P Unit 6 CDN. CONSTR. R.C.E.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) LIEUT. H.D BALL (Unit) 6 Cdn Construction Coy RCE.

Defending Officer (Name) LIEUT. M.M. FARQUHAR 6 Cdn Construction Coy RCE.

At hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q.1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A.1 - NO. SIR

The President, members and judge-advocate (if any) are duly sworn.

The following constitute the Court:

President MAJ. J.C. DAWSON. E.D. Unit GEN LIST NO1 C.D.I.R.U.

Member CAPT. CH ASKWITH RHC Unit NO2 CDIRU

LIEUT. J.B. DUMONT Unit R 22 R NO1 CDIRU

~~The officers under instruction are duly sworn.~~ Jcl

~~Q.2 Do you object to ..... acting as shorthand writer? A.2~~ Jcl

~~The shorthand writer is duly sworn.~~ Jcl

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B(is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court is closed to consider its findings. Court is re-opened.

Name LIEUT H.D BALL 6 CDN CONSTR. RCE sworn, produces AFB 296 and MFM 6 and upon being questioned by Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q.3 (To accused) - Do you wish to make any statement in mitigation of punishment?

A.3 YES SIR

Q.4 Do you wish to give evidence yourself or to call any witnesses as to character?

A.4 YES. SIR.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

THE DEFENDING OFFICER. STATES THAT THE ACCUSED IS A VALUEABLE SOLDIER THAT HE IS EMPLOYED IN Q.M. STORES AND CONSIDERED VERY CAPABLE

SUMMARY OF EVIDENCE

Summary of evidence in the case of D.29201 Spr.Dunnington H.P.,No.6.Cdn. Const.Coy., Royal Canadian Engineers,a soldier of the Canadian Army Overseas.

By the direction of the commanding officer the evidence was taken on oath.

First Witness for the prosecution. K.98211 Spr.Adams G.C.,No.6.Cdn.Const.Coy.,R.C.E.,a soldier of the Canadian Army Overseas,being duly sworn states:-

I produce a certified copy of Part II Orders which shows the accused whom I now recognize,absented himself from 0630 hrs.9th.September 1942. (Exhibit "A")

The accused declined to cross-examine this witness.

Second Witness for the prosecution. M.5089 L/Cpl.Roberts J.C. No.6.Cdn.Const.Coy.,R.C.E. a soldier of the Canadian Army Overseas,having been duly sworn states:-

"At 2300 hrs.on the 29th.Sept 42,at Smallfield,Surrey, the accused whom I now recognise surrendered himself to me."

Cross-examined by the accused.

Q. Was I sober and properly dressed?

A. "Yes Sir."

The accused declines to cross-examine this witness further.

Third Witness for the prosecution. C.2314 Sgt.White J.L. No.6.Cdn.Const.Coy.,R.C.E. a soldier of the Canadian Army Overseas,having been duly sworn states:-

"On the morning of 9th.September 42 at approximately 0700 hrs I went to the C.H.tent to notify Spr.Dunnington,that I had a job for him to do that day. On making inquiries as to his whereabouts I could not find the accused in camp. I reported his absence to L/Cpl Roberts my clerk who made a report to Coy.H.Q."

The accused declines to cross-examine this witness.

Fourth Witness for the prosecution C.2213 Spr.Bogart H.W. No.6.Cdn.Const.Coy.,R.C.E. a soldier of the Canadian Army Overseas,having been duly sworn states:-

"I checked Spr.Dunningtons kit this-afternoon and there is no deficiency.

The accused declines to cross-examine this witness.

The accused is cautioned as follows:-

Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence,unless you wish to do so,but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused reserves his defence.

I certify that the fore going summary of evidence consisting of one page was taken down by me in the presence of and in the hearing of the accused and that Rules of Procedure 4(c),(d),(e) and (f) have been complied with.

Guilford,Surrey.
2 October 42

Lieut.,
Officer detailed to take down Summary of Evidence.

No.6.Cdn.Const.Coy.,R.C.E.
Canadian Army (OS)

Last Order No.92 14 Sept 42 | PART II ORDERS | This Order No.93 15 Sept 42

By Capt.M.T.Woods (R.C.E.) Commanding

SECTION "A"

1. ATTACHED

Lieut.N.D.Ball attached f.c.p., to 4th.Bn.R.C.E., w.e.f., 27th.August 1942

cadres to be attached f.c.p., to 4th. Bn.,R.C.E., w.e.f., 9th. September 42

SECTION "B"

1. LEAVE GRANTED. The u/m personnel have been granted privilege leave from and to dates shown.

M.60079	Spr.	Boughton L.J.	8-9-42	to	15-9-42
R.2107	"	Bennett M.	10-9-42	"	17-9-42
G.32526	"	Bourque G.	15-9-42	"	22-9-42
R.11959	"	Beach A.R.	15-9-42	"	22-9-42
M.59139	"	Chambers J.	8- 9-42	"	15-9-42
R.5[illegible]	L/Cp	Cottam J.	10-9-42	"	17-9-42
O.26303	Spr	Dagg C	10-9-42	"	17-9-42
R.29932	"	Evans D.J.	"	"	"
M.35460	"	Fogarty P.	"	"	"
M.[illegible]	"	Fidler W.G.	"	"	"
R.11971	"	Gouthro J.	8-9-42	"	15-9-42
G.30184	"	Grenier J.	"	"	"
M.[illegible]	"	Hayes M.	9-9-42	"	16-9-42
M.[illegible]	"	Hoff C.E.	10-9-42	"	17-9-42
M.[illegible]	"	Just I	15-9-42	"	22-9-42
M.[illegible]	"	Knowles A.	"	"	"
M.[illegible]	"	Kenny E.	10-9-42	"	24-9-42
M.59753	"	Larocque A.	15-9-42	"	22-9-42
M.[illegible]	"	Metcalf J.C.	10-9-42	"	17-9-42
R.11021	"	Mcdonald A.C.	8-9-42	"	15-9-42
R.83539	"	Mc Neil D.J.	11-9-42	"	18-9-42
O.[illegible]	"	O'Leary E.J.	2-9-42	"	9-9-42
M.[illegible]	"	Peters J.F.	10-9-42	"	17-9-42
M.[illegible]	"	Pettipas R.	15-9-42	"	22-9-42
R.4160	"	Rule R.L.	8-9-42	"	15-9-42
D.16[illegible]	"	Renahan J.	14-9-42	"	21-9-42
R.56[illegible]	Sgt	Villancourt J.	8-9-42	"	15-9-42
M.[illegible]	Spr.	Whittall A.	14-9-42	"	21-9-42
M.[illegible]	"	Watt W.	15-9-42	"	22-9-42
M.[illegible]	"	Webb A.J.	"	"	"
M.[illegible]	"	Zarowny L.	8-9-42	"	15-9-42
D.97717	"	Zarubatany N	15-9-42	"	22-9-42

Exhibit "B"

2. ABSENT WITHOUT LEAVE

B.26201 Spr.Dunnington M.F. reported as being A.W.L. w.e.f., 0630 hrs., 9th.September 42

SHEET TWO DO# 93,d/15 September 42

3. PUNISHMENTS.

(a) H.25195 Spr.Thompson E.F. AA.15(1)(WOAS)A.W.L.from 2359 hrs.13/9/42 until 0915 hrs. 14/9/42.
Awarded 1 days forfeiture of pay F.R.& I 149(1)(a) wef 15/9/42.

(b) H.6403 Spr.McMullen J. AA.15(1)(WOAS) A.W.L. from 2359 hrs 6/9/42 until 0745 hrs 7/9/42.
Admonished and forfeits 1 days pay F.R.& I 149(1)(a) w.e.f., 15 September 42

(c) H.17475 Spr.Miner [illegible] AA.40(WOAS) An act to the prejudice of good order and military discipline in that he did not report to the M.O. at the time stated by him.
Awarded 10 days C.B.

4. AMENDMENTS

(a) DO#63,d/17 August 42 para 12(b) is amended to read w.e.f., 4 June 42.

(b) DO#92,d/14 September 42 para 4(c) is amended to read [illegible]

[illegible] Lieut.,& Adjt.,
For (M.T.Woods)Capt.,
Officer Commanding,
No.6.Cdn.Const.Coy.,R.C.E.

Certified a true copy of the original in my custody
~~H.D. Ball~~ Lieut
Adjt. 6 C.C.C RCE
2/10/42

Old Sheet destroyed 15 Sept 42

No. B.29201 Name Dunnington H.P. Sqn., Battery, or Company 6 Cdn. Const. Coy., R.C.E. Corps Date of enlistment 9/5/40 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 500M—8-39 (1767) H.Q. 1772-41-18.

Date of last entry in Company Conduct Sheet No. and date of last drunk N.1 Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. E.G. Young Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
London	26-11-40	Spr.	N.1	Sec 15 AA (1) WOAS - AWL absent 2 days 5 hrs.	L/Cpl Crowe CPC L/Cpl Blackmore CPC	7 days C.B.	28 Nov 40	L.F. Barnes Lt. Col	forf 2 days pay
Warburg Bks Aldershot.	4-12-40	Spr.	N.1	Sec 15 AA (1) WOAS - AWL absent 11 days	L/Cpl Holben	27 days detention	16 Dec 40		forf 38 day Pay
Borden Hants	30-3-41	Spr.	N.1	Sec 15 AA (1) WOAS - AWL absent 1 day 10 hrs 55 mins.	C.S.M Benoy	14 days C.B.	1 Apr 41	L.F. Barnes Lt. Col	forf 2 days pay F.R.Z.1 149(1)(a)
Cove Hants	10-9-41	A/Cpl		A.A 15(1) WOAS - AWL absent 15 hrs 40 mins	Sgt Phillips Cpl Tyrrell	Severe reprimand Revert to permanent rank Spr.	11 Sept 41	L.F. Barnes Lt. Col	forf 1 day pay F.R.Z.1 149(1)(a)
Cove Hants	14-11-41	A/Cpl		A.A. 15(1) WOAS - AWL absent 8 days 20 hrs	Cpl Tyrrell	Revert to permanent rank Spr.	28 Nov 41	L.F. Barnes Lt. Col.	forf 9 days pay F.R.Z.1 149(1)(a)
Borden Hants	18-5-42	Spr.		AA 15(1) WOAS - AWL absent 16 hrs.	A/CQMS Hart, A	forf 1 day pay		Capt M.T. Woods	deprived 2 days pay.
Borden Hants	10-7-42	Spr.		AA 15(1) WOAS - AWL - 0800 hrs 10-7-42 until 1200 hrs 20-7-42 (absent 10 days 4 hrs.	A/CQMS Hart, A. L/Cpl Abbott.	Admonished		Lieut C.D. Fleming.	forf 11 days pay F.R.Z.1 149(1)(a).

Certified a true copy of the original in my custody. H.D. Ball Lieut. 27 Oct 42. [illegible]

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
R.29201	Spr	DUNNINGTON H.F.	No.6.Cdn.Const.Coy.,R.C.E.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.W.L.	times.	Twelve times.
For A.W.L.	four times.	times.
For	times.	times.
For	times.	times.
For	times.	times.

~~Number of instances of gallantry or distinguished conduct.~~

or

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges, for N.A. days in civil custody, and 2 days in military custody, making a total of 2 days, of which N.A. days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ / attestation paper is 26 years

6. The date of his ~~attestation~~ / ~~enlistment~~ specified in his ~~record of service~~ / attestation paper is 9 May 1940

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .....

8. The accused is entitled to deferred pay or gratuity in respect of N.A. service.

9. The accused is entitled to reckon 2 years service for the purpose of determining his pension, etc.

10. ~~The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or reward)).~~

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of.....~~

12. ~~(In the case of an officer.) The accused holds in the army the rank of ..... dated .....~~
~~and in the regiment (or corps or department) the rank of ..... dated .....~~

J. Clawson Maj

W.L.30(340.000) 75,000 12/40 A.& E.W. Ltd. Gp.499
W.L.4844(1)(40) 25,000 4/41

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B.29201 Rank Spr Name Dunnington H.P. of 6.Cdn.Const Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		Nil.		

J. Clawson Maj

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2nd. day of October 1942

H. D. Ball Lieut.
Adjt. 6 Can. Const. Cy., R.C.E.

~~(If the accused has served as a non-commissioned officer continuously, without reduction, to the present date.~~

In the rank of ..... years, ... Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years, ...

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, ~~except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.~~)

47-9

Spr. Dunnington N.P.

RECORDED AT CMHQ IN AB 160 42-9

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P.A.S. 1608 (2864)

Convening Order of LT. COL. A.S. RUTHERFORD Comd RCE 2 CDN A Tps dated 12 JAN 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) ~~Appmt, A/R or A/Appmt~~	Full Christian Names.	Surname.	Unit.
~~B29201~~	~~SAPPER~~	~~HAROLD PALMER~~	~~DUNNINGTON~~	33 CDN FD COY

~~PROCEEDINGS REVIEWED~~

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 13 JAN 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 22189.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~an interpreter~~? Ans ~~Yes~~

~~The Interpreter is sworn.(1)~~ Do you object to B26408 CPL WRIGHT P.F. shorthand writer? Ans NO, SIR. The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO, SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR E.G. MOOGK	11 CDN FD PK COY RCE
Member	A/CAPT Y.H. WILLIAMSON	32 CDN FD COY RCE
Member	LIEUT. A.T. JORDAN	32 CDN FD COY RCE
Judge-Advocate		
Prosecutor	CAPT D.F. MORTON	33 CDN FD COY RCE
Defending Offr	LIEUT J.R. SMITH	33 CDN FD COY RCE

Questions by President: Is the Prosecutor a lawyer? Ans NO, SIR. Is the Defending Offr a lawyer? Ans ~~NO, SIR~~

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Cons Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (5) and fn 2 were not followed. See DI p 3.)

A8. The accused ~~B 29201 SAPPER DUNNINGTON, H.P.~~ before arraignment make(s) (no) ~~one~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addressees made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in this to RoP cited. Insert in AB rank and names of the accused making the plea.)

A9. The accused is ~~now~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~now~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 at Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~reviewed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B29201 SAPPER DUNNINGTON, HAROLD PALMER

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	CHARGE	GUILTY	GUILTY	N/A
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for SUSPENDED 9 MOS DETN beginning on (date) 11 MAY 44.(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 4 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

60 DAYS DETENTION

(Sgd) N/A Judge-Advocate, if any. 13 JAN 45 Date awarded. (Sgd) President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(1), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 94. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: The finding and sentence of the Court as set forth in Pt I of schedule is hereby confirmed.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 14 Apr 1945 (Sgd) Lt Col. R.C.E. Commanding C.R.E. 2 Cdn A. Tps Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B29201 SAPPER DUNNINGTON, Harold Palmer	14 JAN 45	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B); and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO SIR. (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (their) plea(s) to charge(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)*

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. ..... Do you intend to call witnesses on your behalf?
Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 108(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(B). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (b), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. YES SIR. SEE EXHIBITS "B" & "C"
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFW 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. YES SIR. STATEMENT BY DEFENDING OFFICER
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*) SEE EX "F"

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 60(1), KR Can 564.* 2. *RP 50. As to release from arrest by Convening Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

- CHARGE SHEET -

The accused, B-29201, Sapper DUNNINGTON Harold, Palmer, - 33 Cdn Fd Coy - Royal Canadian Engineers, a soldier of the Canadian Army Overseas, is charged with, while on active service:-

FIRST CHARGE
~~A.A.~~
~~Sec 15 (1)~~

ABSENTING HIMSELF WITHOUT LEAVE,

in that he, in the field absented himself at 2230 A hrs on 2 January 1945 till 1030 A hrs 9 January 1945.

(Total absence of 6 days and 12 hours.)

(R.T. Miller) Major RCE
O.C. 33 Cdn Field Coy.

To be tried by FGCM

Capt. R.C.E.
Adjt. H.Q. R.C.E. 2 Cdn A. Tps.

T.1.1m.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B29201	Sapper		Harold Palmer	DUNNINGTON	33 Cdn Fd Coy RCE

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 Jan 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reasons of a public nature (state nature).~~ *(Delete part in brackets when not required for compliance with RP 105(C).)* nil

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint an officer from the Army in the Fd Offr or President for the accused than the undersigned.~~ nil

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint an Judge-Advocate and the officer named hereunder.~~ nil

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	E.G. MOOGK RCE		11 Cdn Fd Pk Coy RCE

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
A/Capt	Y.H. WILLIAMSON RCE		32 Cdn Fd Coy RCE
Lieut	A.T. JORDAN RCE		32 Cdn Fd Coy RCE

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
	An Officer detailed by OC 11 Cdn Fd Pk Coy RCE		

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

(Signed personally. RP 105 fn 2.) Lieut-Col. (Rank.)

Date 12 Apr 1945

Commanding 2 Cdn Army Troops RCE

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CF AAG (Sp Instr) (CF AFA2) AG 9 A (S) 1/Nov (40))

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-47 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A.* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 88(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D).* *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by J.A., if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A., if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A., if any, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (k).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 759.*)

4. The President or J.A., if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

TRL.

"I hereby certify that I have this day examined B-29201 Spr DUNNINGTON, N.P. and in my opinion he is fit to undergo trial by Court Martial."

13 Jan 45

(D. Cant) Capt. RCAMC
M.O. HQ RCE 2 Cdn A Tps.

Para. E3. Ex 'F'
T.A.L.

PLEA OF MITIGATION

by the defending Officer -

Lieut J.R. Smith.

As the Court can see by the crime sheet all previous offences have been for A.W.L. - Between periods of A.W.L. the accused has done his normal duties and has been a good soldier. This crime was not premeditated, for the accused had a Christmas cheque which he deposited into his Paybook to get himself out of his financial difficulties.

If he had intended to go A.W.L. he would have kept this money. As the accused has stated, alcohol has been his downfall.

He intends to be a good soldier until he starts drinking.

Since coming to this Coy with the exception of this time he has made every effort to be a good soldier.

Rane. E1 Ex "B"

CHARACTER -

STATEMENT BY ACCUSED -

This is not a plea for forgiveness for I fully realize I must be punished. I have had many small crimes but have worked to the satisfaction of all my platoon officers.

On my first F.C.C.M. with 60 days detention I spent all the time in my unit continuing my own work.

Alcohol has been responsible for me doing these things. I realize that I cannot beat the Army but when AWL was scared to come back. I was under close arrest when I case to France, it was fate that I should be absent 3 hrs when under arrest. I was employed as a polling clerk in the Saskatchewan election to the satisfaction of the Officer i/c. After that job I came to this unit and have not had any trouble since coming here until 2 Jan, which was my day off.

I volunteered for guard duty on the 1 Jan and that is why I had the day off. I went to a party on that day at which there was too much liquor for all concerned.

The next day I tried to straighten up but just couldn't - alcohol had it's grip on me - and I just couldn't come back. I finally forced myself to come back and surrendered myself to my own platoon.

That is all I have to say for myself.

No. B29 201 Name DUNNINGTON, H.R. Sqn., Battery, or Company Corps RCE Date of enlistment 9/5/40 G.C. Badges Service or Proficiency Pay 20¢ M.F.M. 6 (A.F.B. 172) 175M—7-41 (1219-20) H.Q. 1773-39-1652

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 3 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9 Dec 43	Spr	nil	A.A. Sec 15(1) AWL from 0800 hrs 9 Dec 43 to 0745 hrs, 29 Apr 44 (Absent 141 days, 23 hrs, 45 min) Cost of return to unit £0-8-5. Held in close arrest from 0745 hrs, 29 Apr 44 to 0900 hrs 9 May 44.	Tried by F.G.C.M.	To undergo 426 days detn sentence mitigated by Comd A Tps to read 9 Mos detn and confirmed as so mitigated on 11 May 44.	9 May 44 by F.G.C.M.	F.G.C.M.	Forf 142 days pay 149 (1)(a) Forf 9 days pay FR&I 149 (1)(c)(1) Forf 277 days pay FR&I 149 (1) (b) Total forf 428 days Pay.

(P.T.O.)

Para E2 Ex "E" 1 Oct

No B.29201 Name DUNNINGTON, H.R. Sqn., Battery, or Company Corps RCE Date of enlistment 9/5/40 G.C. Badges Service or Proficiency Pay 20¢ M.F.M. 6 (A.F.B. 172) 175M—7-41 (1219-20) H.Q. 1773-39-1652

Date of last entry in Company Conduct Sheet 11 Sep 41 No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Alex Gagnon Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Original sheet destroyed on completion of 6 months service in accordance with Overseas RO 319									
Field	14 Nov 41	A/Cpl		AA 15(1) AWL 8 days, 20 hrs-	Cpl Tyrrell L/Cpl Coull	Rev to perm rank of sapper	24 Nov 41	Lt-Col Barnes	Forfs 9 days pay FR&I 149(1)(a)
Field	18/5/42	Spr		AA 15(1) AWL 16 hrs	A/CQMS Hart	Forf 1 days pay	Capt Ward, Dep 2 days pay		Forfs 1 days pay FR&I149(1)(a)
Field	10 Jul 42	Spr		AA 15(1) AWL from 0800 hrs 10/7/42 until 1200 hrs 20/7/42 Absent 10 days 4 hrs	A/CQMS Hart L/Cpl Abbott	Admonished	Lt Fleming		
Field	9 Sep 42	Spr		AWL from 0630 hrs 9 Sep 42 until 2300 hrs 29 Sep 42	Documentary	60 days det 21 days pay FR&I 149(1)(a) Tot Forf 84 days pay	3 Oct 42	FGCM	60 days pay FR&I 149(1)(A) 3 Days pay FR&I (1)(a)

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8 Oct 44	Spr		AA Sec 15(1) AWL from 1800 hrs 8 Oct 44 until 2215 hrs 8 Oct 44 (4 hrs, 15 mins)	CSM C.W. Gardiner	10 days F.P. 10 days Pay	(9Oct 44	MAJOR J.L.BLUE	Forf 10 days pay FR&I 149 (1) (b)
Field	12 Oct 44	Spr		Sentence awarded on 9 Oct 44 (10 days F.P. & 10 days Pay) migitated to 5 days F.P. & Forf of 10 days pay (FR&I 149 (1)(B)				Major J.L. Blue	Fors 1 days pay FR&I (1)(a)

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this..10th...day of..January..1945

(D.H. Morton) Capt RCE
2 i/c 33 Cdn Fd Coy.

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17-12-42	Spr		A.A. 15 (1) (WOAS) AWL 19 hrs, 15 mins.	L/Cpl Wilmox L/Cpl Robinson	7 days pay 46 (2)(c) 7 days C.B.	AA 15/12/42	A/Capt P.N. Gross	Forf 1 days pay FR&I 149 (1)(a)
Field	25-1-43	Spr		A.A. 15 (1) (WOAS) AWL 4 hrs, 15 mins	L/Cpl Adams G.	1 days pay 3 days C.B.	26/1/43	Capt Gross	
Field	9-8-43	Spr		A.A. 15(1) AWL 11 days, 8 hrs, 45 mins	Sgt March G.J.	26 days Field punishment	23 Aug 43	Major N.D. Duff	FR&I 149(1)(a) 26 dys pay FR&I ~~149~~ (1)(a) 17 days pay
Field	3 Oct 43	Spr		AWL from 2359 hrs, 3 Oct 43 until 1400 hrs, 4 Oct 43. Absent 14 hrs, 1 min. A.A. Sec 15(1)	H-36400 Sgt Barron C.R. H-28851 A/L/Cpl Johnson M.E.	Forf 4 days pay.	5 Oct 43	CRCASC 1 AT Coln	1 days pay FR&I 149(1)(a) 1 days pay FR&I 149 (2)

33 Cdn Fd Coy Ex "A"
10 Jan 45

- SUMMARY OF EVIDENCE -

B-29201 Spr DUNNINGTON, H.P.

The following is a Summary of Evidence in the case of B-29201 Spr DUNNINGTON, HP, 33 Cdn Fd Coy,- charged with an offence under Army Act Sec 15 (1) and will be taken under oath in the presence of the accused as ordered by MAJ R.T. MILLER, O.C. 33 Cdn Fd Coy.

FIRST WITNESS

A-116379 L/Cpl Charette, EJ, - 33 Cdn Fd Coy having been duly sworn states :-

I, A-116379 L/Cpl Charette, EJ of 33 Cdn Fd Coy am L/Cpl of 10 Sec. At 2230 hrs, 2 Jan 45 I called the TATTOO of my Sec. B-29201 Spr Dunnington, HP a member of the Sec failed to answer his name. Spr Dunnington was NOT present with 10 Sec again until 9 Jan 45 when I saw him at 1200 A hrs.

(sgd) E.J. Charette
L/Cpl Charette E.J.

The accused declined to question the witness.

SECOND WITNESS

B-26294 Sgt Taylor, R.H., - 33 Cdn Fd Coy having been duly sworn states :-

I, B-26294 Sgt Taylor, R.H. of 33 Cdn Fd Coy am Pl Sgt of 3 Pl,- 33 Cdn Fd Coy. I have called the roll every morning at 0730 hrs from 5 January 45 until 9 January 45 (incl.) B-29201 Spr Dunnington, H.P. failed to answer his name. He had not been detailed for any special tasks and it was his duty to appear on roll call parade. I did not know of his whereabouts on these days.

(sgd) R.H. Taylor
Sgt Taylor R.H.

The accused declined to question the witness.

THIRD WITNESS

M-8145 Cpl Longstaff, WHA 33 Cdn Fd Coy having been duly sworn states :-

I, M-8145 Cpl Longstaff, WHA of 33 Cdn Fd Coy am M.T. Cpl,- H.Q. Sec 3 Pl. At 1030 hrs 9 Jan 45 B-29201 Spr Dunnington, HP reported to me. As a result of information I had received I placed him under close arrest and reported the matter to Sgt Taylor.

(sgd) W.H.A. Longstaff
Cpl Longstaff W.H.A.

The accused declined to question the witness.

cont'd...../(2)

The accused was asked :-

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or give evidence upon oath.

Certified that Rules of Procedure 4 (C), (D), (E), (F) have been duly complied with.

Taken down in writing by me in the presence of the accused on the 10th day of January 1945.

(D.F. Morton) Capt RCE
OIC 38 Cdn Field Coy.

Page E2. Ex "D"

ARMY FORM B. 206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
Bp29201	Sapper	DUNNINGTON, H.P.	33 Cdn Field Coy RCE

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not inserted in the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishment being given in the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instruction.—If the charge is of drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Offences under AA Sec 15(1)	one times	Eight times
For	-- times	-- times.
For	-- times	-- times.
For	-- times	-- times.
For	-- times	-- times.

Number of instances of gallantry or distinguished conduct, Nil

~~The accused has no previous conviction.~~

2. ~~The accused has previous convictions.~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. ~~The accused was under sentence at the present date.~~ The accused at the present time is under sentence, ~~awarded~~ suspended awarded 9 months beginning on the 11th day of May 44

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and Four days in military custody, making a total of Four days of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 28 yrs 4 months

6. The date of his ~~attestation~~ attestation specified in his ~~attestation paper~~ record of service is 9 May 1940

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~is entitled to, is recommended for, is to receive~~ CVSM & CIASF - 15 Jan 44

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated N/A and in his regiment (*or corps or department*) the rank of N/A dated N/A

(*21500) W1.24499/1731 25,000 10/43 A.& E.W.Ltd. Gp.698
(21500) W1.24499/1429 12,500 8/44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No B-29201 Rank Sapper Name DUNNINGTON, H.P. of 33 Cdn Fd Coy RCE Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	9 May 44	AA Sec 15(1) AWL from 0800 hrs 9 Dec 43	To undergo 426	Suspended
	Field	to 0745 hrs 29 Apr 44 (Absent 141 days	days detention	date
		23 hrs 45 mins). Cost of return to unit	Sentence mitigated	unknown.
		£0-8-5. Held in close arrest from	by Comd A Tps to	
		0745 hrs 29 Apr 44 to 0900 hrs 9 May 44.	read 9 months detn	
			and confirmed as so	
			mitigated on 11 May 44	
FGCM	3 Oct 42	AWL from 0630 hrs 9 Sep 42 until 2300	60 days det	
	Field	hrs 29 Sep 42. (Total absence 20 dys -	21 days pay FR&I 149 (1) (a)	
		16 hrs - 30 mins)	3 days close arrest	
			Tot Forf 84 days pay	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13th day of January 1945

(D.F. Morton) Capt RCE

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

			Date of Promotion.
In the rank of	N/A	N/A years,	N/A
In the rank of	N/A	N/A years	N/A
In the rank of	N/A	N/A years,	N/A

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

Page E1 Ex "C"
[illegible]

- CHARACTER EVIDENCE -

Lieut J.R. Smith, - having been duly sworn states :-

I, Lieut J.R. Smith have been Spr Dunningtons' platoon officer since 2 Nov,44. I have found him to be a conscientious worker and a good soldier. Spr Dunnington has had a poor record in the past but since coming to my platoon, I have had no fault to find with his work.

- CHARACTER EVIDENCE -

B-26294 Sgt Taylor R.H. having been duly sworn states: -

I, B.26294 Sgt Taylor RH platoon Sgt of 3 platoon - 33 Cdn Fd Coy have known the accused since 2 Nov 44 when he joined the platoon.

He is an average soldier as far as duties are concerned.

I have had no trouble with him.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F.32654 Pte George, Joseph DUNPHY - CIC - 4 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and re loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which Nil days were spent in hospital.(1)
(1. For RP 44(B) fn 3. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

To undergo detention for sixty days (60) and to be put under stoppages of pay in the amt. of twelve shillings and one penny 60/12/1) being cost of apprehension
2 Aug/44
A.E. Anderson Major
Judge-Advocate, if any. Date as above President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirms the finding of the Court but vary the sentence to read "To undergo detention for 60 days & to be put under stoppages of pay untill he has paid the sum of £0-12-1 cost of Apprehension" & confirm the sentence so commuted

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) [illegible] Reinforcement Commander "D" Group
Date 4 Aug 44 Commanding Cdn. Reinforcement Units C.A. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
F 32654 Pte George Joseph Dunphy	5 Aug 44	A J [illegible] Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 14 AUG 19[illegible] JAG BRANCH

RECORDED AT CMHQ IN AB 160 TTT-112

CPA96 (In lieu of AFA3) (D.P.S.S. 1008 (3864))

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig J.R. Stewart Lough Comd "D" Gp, CRU dated 1 Aug 44
DSO, MC, VD

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F.32654	Pte	George, Joseph	DUNPHY	CIC 4 CIRU

PROCEEDINGS REVIEWED 15 Aug 44 W.C. Finch Capt.
JAG REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England. on (date(s)) 2nd Aug/44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to N/A as interpreter? Ans Nil
~~The interpreter is sworn.(1)~~ Do you object to N/A as shorthand writer? Ans Nil
~~The shorthand writer is sworn.(1)~~ N/A.
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 16, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A.E. Anderson	4 CIRU
Member	Capt.	W.J. Smith	4 CIRU
Member	Lieut	H.A. Staples	4 CIRU
Judge-Advocate	Mjr.		
Prosecutor	Lieut	A.E. Walby	4 CIRU
Defending Offr	Lieut	Cons: MacLaren.	4 CIRU

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (1)
(1. RP 26, 27, 109, 111. List of offrs under instr will be retained separately with proceedings for information of Cons Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused F. 32654 Pte George Joseph DUNPHY 4 CIRU on his arraignment makes(s) (are) (a) plea(s) of guilty.(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 77), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

WDA. President to accused : Do you wish to make a statement ? Ans. Nil. (1) WDA
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

WDA B3. ~~The Court considers the accused's statement.~~(1) The Court decides (not) to advise accused to change his WDA
WDA (their) plea(s) of Guilty to Not Guilty on 1st Charge charge(s). ~~The accused is (are) so informed, and he (they)~~ WDA
WDA ~~change(s) his (their) plea(s) on charge(s).~~ Part I of the Schedule is amended accordingly. WDA
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

WDA B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of WDA
Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

WDA B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1) WDA
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) *fn* 1.)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above, WDA, KDA
(1. *Under B5 such parts only of the Summary of Evidence will be read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(2) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(3) The Court is closed, and considers the submission.(4) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(5)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D6.)
NB : If trial proceeds, accused must be allowed exact latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP* 41. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the Finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
WDA Ans. Nil. WDA
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(1) having the same number, rank, name and corps as the accused. Admitted in evidence and WDA marked Ex E, and Ex F respectively.(3) WDA
(1. *MFR* 25*1 or MFR* 256. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

WDA E3. President to accused : Do you wish to address the Court on the ~~Statement(s) and~~ Conduct Sheet(s), and in WDA
WDA mitigation of punishment ?(1) Ans. Plea , (2) WDA
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

WDA E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which WDA
is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 120. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and* 70 *foregoing, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 336, 543-546. *Overseas RO* 309, 2123, *MML p* 80, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(2), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(*1*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F 32654 Private George Joseph DUNPHY, Canadian Infantry Corps, on the strength of No 4 Canadian Infantry Reinforcement Unit, a Soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE

Section 15(1) Army Act

WHILE ON ACTIVE SERVICE, Absenting himself without leave,

in that he,

In the Field, absented himself without leave from 0800 hours 3 July 1944 until apprehended by the Canadian Provost Corps in York at 2000 hours 25 July 1944, thereby incurring costs of returning him to his unit in the amount of £0-12-1. Total Absence 22 days 14 hours.

IN THE FIELD
29 JULY 1944

J. Gavan Power
(J. Gavan Power) Colonel,
Commanding Officer,
4 Cdn Inf Rft Unit.

To be tried by Field General Court Martial.

In the Field
1 Aug 44

(J.R. Stewart Lough) Brigadier
Commander
"D" Group, Cdn. Rft. Units
Convening Officer

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(J. Gavan Power) Colonel,
Commanding Officer,
4 Cdn Inf Rft Unit.

IN THE FIELD
20 JULY 1944

To be tried by Field General Court Martial.

(J.R. Stewart Lough) Brigadier
Commander
"D" Group, Cdn. Rft. Units
Convening Officer

In the Field
1 Aug 44

W.D.
2nd Aug/44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 181, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
F.32654	Pte		George, Joseph	DUNPHY	CIC 4 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) ~~(s)~~ set forth in the Charge Sheet(s) ~~(s)~~ attached and on (date) 1 Aug 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) ~~(s)~~ should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s) ~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) Unit Offr to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	N.D. Anderson	N Shore R 4 CIRU

MEMBERS.

A Captain	to be detailed by Commanding Officer	4 CIRU
A Lieutenant (Rank.)	to be detailed by Commanding Officer (Named or detailed. RP 106.)	4 CIRU (Unit.)

WAITING MEMBER.

A Lieutenant (Rank.)	to be detailed by Commanding Officer (Named or detailed, if any. RP 106.)	4 CIRU (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 1 Aug 44

R Stewart Lough

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(J.R. Stewart Lough)

Commanding "D" Group, Cdn. Rft. Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAM. (In lieu of AFAS) W.F. & B. 1807 (4/43).)

(See overleaf for oaths and notices for use at trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jun 45 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as practicable*, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J A* (*RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 563(a).*)

(vii) Summing up by *J A, if any.* (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A. *if any.* RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A. *if any*, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations ~~made by~~ Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, *etc.* (*As to admitting in evidence a certified copy in lieu of original see KR Can 380. As to certified copies of regimental books see AA* 163 (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(3), *RP* 118(*C*), *MML* p 709.)

4. The President or *J A, if any*, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as *otherwise* directed.

WDT Medical Officer's Certificate. 40/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. F.32654.....

.....Pte. Dunphy G.J.... of...H.C.I.R.U.....

and in my opinion, he is. Fit.... to undergo trial by Court Martial.

Station...Field.....

Date....2 Aug. 44..... (Sgd.)..D.B.McKee Capt.
(Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3, para 27, d/6 Jan 42)

WDF:

The accused made no objection to the fact that the Prosecutor was a Lawyer.

W D Anderson Major
2 Aug/44

Dudy.

Plea for mitigation in case of F32654 Pte. G. J. Dunphy.

There is no question but what Pte. Dunphy is guilty of this charge. He has not tried to conceal his guilt, nor cloud the issue with technicalities. But, before you decide what his punishment shall be, I ask this Court to examine the circumstances leading up to this trial. Pte Dunphy is young. He enlisted in October 1942 at the age of 17½ years and waited 1½ years until he was permitted to come overseas. His older brother was wounded at Dieppe, and Dunphy arrived here, in April of this year, anxious to get into action. Events, unfortunately, seldom work out as we plan them. At the conclusion of his basic instruction here he was sent, not, as he had hoped and expected, to draft company, but to "D" company for a refresher course as a clerk. He was disappointed, and lacking the judgement of the more mature went away in a foolish fit of resentment. It is easy to go away, Gentlemen, but very difficult to come back. Pte. Dunphy is ready to take his punishment. I ask that you take into consideration the fact that this absence was not that of a draft dodger or a shirker, but the impulsive gesture of a young soldier, disappointed in not getting to the field, and temper your judgement accordingly.

C. S. Mackenzie Lt.

Exhibit A
W D Anderson Major
2nd Aug/44

SUMMARY OF EVIDENCE

Summary of Evidence in the case of F 32654 Pte Dunphy, G.J., Canadian Infantry Corps, on the strength of No 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

The Summary of Evidence is not taken on oath.

FIRST WITNESS

For the Prosecution

Lt A.J. Geisler, Canadian Infantry Corps, on the strength of 4 Canadian Infantry Reinforcement Unit, states:

I am Lt A.J. Geisler, and am Assistant Adjutant, 4 Cdn Inf Rft Unit. I present herewith, marked Exhibit "A", certified true extract from 4 CIRU Part II Order No 191 dated 26 Jul 44, which shows that the accused, F 32654 Pte Dunphy, G.J., whom I now recognize, absented himself without leave from 0600 hrs 3 Jul 44 and that he was still so absent at 0600 hrs 24 Jul 44. I present, marked Exhibit "B", Certificate of Arrest, which shows that the accused, whom I now recognize, was arrested in York by the C.P.C. at 2000 hrs 25 Jul 44. I also present, marked Exhibit "C", Expense Voucher which shows that the cost of returning the accused to his unit was in the amount of 12/1.

A. J. Geisler
(A.J. Geisler) Lt,

The accused declines to cross-examine this witness.

The accused was cautioned as follows: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of ONE page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

A. E. Wilby
(A.E. Wilby) Lt,
Officer Detailed to Take Summary.

Exhibit B.
Wit. 2nd Aug/44

NO 4 CANADIAN INFANTRY REINFORCEMENT UNIT

LAST ORDER	PART II DAILY ORDERS	THIS ORDER
NO 190	Issued by	NO 191
25 JUL 44	A/COL J Gavan POWER ED Commander	26 JUL 44

16. ABSENT WITHOUT LEAVE

(c)

AWL from 0600 hrs 3 Jul 44 and still absent at 0600 hrs 24 Jul 44 (21 days)
F 32654 Pte DUNPHY A J "C1C"

"A.J. Geisler, Lt"
(F A H Gallop) Capt & Adjutant,
No. 4 Cdn Inf Rft Unit (CA(E)

CERTIFIED TRUE COPY 29 JUL 44

A J Geisler Lt. a/adjt.

OFFICER HAVING CUSTODY OF ORIGINAL RECORD.

Exhibit C.
Cdn.
2nd Aug/44

No.7 PROVOST COMPANY,
CANADIAN PROVOST CORPS.

5-4-5
Date. 24 July 44

I certify that Reg. No. F-32654 Rank 1 PTE.

NAME DUMPHY.G.J. UNIT HQ CIRU.

WAS APPREHENDED BY CPL. DECHANT OF THE CDN. PROVOST CORPS.

NO. 7 PROVOST COY. IN CITY OF YORK

ON THE 25th DAY OF JULY 1944, AT APPX 2000 HRS.

AT THE TIME OF HIS APPREHENSION HE WAS WEARING MILITARY UNIFORM.

T. Crawshaw Lieut.
(T. Crawshaw)
No.7 Provost Company,
Canadian Provost Corps.

Exhibit D.
WDC 2nd Aug/44

4C/9

Expense Voucher Re- Ref KR & O (Can) 530

Reg No. F-32654 ...Rank Pte.....Name..Murphy...G.J....Unit. A.E.I.R.D

The following expenses were incurred in apprehension and return of the m/n Soldier to 4 C.I.R.D.

Date	Particulars	Amount
	Escorts return fare from York To Helmsley	9 8
	Prisoners single fare to Helmsley From York	2 5
	Escorts & Prisoners expenses for Bed, Meals and Bus fare	
	Total £:	12 1

I certify that the above statement of expenses is correct and that the amounts are fair and just.

.....D Stewart Capt.....Capt

Officer Issuing Railway Warrant and Expense monies

In lieu of
CMHQ 1000;55

Exhibit E
WDA
2nd Aug/44

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F 32654	Pte	Dunphy, G.J.	4 C.I.R.U.

1. The following is a fair and true summary of the entries in the ~~Service and General Conduct sheets~~ ~~Regimental and Brigade or Battery~~ ~~or~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months			Since enlistment		
For	A.A. Sec 15(1)	3	times	A.A. Sec 15 (1)	9	times
For	A.A. Sec 11	1	times	A.A. Sec 11	1	times

~~For~~ ~~For~~

~~Number of instances of gallantry or distinguished conduct~~

~~There are no entries in the conduct sheets of the accused~~

~~Note: If the charge is for drunkenness, the entries for drunkenness must be stated separately~~

2. The accused has not been previously convicted

~~Previous convictions of the accused by a court-martial or a civil court of summary awards under Section 47 of the Army Act and dispensations with trial under Section 47 of the Army Act in the Schedule accompanying the statement~~

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 8 days in military custody, making a total of 8 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 20

6. The date of his ~~enlistment~~ attestation specified in his record of service is 23 Nov 42

7. ~~The entries which the accused is allowed to reckon towards discharge~~

8. ~~The accused is entitled to reckon~~ ~~service for the purpose of determining his pension~~

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (~~or~~

~~Provision of or entitled to: State any air force decoration or reward~~

~~Reward~~

~~10. If the accused is a non-commissioned, the accused before he was made a non-commissioned officer~~

~~Reward~~

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ 29

Permanent Force
unit

..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Air Force

Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

29

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2 August day of

A. J. Gaskin Lt Asst/Adjt.
Officer Commg, Custody of Regimental Books

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked Exhibit E signed by the president, and annexed to the proceedings.

C. W. D. Fredericson Mgr
2nd Aug/44

Old Sheet destroyed 10-6-43

No 13654 Name DUNPHY, G.J. Sqn, Battery or Company — Corps C.P.C. — Date of enlistment 23/11/42 — GC Badges — Service or Proficiency Pay

MFM 6 (AFB 122) 40/P&S/186 (3488)

Date of last entry in Company Conduct Sheet — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No 1 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
New Glasgow	4-2-43	A/Cpl		Absent from P.T. Parade at 1630 Hrs	Sgt Cunningham	3 Days C.B.	5-2-43	Lt. E.J. Dick	
New Glasgow	1-3-43	"		Absent from Coln Parade at 0750 hrs	Sgt Wilson	3 Days C.B.	1-3-43	Lt R.C. McDougall	
Truro	31-3-43	"		AWL 0300 Hrs 31-3-43 to 0300 Hrs 1-4-43	Sgt Corbett	168 Hrs Defrs.	5-4-43	Capt J.J. Jeffery	
St John, N.B.	15-5-43	"		AWL 1250 Hrs 15-5-43 to 1000 Hrs 22-5-43					
St John, N.B.	22-6-43	"		Class arrest 3 days 13 Hrs.	Sgt Secretary	14 days pay	26-5-43	Lt Col Mc Donald	
St John, N.B.	22-6-43	"		Absent from Parade	Lt Phillips	14 days C.B.		Major J.S. Roache	
St John, N.B.	28-6-43	"		AWL from 2230 hrs 29-6-43 to 0130 Hrs 30-6-43	Sgt Barnes	5 days pay			
Aldershot N.S.	30-8-43	"		Absent from duty from 1730 hrs 30-8-43 to 1800 Hrs 30-8-43 (30 Minutes)	Cpl Mac Dougall	14 Days C.B.	1 Sep 43	Major Lt Col Nicholson	
Field	13-5-44	A/Cpl		AA Sta 15(1) AWL from 2354 hrs 13 May 44 to 1330 hrs 4 Jun 44. (Absent 20 days 12 hrs 31 Minutes)	Sgt Leeper, C	28 Days Lt 28 Days pay	6 Jun 44	Lt-Col O. Lane Reyn Regt Supplies 1 AA Bde (1) (CA)	Surrendered

2 Aug 44

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Jun 44	Pte		AA 11 WOAS Neglecting to obey Standing Orders, Placed both in Civilian Post Box.	Documentary	7 days C.B.	14 Jun 44	Major R. F. MacPherson	
Field	25 Jun 44	Pte		AA Sec (5 (1) AWA from 0100 Hrs 25 Jun 44 to 0630 Hrs 26 Jun 44 Absent 1 day 5 hrs 30 minutes	Cpl Chase RH	6 days Fine of Pay & Rs 149 (2)	29 June 44	Lt-Col. R. F. MacPherson	Fine 2 days Pay Rs 149(1)(a).
				Certified True Copy A. J. Geisler Lt A/Adjt. Officer having Custody of Regimental Books.					
		2 Aug 44							

WDH.

#4 CANADIAN INFANTRY REINFORCEMENT UNIT, C.A.(O). 4C/24

.....29...July.....194.44.

I, No..F.32654.Pte.Dunphy, G.J. ....., wish to have
(Rank) (Name)
an Officer defend me at my forthcoming trial by Court Martial.

I desire the services of..an officer detailed by C.O.....
if he is available.

(Sgd.) ....G.J. Dunphy.....

COPY.

31 Jul 44.

This is to certify that I have received the following papers, in connection with my forcoming trial by F.G.C.M., free of charge:

1 Copy of Charge Sheet
1 Copy of Summary of Evidence
1 List of Witnesses
1 List of Exhibits

T.J. Dunphy.

(F 32654 Pte Dunphy, T.J.)

1004.

LIST OF WITNESSES

In the Case of F 32654 Pte Dunphy, G.J., Cdn Inf Corps, 4 Cdn Inf Rft Unit.

FOR THE PROSECUTION

1. Lt A.J. Geisler, 4 Cdn Inf Rft Unit.

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

In the Case of F 32654 Pte Dunphy, G.J., Cdn Inf Corps, 4 Cdn Inf Rft Unit.

Exhibit "A" - Certified True Extract from 4 CIRU Part II Order No 191 dated 26 Jul 44.

Exhibit "B" - Certificate of Arrest

Exhibit "C" - Expense Voucher

FTT-112.

te Dunphy G.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F.32654 Pte George, Joseph DUNPHY - CIC - 4 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 187 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which Nill days were spent in hospital.(2)

(2. See RP 46(A) fn 3. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

To undergo detention for sixty days (60) and to be fined under stoppages of pay in the amt. of twelve shillings and one penny 12/1d.) being cost of apprehension

2 Aug/44 A.W. Anderson Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 90.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding of the Court but vary the sentence to read:- To undergo detention for 60 days & to be fined under stoppages of pay until he has paid the sum of £0-12-1 cost of apprehension & from the date so calculated.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) Commander "D" Group

Date 4 Aug 44 Commanding Reinforcement Units C.A. Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
F.32654 Pte George Joseph Dunphy	5 Aug 44	A J Gale Lt Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 14 AUG [illegible] JAG BRANCH

RECORDED AT CMHQ IN AD 160 TTT-112

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA5) R.C.P. & S. (1608) (2864)

Convened by Offr of Brig J.R. Stewart Lough Comd "D" Gp, CRU dated 1 Aug 44 DSO, MC, VD

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F.32654	Pte	George, Joseph	DUNPHY	CIC 4 CIRU

PROCEEDINGS REVIEWED 15 Aug 44 H. C. Finch Capt. REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England. on (date(s)) 2nd Aug/44 WBK

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

WBK A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed. WBK

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmo ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for points and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

WBK A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) WBK The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and WBK each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

WBK A3. The Court is opened. The accused is (are) brought before the Court. At 1020 hours trial commences. WBK

WBK A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~ WBK WBK

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

WBK A5. President to accused: Do you object to N/A as interpreter? Ans No WBK

~~The interpreter is sworn.~~(1) Do you object to N/A as shorthand writer? Ans No WBK

~~The shorthand writer is sworn.~~(1) N/A.

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? WBK

Ans No.(2) WBK

(1. RP 110. 2. If no objection, waiting member recires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

WBK President	Major	A.W. Anderson	#4 CIRU WBK
WBK Member	Capt.	H.W. Smith	#4 CIRU WBK
WBK Member	Lieut	H.B. Staples	#4 CIRU WBK
WBK Judge-Advocate	H.J.A.		WBK
WBK Prosecutor	Lieut	A.E. Willey	#4 CIRU WBK
WBK Defending Offr	Lieut	C.S. MacLaren.	#4 CIRU WBK

WBK Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2) WBK

(1. RP 26, 27, 109, 111. List of offrs under instr will be retained separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

WBK A8. The accused F.32654 Pte George Joseph DUNPHY on his arraignment makes(s) (are) (is) plea(s) WBK WBK of Guilty (1) WBK

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(6), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 136, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

WBK A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. WBK

(1. RP 26, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

WBK A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B. WBK

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of J A see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of J A or Pres to record proceedings see RP 94, 96.*

RECORD FORM B--PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. Nil. (5)
(1. *RP 37(E).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.~~(1) The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty on ~~the~~ 1st Charge charge(s). ~~The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on ..... charge(s).~~ Part 1 of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part 1 of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3.* RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C--PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (b).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence will be read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D--PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 52 para 42 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*
NB : If trial proceeds, accused must be allowed exactly latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath or in the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 165.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf AFI. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (b), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E--PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Nil.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that those documents refer to the accused, because (i) they purport to be signed in the manner required by A A 163(1) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E and Ex F respectively.(3)
(1. *AFB 355 or AFB 294.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the ~~circumstances and~~ Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Nil.
(1. *RP 27(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should prevent accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. *When several accused tried separately see RP 74(f). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308ff, 326, 343-346, Overseas RO 309ff, 2323, MML p 86, 737-739. As to sentences assigned for civil offences by the law of England see AA 44(5), MML p 136. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F 32654 Private George Joseph DUNPHY, Canadian Infantry Corps, on the strength of No 4 Canadian Infantry Reinforcement Unit, a Soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE

Section 15(1) Army Act

WHILE ON ACTIVE SERVICE, Absenting himself without leave,

in that he,

In the Field, absented himself without leave from 0600 hours 3 July 1944 until apprehended by the Canadian Provost Corps in York at 2000 hours 25 July 1944, thereby incurring costs of returning him to his unit in the amount of £0-12-1. Total Absence 22 days 14 hours.

IN THE FIELD
29 JULY 1944

(J. Gavan Power) Colonel,
Commanding Officer,
4 Cdn Inf Rft Unit.

To be tried by Field General Court Martial.

(J.R. Stewart Lough) Brigadier
Commander
"D" Group, Cdn. Rft. Units
Convening Officer

In the Field
1 Aug 44

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing *see* AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 563(*g*).)

(vii) Summing up by JA, *if any*. (*CF* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, *if any*, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 153 (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 8 after intimation of sentence awarded. (*AA* 53(*F*), *RP* 118(*C*), *MML p* 759.)

4. The President or JA, *if any*, will return proceedings promptly with covering letter sent in an envelope marked "Confidential", or as otherwise directed.

2nd Aug 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.32654	Pte		George, Joseph	DUNPHY	CIC 4 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 1 Aug 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such ~~offence(s)~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr;)~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W.D. Anderson	N Shore R 4 CIRU

MEMBERS.

A Captain	to be detailed by Commanding Officer	4 CIRU
A Lieutenant (Rank.)	to be detailed by Commanding Officer (Named or detailed. RP 106.)	4 CIRU (Unit.)

WAITING MEMBER.

A Lieutenant (Rank.)	to be detailed by Commanding Officer (Named or detailed, if any. RP 106.)	4 CIRU (Unit.)

JUDGE ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 1 Aug 44

(Signed personally. RP 105 fn 2.)

(J.R. Stewart Lough) Brigadier (Rank.)

Commanding "D" Group, Cdn. Rft. Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (AFMS (To (en) of AFAs) 40/P & D (1)(P) (40))

(See overleaf for oaths and notes for use on trial.)

WBT Medical Officer's Certificate. 40/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. F32654
Pte. Dunphy G.J. of H.C.I.R.U.
and in my opinion, he is Fit to undergo trial by Court Martial.

Station Field

Date 2 Aug 44 (Sgd.) D.B.McKee Capt.
(Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3, para 27, d/c Jan 42)

WDA:

The accused made no objection to the fact that the Prosecutor was a Lawyer.

W D Anderson Major
2 Aug/44

Pte. Dunphy.

Plea for mitigation in case of F32654 Pte. G. J. Dunphy.

There is no question but what Pte. Dunphy is guilty of this charge. He has not tried to conceal his guilt, nor cloud the issue with technicalities. But, before you decide what his punishment shall be, I ask this Court to examine the circumstances leading up to this trial. Pte Dunphy is young. He enlisted in October 1942 at the age of 17½ years and waited 1½ years until he was permitted to come overseas. His older brother was wounded at Dieppe, and Dunphy arrived here, in April of this year, anxious to get into action. Events, unfortunately, seldom work out as we plan them. At the conclusion of his basic instruction here he was sent, not, as he had hoped and expected, to draft company, but to "D" company for a refresher course as a clerk. He was disappointed, and lacking the judgement of the more mature went away in a foolish fit of resentment. It is easy to go away, gentlemen, but very difficult to come back. Pte. Dunphy is ready to take his punishment. I ask that you take into consideration the fact that this absence was not that of a draft-dodger or a shirker, but the impulsive gesture of a young soldier, disappointed in not getting to the field, and temper your judgement accordingly.

C. S. Macleod Lt.

Exhibit A
W.D. Anderson Major
2nd Aug/44

SUMMARY OF EVIDENCE

Summary of Evidence in the case of F 32654 Pte Dunphy, G.J., Canadian Infantry Corps, on the strength of No 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

The Summary of Evidence is not taken on oath.

FIRST WITNESS

For the Prosecution

Lt A.J. Geisler, Canadian Infantry Corps, on the strength of 4 Canadian Infantry Reinforcement Unit, states:

I am Lt A.J. Geisler, and am Assistant Adjutant, 4 Cdn Inf Rft Unit. I present herewith, marked Exhibit "A", certified true extract from 4 CIRU Part II Order No 191 dated 26 Jul 44, which shows that the accused, F 32654 Pte Dunphy, G.J., whom I now recognize, absented himself without leave from 0600 hrs 3 Jul 44 and that he was still so absent at 0600 hrs 24 Jul 44. I present, marked Exhibit "B", Certificate of Arrest, which shows that the accused, whom I now recognize, was arrested in York by the C.P.C. at 2000 hrs 25 Jul 44. I also present, marked Exhibit "C", Expense Voucher which shows that the cost of returning the accused to his unit was in the amount of 12/1.

A.J. Geisler
(A.J. Geisler) Lt,

The accused declines to cross-examine this witness.

The accused was cautioned as follows: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of ONE page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

A.E. Wilby
(A.E. Wilby) Lt,
Officer Detailed to Take Summary.

Exhibit B.
Wdd. 2nd Aug/44

NO 4 CANADIAN INFANTRY REINFORCEMENT UNIT
PART II DAILY ORDERS
Issued by
A/COL J Gavan POWER ED Commander

LAST ORDER NO 190 25 JUL 44

THIS ORDER NO 191 26 JUL 44

16. ABSENT WITHOUT LEAVE

(c) AWL from 0600 hrs 3 Jul 44 and still absent at 0600 hrs 24 Jul 44 (21 days)
F 32654 Pte DUNPHY A J "C1C"

"A.J. Geisler, Lt"
(F A H Gallop) Capt & Adjutant,
No. 4 Cdn Inf Rft Unit (CA(E)

CERTIFIED TRUE COPY 29 JUL 44
A J Geisler Lt a/adjt.
OFFICER HAVING CUSTODY OF ORIGINAL RECORD.

Exhibit C.
Def.
2nd Aug/44

No.7 PROVOST COMPANY,
CANADIAN PROVOST CORPS.

5-4-5
Date. 25 July 44

I certify that Reg. No. F-32654 Rank 1 PTE.

NAME DUMPHY.G.J. UNIT #4-CIRU.

WAS APPREHENDED BY CPL. DECHANT OF THE CDN. PROVOST CORPS.

NO. 7 PROVOST COY. IN CITY OF YORK

ON THE 25th DAY OF JULY 1944, AT APPROX. 2000 HRS.

AT THE TIME OF HIS APPREHENSION HE WAS WEARING MILITARY UNIFORM

T. Crawshaw Lieut.
(T.Crawshaw)
No.7 Provost Company,
Canadian Provost Corps.

Exhibit D.
WDt. 2nd Aug/44

4C/9

Expense Voucher Re- Ref KR & O (Can) 530

Reg No. F-32654 ... Rank Pte. ..... Name .. Dunphy ... G.J. ... Unit. 4 C.I.R.U

The following expenses were incurred in apprehension and return of the m/n Soldier to 4 C.I.R.U.

Date	Particulars	Amount	
	Escorts return fare from York To Helmsley	9	8
	Prisoners single fare to Helmsley From York	2	5
	Escorts & Prisoners expenses for Bed, Meals and Bus fare		
	Total £:	12	1

I certify that the above statement of expenses is correct and that the amounts are fair and just.

E. Tatewart Capt
.....Capt
Officer Issuing Railway Warrant and Expense monies
Assistant Adjutant
4 Can Inf Mem Unit

In lieu of
CMHQ 1000;55

Exhibit E. WA
WDD 2nd Aug/44

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-29-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F 32654	Pte	Dunphy, G.J.	4 C.I.R.U.

1. The following is a fair and true summary of the entries in the ~~Service and General Conduct sheet~~ ~~Regimental and Equivalent Battery~~ ~~or~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months			Since enlistment		
For	A.A. Sec 15(1)	3	times	A.A. Sec 15 (1)	9	times
For	A.A. Sec 11	1	times	A.A. Sec 11	1	times

~~For~~ ~~For~~

~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

2. The accused has not been previously convicted

~~[illegible]~~

3. The accused is not under sentence at the present time.

~~[illegible]~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 8 days in military custody, making a total of 8 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 20

6. The date of his ~~[illegible]~~ attestation specified in his record of service is 23 Nov 42

7. ~~[illegible]~~

8. ~~[illegible]~~

9. The accused is in possession of or entitled to no ~~[illegible]~~ military decoration, or ~~[illegible]~~ military reward (~~[illegible]~~

~~[illegible]~~

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ 29

Permanent Force
unit

..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Air Force

Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which trial	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

29

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2 Sept day of

A. J. Gasler Lt Asst Adjt.
Officer having custody of Regimental Books

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked Exhibit E signed by the president, and annexed to the proceedings.

C. W. D. Anderson Maj
2nd Aug /44

Old Sheet destroyed 10-6-43

No 3365[illegible] Name DUNPHY, G.J. Sqn, Battery or Company | Corps C.I.C. | Date of enlistment 23/11/42 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
New Glasgow	4-2-43	Rfn		Absent from P.T. Parade at 1630 Hrs	Sgt Cunningham	3 Days C.B.	5-2-43	Lt. E.J. Dick	
New Glasgow	1-3-43	"		Absent from Co's Parade at 0750 hrs	Sgt Gillis	3 Days C.B.	1-3-43	Lt. R.G.W. Dargale	
Amherst	2-3-43	"		AWL 2300 Hrs 31-3-43 to 0700 Hrs 1-4-43	Sgt Corbett	168 Hrs Detn.	5-4-43	Lt/Col J.J. Jeffery	
St John, N.B.	15-5-43	"		AWL 1350 Hrs 15-5-43 to 1000 Hrs 22-5-43					
St John, N.B.	22-5-43	"		Close arrest 3 days 13 Hrs.	Dpy Secretary	14 days Pay	26-5-43	Lt/Col W.A. Bendle	
St John, N.B.	22-6-43	"		(2) Absent from Parade	Lt Phillips	7 days C.B.		Major J.S. Roche	
St John, N.B.	28-6-43	"		AWL from 2330 Hrs 27-6-43 to 0130 Hrs 28-6-43	Sgt Davies	5 days Pay			
Aldershot N.S.	30-8-43	"		Absent from duty from 1730 hrs 30-8-43 to 1800 Hrs 30-8-43 (30 Minutes)	Cpl Sherdan Lt.	7 days C.B.	1 Sep 43	Major Lt/Col J.S. Dodd	
Field	13-5-44	A/C		AA. Sec 15(1) Am — from 2359 Hrs 13 May 44 to 1300 Hrs 4 Jun 44 (Absent 20 days 12 Hrs 31 Mins)	Lt Leeper C.	28 Days F.P. 28 days pay.	6 Jun 44	Lt-Col O. Lima Major	Forfeit 28 days 7/44 9-44 (O.K.@)

2 Aug 44

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Jun 44	Pte.		AA 11 WOAS Neglecting to obey Standing Orders, Placed both in Civilian Pass Box.	Documentary	7 days CB	14 Jun 44	Major A. F. McPherson	
Field	25 Jun 44	Pte		AA Sec 15 (1) AWL from 0100 Hrs 25 Jun 44 to 0630 Hrs 26 Jun 44 Absent 1 day 5 hrs 30 minutes	Cpl Chase RH	6 days Forf of Pay & Fr 149 (2)	29 June 44	Lt-Col. A. F. McPherson	Forf 2 days Pay Fr 149 (1) (a).
				Certified True Copy A. J. Geisler Lt A/Ac Gt. Officer having Custody of Regimental Books.					
		2 Aug 44							

WDH.

#4 CANADIAN INFANTRY REINFORCEMENT UNIT, C.A.(C). 4C/24

.....20...July.....194.44.

I, No..F.32654.Pte.Dunphy, G.J. ....., wish to have
(Rank) (Name)

an Officer defend me at my forthcoming trial by Court Martial.

I desire the services of..an officer detailed by C.O.....

if he is available.

(Sgd.) ...G.J. Dunphy.....

WDK.

31 Jul 44.

This is to certify that I have received the following papers, in connection with my forcoming trial by F.G.C.M., free of charge:

1 Copy of Charge Sheet
1 Copy of Summary of Evidence
1 List of Witnesses
1 List of Exhibits

G.J. Dunphy.

(F 32654 Pte Dunphy, G.J.)

Addt.

LIST OF WITNESSES

In the Case of F 32654 Pte Dunphy, G.J., Cdn Inf Corps, 4 Cdn Inf Bft Unit.

FOR THE PROSECUTION

1. Lt A.J. Geisler, 4 Cdn Inf Bft Unit.

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

In the Case of F 32654 Pte Dunphy, G.J., Cdn Inf Corps, 4 Cdn Inf Bft Unit.

Exhibit "A" - Certified True Extract from 4 CIRU Part II Order No 191 dated 26 Jul 44.

Exhibit "B" - Certificate of Arrest

Exhibit "C" - Expense Voucher

5T-121

Pte. Dunphy, E.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F 32654 Pte George Joseph DUMPHY, 4 Cdn Repat Dep

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of 9 months (90) days

(Sgd) ..... 7 SEP/45 (Sgd) .....

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed.

I direct that the accused be not committed to prison or detention barracks until further ordered.(1) Dpl

(1. AA 57A. Delete if not used.)

(Sgd) J.J. Rutherford Brig

Date 10 Sept 45 Commanding E. Sp L.R.U. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F 32654 Pte George Joseph Dumphy	19 Sept 45	Maj

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 5 OCT 1945 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 168 5T-121

FIELD GENERAL COURT-MARTIAL

CFA26 (In lieu of AFA21) 40/P&B/1098 (6/44) 4/38B

Convened by Order of Brig J J Rutherford, CBE, MC Comd "E" Gp CRU dated 5 Sep 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 32654	Pte	George Joseph	DUMPHY	4 Repat Dep

PROCEEDINGS REVIEWED

4 OCT 45 R Lucas Capt 56 I & S

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 7 Sep 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At ..... hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ as interpreter? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to PATTAH SINCLAIR as shorthand writer? Ans NO

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L. REDMAN	HQ 6 AU
Member	CAPT	W.H. JEWELL	4 REPAT D
Member	LT	J.C. POITRAS	4 REPAT D
~~Judge-Advocate~~			
Prosecutor	CAPT	A.E. HETHERINGTON	4 REPAT D
Defending Offr	LT	W.T. BUTLER	4 REPAT D

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dr p 3.)

A8. The accused ..... before arraignment make(s) (has) (have) no plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (2B), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or on bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed) and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below,

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59; 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 15 *fn* 1. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO SIR.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on~~ ~~charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on~~ ~~charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A" initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans.....Do you intend to call witnesses on your behalf?
Ans.....Are they witnesses as to character only? Ans.....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 45, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. Yours Sincerely NOTE-ATT
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 44 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(2), and certified true copy (copies) of Conduct Sheet(s)(3), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (*g*) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(1. *MFR* 255 *or MFR* 296. 2. *MFM* 6. 3. *RP* 44, *KR Can* 158. *If above documents not produced, see RP* 44 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 1(1) Ans. Yours Sincerely NOTE-ATT (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* (20(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and then JA, if any.~~
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas AO* 309, 2323, *MML p* 80, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(2), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 58(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F-32654 Pte DUNPHY, George Joseph, on strength of CD 291/MD 6, attached to 4 Cdn Repat Depot, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE WHILE ON ACTIVE SERVICE, ABSENT WITHOUT LEAVE

in that he

at Jasper Camp, Witley, Surrey at 1600 hrs, 31 Jul 45 did absent himself without leave until apprehended at 1630 hrs, 22 Aug 45. Total time absent: 22 days, 30 minutes.

In the Field
4 Sep 45

(R.E.A. Morton) Colonel
Comd 4 Cdn Repat Depot

"To be tried by Field General Court Martial".

Fd
5 Sep 45

J MUTHERFORD Brig
Comd
"E" Gp CRU

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 32654	Pte		George Joseph	DUNPHY	4 Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (date) 5 Sep 45 endorsed by me, ~~or by direction of any staff for me~~, "To be tried by Field General Court-Martial". 3/1

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~ 3/1

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) above Offrs to form the Court, or a Fd Offr as President, for the reason I have attached hereto~~ 3/1

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder~~ 3/1

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	D L Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by CO 4 Cdn Repat Dep	4 Repat Dep
Lt	To be detailed by CO 4 Cdn Repat Dep	4 Repat Dep

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 5 Sep 45

(Signed personally. RP 106(Note 2.))

(T J RUTHERFORD) Brig

Commanding "E" Gp CRU

Convening Officer.

Brig (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (P.A.M. (In Duplicate) AFB) 40/P & S/1067 (40))

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 269.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 85(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the page in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 19)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 89(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (k).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S REPORT

I certify that No. F 32654 PTE DUNPHY G.J.

of CD 291 #4 CRD is in a fit state of health,

and able to undergo Trial by Court martial.

D.M. Boyd, Capt., R.C.H.M.C.
Medical Officer

Station "C" wing, #4 Cdn Repat Depot

Date 7 Sep 45

M. F. B. 246
25M—6-41 (792)
H.Q. 1773-09 480

TRIAL OF

M.60640 Pte JOHNSON RS 2 CGRU

STATEMENT BY ACCUSED
(ON OATH)

I joined in Jan 42 with the 8 Cdn Recce Regt, and went into action with them and while in action I was sent to hosp with rhumatism and arthritis. I was later sent to the UK and was sent to CASCRU, transferred, although I don't know why. I had difficulty about leave, tried to get paraded to the CO, and then I went AWL and I came back and saw the Col who told me about my case, and he saw the MO who gave me an excused duty chit. Before going on Christmas leave I had a letter from my wife in Can wanting to break up our marriage. While at CASCRU I was still troubled with this rhuematism and arthritis, and was waiting on a reboard. I went to see my friends on the south coast while on leave and got treated by them for the illness I had. While there I also met a girl. She was going to have a child as a result of our acquaintance, and I thought I'd stay near her and give her help. She eventually went north to her parents. I came back to the Army in the hopes that I would get my affairs straightened out to bring up this child.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

SUMMARY OF EVIDENCE

In the case of F-32654 Pte DUNPHY, G J on strength of CD-291/MD 6, 4 Cdn Repat Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer all evidence is taken on oath.

FIRST WITNESS: For the Prosecution

P-4403 Sjt Cook, J W., CD 291/MD 6, 4 Cdn Repat Depot having been duly sworn states:-

"I am P-4403 Sjt Cook, J W, acting sergeant-major of CD 291/MD 6. The accused did not report back from leave at 1600 hrs on 31st Jul 45. I called the roll at 0800 hrs on the 1st Aug 45. The accused was still absent. The accused was absent on each succeeding roll call until apprehended. I submit Part II Order No 2 d/7 Aug 45, shewing dates of commencement and termination of UK leave granted to the accused."

The accused declines to question this witness.

J W Cook
(P-4403 Sjt Cook, J W)

This Part II Order, No 2,d/7 Aug 45 was shewn to the accused, marked by me as Exhibit "A", and attached to the summary.

L T Ennis Lieut
(L T Ennis) Lieut
Officer detailed to take the Summary of Evidence

SECOND WITNESS: For the Prosecution

L-53616 SSM Keene, J R "C" Wing 4 Cdn Repat Depot, having been duly sworn states:-

At approximately 1630 hrs, 22 Aug 45, the postal clerk told me that the accused was in the Unit Post Office. I knew the accused had been absent for some time. I went to the Unit Post Office and questioned the accused. He admitted being absent from 1600 hrs 31 Jul 45. I then placed him under close arrest and informed his serial commander.

The accused declines to question this witness.

J R Keene
(L-53616 SSM Keene, J R)

The accused was cautioned as follows:

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

(Continued on Page Two)

The accused declines to make any statement or to give evidence on oath.

The accused declines to call any witness for the defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

L T Ennis Lieut

(L T Ennis) Lieut
Officer detailed to take the Summary of Evidence.

in the field

29 Aug 45.

EXA

EXHIBIT "A"

Exhibit A
ST Ennis Sk.

291 CD - MD 6

Part II Orders Issued By
NO 4 CANADIAN REPATRIATION DEPOT (CAC)

Last Order No 1 dated Jul 45 | This Order No 2 7 Aug 45

"A"

1. STRENGTH INCREASE

(a) The Offrs as shown on Appendix "S " to this Order emb NVE wef 23 Jul 45. Disemb UK 24 Jul 45.

2. ATTACHMENTS

(a) The Offrs as shown on Appendix "S" to this Order are att for RQ&P to No 4 Cdn Repat Depot wef 24 Jul 45.

3. LEAVES

(a) The Offrs as shown on Appendix "S" to this Order proc on 7 dys PL from 25 Jul 45 to 31 Jul 45 with RA in lieu of rations under FR&I (O) 789 (3)&(4).

"B"

4. STRENGTH INCREASE

(a) The ORs as shown on Appendix "S" to this Order emb NVE 23 Jul 45. Disemb 24 Jul 45.

5. ATTACHMENTS

(a) The ORs as shown on Appendix "S" to this Order are att for RQ&P to No 4 Cdn Repat Depot wef 24 Jul 45.

6. LEAVES

(a) The ORs as shown on Appendix "S" to this Order proc on 7 dys PL from 25 Jul 45 to 31 Jul 45 with RA in lieu of rations under FR&I (O) 789 (3)&(4).

7. PUNISHMENTS

(a) On 2 Aug 45 awarded 26 dys detn for (1) An offence under Sec 19 AA, 1st offence of drunkenness, (2) An offence under Sec 40 AA. Date of offence 25 Jul 45. Placed under stop of pay in the amount of six shillings (6') cost of damage incurred. Forf 26 dys pay under FR&I 149 (1) (b). Total forf 26 dys pay and 6'.

F-33412 Spr WALSH, J.J.
F-56665 Spr SWIFT, M.A.

(b) On 6 Aug 45 was fined $3.00 for an offence under Sec 19 AA, 2nd offence of drunkenness. Date of offence 4 Aug 45.

F-56164 Pte BOUTILIER, R.C.

8. STRENGTH DECREASE

(a) The u/m ORs are SOS to 1 Cdn Repat Depot wef dates shown on adm to hospitals shown.

F-43777 Pte Cleveland, L.H. #22 CGH 24 Jul 45
F-30243 Tpr Pardy, J.W.(Dvr Mech "C") #2 CMC 24 Jul 45
F-16790 Gnr HALE, E.R. Sx Royal Co Hosp 30 Jul 45

SERIAL 291 CD/MD 6

3. STRENGTH DECREASE (Cont'd)

(a)

F-95416	Sgmn	BLOIS, G.R.	#22 CGH	2 Aug 45
F-66681	Gnr	HICKOX, L.D.	#22 CGH	1 Aug 45
G-32376	Pte	COSSABOOM, J.V.	#22 CGH	3 Aug 45
F-45339	Pte	JAMIESON, W.F.	#22 CGH	31 Jul 45

(b) The u/m ORs are SOS to No 4 Cdn Repat Depot(Transit) wef dates shown;

K-41426	Pte	DENEAU, A.	2 Aug 45
G-2978	Pte	HOLLAND, A.H.	2 Aug 45
D-116765	Sgmn	WINCHESTER, W.G. (Dvr Mech "C"	2 Aug 45
F-16342	Pte	TIGWELL, E.L. (Cook "C")	2 Aug 45
F-89966	Spr	O'CONNELL, D.	27 Jul 45
P-6726	Sgt	KELLY, R.T.	24 Jul 45

(H.D.M. McPHEE) Capt
for Officer Commanding
291 CD/MD 6

Appendix "B"

Ser 291 CD/MD 6

Lieut	John "dward Anthony	DELANEY	Leiut	Leo Thomas	ENNIS
Major	George Roy	FLAWN	Lieut	John Karl	HILTZ
Lieut	Owen Patrick	QUINN	Lieut	Clyde David Richard	RANDS
Lieut	Douglas Lawson	SARANTOS	Lieut	Ernest Arthur	SMART
Lieut	Ernest Albert	WILLIAMS			

F.78458	Gnr	AGNEW, L.J.	
F.52660	Pte	ANDERSON, H.E.	
F.86712	Gnr	APT, R.B.	
F.45045	Pte	ARBEAU, S.H.	
F.60478	Pte	ARSENAULT, C.J.	Arty Sigs "C"
F.25527	Gnr	ATWELL, R.H.	S.B.O. "C"
F.79918	Sgan	AUCOIN, N.A.	
F.29621	Pte	BAILEY, A.R.	
F.79907	L/Bdr	BAILLIE, R.D.	
F.58888	Gnr	BARCLAY, L.B.	
F.58659	Pte	BAUDOUX, R.A.	
F.36567	Gnr	BEATON, J.A.	Dvr Mech "C"
F.82138	L/Bdr	BENNETT, H.B.	Cook "C"
F.16342	Pte	BIGNELL, E.L.	Engine Hand "C"
F.40756	Gnr	BLAIR, A.C.	
F.95416	Sgan	BLOIS, G.R.	Dvr Mech "C"
F.86667	Cpl	BOLLIVAR, O.H.	
F.3023	Pte	BOMANG, C.F.	
F.97838	Pte	BOUDREAU, I.F.	
F.56164	Pte	BOUTILLIER, R.C.	Fitter "B"
F.5062	Cfn	BOWERS, .E.R.	
F.36423	Gnr	BRADBURY, D.P.	Dvr Mech "C"
F.15168	Gnr	BRENNAN, M.D.	
F.89288	Pte	BREWER, M.L.	Cook "B"
F.66439	Pte	BROWN, F.W.	
F.36002	Pte	BROWN, H.E.	
F.58248	Pte	BURGESS, F.L.	
F.76039	Gnr	BURKE, L.	
F.36634	Pte	CALLAHAN, J.	
F.87860	Gnr	CAREY, C.G.	
F.10117	L/Cpl	CARVER, J.W.	
F.21172	Gnr	CHAIBSON, P.	
F.78645	Pte	CHAPMAN, E.D.	
F.57640	Pte	CHASE, G.A.	
F.1113	Pte	CHEVERIE, T.J.	
F.58736	L/Cpl	CHURCHILL, W.H.	
F.42579	Gnr	CLARK, W.A.	
F.43777	Pte	CLEVELAND, L.H.	
F.36875	Pte	COCHRANE, F.J.	
F.52507	Gnr	CONRAD, R.J.	Gnr Op "C"
P.4403	Sgt	COOK, J.W.	"
F.51109	Cpl	COOLEN, D.J.D.	
F.51777	Sgan	COOPER, J.L.	
F.56163	L/Bdr	COSMAN, L.W.	Electrician "A"
F.32376	Pte	COSSABOOM, J.V.	
F.72036	Cfn	CROFT, R.C.	
F.33160	Pte	CURRIE, A.F.	
F.35365	Pte	CURRIE, J.L.	
F.19294	Gnr	CUSACK, J.J.	Cook "C"
F.65792	Pte	DAIRYMPLE, A.B.	
F.95857	Gnr	DAVISON, H.H.	
F.5410	Pte	DAYE, M.	
F.43891	Pte	DEADDER, S.W.	
K.41426	Pte	DENEAU, A.	
F.43793	Pte	DEVEAU, M.J.	
F.35140	Pte	DICKEE, J..	

Appendix "S"

Ser 291 CD/MD 6

Lieut	John Edward Anthony	DELANEY	Lieut	Leo Thomas	ENNIS
Major	George Roy	FLAWN	Lieut	John Karl	HILTZ
Lieut	Owen Patrick	QUINN	Lieut	Clyde David Richard	RANDS
Lieut	Douglas Lawson	SARANTOS	Lieut	Ernest Arthur	SMART
Lieut	Ernest Albert	WILLIAMS			

F.78458	Gnr	AGNEW, L.J.	
F.52660	Pte	ANDERSON, H.E.	
F.86712	Gnr	APT, R.B.	
F.45945	Pte	ARBEAU, S.H.	
F.60478	Pte	ARSENAULT, C.J.	
F.25527	Gnr	ATWELL, R.H.	Arty Sigs "C"
F.79918	Sgnn	AUCOIN, R.A.	S.B.O. "C"
F.29621	Pte	BAILEY, A.W.	
F.79907	L/Bdr	BAILLIE, R.D.	
F.58888	Gnr	BARCLAY, L.B.	
F.58659	Pte	BAUDOUX, R.A.	
F.36567	Gnr	BEATON, J.A.	
F.82138	L/Bdr	BENNETT, H.B.	Dvr Mech "C"
F.16342	Pte	BIGNELL, E.L.	Cook "C"
F.40756	Gnr	BLAIR, A.G.	Engine Hand "C"
F.95416	Sgnn	BLOIS, G.R.	
F.86667	Cpl	BOLLIVAR, O.H.	Dvr Mech "C"
F.3023	Pte	BOMANG, C.F.	
F.97838	Pte	BOUDREAU, J.F.	
F.56164	Pte	BOUTILLIER, R.C.	
F.5062	Cfn	BOWERS, .E.R.	Fitter "B"
F.36423	Gnr	BRADBURY, D.P.	
F.15168	Gnr	BRENNAN, M.D.	Dvr Mech "C"
F.89288	Pte	BREWER, M.L.	
F.66439	Pte	BROWN, F.W.	Cook "B"
F.36002	Pte	BROWN, H.E.	
F.58248	Pte	BURGESS, F.L.	
F.76039	Gnr	BURKE, L.	
F.36634	Pte	CALLAHAN, J.	
F.87860	Gnr	CAREY, C.G.	
F.10117	L/Cpl	CARVER, J.W.	
F.21172	Gnr	CHAISSON, P.	
F.78645	Pte	CHAPMAN, J.D.	
F.57640	Pte	CHASE, G.A.	
F.1113	Pte	CHEVERIE, P.J.	
F.58736	L/Cpl	CHURCHILL, W.H.	
F.42579	Gnr	CLARK, W.A.	
F.43777	Pte	CLEVELAND, L.H.	
F.36875	Pte	COCHRANE, F.J.	
F.52507	Gnr	CONRAD, R.J.	
P.4403	Sgt	COOK, J.W.	
F.51109	Cpl	COOLEN, D.J.D.	Gnr Op "C"
F.51777	Sgnn	COOPER, J.L.	"
F.56163	L/Bdr	COSMAN, L.W.	
F.32376	Pte	COSSABOOM, J.V.	Electrician "A"
F.77036	Cfn	CROFT, R.C.	
F.33160	Pte	CURRIE, A.F.	
F.35365	Pte	CURRIE, J.L.	
F.19294	Gnr	CUSHEE, J.J.	Cook "C"
F.65792	Pte	DALRYMPLE, A.B.	
F.95857	Gnr	DAVISON, H.H.	
F.5410	Pte	DAVE, M.	
F.43891	Pte	DEADDEN, S.W.	
K.41426	Pte	DENEAU, A.	
F.43793	Pte	DEVEAU, M.J.	
F.35140	Pte	DICKEE, J.A.	

Ser 291 CD/MD 6

			Op Room Asst "A"
F.76181	Pte	DICKIE, R.M.	
F.9619	Gnr	DONALDSON, C.R.	
F.35823	Pte	DOREY, L.E.	
F.50414	Pte	DOUCETTE, J.O.	
F.76359	Gnr	DOYLE, C.M.	
F.32654	Pte	DUNPHY, G.J.	
F.36522	Pte	DUPONT, N.F.	
F.36062	Pte	EDDY, M.D.	Op W & L "C"
F.64977	Sgnn	ETTINGER, H.B.	Clerk "C"
F.82071	Bdr	EYE, K.C.	
F.66029	Pte	FORREST, F.	Dvr Mech "C"
F.35476	Pte	FORSYTH, T.B.	
F.13291	Pte	FRAZIER, P.F.	
F.77063	Gnr	GALLANT, C.G.	
F.31298	Pte	GALLANT, F.U.	
F.52541	Pte	GALLANT, Y.J.	
F.35450	Sgt	GARRISON, R.V.	
F.27012	Pte	GEAR, T.W.	
F.36159	Gnr	GEORGE, E.A.	
F.10309	Gnr	GILLINGHAM, G.T.	Dvr Op "C"
F.65471	Gnr	GILROIR, A.P.	
F.36951	Pte	GOLDING, R.B.	Arty Stg "C"
F.16293	Gnr	GORMAN, G.W.	Dvr Mech "C"
F.32946	Pte	GORMAN, M.	
F.16798	Gnr	HALE, E.R.	
F.36223	Gnr	HALEY, M.A.	Nursing Orderly "C"
F.3822	Pte	HANRAHAN, F.G.	
F.13269	Pte	HANSON, H.L.	
F.16479	Gnr	HARRISON, B.W.	Op "C"
F.97205	Sgnn	HARTE, P.T.	
F.27974	Sgt	HARVEY, D.D.	
F.86145	Gnr	HATT, W.C.	
F.33062	Pte	HERRINGTON, G.R.	
F.66681	Gnr	HICKOX, L.D.	
G.10964	Pte	HOLAN, P.A.	
F.36584	Pte	HOLDEN, L.M.	
G.2978	Pte	HOLLAND, A.H.	
F.36395	Pte	HOPKINS, E.S.	
F.76692	Pte	HOWATT, R.J.	
F.35423	Sgt	HULL, A.A.	
F.51699	Tpr	INKPEN, T.A.	Fitter MV "A"
F.66028	Cfn	IRVING, J.E.	
F.57613	Pte	JACK, E.D.	
F.59047	Gnr	JACKSON, C.F.	Dvr Mech "C"
F.87519	Tpr	JACKSON, C.T.	
F.45339	Pte	JAMIESON, W.F.	Dvr Mech "C"
F.95186	Cfn	JOHNSON, K.S.	
F.36710	Sgnn	KELLY, H.H.	
F.6726	Sgt	KELLY, R.T.	Dvr Mech "C"
F.1230	Cfn	KENRICK, R.G.	
F.37583	Pte	LA FRANCE, J.J.P.	
F.77427	L/Sgt	LANDRY, M.J.	
F.36080	Gnr	LEBLANC, P.L.	Stwn T&D "C"
F.94613	L/Cpl	LEGERE, P	
F.36467	Pte	LEWIS, C.E.	
F.57419	Pte	MACSYMLEN, W.	Nursing Orderly "B"
F.95926	Pte	MANSFIELD, C.S.	Dvr Mech "C"
F.86308	Bdr	MANTELL, R.P.	
F.36084	Pte	MARTIN, J.E.	
F.76525	Gnr	MATTISON, C.M.	
F.95773	Tpr	MEISNER, G.L.	
F.52080	Pte	MILLER, J.W.	
F.82725	Pte	MILLIGAN, D.	

F.30658	Spr	MOLAND, C.P.	
F.32987	Pte	MONAGHAN, L.F.	
F.95930	Pte	MORAIS, J.E.	Arty Sig "C"
F.41607	Gnr	MORGAN, W.L.	
F.86529	Pte	MORGAN, W.L.	
F.76444	Gnr	MORRISON, J.A.	
F.78387	Pte	MacDONALD, A.C.	
F.32142	Pte	MacDONALD, D.A.	
F.30158	Gnr	MacDONALD, E.J.	Painter "B"
F.22438	Spr	MacDONALD, F.M.	Dvr Mech "C"
F.32116	Sgmn	MacDONALD, G.N.	Dvr Mech "C"
F.30984	Sgmn	MacDONALD, J.E.	
F.52357	Gnr	MacDOUGALL, D.M.	
F.57910	Pte	MacDOUGALL, J.D.	Dvr Mech "C"
F.78926	Gnr	MacDOUGAL, J.H.	
F.45672	Pte	MacILTYRE, D.A.	
F.57855	Pte	MacKENZIE, A.G.	
F.65999	Pte	MacKENZIE, R.V.	Pioneer, "C"
F.89223	Spr	MacKILLOP, K.C.	
F.32441	Gnr	MacLELLAN, J.A.	
F.57937	Pte	MacLEOD, J.R.	
F.5316	Pte	MacMILLAN, L.D.	
F.45903	L/Cpl	MacNAUGHTON, L.M.	Dvr Mech "C"
F.89213	Cfn	MacNEIL, A.J.	Shoemaker "B"
F.82076	Gnr	MacNUTT, E.L.	Fitter MV "A"
F.2902	Cfn	McCALLUM, A.B.	
F.65817	Pte	McCARTHY, A.G.	
F.65099	Gnr	McCAUL, E.S.	
B.110541	Cpl	McCAULEY, E.	Arty Sig "C"
F.20537	Gnr	McCLELLAN, J.E.	Carpenter "B"
F.44764	a/Sgt	McCORMICK, F.K.	Dvr Mech "C"
F.89341	Pte	McDONALD, D.	
F.33124	Pte	McLELLAN, J.	
F.87666	Gnr	McKENZIE, M.D.	Veh Mech "A"
F.32748	Cfn	McNEIL, M.	
F.77923	Pte	NAAS, L.B.	
F.76537	Gnr	NEWCOMBE, R.A.V.	Dvr Mech "C"
F.65065	Pte	NICHOLSON, H.W.	Pioneer "C"
F.87471	Spr	O'BIAN, C.R.	
F.89966	Spr	O'CONNELL, D.	
F.37842	Gnr	O'SHEA, F.J.	Dvr Mech "C"
F.30243	Tpr	PARDY, J.W.	
F.87411	Gnr	PARKIS, G.	Clerk "C"
F.77741	a/Cpl	PATTERSON, J.W.	Dvr Mech "C"
F.96548	Pte	POIRIER, J.A.	Cook "B"
F.55880	Pte	POTTIE, J.L.	
F.36912	Tpr	POWER, K.B.	Stan "C"
F.51898	Cfn	REILLY, G.F.	Carpenter "B"
F.57976	Spr	REYNOLDS, G.E.	Dvr Mech "C"
C.14398	Gnr	ROGERS, J.B.	Lineman "B"
F.95327	L/Cpl	RUSHTON, J.H.	
F.66748	Pte	SAULNIER, L.J.	
F.1127	Pte	SHEA, A.	
F.10534	Gnr	SHEA, G.J.S.	Op W & L "C"
F.1575	Sgmn	SHERMAN, A.F.	Arty Sig "C"
F.65025	Gnr	SINCLAIR, J.H.	
F.45313	Pte	SMITH, R.L.	Fitter MV "A"
F.95579	Cfn	STARK, C.R.	Lineman "B"
F.28378	Sgmn	STEWART, C.J.	Dvr Op "C"
F.58175	Pte	STRICKLAND, A.W.	
F.45312	L/Cpl	SWAINE, D.W.	

Ser 291 CD/MD 6

F.56665	Spr	SWIFT, M.A.	Dvr Mech "C"
F.58398	Gnr	TIDD, H.F.	
F.51128	Pte	WADE, R.G.	
F.97579	Spr	WALL, W.L.	
F.33412	Spr	WALSH, J.J.	
F.78478	Gnr	WARREN, A.S.	
F.95917	Pte	WAYNUT, K.W.	
F.89459	Gnr	WILSON, D.	
F.58853	Pte	WILLIAMS, E.D.	Dvr Mech "C"
D.116765	Sgmn	WINCHESTER, W.G.	Lineman "B"
F.8808	Sgmn	WIRELL, T.G.	Fitter S.E.E. "C"
F.76947	Spr	YOUNG, F.A.	Dvr Mech "C"
F.36742	Tpr	YOUNG, L.E.	Stman "C"
F.58122	Pte	YORKE, C.R.	

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F 32654	Pte	DUNPHY, G.J.	C I C

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL A.A. Sec 15 (1) ~~12~~ 6 times.

For Neglect to obey Standing Orders AA Sec 11 1 times.

For Conduct to the Prejudice AA Sec 40 3 times.

For ____ times.

Date of first entry in Field Conduct Sheet 30 Aug 43

Date of last entry in Field Conduct Sheet 7 Jun 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*~~3. The accused at the present time is undergoing imprisonment for~~

~~sentence of~~

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 17 days in military custody, *i.e.*, Nil days in open arrest, 17 days in close arrest; of which Nil days were spent in hospital as of 7 Jun 45

5. The present age of the accused is 20

6. The date of his attestation is 23 Oct 42

7. The service which the accused is allowed to reckon is 2yrs 10 mos

8. The accused is in possession of 1939-45 Star CVSM & Clasp, France & Germany Star

State the military decorations (if any) held by accused.

~~9. If the accused is a warrant officer or non-commissioned officer, the record of his service as such is as follows :—~~

~~10. The accused has~~

~~11. The accused was~~

~~12. The accused is~~

Pte

~~13. The accused~~

~~14. The accused~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(12876) 4200 45/1001 12/44 A.& E.W.Ltd. Gp.633 Forms F.2 & W.Forms

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended.
FGCM	Jul 44	AA Sec 15 (1)	60 days Detn	20 days

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 29th day of Aug 45

(W. W. Wilkinson) Adjt
C Wing 4 C Repat D

F-32654 DUNPHY G.J.

No. Name | Sqn., Battery, or Company | Corps C.I.C. | Date of enlistment 23-11-42 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 17554-7-41 (1219-20) H.Q. 1772-23-1652

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. P.E. HOWARD Major | Character Indifferent

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				First sheet destroyed after 6 months service. Cases of Drunkenness: NIL Date of last regimental entry: 28 Jun 43					
						(W.W. WILKINSON) Capt & Adjt, "C" Wing 4 C Repat D. 30 Aug 45.			
Aldershot NS	30 Aug 43	Pte		Absent from duty from 1730 hrs 30 Aug 43 to 1800 hrs 30 Aug 43. (30 minutes)	Cpl MacDougall, H.	7 days CB	1 Sep 43	Major R.T. Chisholm CTS	

CERTIFIED CORRECT AS OF 24 Apr 44 JST

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13-5-44	Pte		A.A. 15(1) AWL from 2359 hrs 13 May 44 to 1230 hrs 4 Jun 44 (20 days, 12 hrs, 31 min)	Sgt KEEFER C	28 dys F P 28 dys pay	6 Jun 44	Lt-Col J. GAVAN POWER	Forf 21 dys pay FR&I 149(1)(a) MJS Capt
Field	12-6-44	Pte		AA 11. WOAS - Neglecting to obey Standing Orders, placed letter in Civilian Post Box	Documentary	7 days C.B.	14 Jun 44	Major A.F. R. J. MacPherson	R. J. M.
Field	25 Jun 44	Pte		A.A. Sec 15(1) AWL from 0100 hrs 25 Jun 44 to 0630 hrs 26 Jun 44 Total 1 day 5 hrs 30 min	Cpl Chase H.R.	Forf of 6 dys pay FR&I 149(2)	29 Jun 44	Lt-Col A. MacPherson	F 2 dys forf FR&I 149(1)(a) RJM
Field	3 Jul 44	Pte		A.A. 15(1) AWL from 0600 hrs 3 Jul 44 to 2000 hrs 25 Jul 44 (22 days 14 hrs.	Lt AJ Geisler	60 dys detn RELEASED FROM DETENTION BARRACK on 9 Sep 44 SENTENCE HAVING EXPIRED. Remission earned under "Rules for Detention Barracks and Military Prisons" 20 days	2 Aug 44	FGCM 1100 hrs	A J Geisler Lt

"CERTIFIED TRUE COPY" from the books and held in my custody for COMMANDANT'S initials R.C.M.

(W.W. WILKINSON) Capt. A.C. "C" Wing, 4 C Repat D.

F 32654 DUNPHY G J

No. Name

Sqn. Battery, or Company N/A

Corps C I C

Date of enlistment 23 Nov 42

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine N/A

Sheet No 3

GC Badges

Signature OC Company, etc

Service or Proficiency Pay N/A

3/17 MFM 6 (APR 122) 40/PAS/136 (5418)

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	13 Feb 45	Pte		AA Sec 40: NEGLECT TO THE PREJUDICE OF GOOD ORDER ETC. IN THAT HE IN THE FIELD 13 Feb 45 WAS NOT SHAVEN.	DOCUMENTARY	1 DAYS PAY	13 Feb 45	Major CS NICKLE	Forf 1 Days Pay FR&I 149
FIELD	7 Jun 45	Pte		AA Sec 15(1) WHILE ON ACTIVE SERVICE, ABSENT WITHOUT LEAVE, in THAT HE, IN THE FIELD, ABSENTED HIMSELF WITHOUT LEAVE FROM 2230 HRS 7 JUN 45 UNTIL 0630 HRS 8 JUN 45. (ABSENT 8 HRS)	CPL MORISSEY MD	7 DAYS CB	10 JUN 45	LT-COL J.N.GORDON	FORF 1 Days PAY FR&I 149(1)(a) Forf 5 days Pay FR&I 149 (2) H C Doyle Capt

"CERTIFIED TRUE COPY" from the books held in my custody ~~(W W Wilkinson) Capt.,A.C.~~ "C" Wing 4 C Repat D (PTO)

F 32654 Dunphy, G.J.

No. Name

Sqn. Battery, or Company

Corps C.I.C.

Date of enlistment 23-11-42

GC Badges

Service or Proficiency Pay

3/17 MFM 6 (APR 122) 40/PAS/136 (5418)

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No 2

Signature OC Company, etc

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30-9-44	Pte		AA Sec 40 WOAS Conduct to Prejudice appeared on parade improperly dressed	Sjt Arthur, WJ	7 days CB	30-9-44	M.D. Yeawood Capt	
				FIRST CHARGE					
Field	12Jan 45	Pte		A.A. Sec 40 WOAS CONDUCT TO THE PREJUDICE ETC did appear on COs Orders at 1400 hrs 12 Jan 45 as escort with a dirty web belt.	Major H.R. Fullerton	7 days CB	13Jan45	Major H.R. Fullerton MWH	
				SECOND CHARGE A.A. Sec 40 WOAS CONDUCT TO THE PREJUDICE OF GOOD ORDER ETC did appear on COs Orders at 1400 hrs 12 Jan 45 as an escort in an untidy condition.	Major H.R. Fullerton				

"CERTIFIED TRUE COPY" from the books held in my custody ~~(W W Wilkinson) Capt.,A.C.~~ "C" Wing 4 C Repat D (PTO)

LIST OF WITNESSES

In the case of F-32654 Pte DUNPHY, G J on strength of CD 291/MD 6, 4 Cdn Repat Depot, a soldier of the Canadian Army Overseas.

FOR THE PROSECUTION

1. P 4403 Sjt Cook, J W - A/SM CD 291/MD 6, 4 Cdn Repat Depot.
2. L 53616 SSM Keene, J R - "C" Wing 4 C Repat D

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

In the case of F-32654 Pte DUNPHY, G J on strength of CD-291/MD 6, 4 Cdn Repat Depot, a soldier of the Canadian Army Overseas.

FOR THE PROSECUTION — Exhibit "A" - Part II Order No 2 d/7 Aug 45

FOR THE DEFENCE — N I L

I desire the services of an officer to defend me at my forthcoming trial by F.G.C.M., the officer to be detailed.

L. F. Dunphy.

(F 32654, Pte. Dunphy, C.F.)

GGG 13

PTE DUNPHY R

ENTERED IN RECORDS OF C.M. "J"
GGG 13 C ho Bellevance Major

D147

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty-Seventh day of February, 1944.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial of the offence to a superior qualified officer~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*~~It is not practicable to appoint~~
*~~Three Officers to form the Court~~
*~~A field officer as President~~
~~for the following reasons, namely:~~

PROCEEDINGS REVIEWED
H. C. Inch Lieut
1 Apr 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	C Bellevance	R 22e R

Members.

Rank.	Name.	Regiment.
Captain	A Nicholson	West NSR
Captain	G.A. Crutcher	Carlt & York R
Lieut	A.E. Edger	Carlt & York R

Waiting

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Lt.-Col.,
T/Commanding 3 Cdn Inf Bde
Convening Officer.

D 147

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F97304 Pte. DUNPHY, R. West Nova Scotia R.	FIRST CHARGE: Sec 40 A.A.	not guilty	not guilty	~~Noted~~
				[signature] Lt Col T/ Commanding, 3rd Cdn Inf Bde 1 Mar 44
			29th Feb 1944 Chs Bellavance Major President	

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No Sir
Answer (to be recorded on separate sheet if necessary) :—

(Signed) [signature] Lt-Col (Signed) Chs Bellavance Major

T/ Commanding 3 Cdn Inf Bde R 22 R
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 29th day of February 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~) CB
*(4. ~~The officers under instruction~~) CB

were duly sworn.

*Omit if not applicable.

Signed this 29th day of Feb 1944

Charles Bellavance Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

CB
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this day of 19 .

Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

A

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for Ger
Courts-Martia

Proceedings of a Field General Court-M

on the 29th day of Feb

Lieut Col J. A. Carter

1/ Commanding 3 Cdn Inf Bde

dated the 27 day of February 1944

President.

Major C. Bellavance R. 22 R.

Members.

Captain A. Nicholson West NSR

Captain G. A. Crutcher Carlt & York R.

Judge Advocate. CB

Trial of* F97304 Pte. R. Dunphy West Nova Scotia Regiment

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court ~~satisfy themselves that~~ is not available CB ~~to serve~~ owing to

CB ~~waiting member takes his place as a member of the Court.~~ CB

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. C. B. C. Cochran West NSR

CB ~~Counsel,‡~~ or defending officer† Lieut E. H. Holloway West NSR

At 1045 o'clock the Trial commences.

The order convening the Court is read, and is marked "J" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Chas Bellavance Major

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at In the field on the 29th day of Feb 1944 by order of Lieut. Col. J. A. Carter

Commanding 3 Cdn Inf Bde

dated the 27 day of February 1944

President.

Major C. Bellavance R.22R.

Members.

Captain A. Nicholson West NSR

Captain G. A. Crutcher Carlt & York R

, ~~Judge Advocate~~ CB

Trial of* F 97304 Pte. R. Dunphy West Nova Scotia Regiment

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ is not available CB ~~to serve owing to~~

, ~~waiting member takes his place as a member of the Court.~~ CB

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

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The order convening the Court is read, and is marked "J", signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible]

B

The President, members and ~~judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Question.*

Answer.

Are you guilty ~~or not guilty~~ of the third charge against you, which you have heard read? *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.~~

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

"B2"
C hs Sellaonee Mofr

CHARGE SHEET

The Accused, F97304 Pte R Dunphy, West Nova Scotia Regiment, Canadian Army Overseas, C.M.F., When on Active Service, is charged with:

1st CHARGE
Sec 40
Army Act

When on Active Service, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, at approx 1830 hrs 23 Feb 44, so negligently handled his rifle as to cause it to discharge thereby wounding himself in his ~~xxxx~~ third toe of his right foot.

Waterman

(R S E Waterman) Lt col.,
Comd West N S R.

In the Field
27 Feb 44

To be tried by Field General Court-Martial

Lt Col
~~Brigadier~~
Commanding 3 Can Inf Bde.

In the Field

F97304 Pte Dunphy, R

29 Feb '44 J Gordon Cook Capt

Chs Bellavance Weapon

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. no Sir.

CB ~~The prosecutor makes an opening address [hands in a written address~~
CB ~~which is read, marked~~ ~~, signed by the President, and attached~~
CB ~~to the proceedings.]~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. See Page attached

being duly sworn, is examined by the prosecutor.

C 3 Chs Bellmore Mgr

First Witness for the Prosecution

D 27224 Cpl Fleury, F. West NS Regt, having been duly sworn, ~~states~~ is examined by the Prosecutor.

Q. Tell the court in your own words what happened to Pte Dunfy on 23 Feb 44

A. On the 23 Feb 44 at approximately 1800 hrs I had my section get ready to do guard and moved them over to the company area to a shed there. While we were in the shed taking off our packs Mr Campbell, the platoon officer called me out to look over the platoon area. When I came back, Private Dunfy had been wounded.

Q. Who was with the accused at the time of the shot being fired?

A. The rest of the section, I think.

Cross-examined by Defending Officer

Q. To your knowledge do you know who was with the accused?

A. The section was there when I left, and there when I came back. I was about 15 minutes ~~away~~ from them.

Q. What area were you in when the shooting took place?

A. In the coy area.

Q. How far ~~were~~ you away at the time?

A. About 50 yds.

Q. Did you see the accused at the time of the shooting?

A. Sir

C 5 C Bellamie Accp

Q. by Court

In your opinion was Pte Dunfy a trained rifleman?

A. I can't say.

Q. How long had he been in your section?

A About 1 week

Q. Was the company in a forward or a reserve position at the time?

A The company was in a forward position.

Second Witness for the Prosecution

G 22031 Pte May M A having been duly sworn is examined by the Prosecutor.

Q. Tell the court in your own words what you know about the case now being tried.

A. I am the stretcher - bearer with A Coy H.Q. I was called in to A Coy Orderly Room on 23 Feb where ~~you~~ I found Pte Dunfy was wounded. I dressed the wound and organized a stretcher party to take him to the R.A.P.

Q. What time did this take place?

A About 1830 hrs

Cross-examined by Defending Officer

Q. Was there anyone with the accused when you arrived?

A. The orderly room staff was there including the company commander.

[illegible] this at the scene of the accident

[illegible]

Q. Did you see the accident take place?

A. No, sir.

Questioned by the court

Q. Where was Pte Duffy wounded?

A. In the right foot.

Third witness for the Prosecution

I, 5692 Pte Higby, A having been duly sworn as a witness by the Prosecutor.

Q. Tell the court what you know about the case now being tried.

A. On the night 22 & 23 myself and Pte Duffy were getting ready to go on guard. We were getting ready to go on guard. We were getting ready to go on guard. We

C9 C Bellerave [illegible]

Cross-examined by the Defending Officer

2. At that time was the accused handling the rifle negligently in your opinion, that is according to your standards of training

A. I didn't see him handling the rifle at the time of the accident.

2. Did the accused have a rifle in his hands at the time of the accident

A. No

~~Re-examined~~

Questioned by Court

2. Was the accused facing you when the shot was fired

A. The accused's back was to me.

2. Would you be certain whether at the time of the accident the accused had a rifle in his hands

A. No

2. What other rifles if any were near the Deceased at the time of the accident?

A. There were about three other rifles near him.

2. Where was the flash when you saw it?

A. It looked at the ground.

2. How clear was the light at the time?

A. It was light enough to see the Deceased and what he was doing.

Certified that R.P. 83(b) has been complied with

The Prosecution is closed

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. no Sir

Question. Do you intend to call any other witness in your defence?

Answer. no Sir

Question. ~~Is he a witness as to character only? *Answer.*~~

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order to which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence?

Answer. no Sir

The accused in his defence says:†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Instructions.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

K. Bollman Capt

Closing Address - Prosecution

Sir - The evidence given before you has proven ~~the one~~ (a) that the accused was wounded in his right foot not by enemy action, and not by a comrade.

The first stages of initial tig teach the care and handling of weapons, of which the rifle is the first taught. Accidents such as these occur only through carelessness and neglect. Being a trained man - as he is having reached the field of action - I consider no other alternative of the court then to find him guilty.

[illegible] Capt

[illegible] e E Bellamy [illegible]

The first two witness were not at the same of the accident at the time it happened.

The third witness was close enough to see the movements and recognize the accused. He saw the flash of a rifle ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~

But according to this witness the accused did not have a rifle at the time. Therefore since there was only one shot fired, the rifle that he saw the flash from was the only one that could have wounded the accused. And it was not in the possession of the accused at the time.

~~[illegible]~~ [illegible]

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused F97304 Pte R. Dunphy

West Nova Scotia Regt.

is Not Guilty of the charge and honourably acquit of the same. Findings of Not Guilty announce in open court and accused ordered release

Signed in the Field this 29th day of Feb 1944

Charles Bellavance Maj

President

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before Sentence.*

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

(Construction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

C hr Bellavance Mayor

F97304 Pte R Dunphy,

LIST OF WITNESSES in the case of:
West Nova Scotia Regiment.

PROSECUTION:

D27224 Cpl Fleury, F
G22031 Pte May, M.A
F 5029 Pte Higby, K.

DEFENCE: Nil

LIST OF EXHIBITS:

Statement by the accused as to a defending Officer:

If I am to be tried by Court Martial on charges now pending against me, I wish to have ..... to act in my behalf.

In the Field (Signature of Accused)

F97304 Pte Dunphy, R

This is to certify that I, ... West NSR, have been given free of charge, a copy of the Summary of Evidence, Charge Sheet, documents, etc relative to my trial by Court Martial.

In the Field
24 Feb 44

(Signature of Accused)

Chs Bellerones Wagner

SUMMARY OF EVIDENCE in the case of F-97304 Pte R DUNPAHY, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, CMF, On Active Service.

By the Order of Lt-col R.S.E. Waterman, Officer Commanding, West Nova Scotia Regiment.

Evidence taken on oath.

First Witness for Prosecution

D-27224 Cpl Fleury, F. of 8 Platoon "A" Company, West NSR, having been duly sworn states :-

At about 1815 hrs 23 Feb 44 I left my section at the company area and went out with Mr. Campbell, my platoon commander to look over our section area and when I returned Pte Dunphy had been hurt.

Q1 Where was the section when you left ?
A1 In the company area taking off their packs.

Q2 Who was left in charge of the section when you departed?
A2 There was no one left in charge of the section as we were only going about 50 yards away.

Q3 Was Pte Dunphy all right when you left ?
A3 Yes,

Q4 How long were you away ?
A4 Between ten and fifteen minutes.

Q5 Was Pte Dunphy warned for any duty, guard or piquet ?
A5 Yes.

Q6 Was Pte Dunphy there when you returned?
A6 No.

Signed Cpl Fleury F

The accused declines to cross examine this witness.

Second Witness for Prosecution

G-22031 Pte May, M.A, of Coy HQ "A" Coy., West Nova Scotia Regiment, having been duly sworn states :-

I am stretcher bearer with Coy, HQ of "A" Company. The company runner came to me at 8 Platoon HQ and told me that there had been an accident. I went into the company Orderly Room and found the accused with a bullet wound in his right foot. I dressed the wound and organized a stretcher party. We carried him out to where we met the RAP carrier.

Q1 What time and date did you dress the wound ?
A1 Approximately 1830 hrs the 23 Feb 44

Q2 What part of the foot received the wound ?
A2 Between the second and third toe.

Cross examined by the accused.

A1 Are you sure the bullet did not hit the third toe ?
A1 I am not sure.

Secon' Witness for Prosecution Cont'.

The accuse' 'eclines to further cross examine this witness.

Thir' Witness for Prosecution

F- 5092 Pte Higby, K. of 8 Platoon "A" Company. West Nova Scotia Regiment, having been 'uly swor- states :-

On the evening of the 23 Feb 44 we were getting rea'y for a guar'. We were taking our packs off by the buil'ing next to Company HQ, an' getting our Bren Mags. to take to the section post, when I hear' a rifle go off about ten to fifteen feet away. I saw the rifle fall an' Pte Dunphy grabbed his foot an' sai'," A shot went through my foot" then he limpe' away to the Company Or'erly Room.

Q1 What time was this ?
A1 About 1815 hrs.

Q2 Were you watching the accuse' when the rifle went off ?
A2 Yes, I was facing him, but he was turne' back to me getting his mags. out of his pouches.

Q3 Were there any others stan'ing aroun' at the time ?
A3 No.

Q4 What was he getting mags out of his pouches for ?
A4 To take over to the trench for our Bren Gun.

Q5 Was it necessary to take the mags out of the pouches, to take them to the trench.
A5 No he coul' have left them in his web, if he wante' to wear his wea- in the trench.

Q6 Is it customary to remove your web equipment before going into the trench
A6 No, we usually remove it when we get in the trench.

Q7 Was the accuse' taking the mags out of his pouches in or'er that he might remove his web equipment at the time the rifle went off ?
A7 No, his equipment was on the bench where he ha' lai' it about ten minutes before.

Q8 Why was the accuse' getting his Bren mags. from the pouches at this time?
A8 Because we ha' to be on guar' at 'usk an' I aske' him for the mags.

Cross examine' by the accuse'.

Q1 The night before the acci'en' 'i' we carry our web equipment into the trench ?
A1 Yes, we 'i'. Signe': Higby K.

The accuse' 'eclines to further cross examine this witness

The accuse' having been suly cautione' as follows, "Do you wish to make any statement or to give evi'ence upon oath ? You are not oblige' to say anything or give evi'ence unless you wish to 'o so, but what ever you say or any evi'ence you give will be taken 'own in writing an' may be given in evi'ence ", 'eclines to make a statement or to give evi'ence on oath.

Certify that Rule of Prose'ure 4 (c) (') (e) an' (f) have been complie' with.

Taken 'own by me ,In the Fiel', in the presence an' hearing of the accuse' this 24 Day of February 1944.

In the Field
24 Feb 44

Officer taking Summary

HI. 72

CPL. DUNSDON S. H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K 70675 Cpl. Stephen Harvey DUNSDON

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	GUILTY	GUILTY	
2nd AA sec 40	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to Findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~If Cdn present under sentence for~~ beginning on (date)..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which ~~Nil~~ days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be reduced to the ranks and to forfeit all ordinary pay for a period of 35 days.

(Sgd) [signature] Judge-Advocate, if any. 30 Nov 44 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and dispersal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date..... (Sgd)..... Commanding.....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 57, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) [signature]

Date 1 Dec 44 Commanding Reme 4th Cdn Armd Div Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
K70675 CPL. DUNSDON, S.H. HQ Bde 4 Cdn Armd Div	1 Dec 44	[signature] Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 as 4172

FIELD GENERAL COURT-MARTIAL

(Army Form C (Jieu of AFAE) 40/P & S/1698 (40/70)) 4/38B

Convened by Col R. H. Noble Com RCEME 4 Cdn Armd Div dated 27 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K70675	(a) Cpl (b)	Stephen Harvey	DUNSDON	HQ Bde RCEME 4 Cdn Armd Div

PROCEEDINGS REVIEWED Acting Armoury Lieut 8 Dec 44

REVIEWING OFFICER, JAG BRANCH CMHQ Date

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date) 28 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 14/102

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1 C.C.30 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the (CO)~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~(a) President to accused: Do you object to~~ ~~to interpreter I Ans~~

~~(b) The Interpreter is sworn (1): Do you object to~~ ~~or shorthand writer I Ans~~

~~(c) The shorthand writer is sworn (1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J. G. Lamb	4 Cdn Armd Bde Coy
Member	Capt	H. E. Nancekivell	10 Cdn Inf Bde Coy
Member	Capt	D. C. Dingwall	4 Cdn Armd Bde Coy
Judge-Advocate	Major	H. N. E. Cimmy	Gen List attd HQ 2 Cdn Corps
Prosecutor	Capt	D. E. Lewis	4 Cdn Armd Div Tps Coy
Defending Offr	Lieut	S. M. Adams	4 Cdn Armd Div Tps Coy

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See CF p 2.)

A8. The accused before arraignment make(s) (no) ~~no~~ plea.

~~The Court adjourns at 1035 hours and resumes at 1600 hrs 30 Nov 44~~ (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B and E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. Nil.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his ~~~~ plea(s) of Guilty to Not Guilty on ~~~~ charge(s). The accused is (are) so informed, ~~~~
~~~~ (change(s) his (their) plea(s) of ~~~~ charge(s). Part I of the Schedule is amended accordingly.~~~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans.....Do you intend to call witnesses on your behalf?
Ans.....Are they witnesses as to character only? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if on his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (a), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. YES to give evidence and to call witnesses.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes through my Defending Officer.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or deal with anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 80, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.
~~~~

CHARGE SHEET

The accused, K.70675 Cpl Stephen Harvey DUNSDON, HQ RCASC 4 Cdn Armd Div, a soldier of the Canadian Army Overseas, is charged with:-

First Charge - Sec 40 Army Act — WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, on 24 Nov 44, did improperly and without authority use W.D. Vehicle M.5537466 Car 5-cwt L.U. for his own private purposes.

Second Charge - Sec 40 Army Act — WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, on 24 Nov 44, with intent to disguise W.D. Vehicle M.5537466 Car 5-cwt L.U., did improperly remove the vehicle number from the hood and removed a manufacturer's identification plate from the dash board.

(D. Douglas) Lt.Col.,
Commanding,
RCASC 4 Cdn Armd Div.

Field
25 Nov 44

To be tried by Field General Court-Martial.

(R.H. Noble) Lieut-Col.,
CRCEME 4 Cdn Armd Div.

Field
27 Nov 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 61, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
K.70675	Cpl		Stephen Harvey	DUNSDON	HQ RCASC 4 Cdn Armd Div

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet~~s~~ attached and on (*date*) 27 Nov 44 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.G. Lamb	4 Cdn Armd Amn Coy

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	H.C. Nancekivell	10 Cdn Inf Bde Coy
Capt	D.C. Dingwall	4 Cdn Armd Bde Coy

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	G.B. Macfarlane	10 Cdn Inf Bde Coy

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
~~Major~~	~~H.N.W. Guppy~~ (~~exempted~~)	GEN LIST Asst 2 Cdn Corps

On Active Service in the Fd

in HOLLAND (*Country.*)

(R.E. Noble) (*Signed personally. RP 105 fn 2.*) Lt.Col., (*Rank.*)

Date 27 Nov 44

Commanding ~~Officer~~ 4 Cdn Armd Div.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (*Page 1 to Dec of AFA3*) (*See overleaf for oaths and notes for use on trial.*)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as* practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A.* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 565(*a*).)

(vii) Summing up by J.A., *if any*. (*RP* 82.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A., *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A., *if any*, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can* 566. *As to certified copies of regimental books see AA* 153 (1) (*g*) (*ii*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML* p 709.)

4. The President or J.A., *if any*, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICERS'S CERTIFICATE

I certify that I have this morning examined

No. K 70675 Cpl. Dunsdon S.H.

of HQ. R.C.A.S.C. 11 C.A.D.

and in my opinion he is ~~unfit~~ fit to undergo trial by

Court-Martial.

Station In the Field

Date 30 Nov 44

[signature] Capt

Medical Officer

MEDICAL CERTIFICATE OF FITNESS

I certify that I have this day examined No.R.70675 Cpl. DUNSDON, S.H., of HQ RCASC 4 Cdn Armd Div, and in my opinion he is fit/[redacted] to undergo trial by Court Martial.

(K.A. Sparling) Capt, RCAMC,
Regimental Medical Offr.

Field
28 Nov 44

E1 Evidence for the Defence on Conviction before Sentence E1

First Witness for the Defence. K 70675 Cpl Stephen Harvey Dunsdon HQ RCASC 4 Cdn Arnd Div. Sworn:

I am the accused. At approx 0900 hrs 24 Nov 44 while proceeding to 4 CAB Coy Wksp on duty I saw a jeep in a bombed out garage in a street in Oisterwyk. Several times later during the day I noticed the vehicle in the same position. I contacted Sgt Kennedy and we decided that if the vehicle was still there that evening that it was likely abandoned and should be turned in to the HQ's. After picking the vehicle up that evening we decided that it should be fixed up. We took it to Mr Briel's garage. We did some work on it but could not get it finished that evening. I was placed under close arrest at approx 0030 hrs 25 Nov 44. I know that Sgt Kennedy has been tried on the same charges and it is as a result of his trial that I am pleading guilty.
I wish to ask the Court to note that if higher authority should give any further consideration to Sgt Kennedy's case that my case also be reviewed ✓

Cross exam: none

Exam by the Court: After we had the vehicle fixed up we hoped to be able to use it as a bucksheet vehicle for a period of time. I have never had any serious charge against me before and I have been on active service since 1 Oct 41. I have been overseas since Aug 42 and on the Continent since July 44. I have been an NCO since Feb 42 when I was made a L/Cpl and in July 42 I was made ~~[illegible]~~ actual cc corporal. I am married in Canada. I have one child. My age is 25 years.

RP 83(B) complied with.

Second Witness for the Defence. Capt D. A. Harper, HQ RCASC 4 Cdn Arnd Div. Sworn:
I am adjt at HQ RCASC. In my capacity as adjt I have known and had close dealings with the accused who has been employed at my HQ for the past years as NCO i/c transport. His

appointment carried a very great responsibility much more so than that of the average section Corporal. He has carried out his various duties at all times in a most efficient and highly satisfactory manner. I have known no occasion during which he has let down either myself or his other superiors. He has been a example to other NCO. as well as to the men of the unit in efficiency, conduct, behaviour, punctuality and close attention to his duties in every respect and I have never had occasion to check him for any disciplinary reason. this Conduct Sheet is clear as his previous good behaviour would indicate. I would request the Court to consider this NCO's previous good record in dealing with this his first lapse in conduct.

Cross exam : none

RP 93(B) complied with.

E3. Plea in Mitigation E3

Mr. President and Members of the Court: In view of the result of the previous trial of 13084 Sgt. J. J. Kennedy. the accused has pleaded guilty to the two charges under A.A. Sec 40. the Court has heard the evidence of the character witness and has before it the conduct sheet and particulars of service of the accused. The offences, as indicated clearly in the summary of evidence are of a rather minor character and the wrongdoing is not that the usual strictly criminal or felonious type. There is obviously no attempt on the part of the accused to deprive the Army of the use or services of equipment. It is obvious also that the accused had every intention of using the veh in the course of his duties as W.T. Corporal at formation HQ. Any other conclusion would be very remote and unfair under the circumstances. Thus it amounts to this: that a highly efficient and satisfactory N.C.O. backed up by three years voluntary service, including more than two years overseas o

service (in the United Kingdom and on the Continent) ~~[illegible]~~ appears to have gone ~~[illegible]~~ temporarily astray ~~a more or less technical offence~~, ~~[illegible]~~ (By the way no special Act of the Parliament of Canada was required to make him a "volunteer").

In addition I would like to stress the fact that ~~no~~ no harm or damage has been done to anyone — in fact a benefit has accrued to the Army in the shape of the recovery of an abandoned veh before it could come to harm.

I therefore appeal to the Court on behalf of the accused to consider the above-mentioned facts and circumstances and to temper justice with well deserved mercy in favour of the accused.

[illegible] Lt
Defending Officer
30 Nov 44

Exhibit "A"

SUMMARY OF EVIDENCE

In the case of K-70675 Cpl Dunsdon, S.H., HQ RCASC 4 Cdn Armd Div, Canadian Army Overseas, charged with improper possession of WD Veh No. M5537466 and defacing said veh by scraping off WD identification marks from same, on 24 Nov 44.

The Commanding Officer directs that evidence will be taken on oath.

FIRST WITNESS:- William Ernest Marie BRIEDE, Klompmen No. D327, OISTERWIJK, sworn, states:-

On 24 Nov 44 the accused whom I recognized came to my house with a Dutchman. The Dutchman whose name is A Paayman an acquaintance of mine. The Cpl asked if he could use my garage. He said he had a motorcycle he wanted to put in the garage. He also said it was not necessary for other people to know about it. He said he was pleased to use the garage and he said he would bring me some parafin oil. I asked him if he would buy me some cigarettes then he went. About six oclock in the evening A Paayman came to my house and said the Cpl would give him a tin of petrol and could he leave it at my place. I said it was alright. About seven oclock in the evening the Cpl came with a Sgt. I had not seen the Sgt before. They came together in a "jeep". They came to the door and asked me if I would open the garage. I did so. They put on the light from the jeep. The Cpl said that we had to work in the garage. I blackout the garage windows and then went into my house. Everything did not seem quite right to me so I went out to the garage again and saw they were burning off the numbers on the jeep. At the moment two neighbors of mine arrived and when I came back to the house I told them what was going on. We decided that something was wrong. My friends and I went out to the garage so that my friends could also see what was taking place. We then invited the Sgt & Cpl in for a cup of tea. When I introduced them they said their names were Steve & Jack. The Cpl was Steve and the Sgt was Jack. Just before they came in the house a motorcyclist came to the lane. He stopped one house away and whistled. The Cpl put out the lights and peered around the garage door to see who it was. The Cpl went to see who it was. The Cpl went to the motorcyclist. The Sgt in the mean time was in my garden. When the Cpl came back I asked him what it was about. He said the motorcyclist was looking for a girl. After they had tea the Sgt & Cpl went back to the garage. The Sgt & Cpl said that they were so pleased about getting the garage that they would bring us candy, cheese and other articles tomorrow.

After the Sgt and Cpl went back to the garage I decided things were wrong so I immediately went to the town major where I reported the incident. I was accompanied by my two neighbors. I told the town major that they were Cdn Army Service Corps. The town major then took me to the HQ of the Service Corps where I told my story.

Cross-examined by the accused

Q What kind of a veh did I say I wanted to use your garage for?

A A motorcycle.

(Signed) W.E. M. BRIEDE

The above statement has been read back to the witness. WEB.

SECOND WITNESS:-

Gerben Van WYNGAARDEN, Klompenmaker No. D323 OISTERWIJK, sworn, states:-

On 24 Nov 44 about seven oclock in the evening I went to Mr Brude's home. After I had been there a few minutes Mr Brude came into the house. He told me there was something happening in the garage that he was worried about. He asked me to come with him so I could form my opinion. I went with him into the garage . I saw a "jeep" with the top taken off I also noticed that the numbers had been removed from the jeep. The accused whom I recognize was there. Mr Brude and I went back into the house and he asked me my opinion. I told him that the soldiers have their own garage to work in and could see no reason why they should use a civilian garage. The Sgt and Cpl came in for a cup of tea. The Cpl promised Mr Brude cigarettes and chocolate for the use of the garage. After the Sgt and Cpl had gone back to the garage Mr Brude, myself and another friend went to the town major and told him the story.

The accused declines to cross-examine this witness.

(Signed) G.V. Wyngaarden

The above statement has been read back to the witness.

THIRD WITNESS :-

Lieut. C.D. Glover, Att HQ RCASC 4 Cdn Armd Div, sworn, states:-

At about 2100 hrs 24 Nov 44 Lieut.-Colonel Douglas instructed me to proceed with a civilian, a Mr Brude, to his home to investigate suspicious circumstances regarding a WD veh. From the facts given us by Mr Brude I expected to find at least two soldiers at his home and so took RSM Wilson and a guard with me. We were taken to the small garage belonging to Mr Brude and found a WD veh 5 Cwt. Before noting anything further on the veh we searched in the house and on the property for the person who were responsible for the jeep being there but could find none. On checking the 5 Cwt thoroughly I found that it was "mobile" back. The canvas top was removed and in the back seat, the WD numbers had been removed from engine hood by means of scraping and burning. One small plate on the dash board had been removed and one other partially removed. One "seal beam" light was connected with the battery and was lying on the fender. This light was out. Curtains had been placed over the garage windows evidiently to make a "blackout". Between four and six jerricans filled with petrol were on the floor or in the jeep. A hammer was lying in the front of the jeep. I then removed the rotor from the veh and returned to report to Lieut.-Colonel Douglas who instructed me to place a guard, preferably myself, at the house. RSM Wilson, myself returned to Mr Brude's house where we obtained description of two soldiers involved. Mr Brude also told us the names that the soldiers had given and from all this we were able to make a guess to their identification. As description filled Cpl Dunsdon of HQ RCASC I came back in order to bring him to Mr Brudes' house. We intended to use him as a guard if he was not either of the two concerned. At Mr Brude's house he was identified as the Cpl who had been working on the 5 Cwt in Mr Brude's garage. Cpl Dunsdon, RSM Wilson and myself return to our HQ area and Cpl Dunsdon was placed under close arrest. From further facts obtained from Mr Brude and RSM Wilson we ascertained that the second man was Sgt Kennedy of 4 Cdn Armd Div Tps Coy RCASC. I reported this to Capt Harper, adjt of CRASC and instructions were sent to have Sgt Kennedy placed under arrest.

From the rear bumper markings of the jeep identified the vehicle as M 5537466.

On the morning of Nov 25 1944 while in the company of two other Sgts and two Cpls, Sgt Kennedy was picked out by Mr Briede as the Sgt who had been with Cpl Dunsdon at his home.

(..... 3)

Cross - examined by the accused

Q Were the W.D. numbers removed from both sides of the hood?

A I am certain it was fully removed from one side but I would'nt be sure of the other side.

Q Had the plate on the dash board been removed recently?

A The marks where they had been were quite clear.

(Signed) S.D. Glover Lieut.

The above statement has been read back to the witness. J.C.

FOURTH WITNESS :- K-75465 R.S.M. Wilson, G.E., HQ RCASC 4th Cdn Armd Div, sworn, states:-

I was on the night of the 24 Nov 44 and still am the RSM of HQ RCASC, 4th Cdn Armd Div. Between 2100 & 2200 hrs of the night of the 24 Nov 44 Lieut Glover instructed me to proceed with him to the house of Mr Briede in Oisterwijk to investigate the defacing of a jeep by two NCO's wearing 4 Cdn Armd Div RCASC patches. On our arrival we found all the numbers had been removed from the jeep but no one was present in the garage. We returned to HQ and further instructed to wait see if any one came back to the jeep. During ourwait Mr Briede described the two NCO's to us, and gave us their names. It was thought at the time that one description fitted Cpl Dunsdon. Glover returned to the mens lines & brought Cpl Dunsdon back to Mr Briede's house. Mr Briede identified Cpl Dunsdon immediatley by saying"hello Steve". We left the house and on being question Cpl Dunsdon said Sgt Kennedy had been with him when he took the jeep to the house. On instruction from Glover I placed Cpl Dunsdon under close arrest. On the morning of the 26 Nov 44 I was a witness at an identification parade at which six or eight NCO's and OR's were placed in a room. Mr Briede identified Sgt Kennedy as the other party who had been with Cpl Dunsdon.

The accused declines to cross -examine the witness.

(Signed) G.E. Wilson, R.S.M.

The above statement has been read back to the witness. J.C.

The accused was warned as follows:- " Do you wish to make any statement or give evidence upon Oath? You are not obliged to say anything or give evidence unless you wish to do so, but what you say or any evidence you give will be taken down in writing, and may be given in evidence."

The Accused:- I have nothing to say at this time.

(Signed) S.H. Dunsdon, Cpl.

The above statement has been read back to the accused.

I certify that R.P.4 has been complied with. Taken by me in the field in the presence and hearing of the accused this 25 day of Nov 1944.

J.C. Chamberlain Capt.

(Signed) J.C. Chamberlain, Capt.

(1)

SUMMARY OF EVIDENCE

In the case of K-70675 Cpl. Dunsdon, S.H., HQ RCASC, 4 Cdn Armd Div, Canadian Army Overseas, charged with improper possession of WD Veh No. M 5537466 and defacing said veh by scraping off WD identification marks from same, on 24 Nov 44

The Commanding Officer directs that evidence will be taken on oath.

FIRST WITNESS -

William Ernest Marie Brudé
Klompen No D 327 Oesterwijk

duly sworn states

On 24 Nov 44 the accused whom I recognize came to my house with a Dutchman. The Dutchman whose name is A Paagnas an acquaintance of mine. The Cpl asked if he could use my garage. He said he had a motorcycle he wanted to put in the garage. He also said it was not necessary for other people to know about it. He said he was pleased to use the garage and he said he would bring me some parafin oil. I asked him if he would bring me some cigarettes then he went. About seven oclock in the evening A Paagnas came to my house and said the Cpl would give him a tin of petrol and could he leave it at my place. I said it was alright. About seven oclock in the evening the Cpl came with a Sgt. I had not seen the Sgt before.

They came together in a "jeep". They came to the door and asked me if I would open the garage. I did so. They put on the light from the jeep. The Cpl said that we had to work in the garage. I blacked out the garage windows and then went into my home. Everything did not seem quite right to me so I went out to the garage again and saw they were burning off the numbers of the jeeps. At that moment ~~came~~ two neighbors of mine arrived and when I came back to the house I told them what was going on. We decided that something was wrong. My friends & I went out to the garage so that my friends could also see what was ~~going~~ taking place.* We then invited the Sgt & Cpl in for a cup of ~~coffee~~ tea. When I introduced them they said their names were Steve & Jack. The Cpl was Steve and the Sgt was Jack* Just before they came in the house a motorcyclist came to the lane ~~to gar~~. It stopped the house away and whistled. The Cpl ~~went to the motorcycles~~ put out the lights and peered around the garage door to see who it was. The Cpl went to the motorcyclist. The Sgt in the mean time was in my garden.

oc

When the Cpl came back I asked him what it was about. He said the motorcyclist was looking for a girl.

After they had tea the Sgt & Cpl went back to the garage. The Sgt & Cpl said that they were so pleased about getting the garage that they would bring us candy, cheese & other articles tomorrow.

After the Sgt & Cpl went back to the garage I decided things were wrong so I immediately went to the ~~[illegible]~~ town major, why I reported the incident. I was accompied by my two ~~friends~~ neighbors. I told the ~~town~~ major that they were Cdn Army Service Corp. The town major then took me to the HQ of the Service Corps where I told my story.

~~Cross-examined by the accused~~

~~Q What kind of a vehicle did~~ I say ~~I wished to use your garage for.~~

~~A. A motorcycle.~~

OK [illegible]

~~The above statement has been read back to the witness.~~

OK [illegible]

[illegible]

2nd witness Lieben Van Wyngaarden (4)
Klompen Mo D 323 Oosterwijk

duly sworn states

On 24 Nov 44 about seven o'clock in the evening I went to Mr Briedé's home. After I had been there a few minutes Mr Briedé came into the house. He told me there was something happening in the garage that he was worried about. He asked me to come with him so I could form my own opinion. I went with him into the garage. I saw a "jeep" with the top taken off I also noticed ~~the numbers on the jeeps had been~~ that the numbers had been removed from the jeep. The accused whom I recognize was there. Mr Briedé and I went back into the house and he asked me my opinion. I told him that the soldiers have their own garage to work in and could see no reason why the should use a civilian garage. The Sgt & Cpl came in for a cup of tea. The Cpl promised Mr Briedé cigarettes and chocolate for the use of the garage. After the Sgt & Cpl had gone back to the garage. Mr Briedé myself and another friend went to the town major and told him the story. The accused declined to cross-examine this witness.

The above statement is read back to the witness.

Wyngaarden

3rd Witness. Lt C.D. Glover
att HQ RCASC
4th Adn Armed Dien.

duly sworn State.

At about 2100 hrs 24 Nov 44 Hol Douglas instructed me to proceed with a civilian, a Mr Brudé, to his home to investigate suspicious circumstances regarding a W.D. vehicle. From the facts given us by Mr Brudé I expected to find at least two soldiers at his home and so took R.S.M. Wilson and a guard with me. We were taken to the small garage belonging to Mr Brudé and found a W.D. vehicle 500 cwt. Before noting anything further on the vehicle we searched in the house and on the property for the person who were responsible for the jeep being there but could find no one. On checking the 500 cwt thoroughly I found that it was "mobilized". The canvas top was removed & in the back seat, the W.D. numbers had been removed from ~~the either side of the~~ engine hood by means of scraping and burning. One small plate on the dash board had been removed and one other partially removed. One "seal beam" light ~~had been removed and~~ was connected with the battery and was lying on the fender.

This light was out. Curtains had been placed over the garage window evidently to make a "blackout". ~~Four~~ Between four & six jerry cans filled with petrol were on the floor or in the jeep. A hammer was lying in the front of the jeep. I then removed the rotor from the vehicle and return to report to ~~the~~ Lt Col Douglas who instructed me to place a guard preferably myself, at the house. RSM Wilson & myself returned to Mr Briedé's house where we obtained descriptions of two soldiers involved. Mr Briedé also told us the names that the soldiers had given and from all this we were able to make a guess to their identification. As description filled Cpl Dendson of HQ RCASC I came back in order to bring him to Mr Briedé's house. We intended to use him as a guard if he was not either of the two concerned at Mr Briedé's house he was identified as the Cpl who had been working on the 300 unit in Mr Briedé's garage. Cpl Dendson RSM Wilson & myself returned to our HQ area and Cpl Dendson was placed under close arrest. From further facts obtained from Mr Briedé ~~and~~ ~~confirmed by Cpl Dendson~~ &c

From the rear bumper markings of the Jeep I identified the vehicle as H 8237 & 66

and RSM Wilson we ascertained that the second man was Sgt Kennedy of Div Tps Coy. ~~the~~ I reported this to Capt Harper, adj of CRASC, and instructions were sent to have Sgt Kennedy placed under arrest.

On the morning of Nov. 25 1944 while in the company of ~~both~~ two other Sgts & two Cpls. Sgt Kennedy was picked out by Mr Breydé as the Sgt who had been with Cpl Dunsdon at his home.

Cross examined by the accused

Q Were the W.D. numbers removed from both sides of the hood.

A. I am certain it was fully removed from one side but I wouldn't be sure of the other side.

Q Had the plate on the dash board been removed recently.

A. The marks where they had been were quite clear.

W.D. Glover Lt.

The above above statement was read back to the witness.

FBC.

(8)

4th Witness K 75465 RSM Wilson GE
HQ RCASC
4th Cdn Armed Dis.

duly sworn states. I was on the night of the 24 Nov 44 and still am the RSM of HQ RCASC, 4th Cdn Armed Dis. Between 2100 & 2200 hrs of the night of the 24 Nov 44 Lt Glover instructed me to proceed with him to the house of Mr Brieder in Oosterwijk to investigate the defaing of a jeep by two NCO's wearing 4 Cdn Dis RCASC patches. On our arrival we found all the numbers had been removed from the jeep but no one was present in the garage. We returned to HQ and were further instructed to wait see if any one came back to the "jeep". During our wait Mr Brieder described the two NCO's to us, and gave us their first names. It was thought at the time that one description fitted Cpl Dunsdon. Mr Glover returned to the news lines & brought Cpl Dunsdon back to Mr Brieder's house. Mr Brieder identified Cpl Dunsdon immediately by saying "hello Steve". We left the house and on being questioned Cpl Dunsdon said Sgt Kennedy had been with him when he took a

2

the jeep to the house. On instructions from Mr. Flower I placed Cpl Dusdon under close arrest.

On the morning of the 25 Nov 44 I was a witness to an identification parade at which six or eight HCLS & OKS were placed in a room. Mr Brucé identified Sgt Kennedy as the other party who had been with Cpl Dusdon.

The accused declines to cross-examine this witness.

The above statement has been read back to the witness.

[signature]

The accused was warned as follows:

"Do you wish to make any statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but what you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused: I have nothing to say at this time

S H Dunsdon cpl.

The above statement has been read back to the accused.

I certify that R.P.C. has been complied with. Taken by me in the field in the presence & hearing of the accused this 25 day of Nov. 1944

F E Chamberlain
Capt. C

F.C.C.M.

K-70375 Cpl Dunsdon, S.H.
[redacted]

In accordance with R.P. 76 the prosecution gives notice that Capt D.A. Harper will be called as a witness for the prosecution. His evidence will be to the effect that there is not a 5 cwt M-553746 on HQ RCASC strength and the accused did not have authority to drive, use or deface same.

D. E. Lewis
(D.E. Lewis) Capt.,
Prosecutor.

Date 27 Nov 44

Time 1330 hrs.

Exhibit "B"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K.70675	Cpl	Dunsdon, S.H.	HQ RCASC 4 Cdn Armd Div

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be accorded to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For ..... times.

For ..... times.

For ..... times.

For NIL times.

Date of first entry in Field Conduct Sheet 15 Jan 44 (Awarded C.V.S.M. and Clasp)

Date of last entry in Field Conduct Sheet Above entry only

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf. NIL

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N.A.

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 5 days in military custody, *i.e.*, NIL days in open arrest, 5 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 25 Yrs 8 Mos.

6. The date of his attestation ~~calling up for military service~~ is 1 Oct 41

7. The service which the accused is allowed to reckon is from 1 Oct 41

8. The accused is in possession of; NIL. C.V.S.M. & Clasp

State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of N.A.	
In the war substantive rank of Cpl	since 28 Oct 42
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(11141) W1.8570-659 200,000 8/42 A. & E. W. Ltd. Gp.A88
(11439) W1.22458-1873 80,000 2/43 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL.		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 27th day of November 1944

(D.A. Harper) Capt & Adjt.,
HQ RCASC 4 Cdn Armd Div.

99/37/DUNSDON S.H/1(DJA)
99/37/KENNEDY J.J/1

Cdn Sec GHQ 2 Echn 21 A Gp
15 Dec 44

ADJA,
HQ 4 Cdn Armd Div

GCM - 28 Nov 44
K.70675 Cpl Dunsdon S.H.
HQ RCASC 4 Cdn Armd Div
K.73064 Sgt Kennedy J.J.
4 Cdn Armd Div Tps Coy RCASC

1. In accordance with the provisions of Cdn RO(21 A Gp) No.25 the release is hereby authorized of the following exhibits in the m/n two proceedings:

Exhibit 'A' in the Kennedy proceedings -

One (1) vehicle M.5537466, Car 5-cwt, L.W.

Exhibit in the Dunsdon proceedings -

The same vehicle as above.

2. It is directed that the vehicle concerned be returned to the British unit on whose charge it is.

3. Attention is also directed to Cdn RO (21 A Gp)Nos. 105 and 602 pertaining to return of vehicles surplus to establishment.

(W.H. Waugh) Major
DJA
Cdn Sec GHQ 2 Echn
21 Army Group

Exhibit C

MFM 6
(AFB 122)
40/PAS/136 (9438)

No. R.70675 Name Cpl Dunsdon, SH | Sqn, Battery or Company | Corps RCASC | Date of enlistment 1-10-41 | GC Badges | Service or Proficiency Pay NIL

Date of last entry in Company Conduct Sheet 23-2-44 | No and date of last drunk NIL | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature OC Company, etc J.A.Moran, Capt | Character Very Good

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
PREVIOUS SHEET DESTROYED ON COMPLETION OF TWO YEARS SERVICE(16 NOV 43) - One Entry									
Awarded Cdn Vol Service Medal and Clasp wef 15 Jan 44								D.A. Harper, Capt.	

Certified to be a true copy from the Regimental Books in my custody.

27 Nov 44

(D.A. Harper) Capt & Adjt.,
HQ RCASC 4 Cdn Armd Div.

(PTO)

COUNTER NUMBER 562376

HOUR 1705

OPERATOR'S INITIALS P.L

RELIEVING OPERATOR E.M

4F-90
Pt Dunford B

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F 88280 Pte Dunnaford C 1 Can I CORPS

Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 8.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 49 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be [illegible] from the date of this sentence and to be cashiered

(Sgd) ..... Judge Advocate, if any. Date awarded 9 Nov 44 (Sgd) [illegible] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : Confirmed

I direct that the accused be not cashiered or undergo penalty until further ordered.(1) (1. AA 57A. Delete if not used.)

(Sgd) Cowtl Brig Commanding

Date 9 NOV. 44 COMMANDER 1 CDN BASE RET GROUP

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F 88280 Pte Dunnaford C Boyd	11 Nov 44	Vernon Lt Kanna 24 C1

Offr Commanding 1 Bn 1 Can Base Reinforcement Depot

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160

WE-90

CP486 (To Dep of AFA) 40-P & R-1608 (40/50) 4/38B

FIELD GENERAL COURT-MARTIAL

PROCEEDINGS REVIEWED 30 NOV 1944 JAG's BRANCH C.M.H.Q.

Convened by [illegible] Comd 1 CDN Corps dated 7 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183. [ins, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F 88280	Pte Capt	Boyd	Dunnaford	1 Can Corps

JCS c J Rutherford Lt Col 1 Dec 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 7 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2D 81

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED. Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fms KOs. For guidance on procedure when a variation in this form occurs, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 465, for oaths and instrs on how to record addresses, evidence, etc., which instr are hereafter called "notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At [illegible] hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 561(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans Nil.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(3). If objection, see procedure AA 37, RP 23, 71, (8, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	F P Underdown RC Sigs	2 Can Corps
Member	Capt	J A Marahan [illegible]	2 Can Corps
Member	Lieut	W M Grant [illegible]	2 Can Corps
~~Judge Advocate~~			
Prosecutor	Lieut	R E Fegan [illegible]	1 Can Corps
Defending Offr	Lieut	P J Lachance [illegible]	1 Can Corps

Questions by President : Is the Prosecutor a lawyer ? Ans Nil. Is the Defending Offr a lawyer ? Ans Nil.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings (for information of Conv Offr.) 2. If Pros a lawyer and Def Offr not, occasion is anticipated for an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused F 88280 Pte Dunnaford C before arraignment make(s) (no) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or on the accused's mental fitness to attend trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded (per Notes). For forms of record see references in fns to RP cited. Insert in AB rare and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62 ; where several accused to be tried separately see RP 71(C), and use separate copies of CF 465 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

L1214

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, use Record Form D on p 3.*

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex *A*, initialled and read aloud by the President.(1) The accused, on standing on Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. *RP 37(D).*)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea*

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PR... I PLEAS OF NOT GUILTY TO ALL CH...

D1. President to accused : ... relating to procedure before trial have ... the ground that you have not had sufficient ... for an adjournment on the ground that any of ... (1. *If "yes", see RP 39(A) for procedure.*)

D2. The Prosecutor makes (an) (no) opening an... with, and that you have been prejudiced thereby, ... (1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address p... pare your defence ?* Ans ....y, is recorded per Notes.)

D3. The evidence for the Prosecution is taken.(1) (1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As ... p 95(C).*)

D4. The Prosecution is closed.(1) The Defending Offr submits ... evidence himself see RP 39(D) (E).) establish a prima facie case against the accused on the ..... is disallowed on the ..... charge(s), and allowed on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the Pronce for the Prosecution does not charge(s), and that, accordingly, the trial will proceed on the former, but the accused ... found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and ... recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If acce... omitted on all charges use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) character should, if in his interest, be given before the finding. *See RP 46(A) fn 1; 86(C). Note the further opportunity in para E1* (1. *RP 114, 115, 116. For procedure see Notes in back of Convening Order. CF A95. Evidence for accused as to his* of Record Form E. *Record per Notes addresses, statement, evidence and any summing up to the jk under RP 42, 103(b).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) *Or,* The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(2) (b), RP 45, 120(b).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding one dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans ..... (1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(2)

(1. *MFB 255 or AFB 2996.* 2. *MFM 8.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans ..... (1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(2), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)

(1. *When several accused tried substantially see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 43, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 130, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566. Overseas RO 308, 2323, MML p 60, 737-739. As to sentences consigned for civil offences to the law of England see AA 41(3), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see stairs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*b*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *assisting and withdrawal of witness from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s) (1). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~and~~ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records findings of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex *A*, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 93(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), *114*, *115*.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. ..... Do you intend to call witnesses on your behalf ?

Ans. ..... Are they witnesses as to character only ? Ans. .....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 44(*A*) *fn* 1, 58(*C*). *Note the further opportunity in para E1 of Record Form E. Recorded per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 102(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court or the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(*2*), (*3*), *RP* 45, 120(*A*). 2. *AA* 54(*3*), *RP* 45, 117. *This alternative announcement is not applicable where there are pleas of Guilty surrounding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. No

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 44 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(2) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex C respectively.(3)

(1. *MFB* 235 *or AFB* 294. 2. *MFM* 4. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes – plea in mitigation

(1. *RP* 37(*C*), 86(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(*5*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 40, 44 *and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-52; *WP*, 114, 119(*a*), *KR Con* 308, 330, 563-(*ins*). *Overseas* 80 *JCP*, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 58(*1*), *KR Con* 564. 2. *RP* 52. *As to release from arrest be Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

ACCUSED ELECTS TRIAL BY COURT MARTIAL

CHARGE SHEET

The accused, F. 82280, Pte. Boyd DUNSFORD, 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with :-

First Charge
Sec. 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, at about 0830 hours, 2 October 1944, absented himself without leave until being apprehended at 1920 hours, 21 October 1944. (Total absence, 19 days, 10 hours, 50 mins.)

Lt-Col.
(VINCENT McKENNA,)
Officer Commanding,
1 Cdn Base Rft Bn, 1 C.B.R.D.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

E.W. Haldenby

(E. W. HALDENBY) Brigadier.
Comd 1 Cdn Base Rft Gp
Cdn Army-CMF

In the Field,
1 November, 1944.

In the Field
In Italy
7 Nov 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H81880	Pte		Boyd	DUNSFORD	1 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 7 Nov 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	T P DUNDERDALE (R C SIGS)	2 Cdn N E T D

MEMBERS.

Capt or Lieut to be detailed by the OC 2 Cdn N E T D

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
" " " " " " " " " " " "		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	J C CAMPBELL (QAC)	2 Cdn Reallocation Centre

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (*Country.*)

(*Signed personally. RP 105 fn 2.*)
(E. W. HALDENBY)

Brigadier (Rank.)

Date 7 Nov 44

Commanding 1 Cdn Base Rft Gp-CMF
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FABS (to DHQ of AFAS) 40/F & S/1897 (4021))

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICER'S CERTIFICATE
(KR (Can) 557)

I certify that I have this morning examined No F. 82280 Rank PTE
Name Dunsford B. of 1 Bn. 1 C.B.R.D. and in my opinion he is
fit/~~unfit~~ to undergo trial by Court Martial.

In the Field
Date Nov. 8th/44

Mt Lavisky Capt
(MEDICAL OFFICER)

Plea in Mitigation

Pte Dunsford B. Join his regt the West Nova Scotia shortly after he landed in Italy and he has been with them until he went absent without leave on the 21st October. While he was with the regt he prove that he was a good soldier and worked hard, when the regt came out to rest this summer he was not able to obtain a leave, seeing that new men came in to the regt and getting their leaves he decided to go absent without leave. Now that he has had his leave he is quite prepared to continue in action with his regt. In view of the long service in action of the accused and his good conduct sheet would request the court to be lenient

F J Leblanc Lieut

Defending Officer

Summary of Evidence

in the case of

F - 82280 Pte. Dunsford Boyd, 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army overseas.

The Commanding Officer has directed that the evidence be taken under oath.

First Witness for Prosecution

D - 10107 Cpl. Rae A.H., orderly Room Clerk, 1 Bn. 1 C.B.R.D. having been duly sworn states: -

I am D - 10107 Cpl. Rae A.H. orderly Room Clerk, 1 Bn, 1 C.B.R.D. I produce West Nova Scotia Regimental Order No. 85 dated 2 Oct 1944 which states that F - 82280 Pte Dunsford B. was A.W.L. from 0830 hrs 2 Oct 1944, apprehended by 230 Provost Coy, C.M.P at 1920 hrs 21 Oct. 1944. Produced and marked Exhibit A.

A H Rae

The accused declines to cross examine the witness

Page 2 of the Summary of Evidence in the case of F-82280 Pte. Dunsford B.

"West Nova Scotia Reg't Part II Order No. 85 dated 26 Oct 1944 referred to by the witness, produced, read over, shown to the accused and marked Exhibit "1" and attached to the Summary.

[signature]
Signature of Officer taking Summary

Question to the Accused

Do you wish to make a statement or to give evidence under oath? You are not obliged to do so but any evidence you give or statement you make will be taken down in writing and may be used in evidence.

Answer by the Accused

I reserve my defence.

I certify that the foregoing Summary of Evidence consisting of two (2) pages was taken down by me in the presence of the accused and that Rules of Procedure 4(a)(d)(e)(f) and (g) have been complied with.

[signature]
Officer taking Summary of Evidence.

On the Field
31 Oct. 1944.

This is Exhibit "A" referred to in the Summary of Evidence in the case of F-P2280 Pte. Dunsford R. taken before me this 31st day of October 1944.

Signature of Officer taking Summary.

Last Order No. 44 23 Oct 44	THE WEST NOVA SCOTIA REGIMENT Part II Orders Issued by CDN SEC GHQ 2 MCH AAI	This Order No. 45 26 Oct 44

"A" OFFICERS

1. STRENGTH DECREASE
(a) S.C.S. to X-3 Lieut West N.S.R. 20 Oct 44
Capt. C.H. Bent

"B" OTHER RANKS

2. STRENGTH INCREASE
(a) AMENDMENT: Part II Order No 77 para 3(a) of 3 Oct 44 insofar as it refers to the u/n is amended by adding "Dr Mech (MV) "C"
F76591 Pte. Hayes F.J.
F79335 Pte. MacDonald J.C.

(b) AMENDMENT: Part II Order No 77 para 3(d) of 3 Oct 44 insofar as it refers to the u/n is amended by adding "Dr Mech (MV) "C"
F60487 Pte. McDougall L.F.

(c) AMENDMENT: Part II Order No 46 para 2(a) of 20 Oct 44 insofar as it refers to the u/n is amended to "pte.(L/Cpl)"
F49625 Pte. Shuttleworth T.P.

3. STRENGTH DECREASE
(a) S.C.S. to X-3 Lieut West N.S.R. dates shown
F42507 Pte. Duquette J.W. 21 Oct 44
F40804 Pte. Landry E.J. 21 Oct 44
F76591 Pte. MacDonald C.L. 21 Oct 44
F49625 Pte. Shuttleworth T.P. 21 Oct 44
F39870 Pte. Rogers D.E. 18 Oct 44

4. TRANSFERS
(a) Trans from C.I.C. to R.C.A.S.C. and to remain posted to West N.S.R. 24 Sep 44
Auth - CIC/4[illegible] 4/26 May 42
F2645 Pte. Gerhardt E.E. Cook "C"
F50467 Pte. MacDonald M.F. Cook "C"

5. ABSENT WITHOUT LEAVE
(a) AWL from 0830 hrs 2 Oct 44, still absent 0830 hrs 10 Oct 44 (6th day)

AWL from 0830 hrs 2 Oct 44, App by 230 Prov Coy C.M.P. 1920 hrs 21 Oct 44
F82280 Pte. Dunsford R.
F20347 Pte. Cote R.J.

(b) AMENDMENT: Part II Order No 41 para 7(b) of 24 Jun 44 is amended to "App 1045 hrs 24 Jun 44"
F5152 Pte. Vialth R.E.

6. APPOINTMENTS
(a) Appointed A/L/Sgt 21 Oct 44
F40256 Pte.(A/Cpl) Skinner R.R.

(b) Appointed L/Cpl dates shown

F56144	Pte.	Briand	P.J.	21 Oct 44
F40332	Pte.	Tanner	A.E.	18 Oct 44
F34867	Pte.	Connolly	G.F.	18 Oct 44
F52549	Pte.	Christie	R.S.	19 Oct 44
F66780	Pte.	MacDonald	E.G.	19 Oct 44
G23043	Pte.	Flynn	T.J.	19 Oct 44
F40196	Pte.	Silver	H.M.	19 Oct 44

7. PROMOTIONS
(a) To be A/Sgt. 21 Oct 44
G45087 L/Sgt. Halman C.K.

8. CONFIRMATIONS
(a) Confirmed in the rank of Sgt 22 Oct 43
Auth - 2 CBRBn/6-0-6- (Conf of Rank) d/24 Oct 44
F42610 Cpl.(A/Sgt) Kelly F.W.

(b) Confirmed in the rank of Sgt 15 Sep 44
Auth - DCA 73 d/10 Sep 44
A44592 Cpl.(A/Sgt) Crook W.J. Cook "B" (RCASC)

(c) Confirmed in the rank of Cpl 16 Oct 44
F60130 Pte.(A/Cpl) MacDonald L.W.

9. TRADESMEN'S QUALIFICATIONS
(a) Qual Cook "C" 24 Sep 44. T.S.B. Report d/24 Sep 44
F2645 Pte. Gerhardt E.E.
F50467 Pte. MacDonald M.F.

10. TRADESMEN'S RATES OF PAY
(a) Granted tradesmen's rates of pay Cook "C" 24 Sep 44
F2645 Pte. Gerhardt E.E.
F50467 Pte. MacDonald M.F.

11. PUNISHMENTS
(a) Ref Part II Order No 54 para 13(a) of 27 Jul 44, the sentence of 2 years imprisonment passed by the Court on 10 Jun 44 having been declared invalid, such sentence was removed and the accused relieved from all the consequences thereto by Major-General i/c Admin CMHQ on 12 Oct 44 who thereupon sentenced the accused to be imprisoned without hard labour for 2 years less 23 days, such sentence to be effective as if passed by the Court Martial 10 Jun 44
G18569 Pte. Lee M.L.

12. MARRIAGE
(a) Having been granted permission to marry 16 Mar 44. Was married to Miss Marcella Mae Barnett at New Glasgow, Nova Scotia, Canada, 12 Mar 43
F45838 L/Cpl. O'Connor J.G.

(C.V. Allen) Lieutenant
for Officer i/c
Cdn Sec GHQ 2 Ech AAI

/EL

Certified True Copy.
[signature]
Officer having Custody of Regt'l Books.

Ex B

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
F. 82280	Pte.	DUNSFORD, B.	1 C.B.R.Bn., 1 C.B.R.D.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The summary herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	A.A. Sec. 15 (1) 1 times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct.~~

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, or

~~Previous convictions of the accused by a court martial or civil court, summary awards under section 47 of the Army Act and dispensed with under section 73 of the Army Act are as shown in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~

~~- - - [illegible] - - -~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and ~~72~~ 17 days in military custody, making a total of ~~72~~ 17 days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 21 yrs.

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper is 25 Feb. 1943.

~~7. The service which the accused is allowed to reckon [illegible] discharge or transfer to the reserve is~~

8. The accused is entitled to deferred pay or gratuity in respect of ..... service.

9. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or reward).)

11. (If the accused is a warrant officer.) The accused ~~[illegible]~~ he was made a warrant officer last held the regimental rank of .....

12. (In the case of an officer.) The accused holds in the army the rank of ..... dated ..... and in his regiment (or corps or department) the rank of ..... dated .....

(Form) [illegible]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		WJR		
		WJR		
		WJR		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2nd day of November 1944.

Wasolins Lieut
Officer having Custody of Regt'l Books

—18—The accused has served as a non-commissioned officer 1/10 [illegible] without reduction, to the present date.

Date of Promotion

In the rank of _____ years _____

In the rank of _____ years _____

In the rank of _____ years _____

WJR

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.

WJR

NF.82280 Name DUNSFORD, B. Sqn, Battery, or Company — Corps CIC — Date of enlistment 25 Feb. '43. — GC Badges — Service or Proficiency Pay — MFM 6 (AFB 122) 20/PAM/136 (3428)

Date of last entry in Company Conduct Sheet — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		AWL (Absent 4 days, 18 Hrs)		Admonished 7 Sep. 44. Forfs 5 days pay-FR&I-149(1)(a).			

Certified true extracts from MFM 4 to date (28 Oct '44) (Signed) (C.V.Allen.) Lieut.
for officer i/c.,
Cdn Sec GHQ 2 Ech AAI.

CERTIFIED TRUE COPY FROM REGTL BOOKS B Jenkins Lieut
(Officer in Custody of Regtl Books)

(FTO)

Encl D

STATEMENT BY THE ACCUSED

I certify having received free of charge, a copy of the Summary of Evidence, list of Witnesses, list of Exhibits and Charge Sheet.

I desire the services of an Officer to represent me at the trial.

Date 2 Nov. 44

Boyd. Dumsford.

CHARGE SHEET

MMM-24

PTE DUNSFORD JE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B63681 Pte DUNSFORD J.E.R.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 16, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At ~~present under sentence for~~ ~~beginning on (date)~~ (If N)

(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

1 day Detention and to be put under stoppages of pay until he has made good the sum £31 0d to defrayment of the

3 May 44

(Sgd) Judge-Advocate, if any. Date Awarded. (Sgd) President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Mitigation of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention further~~ Sentence is suspended until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 3 May 44 (Sgd) E.W. Haldenby Brig. Commanding COMMANDER 1 CDN CASUALTY (Confirming Officer)

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B 63681 PTE DUNSFORD JER	5 May 44	A.E. Saunders (A.E. Saunders) Capt, Adjt, 4 Cdn Base Rft Bn, 1 Cdn Base Rft Group C.M.F.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 MAY 24 Cp 104

RECEIVED 30 MAY 1944 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL (Page (In lieu of AF A3) 40-1 A. H. 8/1678 (2864))

Convened by Order of BRIG E.W. HALDENBY Comd 1 CDN GP - CMF dated 30 Apr 44 SCH

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B 63681	Pte	JAMES ELWIN ROY	DUNSFORD	CARLTO YORK R 4BN 1CDN Gp

PROCEEDINGS REVIEWED 5 JUN 1944 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Irregular Court. 2 June 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (dates) 3 MAY 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A97, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) The ~~Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~an interpreter~~ / ~~Any~~ The Interpreter is sworn.(1) Do you object to ~~a shorthand writer~~ / ~~Any~~ The shorthand writer is sworn.(1) Nil

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member recires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 187, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	S.C. HEYES	C.I.C.	2 CDN BASE RFT COY
Member	CAPT	E.M. LEONARD	C.I.C.	1 BN 1 CDN BDE
Member	LT	J. WASHBURN	C.I.C.	2 BN 1 CDN BDE
~~Judge-Advocate~~ JA				
Prosecutor	LT	F. PETLEY	C.I.C.	2 BN 1 CDN BDE
Defending Offr	LT	W.G. REID	C.I.C.	1 BN 1 CDN BDE

Questions by President: Is the Prosecutor a lawyer? Ans Nil Is the Defending Offr a lawyer? Ans YES (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See QL p 33.)

A8. The accused B63681 PTE J.E.R. DUNSFORD before arraignment make(s) (no) ~~a~~ plea. Pleads Guilty (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to lack of trial (RP 38), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB room and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witness from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court de see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans N/C.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~changes~~ his (their) plea(s) on ..... charge(s). Part 1 of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*E*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans .....
Do you intend to call witnesses on your behalf?
Ans .....
Are they witnesses as to character only? Ans .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself ~~or to call any witnesses as to your character~~?(1)
Ans N/C
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *AFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans N/C.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 306, 330, 363-366. *Overseas AO* 209, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1) (*b*), 68(1), *KR Can* 564. 2. *RP* 52. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

L. J. Flynn
Lt

CHARGE-SHEET

THE ACCUSED, No. B 63681 PRIVATE JAMES ELWIN ROY DUNSFORD, CARLT & YORK REGT, 4 CDN BASE REINF BN., 1 CDN BASE REINF GROUP, A SOLDIER OF THE CANADIAN ARMY OVERSEAS, IS CHARGED WITH:

1st Charge

A.A. Sec 15

(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in ITALY, absented himself without leave from 4 Cdn Base Reinf Bn from 0700 hrs 8 Mar 44 until surrendering himself at 1955 hrs 20 Apr 44. (Total time absent: 43 days - 12 hrs - 55 mins).

2nd Charge

A.A. Sec 24

(2)

WHEN ON ACTIVE SERVICE, LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING AND REGIMENTAL NECESSARIES,

in that he,

In the Field, in ITALY, at 4 Cdn Base Reinf Bn on 21 Apr 44, was deficient equipment, clothing and regimental necessaries as set out hereunder:-

Item	100% Vocab $ ¢	75% Vocab $ ¢
Anklets web	.77	.58
~~Boots ankle (1 pr)~~	~~4.81~~	~~3.61~~
Caps F.S.	.82	.62
Greatcoat	17.22	12.92
Shoes canvas	.74	.56
Socks (1 pr)	.37	.28
Braces	.29	.22
Caps Comforter	.25	.19
Gloves knitted	.59	.44
Knife Clasp	1.16	.87
" Table	.18	.14
Vests woollen (2)	2.28	1.72
Jersey Pullover	1.51	1.13
Dressing F.F.	.24	.18
~~Blankets (2)~~	~~6.04~~	~~4.54~~
Cape A.G.	4.43	3.32
Belt Waist	.97	.73
Braces R&L (PR)	.95	.71
Frog Bayonet	.21	.16
Haversack	2.14	1.61
Helmet Steel	2.39	1.79
Pouches Basic (Pr)	1.48	1.14
Straps Shoulder (Pr)	.90	.68
TOTAL	~~$52.24~~ 41.39	~~$39.24~~ 31.09

EWH

EWH

EWH

L. J. Flynn

(L J Flynn) Lt.-col.,
Commanding,
4 Cdn Base Rft Bn, 1 Cdn Base Rft Group - CMF

In the Field
26 Apr 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

E W Haldenby

(E. W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Group
Cdn Army - C M F

EWH

30 ~~29~~ Apr 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2853)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.63681	Pte		James, Elwin, Roy	DUNSFORD,	Carlt & York R. 1 Bn, 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 30 Apr 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". GWH

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~) GWH

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ GWH

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ GWH

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	S.C. HEYES	(CIC) 38 Cdn Base Rft Coy, 1 CBRGp

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	E.M. LEONARD	(CIC) 1 Bn 1 CBRD
Lieut	J. WASHBURN	(CIC) 2 Bn 1 CBRD

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut	to be detailed by OC 3 Bn 1 CBRD	

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.) — E.W. Haldenby (Signed personally. RP 105 (n 7.)) — Brigadier (Rank.)

(E.W. Haldenby)

Date 30 Apr 44 — Commanding 1 Cdn Base Rft Group

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE.

I certify that No. B 63681 Dunford J.E.R. ..... S. C. Heyes my Pres.

Regiment 4 Bn. ..... is @ ..... to undergo

trial by Court Martial.

@ Insert "fit" or "~~unfit~~".

3 May 44 F.P.

J. Dondenault Capt .....

Medical Officers Signature.

E1

B63681 Pte Dunsford J.E.R. Carlt & York R
4Bn 1CBRGp having been duly sworn
States:—

I joined the army active June 1940 & went overseas in July 41. I landed in Africa as a reinforcement 10 July 43. I joined the army to fight. Before leaving for Africa I was sent to 48th High of Canada as a Dr Mech reinforcement. Then I went to A coy Carlt & York Regt. 1Bn 1CBRD I asked numerous people in authority the reason for this. I spent from July 43 to Nov 43 with Carlt & York Reg. Landed in Italy in the latter part of Nov. All personnel that came with me have gone out to this F.U. on draft. I went to 4Bn 1CBRGp rear to Taranto. I was still with 4Bn when I went A.W.L. on the 8 Mar 44. I met numerous lads who had been up to the field & back again thru the hospital & numerous remarks were made to me about not going up. The next day I went A.W.L. Then I tried to get to Yugo-Slavia. I couldn't get there so I came back & met an American Inf outfit outside Avellino. I spent the last 25 days of my A.W.L. fighting the Germans with the American Inf unit. I can't tell ~~the~~ where I was fighting for the American Sgt I was fighting under should have turned me in.

In the case of B 6346 1 Pte Dunsford S.E.R.

Plea in mitigation.

The accused, Pte Dunsford, joined the army on the 12th of June 1940 — four years ago. During that four years he has had not one crime — think of that gentlemen, — not one crime !! His conduct sheet and statement as to character are absolutely bare.

The Accused joined the Army four years ago to fight the enemy. He wanted as some of us have wanted, to get into the fighting part of this war. But the Army, with normal bad man-management, put some poor blighter that had no desire to fight at all up in the line and kept the accused out; probably if his conduct sheet had been full instead of clean he would have got his wish.

The Army never properly allotted the accused to a unit. Latterly he was listed as Carleton & York but has never been anywhere near that unit. He was brought to Africa and later to Italy as reinforcement C.I.C and spent ~~few~~ months in this theatre without getting to the line.

Gentlemen the accused went A.W.L because he was heartily sick of the whole thing. He wanted to fight Jerries and he had waited four years, eight months of it in this theatre, without getting his wish. He went A.W.L, his first crime in four years, with the avowed intention of fighting Jerry. He was only away six weeks. During that time he ~~found~~ tried to cross to Yugo Slavia to fight with the partisans, he spent some time with the British Navy and he fought for three weeks with the American Army. He finally returned on his own volition and it is now his hope,

E1 B63681 Pte Dunsford J.E.R. Carlt & York R
4Bn 1CBRGp having been duly sworn
States: —

I joined the army active June 1940 &
went overseas in July 41. I landed in
Africa as a reinforcement 10 July 43.
I joined the army to fight. Before leaving
for Africa I was sent to 48th High of Canada
as a Dr Mech reinforcement. Then I went
to A coy Carlt & York Regt 1Bn 1CBRD I asked numerous
people in authority the reason for this.
I spent from July 43 to Nov 43 with Carlt
& York Reg. Landed in Italy in the latter part
of Nov. All personnel that came with me
have gone out to this Pte on drift. I
went to 4Bn 1CBRGp rear to Taranto. I was
still with 4Bn when I went AWL on the
8 Mar 44. I met numerous lads who
had been up to the field & back again thru
the hospital & numerous remarks were
made to me about not going up. The
next day I went AWL. Then I tried to
get to Yugo-Slavia. I couldn't get there
so I came back & met an American
Inf outfit outside Avellino. I spent the
last 25 days of my AWL fighting the
Germans with the American Inf unit.
I can't tell ~~the~~ where I was fighting for the
American Sgt I was fighting under should
have turned me in.

Queen by the Court

I won't ~~cant~~ not tell what front I was fighting on.

I won't tell the names of any towns passed thru' altho' my story might sound false it is true. And that is use I can say because I do not want to give any indication of the American unit I was fighting with

I actually joined the QOR of C in Jan 40 and was sent from their Rft unit when I went from hospital to become a general rft in Jan 43.

R.P. 83 (B) complied with.

In the case of B63681 Pte Dunsford S.E.R. [illegible]

Plea in mitigation

The accused, Pte Dunsford, joined the army for the 12th of June 1940 — four years ago. During that four years he has had not one crime — think of that gentlemen, — not one crime !!. His conduct sheet and statement as to character are absolutely bare.

The Accused joined the Army four years ago to fight the enemy. He wanted as some of us have wanted, to get into the fighting part of this war. But the Army, with normal bad man-management, put some poor blighter that had no desire to fight at all up in the line and kept the accused out; probably if his conduct sheet had been full instead of clean he would have got his wish.

The Army never properly allotted the accused to a unit. Latterly he was listed as Carleton & York but has never been anywhere near that unit. He was brought to Africa and later to Italy as reinforcement C.I.C. and spent ten months in this theatre without getting to the line.

Gentlemen the accused went A.W.L. because he was heartily sick of the whole thing. He wanted to fight Jerries and he had waited four years, eight months of it in this theatre, without getting his wish. He went A.W.L., his first crime in four years, with the avowed intention of fighting Jerry. He was only away six weeks. During that time he forced to cross to Yugo Slavia to fight with the partisans, he spent some time with the British Navy and he fought for three weeks with the American Army. He finally returned on his own volition and it is now his hope,

and mine, to see him accomplish in the near future what he set out to do four years ago — fight with a Canadian front line unit.

This is the accused's first and only crime in the Army — an A.W.L after four years service, — unfortunately not a very often beaten record. He went A.W.L for a purpose that, while contrary to military law is, — must be — morally acceptably to any of us. I have defended a good many Courts Martial but of them all I feel most behind the accused in this one — I believe his story of what he did during his A.W.L and I would like to see the Court award a suspended sentence and recommend Dunsford's return to a field unit at the front at the earliest possible opportunity.

Weskeight
Defending officer.

This is EXHIBIT "A" on the Summary of Evidence in the case of B 63681 Pte Dunsford J.E.R. taken before me this 21 Apr 44.

Sgd(G K Drynan) Lieut.

Pro Forma(in lieu of Army Form B-115).

RECORD of the Declaration of a Court of Inquiry assembled at 4 Bn 1 CBR Gp on the 14th day of April 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and the deficiency, if any, in the arms, ammunition, equipments, instruments, regimental necessaries or clothing of,

No. B 63681 PTE DUNSFORD J.E.R. (C&YR)

DECLARATION

THE COURT declare that No. B 63681 Pte Dunsford J.E.R. (CYR) on strength 4 Bn 1 C B R Gp illegally absented himself from 0700 hrs at FIELD, Italy, on the 8th day of Mar 44, is still so absent, and that on the 8 Mar 44 he was deficient and that he is still deficient of the following articles:-

Total deficiencies amounting to $79.58 as per attached list.

Names of President and Members.

President Capt C S Price RCA 4 Bn

Members Capt J D H Cameron CIC 4 Bn

Capt L C Willoughby CIC 4 Bn

Signed at FIELD ITALY
this 20th day of April 1944.

Signature of Commanding Officer (Sgd) L J Flynn, Lt.-col., Officer Commanding

Certified true copy.

J D Cameron, Capt a/Adjt.

(Sgd) [redacted]
Signature of Officer having custody of the Original Record.

This is the schedule to Exhibit A in the Summary Evidence in the Case of B63681 Pte & E R Dunsford [illegible] before me this [illegible]

D Coy 4 Bn 1 CBRGp.
KIT DEFICIENCIES OF B.63681 Pte Dunsford, J.E.R. 14 April 44.

	100% $	100% cts.	75% $	75% cts.
ANKLETS WEB		77		58
BOOTS ANKLE (2 prs.)	9	62	7	22
CAP F.S.		82		62
GREATCOAT	17	22	12	92
SHOES CANVAS		74		56
SOCKS WORSTED (3)	1	11		83
BRACES		29		22
CAPS COMFORTER		25		19
COMBS HAIR		04		03
FORKS TABLE		09		07
GLOVES KNITTED		59		44
HOLDALL		17		13
KNIFE CLASP	1	16		87
KNIFE TABLE		18		14
RAZOR		42		33
TOWELS HAND (1)		21		16
VESTS WOOL (2)	2	28	1	71
JERSEY PULLOVER	1	51	1	13
DRESSING F.F.		24		18
BLANKETS (2)	6	04	4	53
CAPES A.G.	4	43	3	32
BELTS WAIST		97		73
BRACES L & R Pr.		95		71
FROG BAYONET		21		16
HAVERSACK	2	14	1	61
HELMET STEEL	2	39	1	79
POUCHES BASIC	1	49	1	12
STRAPS SHOULDER Pr.		90		68
TINS MESS		57		43
RIFLE No. 4 MK. 1 COMPLETE	48	22	36	17
TOTALS 100%	$106.	02	75% $79.	58

This is Exhibit "C" in the Summary of Evidence in the Case of B63681 Pte J E R Dunsford taken before me 24 April [illegible]

21 April 1944

D COY 4 BN 1 C.B.R.Gp.

KIT DEFICIENCIES OF..B.63681.Pte.Dunsford.J.E.R.....

	.100%...		..75%..	
	$	¢	$	¢
ANKLETS WEB		.77		.58
~~BOOTS ANKLE (1 Pr)~~	~~4~~	~~.81~~	~~3~~	~~.61~~ SCH
CAPS F.S.		.82		.62
GREATCOAT	17	.22	12	.92
SHOES CANVAS		.74		.56
SOCKS (1 Pr)		.37		.28
BRACES		.29		.22
CAPS COMFORTER		.25		.19
GLOVES KNITTED		.59		.44
KNIFE CLASP	1	.16		.87
" TABLE		.18		.14
VESTS WOOLLEN (2)	2	.28	1	.72
JERSEY PULOVER	1	.51	1	.13
DRESSING F.F.		.24		.18
~~BLANKETS (2)~~	~~6~~	~~.04~~	~~4~~	~~.54~~ SCH
CAPE A.C.	4	.43	3	.32
BELT WAIST		.97		.73
BRACES R&L (PR)		.95		.71
FROG BAYONET		.21		.16
HAVERSACK	2	.14	1	.61
HELMET STEEL	2	.39	1	.79
POUCHES BASIC (Pr)	1.48 ~~1~~	~~.49~~ SCH	1.14 ~~1~~	~~.14~~ SCH
STRAPS SHOULDER (Pr)		.90		.68
TOTAL	41.39		31.09	
SCH	~~50.75~~ ~~52.24~~ (RP)		SCH ~~38.12~~ ~~39.24~~ (RP)	

W. Prior
A/COMS.

This is Exhibit B in the Survey of Evidence with the Case of B63681 Pte V E R Dunsford taken before me 24 Apr 44
Ex Hyman [illegible]

CERTIFICATE UNDER ARMY ACT, SECTION 163 (1) (j).

I Capt. A.E. Davidson certify that B63681 PTE. DUNSFORD J.E.R. of the Earlhogh York Regiment surrendered himself to N114993 Sgt Shuster S at 19.55 HRS. on the 20th day of APRIL 1944 as a deserter (or absentee without leave). HE WAS SOBER & WEARING UNIFORM

Date 21 Apr 44 1944 Signature A.E. Davidson Capt.

I request that ..... if available act in my defence. If this Officer is not available, I request that the Commanding Officer of HQ, 1 Cdn Base Rft Group, appoint an Officer to act in my behalf.

J.E.R. Dunford .....

LIST OF EXHIBITS:

EXHIBIT "A " Record of Declaration of Court of Inquiry.(and schedule)

EXHIBIT "B" Certificate of Surrender under AA Section 163 (1)(j).

EXHIBIT "C" Kit Deficiencies of accused.

LIST OF WITNESS FOR THE PROSECUTION:

A 22296 Sgt White J.P. Bn Orderly Room Clerk 4 Cdn Base Rft Bn.

B 112342 A/CQMS Prior N.R. 4 Cdn Base Rft Bn.

Date 28 Apr. 1944

Received from A Cdn Base Rft Bn, 1 Copy of Charge Sheet and Summary of Evidence Exhibits A, B & C. referring to a charge of AWL & Ret Deficiencies for which I was remanded for Court Martial

J E B Trumpf
(Signature)

Summary of Evidence
In the Case of B63681
Pte JAMES ELWIN ROY DUNSFORD (CYR.)
4 CBR Bn 1 CBR Sp CA; C.M.F.
Charged with: Absenting Himself Without Leave
(A.A. Sec 15(1))

EXHIBIT A
[illegible]

By direction of the Commanding Officer the evidence is taken on oath.

First Witness: A22296 Sgt WHITE, J.P., 4 CBR Bn, 1 CBR Sp.
duly sworn, states:

I am Sgt White, J.P., Orderly Room Clerk, 4 CBR Bn.

I produce a certified true copy of a declaration of a Court of Inquiry (and schedule thereto) purporting to relate to the accused.

I further produce a Certificate of Surrender under A.A. Sec 163 (1) (j) purporting to relate to the accused.

[signature] White

The accused declines to cross-examine this witness.

The declaration of Court of Inquiry (and schedule), and the Certificate of Surrender, mentioned by the witness, produced, read over to the accused, marked EXHIBIT A and EXHIBIT "B" respectively, signed by me and attached hereto.

[signature]
Officer Taking Summary

Second Witness: B112342 A/CQMS, Prior, N.R., 4 CBR Bn, 1 CBR Sp
duly sworn, states.

On 21 Apr. 44 I inspected the arms, equipment and clothing of the accused. I produce a document which I prepared as a result of this inspection. In the first column of this statement are set out the articles of which I found the accused to be deficient. The prices set out in the second column are the correct current vocabulary prices of the articles against

[signature] Prior

which they are set out. The amounts set out in the third column are the correct computed 75% values of the articles against which they are set out. The totals, being $52.24 and $39.24 are correct. All amounts are in Canadian currency.

N Prior

The accused declines to cross-examine this witness.

The document mentioned by the witness produced, read over to the accused, marked EXHIBIT C, signed by me and attached hereto.

J A Ryman Lt
Officer Taking Summary.

The accused was warned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence." The accused replied: "I do not wish to say anything at this time."

J C R Dunn Jr

The accused declines to call witnesses in his own behalf.

I certify that the foregoing Summary of Evidence, consisting of two pages was taken down by me in the presence and hearing of the accused and that RPH has been complied with.

J A Ryman Lt
Officer Taking Summary.

In the field
24 Apr 44

EXHIBIT C.

SUPPLEMENTARY

No. B.63681 Name Dunsford J E R | Sqn., Battery, or Company | Corps C.I.C. | Date of enlistment | Badges | Service or Proficiency Pay | M.F.M. G

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				"Certified true copy from Regt'l Books in my custody."					
				A E Davidson Captain					
				In the field (A E Davidson) Ad'utant					
				26 Apr. 44.					

(P.T.O.)

C-4-H-13-17 B

ARMY FORM B.200.

5 Cdn Armd Div

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B.63681	Pte	DUNSFORD JER	C & Y R 4 Cdn Base Rft Bn.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, provision being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	N/A times	N/A times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, N/A

or

There are no entries in the conduct sheets of the accused N/A

2. The accused has not been previously convicted, *or* N/A

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* ~~[illegible]~~

N/A beginning on the N/A day of N/A from 1955hrs 20Apr.45

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 12 days 6 hrs 5 mins days in military custody, making a total of 12 days 6 hrs 5 mins of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ / attestation paper is 25 yrs

6. The date of his ~~commission~~ / attestation specified in his ~~record of service~~ / ~~attestation paper~~ is 12 Nov 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). N/A

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated N/A and in his regiment (*or* corps *or* department) the rank of N/A dated N/A

(47)B/63681/1917 15,000 10/42 A.& E.W. Ltd. Gp.999
(47)B/63681/1917 15,000 3/43

Schedule of Convictions by a Court Martial or Civil Court or summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B.63681 Rank Pte Name DUNSFORD J E R of CYR 4 CBRBn Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
N/A	N/A	N/A	N/A	N/A

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3 day of May 44 A.E. Saunders Capt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

			Date of Promotion
In the rank of	* N/A	years,	N/A
In the rank of		years,	
In the rank of		years,	

(Corrections—*If any matter in any of the above paragraphs ceased to be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be inserted from such sources as are available and the paragraph countersigned, amended accordingly.*)

YYY-29

Ata Dumatan, D.J.

21

22

RECEIVED 4 OCT 1944 JAG BRANCH

RECORDED AT CMHQ IN AB 160. YYY-29 OK

FIELD GENERAL COURT-MARTIAL

CFA86 (To be used with AFA3) 40-P.A.S. (656) (2004)

Convened by Order of Brig. I.S. Johnston DSO, ED Comd 11 Cdn Inf Bde dated 10 Aug 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B.61754	Pte	Donald John	DUNSTAN	HQ 11 Cdn Inf Bde

PROCEEDINGS REVIEWED 5 Oct 44

JAG 77 W. J. Friel Capt.
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 15 Aug 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. As ~~are~~ hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~The President to accused: Do you object to be interpreted by ...~~ ~~or interpreter I Am~~

~~The Interpreter is sworn.(1) Do you object to be~~ ~~or shorthand writer I Am~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No, Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 15, 71, 187MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H A Snelgrove	Perth R
Member	Capt	S R Granger	HQ 11 C I B
Member	Capt	T Allen	P L Regt
Judge-Advocate	Capt	W M W Shaw	HQ 5 Cdn Armd Div
Prosecutor	Capt	K M Harrison	HQ 11 C I B
Defending Offr	Lt	G O G Phibbs	HQ 11 C I B

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Qu p 2.)

A8. The accused Before arraignment make(s) (no) (~~a~~) plea(s) ~~in bar of trial~~

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in this to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 112; where several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~endeavours~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

PART I. PL...

Accused: B61754 ... Donal...

Charge ... Plea.

(Insert "alternative" where applicable.) (See Instrs p 2.) (Space for use as required for further charges, accused charged jointly, special findings, etc.)

1st ...

...gs for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; ...44 and MML p 753, and in loss of kit see RP 44 fn b.)

...for beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 1 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To suffer FP for 75 days and to forfeit 75 days pay

(Sgd) W M W Shaw Capt — Judge Advocate, if any. 15 Aug 44 — Date awarded. (Sgd) I S Johnston — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn b, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the Court.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 7 Aug 44 (Sgd) Chas. Johnston Brig. Commanding 11 Cdn Inf Bde. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
B61754 Pte Dunston D.J.	22 Aug 44	[illegible] Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court dic see RP* 75-79, 85, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 104, 90.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. Yes, Sir (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the charge(s). The accused is [illegible] and he (they) [illegible] to the charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD [redacted] F NOT GUILTY TO ALL CHARGES.

D1. [redacted] nment on the ground that any of the rules relating to [redacted] you have been prejudiced thereby, or on the [redacted] defence ? Ans. .....(1)
(1. *RP* 37(*C*), 114, *KR Con* 555. *Record evidence per Notes.*)

[redacted] address. [redacted] record address per [redacted] 5(C).)

[redacted] for the Prosecution is taken.(1) [redacted]
(1. *RP* 37(*C*), 114, *KR Con* 555. *Record evidence per Notes.*) [redacted] *not giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr [redacted] idence for the Prosecution does not establish a prima facie case against the accused on the [redacted] charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-op[redacted] that [redacted] is disallowed on the ..... charge(s), [redacted] charge(s), and that, accordingly, the trial will proceed on the fo[redacted] (are) [redacted] the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *RP* [redacted] *per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* [redacted] *on all charges, use second alternative in para* D8.)
NB : *If trial proceeds, accused must be allowed great latitude in making h*[redacted] *solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You [redacted] yourself on oath as to the facts or your character or both, in which case you will be subject to cr[redacted] You may, however, make a statement without being sworn, and you will not be subject to cr[redacted] But a statement which could have been made on oath will not carry with the Court the same weight You may call witnesses in your defence and as to character. You give evidence on [redacted] neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. .....
Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fn* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf. AP5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 40(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Yes Sir
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (*g*) (*h*), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(1. *MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes thru Def Offr (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 40, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 71(*B*), 182, *RP* 46-52, 69, 118, 119(*A*), *KR Con* 308, 330, 563-565, *Overseas RD* 309, 334, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(*1*), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B.61754 Private Donald John DUNSTAN, Headquarters 11 Canadian Infantry Brigade, a soldier on active service, is charged with:

First Charge
Sec 15(1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field absented himself without leave from Headquarters 11 Canadian Infantry Brigade at 1200 hrs 21 Jul 44, and remained absent until apprehended by Military Police in CAPUA at approximately 0830 hrs 30 Jul 44. Total absence 8 days, 20 hrs, 30 mins.

In the Field
7 AUG 44

(N L Dutton) Major
DAA&QMG 11 Cdn Inf Bde

Bde Comd's remarks:

To be tried by Field General Court-Martial

Field
10 Aug 44

(I S Johnston) Br-G
Comd 11 Cdn Inf Bde

CFA95 (In lieu of AFA3)
40/P&S/1697 (2868)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.61754	Pte		Donald John	DUNSTAN	HQ 11 Cdn Inf Bde

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (date) 10 Aug 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs in total for Court, (b) [illegible] for the reason that [illegible]~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	H A Snelgrove	PerthR.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	S R Granger	HQ 11 Cdn Inf Bde
Capt	T. Allen	P L P

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	G K Drynan	I R C

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	W M W Shaw	HQ 5 Cdn Armd Div

On Active Service in the Fd

in Italy (Country.)

(I.S. Johnston) (Signed personally. RP 105 fn 2.) Brig. (Rank.)

Date 10 Aug 44

Commanding 11 Canadian Infantry Brigade
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use in trial.)

MEDICAL OFFICER'S CERTIFICATE

I certify that No. B.61754 , Pte Dunstan D.J. HQ 11 Gdn Inf Bde Regiment,

is fit to undergo trial by Court-Martial.

N.R.J. McMullen Capt
Signature of the Medical Officer.

Note Has scabies & desert sores - under treatment.

"Insert "fit" or "unfit."

15 Aug 44.

(a) Here insert name of:—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence (R.P. 19 (B) (iii)).

(b) To be filled in if there has been a Court of Enquiry respecting any matters connected with the charges; otherwise to be struck out (R.P. 19 (B) (iii)).

(c) To be filled in by the Commanding Officer.

(d) Any items not applicable to be struck out.

(e) One copy to be sent to the President; one copy to be filed with the application for trial.

(f) Original summary of evidence to be sent to the President.

(g) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.

(h) 5 and 8 to be sent to the President.

(If the accused has elected to be tried under A.A. 46 (8), the fact should be recorded at the top of this form.)

M.F.B. 321
40/F & S/650

WMWS

Statement by accd

On morning 21 Jne I left Bde at approx 1000 hrs under influence of alcohol. took containers to men's kitchen - later went back to old harbour to get shovels + laundry + had more wine. left house + some fellows met me + [illegible] drink - left then + went to Capua apprehended by MPs.

Character Evidence

1st Witness A54656 Sgt Miller, W

duly sworn states

"Known Dunstan since Nov [illegible] has been good worker + com[illegible] job - his job sanitation

Crass - has been away f[illegible] never had to be told wh[illegible] on strength of unit since Nov 4[illegible]

Re-Exam. - Nil

Court - Nil

R P 83(B) complied with

Plea in mitigation by Def Offr

"Accd affected greatly by drink influence hasn't full mental [illegible] very much more potent the[illegible]

[illegible]

SUMMARY OF EVIDENCE

in the case of

B.61754 Private Donald John DUNSTAN, Headquarters, 11 Canadian Infantry Brigade, a soldier of the Canadian Army on Active Service, is charged with:

(1) A.A. Sec 15(1) Absenting himself without leave.

R P 4 The Commanding Officer directs that the evidence be taken on oath.

First Witness: A.11185 C.S.M.(WO II) Bruce D.R., Headquarters 11 Canadian Infantry Brigade, having been duly sworn, states:

"On 21 Jul 44 I was, and still am, C.S.M. of HQ 11 Cdn Inf Bde. At approximately 1030 hrs I went through the Camp to find B.61754 Pte Dunstan D.J., to give him some instructions on sanitation. Each place I inquired throughout the Camp I was informed that Pte Dunstan had been seen proceeding to another part of the Camp. Arriving at the mens' kitchen at approximately 1145 hrs. I found that there was no hot water for the mens' dishes for the noon meal. Pte Dunstan was not to be found at 1200 hrs 21 Jul 44. I did not see Pte Dunstan again until he was brought back under escort at approximately 2030 hrs 31 Jul 44.

The accused declined to cross-examine the witness.

C.S.M. Bruce D.R.
(A.11185 C.S.M. Bruce D.R.)

Second Witness:

Captain J.E. Tyler, Headquarters 11 Canadian Infantry Brigade, having been duly sworn, states:

"I am Capt J.E. Tyler and I was on 30 Jul 44, and still am, Camp Commandant, Headquarters 11 Canadian Infantry Brigade.

As Officer in Charge of documents of this Headquarters, I hereby present as evidence, Exhibit 'A', certificate of arrest of B.61754 Pte Dunstan D.J., arrested at 0830 hrs 30 Jul 44, purporting to be a signed statement by Captain W. Newham, O.C. 501 Provost Coy, C.M.P.

evidence that
d at CAIUA, Italy,
e signed by 2 Cpl

The accused declines to cross-examine the witness.

(Capt J.E. Tyler)

The above Exhibits 'A' was read over to the accused and is attached hereto as evidence.

A
WOMACS

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be used as evidence."

"The accused wishes to make a statement NOT under oath."

Third Witness: B.61754 Pte Dunstan D.J., Headquarters 11 Canadian Infantry Brigade, states:

"I, B.61754 Pte Dunstan D.J., Headquarters 11 Canadian Infantry Brigade, declare that on the 21 Jul 1944, at approximately 1030 hrs, I was under the influence of alcohol."

D.J. Dunstan
(B.61754 Pte Dunstan D.J.)

The accused declines to call witnesses on his behalf.

I certify that R P 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this 7th day of August, 1944.

In the Field
7 AUG 1944

George F. Ryan
(G.F. Ryan) Capt
HQ 11 Cdn Inf Bde.

"A" Comds

This is Exhibit 'A' referred to in the Summary of Evidence.

Certificate of Arrest.

Certificate in accordance with the Army Act Section 163(i) (ii)

I certify that No. B. 61754 Rank Pte. Name DUNSTAN D. J.

Unit HQ Coy, 11th Cdn. Infantry Bn.

was arrested at 08 30 hrs on the 30th July 1944.

Signature of PM, APM, or other Officer into whose custody the above named was taken on arrest.

[signature]

Whew man capt.

O.C. 501 Provost Coy. C.M.P.

NB61754 Name Dunstan D.J. | Sqn, Battery or Company | #2 D.D. Ont Regt 'C' Wing Corps | Date of enlistment | 1-7-41 | OC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3428)

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | R.H. Dunn Lt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				SOS on transfer No.20 CA(B)TC Brant Pt II 160 A d/30/7/41					
Brantford	1 Sep	Tpr		AWL from 2145 hrs 1 Sept to 2255 hrs 1 Sept (1hr).	Cpl Harley Cpl Russell	14 dys C.B.	2 Sep 41	Maj Harris	
Brantford	19 Sep	"		Breaking out of Barracks on 19 Sept	Cpl Russell	7 dys CB forf 7 dys pay AA 46 2(d)	20 Sep	Col Weir	
				S.O.S. A.9 C.A.C.(A)T.C.(CA) ON TRANSFER TO CAN ARMY OVERSEAS 27-4-42.					
Dettinger Bks	31-5-42	Tpr		AWL from 2230 hrs 31-5-42 to 2230 hrs 31-5-42	L/Cpl Lacombe J.A. Cpl McCann	2 dys CB	2-6-42	Capt Vrooman	
In the Field	13 Aug 43	Tpr		AWL from 2230 hrs to 2315 hrs	Sgt Miller O.S.	2 dys pay FRI 149(2)	16-8-42	M.E.Clarke	Forf 2 dys FRI 149(1)(a)

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Fd	13Oct	Tpr		AWL 0800 hrs 13 Oct to 2000hrs 14 Oct (total 36 hrs)AA 15(1)	Sgt Miller	2 dys pay FWW FRI 149(1)(a) 7 dys pay 149(2)	16 Oct 43	M.E.Clarke Capt	
In the Fd	20 Nov	Tpr		Sec 15(1) AWL 2000 hrs 20 Nov 43 to 0545 hrs 23 Nov 43 (2 days 9 hrs 45 mins)	Sgt Miller (Doc)	14 days pay FRI (1)(a) 3 dys pay FRI (2)	24 Nov 43	M.E.Clarke Capt	Total Forf pay 17 days
Italy	6 Feb 44	Tpr		Sec 15(1) AWL 0600 hrs 6 Feb 44 to 1900 hrs 10 Feb 44(4 days, 13 hrs)	S/Sgt Drew	28 dys FP and 28 dys pay FRI (1) (a) 5 dys pay FRI (2)	19 FEB 44	Maj Jotcham T.D.	Total Forf pay 32 dys
Field	14 May 44	Pte		WOAS AA Sec 40 Neglect to Prej good order & Mil Disc in that he in the field failed to have hot water ready for mens' dishes at supper time, 1700 hrs 14 May 44	CQMS Morrow E.W.	3 dys pay FRI 149(1)(2)	16 May 44	MW Coward Capt	

No B61754 Name Dunstan D.J. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 1 Jul 41 GC | Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3458)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	30 Jun 44	Pte		A.A. Sec 15(1) WOA~ absenting himself without leave in that he in the field, absented himself without leave from 0830 hrs 30 Jun 44 and remained absent until 0630 hrs 1 Jul 44. (Total absence 22 hrs).	CSM Bruce DR A/Cpl Campbell D.R. L/Cpl Gilbert J.D.	15 days F.P.	3 Jul 44	Maj W C Dick B.M.	1 days pay FRI 149(1)(a) 15 days pay FRI 149(1)(b) Total forf 16 days pay

I certify that this is a true copy of the document now now in my custod , as officer i/c records.

Capt
(R.M. Harrison) Camp Comdt
11 Cdn Inf Bde.

(FTO)

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B.61754	[illegible]e	Dunstan D.J.	HQ 1[illegible] Cdn Inf Bde

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with.

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishments being given for the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 2 months.	*Since Enlistment.
For A.W.L.	times.	7 times.
For Neglect to Prej etc	1	1 times.
For Breaking barracks	0	1 times.
For	times	times.
For	times	times.

Number of occasions on which any of distinguished conduct

Nature of entries in conduct sheets to be noted

2. The accused has not been previously convicted, [illegible]

[illegible]

3. The accused is not under sentence at the present time, [illegible]

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 1 day in military custody, making a total of 1 day, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 31 yrs, 1 mth, 14 dys

6. The date of his attestation specified in his record of service is 1 Jul 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 yrs, 1mth, 7 dys.

[illegible]

9. The accused is entitled to reckon 3yrs, 1mth, 7 dys service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*) : C.V.S.M. and clasp

[illegible]

[illegible]

(*2864) W1.31705/1677 10,000 10/42 A.& E.W.Ltd. Gp.698
(2907) W1.30904/1257 [illegible] 3.43

"C"

Schedule of Convictions by a Court Martial or Civil Court, of summary awards un[illegible]tion 47 of the Army Act and of cases in which trial has been dispensed with of acc[illegible]

No. B.61754 Rank Pte Name Dunstan D.J. of 11 C dn Inf Re[illegible] as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations [illegible] be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	[illegible]	Punishment resisted.
		N A		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15th day of August 1944

(K M Harrison) Capt
Camp Cmdt 11 Cdn Inf Bde.

13. The accused has served as a non-commissioned officer continuously, with[illegible] [illegible] date,

In the rank of [illegible] years [illegible] date of Promotion.

In the rank of [illegible] years [illegible]

In the rank of [illegible] years [illegible]

(Inscription.—[illegible] any of the above [illegible] cannot be stated from the regimental books [illegible] must be struck through, except that in the case of a trial by field general [illegible] martial the information may be collected from such [illegible] available and the paragraphs concerned amended accordingly.)

EE-152
GNR DUPILKA J.

EE-152 8

Correspondence to be PINNED here

Army Form A.d.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

(A.) Order convening the Court.

On Active Service, this Fourteenth---------- day of ------ May----------, 19 42.

Whereas it appears to me, the undersigned, an officer in Command of 9 Canadian Infantry Brigade---------- ---------- ----------

2

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
M-36999 Gnr. J. Dupilka, R.C.A. att 6 Wing C.T.S.	Absent without leave A.A. 15(1)	Guilty	60 days det 20 May 43 J W Stanton Major	Confirmed N Gibson Brig

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (*to be recorded on separate sheet if necessary*):—

(Signed) ..... (Signed) J W Stanton

Commanding. (T. Gibson) Brig Comd 9 Cdn Inf Bde *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

3

I certify that the above Court assembled on the 20th day of May, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. B. Certificate of President as to proceedings.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The interpreter~~
4. The officers under instruction)

were duly sworn. * Omit if not applicable.

Signed this 20 day of May 19 43.

J W Stanton Major

President of the Court Martial.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

Signed this ..... day of ..... 19 .....

President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. D. Confirmation.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*I direct that the safety thereof be suspended until it is duly confirmed.~~

Signed this 22nd day of May 1943

(T. Gibson) Brig Comd 9 Cdn Inf Bde

Confirming Officer.

Promulgated and extracts taken in the case of M 36999 Gnr Dupilka J

(*a*) (Dated) 24 May 43 (Signed) B Shirtliffe Lt Col O.C. 6 (C.W.) Wing C.T.S.

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

"B" 3

Jim Douglas Major

CHARGE SHEET

The accused M.36999 Gnr Joseph Dupilka R C A posted to No 6 (C.W.) Wing, C.T.S. a soldier of the Canadian Army Overseas is charged with:-

FIRST Charge
A.A. Sec 15 (1)

When on Active Service

Absenting himself without leave

in that he

in the field absented himself without leave from 1210 hrs 9 May 43, after having been duly warned for kitchen fatigue, to 2145 hrs 9 May 43 (total absence 9 hrs 35 mins).

To be tried by Field General Court Martial
[signature]
16 May 43

F S Wilder

(F.S. Wilder) Lt.-col.,
Officer Commanding,
No. 6 (C.W.) Wing, C.T.S.

20
1/9

THE HIGHLAND LIGHT INFANTRY OF CANADA

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA. 557

I certify that I have this morning examined

M-36999 Pte. Dupilka, J. ..... and in my opin-
(Number) (Rank) (Name)

ion he is fit to undergo trial by Court Martial.

Category B_2 due probably to a chronic myositis and pes planus.

20 May 43
(Date)

J. Howard B. Ban Capt.
Medical Officer
Unit... Rel. I. of Canada

Jim Douglas Major
President

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at #6 Wing C.T.S on the 20 day of May 1943 by order of Brig. T.G. Gibson Commanding 9 Cdn Inf Bde dated the 14 day of May 1943

Major J.W. Douglas President. N.N.S. Highlanders

Capt A.C. Stewart Capt C.A. Bram. Members. S.D.&G. Highlanders H.L.I. of Canada

, ~~Judge Advocate~~ Jud

Trial of* M36999 Gen. Dupilka J. RCA. att'd #6 (CW) Wing C.T.S

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that ..... is not available to serve owing to~~ Jud

, ~~waiting member takes his place as a member of the Court.~~ Jud

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Capt G.A. Camsford. R.H.L.I. posted to #6 Wing C.T.S.

~~Counsel~~ ~~or~~ defending officer† Lt H.W. Purcell. Gen list att'd #6 Wing C.T.S.

At 2.23 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings. (A.)

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No, Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Jud Douglas Major President

M.F.D. 271

2

B

The President, members and ~~judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Major R. C. Honey. P.W.R. a/H'd 8 Div'g Highlanders

Charge-Sheet

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [~~first~~] charge against you, which you have heard read?

Question to the accused.

Guilty, Sir.

Answer.

~~Are you guilty or not guilty of the second charge against you, which you have heard read~~?

Question.

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read~~?

Question.

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read~~?

Question.

Answer.

The accused having pleaded Guilty to the charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Instruction.

President

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again:~~]

The accused M36999 Pte Dupicka J.R. R.C.A. is found guilty of the charge.

*The summary (or abstract) of evidence is read, marked "C", signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment ~~says~~

[~~he~~ hands in a written statement, which is read, marked "D", signed by the President, and attached to the proceedings.]

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

President

5

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No, Sir

Answer.

Evidence as to character.

"D" 14

Plea in Mitigation of Sentence of M36999 Gnr. Dupilka [redacted] Jr. for Douglas major President

Sir

I submit the following reasons for asking mitigation of Sentence of the accused.

1.

He has had no leave since 31st Oct.1942. This naturally would tend to brown off any soldier.

He claims the reason for this is due to the fact that he has had entries on his F.F.M. 6 since then, and could not get leave for this reason. Though leave is a privilege to be granted at the discretion of a soldiers C.O., it has caused him to feel that he was being punished unfairly as he had already paid the penalty for his crime and this caused him to justify to himself acts he normally wouldn't do.

2.

The man claims the work he has been doing the past few months is of no interest to him, that he has always wanted to learn a trade, and thus he has been further disatisfied.

3.

The accused claims hesuffers from chronic back trouble and that it has been aggravated by the work he was doing, that is kitchen fatigue, because of the dampness and continual bending over required. He claims the M.O. at 1 C.A.R.U. excused him from this type of duty telling him that he was not fit for it. This work has made him feel sick.

4.

In summing up I would ask that the courts martial consider these facts from the stand point of the accused , that there was no premeditation in to this crime rather only one of impulse caused by the accuseds feeling of frustration and persecution. Further I would draw your attention to the fact that though he has beenpunished in the past few months a considerable no. of times and rather severely, for this same type of minor crime it has in no way deterred its re-occurence. I wish to draw the courts attention to this in order to show that it will be the placing of this man in work he likes and is physically capable of doing that will make him an efficient soldier rather than punishment. I would also like the court to recommend, in order to satisfy the soldier in his own mind as to his physical health, that he be given a medical re-board.

H.W. Purcell Lieut.
Defending Officer.

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before Sentence*

~~*The Court being re-opened, the accused is again brought before it.~~

Evidence of character, &c.

Capt J.A. Cannalford RAI att'd ~~is duly sworn.~~

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes, Sir, I produce an M.T.A.G. and an M.F.B. 355 marked E+F.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked "E+F", signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes, Sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes, Sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes, Sir

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused.

The accused declines to cross-examine this witness

Question to the accused.

Do you wish to address the Court? *Answer.* No, Sir.

The Court is closed for the consideration of the sentence.

Jno Douglas Major President

7

F

Sentence

The Court sentence the accused M36999 Gnr Duplika J Sentence.

to undergo detention for 60 days

In the Field

20/May/43

[illegible] Douglas Major
President

"C" 12

SUMMARY OF EVIDENCE in the case of M.36999 Gunner DUPILKA, Joseph R.C.A. / Posted to No. 6 (C.W.) Wing, C.T.S.

On the demand of the accused the evidence was taken on oath.

1st WITNESS FOR THE PROSECUTION

K.9053 Cpl Elgie, G.H. No. 1 C.A.S.C.R.U. (Catering Wing) / Posted to No. 6 (C.W.) Wing, C.T.S. having been duly sworn, states :-

"I am the NCO i/c of the cookhouses of No. 6 (C.W.) Wing, CTS. On Friday morning , 7 May 43 Gnr Dupilka reported to me at the Men's Kitchen for kitchen duty and I told him that his duties were the washing of pots and pans, meat block, and table he would use to put his pots and pans on. I also told him he was to prepare any vegetables other than potatoes. Gnr Dupilka carried out his duties on Friday and Saturday. At approx 1115 hrs on Sunday, 9 May 43 the C.S.M. came to the Mess Hall and asked where Gnr Dupilka was. I told the C.S.M. that Gnr Dupilka had left a short time ago and had probably gone to wash. I was told by the C.S.M. to check Gnr Dupilka's whereabouts. I detailed Pte Martin T. to go to the hut in which Gnr Dupilka slept, and see if he was there. On the return of Pte Martin he told me he couldn't find Gnr Dupilka. I then went myself to the sleeping quarters and not finding Gnr Dupilka there, went to the ablution hut checking thoroughly, but he was not there. The C.S.M. returned to the kitchen at approx 1210 hrs and I reported Gnr Dupilka absent."

The accused declines to cross-examine the witness.

G. H. Elgie

K.9053 Cpl Elgie, G.H.

2nd WITNESS FOR THE PROSECUTION

L.22033 A/Cpl Fitzgerald J.T. No. 1 C.A.S.C.R.U. (Catering Wing) / Posted to No. 6 (C.W.) Wing, C.T.S. having been duly sworn, states :-

"I am the NCO i/c Mens' cookhouse and at approx 0930 hrs, 9 May 43 I told Gnr Dupilka to prepare carrots for Monday 10 May 43. At approx 1115 hrs 9 May 43, C.S.M. Ward came to the kitchen and not seeing Gnr Dupilka there inquired as to his whereabouts. I told him he was probably cleaning up after his morning work prior to serving the noon meal. At approx 1205 hrs when it came time to serve the noon meal Gnr Dupilka did not appear and I sent Gnr Blondin to tell him to come to the kitchen. Gnr Blondin returned in a few minutes and advised me that Gnr Dupilka's working clothes were lying on the bed and his dress clothes were gone. I reported Gnr Dupilka's absence to Cpl Elgie.

The accused declines to cross-examine the witness.

J.T. Fitzgerald

L.22033 A/Cpl Fitzgerald J.T.

3rd WITNESS FOR THE PROSECUTION

M.7002 A/ CSM Ward, A.T. R.C.E. / Posted to No. 6 (C.W.) Wing, C.T.S. having been duly sworn, states :-

"I am the C.S.M. of No. 6 (C.W.) Wing, CTS. At approx 1115 hrs Sunday, 9 May 43 I entered the Mens' Kitchen and noticed that Gnr Dupilka was not present. Between 1115 hrs and 1210 I checked the camp area and Gnr Dupilka was nowhere to be found. Gnr Dupilka did not return to the kitchen to assist with serving the noon meal which is the duty of the kitchen fatigue men. I then instructed Gnr Blondin to place Gnr Dupilka under open arrest when he returned to camp.

The accused declines to cross-examine this witness.

Ward A.T.

M.7002 A/ CSM Ward, A.T.

4th WITNESS FOR THE PROSECUTION

L.25 Gnr Blondin, W. R.C.A. / Posted to No. 6 (C.W.) Wing, C.T.S. having been duly sworn, states :-

"At approx 1210 hrs 9 May 43 I was detailed by C.S.M. Ward to make a thorough check of the entire camp which I did, and Gnr Dupilka was nowhere to be found. His fatigue trousers were lying on his bed. I was able to identify them as belonging to Gnr Dupilka. I reported back to CSM Ward and informed him that Gnr Dupilka was absent. CSM Ward then told me that if Gnr Dupilka returned, I was to place him under open arrest immediately. At approx 2145 hrs Gnr Dupilka entered his hut and I happened to be there at the time. I asked him where he had been and he said Worthing, and that he had come back on the last bus. I then placed him under open arrest and warned him for office at 0830 hrs Monday, 10 May 43. I am one of the Regimental Police of No. 6 (C.W.) Wing, CTS and was on duty from 0800 hrs 9 May 43 until 0800 hrs 10 May 43 and am in a position to know, and to my certain knowledge Gnr Dupilka did not return to camp between 1210 hrs 9 May 43 and 2145 hrs 9 May 43, when I saw him enter the sleeping quarters.

The accused declines to cross-examine the witness.

W. Blondin

L.25 Gnr Blondin, W.

The accused having been duly cautioned in accordance with Rules of Procedure 4 (E),

reserves his defence.

Certified that Rule of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.
Taken down by me in the presence and hearing of the accused this twelfth day of May 1943 at SANDGATE Pk., in the Field.

J.A. Camelford Capt.

(J.A. Camelford), Captain
Adjt & V.M. 6 (C.W.) Wing CTS

J.W. Douglas
Major
President

Old sheet destroyed on completion of 6 months service 24-11-42 JAAS

No. M. 36999 Name DUPILKA, J. Sqn., Battery, or Company: Corps l Bn Edmn R. Date of enlistment: 30-7-41 G.C. Badges: Service or Proficiency Pay: N-A

Date of last entry in Company Conduct Sheet: N-A No. and date of last drunk: N-A Period not reckoning towards freedom from extra fine: N-A Sheet No. 1 Signature O.C. Company, etc.: Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Edmonton	1-2-42	pte		AWL 3 hrs 15 mins, breaking into at 0115 hrs 31-1-42	L-cpl Mc Pherson	5 days C.B.	2-2-42	AH Elliott	JAAS
Edmonton Alta	5-2-42	pte		AWL from 1330 hrs 5-2-42 until surrendering himself at 2210 hrs 9-2-42(4 days 8 hrs 40 mins) (2) Deficient in equipment and necessaries to value of $28.37	cpl Gordon	28 days Detn Stoppage of $28.37	11-2-42	Major A.H. Elliott	Forf 28 days pay FR&I 149 (2) Forf 5 days pay FR&I 149 (1) (a) Stoppage of pay $28.37
Currie Bks	4.5.42	gnr		Without urgent necessity quitting the ranks (AA 15 (2)	A L cpl Gunther, A.W.	3 days C.B.	6-5-42	Capt Donaghy, D.S.	
In the Field	31 Dec 42	gnr		AWL from 2359 hrs 30 Dec 42 to 0845 hrs 31 Dec 42(8 hrs 46 mins) AA 15 (1)	Sjt Ward	7 days C.B.	2 Jan 43	RA Klaehn capt.	Forf 1 days pay FR&I 149 (1) (a)

(P.T.O.)

16

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	30-1-43	gnr		AWL from 2359 hrs 30 Jan 43 to 1530 hrs 31 Jan 43(15 hrs 31 mins) AA 15 (1)	Pte Williamson Sjt Ward Documentary	Forf 7 days pay FR&I 149(2)	1-2-43	FS Wilder Lt.-col.	1 days pay FR&I 149 (1) (a)
In the Field	10Feb 43	gnr		WOAS-AWL from 1730 hrs 10 Feb 43 to 2000 hrs 10 Feb 43(2 hrs 10 mins) failed to report for Guard Duty having to be replaced) AA 15 (1)	Documentary Pte Williamson Sjt Ward.	14 days pay	14 Feb 43	FS Wilder Lt.-col.	Forf 1 days pay FR&I 149 (1)(a)
In the Field	20 Feb 43	gnr		First Charge AA Sec 22-WOAS escaped from lawful custody Cost of return to unit 7s 8d Second Charge AA Sec 15 (1) WOAS-AWL from 2300 hrs 20 Feb 43 to 0930 hrs 22 Feb 43(34 hrs 30 mins	A Sjt Jones Documentary	Stoppageof 7s 8d 28 days Detn.	25 Feb 43	FS Wilder Lt.-col.	Total Forf 33 days 10 days con with pre pun plus 7s 8d stoppage JAC
In the Field	22-3 43	gnr		Granted 2 days remission of sentence awarded 25 Feb 43	JAC				

M.F.M. 6
A.F.B. 122
175M—7-41 (1219-20)
H.Q. 1772-20-1452

No. · Name · Sqn., Battery, or Company · Corps · Date of enlistment · G.C. Badges · Service or Proficiency Pay · Character

Date of last entry in Company Conduct Sheet · No. and date of last drunk · Period not reckoning towards freedom from extra fine · Sheet No. 2 · Signature O.C. Company, etc.

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	28 Mar 43	gnr		AA 15 (1) AWL 4 hrs another soldier had to be detailed to take his duty	CSM Ward L cpl McGill, A.	14 days C.B.	30-3-42	FS Wilder Lt.-col.	Forf 1 days pay FR&I 149 (1)(a)
In the Field	3 Apr 43	gnr		WOAS Breaking out of bks whilst C.B. AA Sec 10	L cpl McGill, A. L cpl Williamson, J.	28 days F.P. and 28 days forf pay	5-4-43	FS Wilder Lt.-col.	

CERTIFIED TRUE COPY 13 May 43

(J.A. Camelford) Captain, R.H.L.I.
Adjutant & Quartermaster,
No. 6 (C.W.) Wing, C.T.S.

"F"

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M.36999	Gunner	Dupilka, Joseph	R.C.A. Posted to No. 6 (C.W.) Wing, CTS

1. The following is a fair and true summary of the entries in the Regimental conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. 15 (2)	1 times	A.A. Sec 15 (2)	1 times
For	A.A. 15 (1)	5 times	A.A. Sec 15 (1)	7 times
For	A.A. 22	1 times	A.A. Sec 22	1 times
For	A.A. 10	1 times	A.A. Sec 10	1 times
For	A.A. 24 (2)	1 times	A.A. Sec 24 (2)	1 times

There are no entries in the conduct sheets of the accused for gallantry or distinguished conduct

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

3. The accused is not under sentence at the present time

4. The accused has been in confinement awaiting trial on the present charges, 11 days in military custody, making a total of 11 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 24 yrs & 8 mos

6. The date of his attestation specified in his attestation paper 15 Sep 41

B.A. 7. ~~The service which the accused is allowed to reckon towards discharge is~~

B.A. 8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

B.A. 9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military military possession of or entitled to). State any air force decoration or air force reward.

B.A. 10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of

N.A. ~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force

unit

dated , and in his regiment (or corps), the rank of

dated .

N.A. 12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

~~In the rank of~~ years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

(N.A.)

~~(If convictions by a court-martial or civil court, or summary awards under Section 47 of the Army~~ Air Force

Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13th day of May 1943 Capt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

President

4I 75

PTE DUPONT D

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-157713 Pte (A/Cpl) Donat DUPONT, Fus M R, 11 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st ~~Cor~~ Charge	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, end in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~(remaining sts state)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 26 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of 120 days.

(Sgd) ~~Judge Advocate, if any~~ 6 Dec 44 (Sgd) R Cumard. Maj President. (RP 45, 50.)

Date awarded.

(See note of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53. NML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 7 Dec 44 (Sgd) G Francoeur Commanding 2 CBRB Brig Confirming Offr.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D157713 ~~Pte~~ A/Cpl Dupont D (Fus M R) 11 C BR Bn	8 Dec 44.	D Stewart Capt Adjt 11 CBR Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4/I 7

FIELD GENERAL COURT-MARTIAL

CF A68 (To lieu of AFA2) 40 F & S/1698 (1942)

4/388

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 4 DEC 44

RECEIVED 21 DEC 1944 Army Group Records

PROCEEDINGS REVIEWED Date 14 Dec 44 D.J.A. Gen. Staff GHQ 21 Army Gp

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent and confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-157713	PROCEEDINGS REVIEWED 21 Dec 44 (Pte)	Donat	DUPONT	11 CBR Bn

Part R. Beaudrille Capt REVIEWING OFFICER, HQ BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date) 6 DEC 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OF JA. The Schedule referred to throughout is on p 4. Citations to NOT include all relevant fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for words and instrs on how to record addresses, evidence, etc, which instrs are hereinafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~are~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Are you object to~~ ~~no interpreter I. Asst~~ ~~The Interpreter or sworn(1) Are you objected to~~ ~~no shorthand writer I. Asst~~ ~~The shorthand writer is sworn~~ (1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 116. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 31, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J E FARNCOMB, ED,	CIC,	13 CBR Bn
Member	Capt	J C Pamburn	CIC	12 CBR Bn
Member	Lt	G McRae	RCA	12 CBR Bn
~~Judge Advocate~~				
Prosecutor	Lt	A T Mann	CIC	11 CBR Bn
Defending Offr	Lt	H G G Forest	CIC	11 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused D-157713 Pte (A/Cpl) DUPONT D. before arraignment make(s) (no) ~~a~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (DB), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 73, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use seperate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*ii*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge, call witnesses as to character and make an address in mitigation of punishment.[2]
(*1. RP* 35 *fn* 3. *2. MML p* 34 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge[1]. If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused : Do you wish to make a statement ? Ans. No [5]
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 3 *para* 3, *MML p* 34 *para* 47. *4. See para* E3 *of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement (i) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty as to charge(s). The accused is (are) so informed, and he (they) (change(s) his (their)) plea(s) as to charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge to which the plea of Guilty is (was) not changed the President records findings of Guilty in Part I of the Schedule.[1]
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.[1]
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*1. RP* 37(*A*) (*ii*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....[1]
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(*1. RP* 39(*B*), 60(*A*) (*B*). 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.[1]
(*1. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 4. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[2] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[3] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP* 115. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 895. *Evidence for accused as to his character should, if on his oath/affd, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E3 *of Record Form E. Record, per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is cleared to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(*1. RP* 43, 116(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(*1. AA* 54(*7*) (*d*), *RP* 45, 120(*A*). *2. AA* 54(*5*), *RP* 45, 120. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?[1]
Ans. No
(*1. If evidence has alreadly been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement[1] as to Character and Particulars of Service[2], ~~and certified true copy/copies of Conduct Sheet(s)~~[3], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" ~~and Ex ..... respectively~~.[4]
(*1. MFB* 355 *or MFB* 296. *2. MFM* 6. *3. RP* 46, *KR Can* 538. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?[1] Ans. No Yes [2]
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(*1. AA* 54(*5*), *RP* 120(*A*).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 343-366, *Overseas RO* 309, 2323, *MML p* 86, 737-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(*c*), *KR Can* 364. *2. RP* 50. *As to release from arrest be Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused D-157713 Pte A/Cpl Donat, DUPONT (FMR) 53 Coy 11 C.B.R.Bn. a soldier of the Cdn Army Overseas is charged with:

FIRST CHARGE
AA Sec 15 (1)

WHEN ON ACTIVE SERVICE, ABSENCE WITHOUT LEAVE

in that, he,

In the Field at 0830 hrs 24 Oct 44 did absent himself without leave until apprehended at 1400 hrs 10 Nov 44.

(Total time of absence: 17 days, 5 hrs and 30 mins)

.....
(G.H. LOGIE) lt-col,
Officer Commanding,
11 C.B.R.Bn.

In the field
1 Dec 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G Francoeur) Brig
Comd
2 Cdn Base Rft Gp

In the Field
4 DEC 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-15/7713	Pte	(A/Cpl)	Donat	DUPONT	Pnl M R, 11 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 4 DEC 44 endorsed by me, ~~(or by an offr of my staff (or me))~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior (qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if not appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J E FARNCOMB, ED,	CIC, 12 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by OC 12 CBR Bn	12 CBR Bn
Lieut	To be detailed by OC 12 CBR Bn	12 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	To be detailed by OC 10 CBR Bn	10 CBR Bn

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 4 DEC 44

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(G Francoeur)

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for blocks and notes for use on trial.)

4/38A (For AAG, 1st Div of AFHQ) WO 213 & 1697 (4601)

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined D157713
(No.)

A/cpl. Dupont. D. and in my opinion he is
(Rank) (Name)

fit to undergo trial by Court-Martial.

Station Field

Date 6 Dec 44

[illegible] (Sgd)
Medical Officer

C B R BN
(Unit)

Page (1) Plea in mitigation of punishment.

This soldier has been three months in action with the F M R, has been wounded, and while at the Convalescence depot, his wound not being healed completely, thought he might wait for a future draft, unfortunately the Provost caught up with him, and he admits it. He is anxious to go back with his unit. I ask the court to deal lightly with him.

Robert Ford Lt

SUMMARY OF EVIDENCE

IN THE CASE OF D157713 Pte A/Cpl Donat, DUPONT (FMR) 53 Coy 11 C.B.R.Bn, a soldier of the Cdn Army Overseas, charged with:

ABSENCE WITHOUT LEAVE

COURT OF INQUIRY

A certified true copy of Declaration of Court of Inquiry investigating and recording the absence without leave of D-157713 A/Cpl Dupont, D. produced as documentary evidence was read over to the accused, marked Exhibit "A" by me and attached hereto.

.....
(A.T. Mann) Lt.

CERTIFICATE OF APPREHENSION:

The Certificate of Apprehension produced as documentary evidence was read over to the accused, marked Exhibit "B" by me and attached hereto.

.....
(A.T. Mann) Lt.

The accused was cautioned as follows:

"Do you wish to make any statement or give evidence on oath ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you may give will be taken down in writing and may be given in evidence".

The accused does not wish to make any statement
The accused does not call any witnesses.

-R.P. 83 (B) have been complied with.

I CERTIFY THAT THE FOREGOING SUMMARY OF EVIDENCE CONSISTING OF ONE (1) PAGE WAS TAKEN DOWN BY ME IN THE PRESENCE AND HEARING OF THE ACCUSED AND THAT RP-4 (c)(d)(e) and (f) HAVE BEEN COMPLIED WITH.

.....
(A.T. Mann) Lieut
Officer detailed to take
SUMMARY OF EVIDENCE

In the Field
1 Dec 44

Exhibit "A"

This is Exhibit "A" referred to in the Summary of Evidence in the case of D 157713 Cpl Dupond D. taken before me this 1st day of Dec 44 [illegible]

CERTIFIED TRUE COPY

R E C O R D of the Declaration of a Court of Inquiry assembled In the Field on the 15th day of November 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D 157713 Cpl. DUPOND, Donat (Convalescent) Fusiliers Mont Royal

D E C L A R A T I O N

The Court declare that No. D 157713 Cpl. DUPOND, D. Fus. Mont Royal (Convalescrnt) illegally absented himself without leave In the Field at 0830 hrs. on the 24th day of Oct 44; and that on the 24th Oct 44 he was deficient, and that he is still deficient of the following articles:-

ARTICLES	VALUE	ARTICLES	VALUE
N I L		N I L	

Signed In the Field

this 16th day of Nov 1944

Capt. J.A.G. Page President
Lieut. C.E. Hornecastle Member
Lieut. W.H. Mc Kenzie Member

Signature of Commanding Officer J.R. CAIKIN, Lt.Col.

Certified True Copy

(G.W. RAHM) CAPT. & ADJT.
Officer having Custody of Original Rec

This is Exhibit "B" referred to in the summary of Evidence in the case of D157713 Cpl Dupont D. taken before me this 1st day of Dec 44 [illegible] Officers detached to Lake S/E

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT

SECTION 163 (1) (jj) (A.C.I.2253 of 1942)

I certify that (No) D157713 (Rank) Cpl.

(Name) DuPont D. (Unit) Fusiliers Mont Royal

was arrested at (place) Paris

at (hour) 1400 hours on (date) 10th November 1944

He was dressed in military uniform / civilian clothes * (strike out whichever inapplicable)

Signature of Provost Marshal A.P.M. or other officer into whose custody the above-named person was taken after arrest

[illegible] Capt.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
D 157713	A/Cnl	Dupont, D.	(FMR) 11 C.B.R.Bn.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For NO MEM & AVAILABLE ..... times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 26 days in military custody, i.e., nil days in open arrest, 26 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 23 yrs.

6. The date of his attestation / calling up for military service is 16 Jan 43

7. The service which the accused is allowed to reckon is 1 yr. 11 mths.

8. The accused is in possession of † CVRM & clasp

†State the military decorations (if any) held by accused.

9. (If the accused is a warrant officer or N.C.O.). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of Pte.	
In the war substantive rank of	
In the acting rank of Cpl.	6 Sept 44

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Exhibit "B"

[signature]

WL 13479/2857 30,000 1/44 51-432 T.Ltd. Form B.296/War/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N/A		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ~~Fifth~~ Sixth day of December 1944.

D. Stewart, Capt.,
Adjt., 11 C.B.R. Bn.

4F. 42 —
Pte Dupont F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E-23007 Pte Fernand DUPONT, R de Mais, 11 CBR Bn

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec 12 (1)	Not Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in case of kit see RP 44 fn 6.)

~~At present~~ ~~expires sentence for~~ ~~beginning on date~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which 8 of days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of nine months.

(Sgd) E E Pearlman Capt 14th Nov 44 (Sgd) A E Kelsey Major
Judge Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and dispersal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 33, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 171 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be put committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 15 Nov 44 (Sgd) G Francoeur
Commanding 2 CBRG
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
E23007 Pte Fernand Dupont R de Mais, 11CBRBn	18 Nov 44	J M Fauteux Capt adjt 11 CBR Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 45-42

REC 1 DEC 1944 CMHQ

FIELD GENERAL COURT-MARTIAL

CP(AS) (to limit of AP(AS) 40/P & B/1808) (40/HQ) 4/38B

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 11 NOV 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent & confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-23007	Pte		Fernand	DUPONT	R de Mais, 11 CBR Bn

PROCEEDINGS REVIEWED
J C Campbell Major
2 Dec 44
REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held at the Ed h (locality) on (date) 14 NOV 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. (G 89)

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OF JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for certs and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 36, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (or attached thereto.(1)) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to LT Thivierge JG as interpreter? Ans No Sir.

The Interpreter is sworn.(1) ~~Do you object to the shorthand writer being sworn.~~ ~~the shorthand writer is sworn.~~ (1) ~~Ans~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No Sir. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A E KELSEY	OIC, OC 20 Cdn Spec Emp Coy
Member	Capt	D E VERMETTE	OIC, 11 CBR Bn
Member	Lieut	L J R LEVESQUE	OIC, 11 CBR Bn
Judge-Advocate	Captain	E E PEARLMAN	ADJA, HQ 2 CBRG
Prosecutor	Lieut	A T MANN	OIC, 11 CBR Bn
Defending Offr	Lieut	J J M M ALLARD	OIC, 11 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused E-23007 Pte DUPONT F. before arraignment makes(s) (no) ~~of~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~arraigned~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, deletes and make appropriate record per Notes.)

A10. The Court ~~considered~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vol 2 p 52.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 3rdntrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 105 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 4.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 5, MML p 54 para 47.* 4. *See para E2 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) to which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are to be read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No Sir.(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevence.* (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans No Question. Do you intend to call witnesses on your behalf ? Ans No Sir. Are they witnesses as to character only ? Ans N/A.
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 80(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 41, 105(c).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Para 1 of the Schedule is dated and signed.(2)~~
(1. *AA 54(2) (c), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), ~~and certified true copy (copies) of Conduct Sheet(s)~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" ~~and Ex .....~~(3).
(1. *MFB 332 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) ~~and Conduct Sheet(s)~~, and in mitigation of punishment ?(1) Ans No Sir - I have May Day Effects - See Note.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (2). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-738. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A21

CHARGE SHEET

The accused E-23007 Pte Fernand DUPONT (R de Mais) 52 Coy, 11 CBR Bn, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
AA Sec 12(1)

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY's SERVICE

in that he

IN THE FIELD at 0900 hours, 31 Oct 44, having been warned for draft to proceed to t he field with intent to avoid so proceeding absented himself without leave until 2200 hours 31 Oct 44.

(Total time absent 13 hours)

.....
(G. H. LOGIE) Lt Col
Commanding Officer
11 CBR Bn

In the Field
2 Nov 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G Francoeur) Brig
Comd
2 Cdn Base Rft Gp

In the Field
11 NOV 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see *MML* Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-23007	Pte		Fernand	DUPONT	R de Mais, 52 Coy, 11 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 11 NOV 44 endorsed by me, ~~(or by an offr of my unit for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	A E KELSEY (Must be named. RP 106.)	CIC,	OC 20 Cdn Spec (Unit.) Emp Coy.

MEMBERS.

Capt	To be detailed by OC 11 CBR Bn	11 CBR Bn
Lieut (Rank.)	To be detailed by OC 11 CBR Bn (Named or detailed. RP 106.)	11 CBR Bn (Unit.)

WAITING MEMBER.

Capt (Rank.)	To be detailed by OC 11 CBR Bn (Named or detailed, if any. RP 106.)	11 CBR Bn (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	E E PEARLMAN (Must be named, if any. RP 106.)	ADJA, HQ 2 CBRG (Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 11 NOV 44

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(C Franceour)

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and rules for use on trial.)

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined E23007
(No.)

Pte DUPONT, F. and in my opinion he is
(Rank) (Name)

~~unfit~~ fit to undergo trial by Court-Martial.

Station Field

Date 14 Nov 44

S. Segalles Capt RCAMC (S Gd)
Medical Officer

11 CBR Bn
(Unit)

D 3. Page! 1st Witness for Prosecution

Capt. D. L. Stewart 11 CBR Bn - duly sworn states

At approx 1415 hrs 30 oct 44 I called a muster roll of personnel selected for a draft - the accused was on this draft responded properly to the roll & fell in with the draft party. I then warned them for draft as follows " you have been selected to proceed on draft and you are now warned that you must be present and ready to leave when the draft is despatched - any unauthorized failure on your part to proceed with this draft when it leaves will result in a charge of desertion on Active Service - later you will be called on parade and the exact date & time of departure will be told to you. I then warned this draft they were confined to Barracks & that they would parade at 0900 hrs 31 oct 44 ready to march out. To ensure complete understanding I instructed Sgt Gauthier to repeat these warnings in French - this was done in my presence. After questioning to ensure that all present heard & understood these warnings the accused signed an acknowledgment of the draft - I produce original draft warning which the accused signed in my presence. The handwriting below the typewritten headnote is my handwriting. Draft warning initialled & marked Ex "A"

At approx 0900 hrs 31 oct 44 I called the roll of this draft on their marching out parade. The accused whose name was on this roll did not answer his name. Just before this draft moved off a further check revealed the accused was still absent & he did not move off when the draft left at approx 0900 31 oct 44

D3

Cross Examn — I instr Sgt Gauthier to repeat my warnings in French & this was done in my presence I do not understand French very well. From my knowledge of previous warnings given in French I am satisfied that Sgt Gauthier carried out these instructions.

RP 83(b) complied with

2nd witness for the prosecution

B-130507 Sgt Gauthier J - 11 CBR Bn duly sworn states —

At approx 1415 hrs 30 Oct 44 I was draft Sgt & was present when the draft was being warned by Capt Stewart. The accused was present on this draft parade. On instr from Capt Steward I read the draft warning in French — the witness identifies Ex "A" having exactly the same wording as the warning which was read by him in French.

Pte Dupont was the only one on parade not understanding English. I stood beside him & read out the warning in French — and I warned him for a draft parade at 0900 hrs 31 Oct 44 and he understood the warning.

Cross Examn — I am not sure whether I read in English & translated it or whether I read a French warning but I am sure I warned the accused in French in the same words as in Ex "A". I cannot say it is in exactly the same wording. I read the warning as I was standing beside Pte Dupont.

D 3

By the Judge Advocate —

In order to avoid any misunderstanding please state to the Court the Warning that you say you gave the accused on 30 Oct 44.

Ans. I warned the accused - "you have been selected to proceed on a draft - any unauthorized failure to be present when the draft is due to depart will result in a charge of desertion W.O. H.S. Prior to the departure of the draft there will be a parade called & all personnel on draft must be on it. The day is C.B until moving out orders - There will be a parade the next morning (Oct 31 44) at 0900 hrs - a marching parade with full pack ready to go". All this was said in French and I am sure the accused heard & understood it. I am sure of the wording of the draft generally as I am draft Sgt and give the same Warning or words to the same effect at all draft parades.

R P 83(b) complied with

3rd Witness for the Prosecution

19-62361 C.S.M. Jackson H - 11 Bn
duly sworn states

on 30 Oct 44 at 1415 hrs. I was present when Capt Stewart warned the accused that he had been selected for draft & that the draft would proceed at 0900 hrs the following day. Capt Stewart with Sgt Gauthier to translate the warning in French. On 31 Oct 44 at 0900 hrs the draft was called to proceed forward — the accused

~~he~~ name was called, he did not answer and the did not proceed with the draft. I then had a search made of the Coy lines for the accused but did not locate him. At 2200 hrs 31 Oct 44 the accused reported to me & I placed him under arrest the following morning.

Cross Examn - I do not understand French and I am not sure whether the warning which Sgt Gauthier gave the accused was the same Warning as given by Capt Stewart in English

4th Witness for the Prosecution -

B-63755 Sgt Hemmings J.

This witness is called by the Prosecution on the request of the Accused. and is cross examined by the Def Officer.

Q Were you present on the 30 Oct 44 when Capt Stewart warned the draft incl the accused A. Yes Sir.

The Prosecution does not call the witness Sgt Barstow a witness in the Summary & the Defence does not request that he be called.

Prosecutors Address EEP D.6. [illegible]

(in the case of E23007 Pte Dupont F.)

Mr President, Members of the Court:-

You have just heard the evidence & are aware of the important facts that surround the case what I wish to do is merely sum up these facts & bring up some points for consideration.

First of all - the accused is charged with desertion but it is a special type of desertion. It is not a question of leaving the army & intending never to return. This a the type of desertion where the a soldier having been duly warned to proceed on a draft, absents himself without leave with intent ~~in order~~ to avoid proceeding on that particular draft. This type of desertion may not be as common but it is every bit as serious, and with the evidence that the court has before it I am certain that there can be no doubt that the accused is guilty of this type of desertion.

There is no doubt that the accused was warned for draft. He was warned by Capt Stewart & the warning translated into French by Sgt Gauthier. Being the only ~~A~~ soldier on that parade who did not understand Eng. Sgt Gauthier stood beside him & warned him personally - the accused heard & understood that warning & signed an acknowledgement of it.

Having been duly warned the accused absented himself without leave. When the draft parade was

called the following morning the accused was not present. An effort was made to locate him but he could not be found & the draft was taken to the assembly area without him. I maintain that the only reason he could not be found was because he intended to avoid proceeding with this draft.

The defence is dubious as to the exact words of the warning. To my mind the exact words of the warning are not important. I do not believe it makes any difference whether the warning was read or translated as long as the significance of the warning is made known to the accused.

Sgt Gauthier states beyond any doubt that
1 the accused knew he was on draft, 2 that the accused was warned he would be charged with desertion if unauthorized he failed to proceed with the draft, 3 that the draft would parade at 0900 hrs the next morning 31st Oct ready to move off; 4 & that they were confined to barrack untill that time. Aware of all this the accused absented himself without leave & not only did not show up in the morning but stayed away untill night. I maintain that he stayed away all day in order to make certain that the draft for which he was warned moved off without him. The ~~accused~~ defence claims ~~he did not~~ that

there is no witness to corroborate that sgt Gathier stated the time that the draft would move off. I would like to point out that sgt Gauthier gave his evidence on oath & has nothing to gain by this evidence. The accused has a lot to gain. Moreover the accused was in a room with other personnel warned for same draft & they proceeded with this draft.

I am certain that there can be no doubt in the eyes of the court & that the court will find the accused guilty of the charge against him.

D.6.p4

In the case of Pte Dupont, the draft warning was given in English and some ~~addition~~ hand writing were added to the draft warning and written by Capt Stewart. Sgt Gauthier is not sure if he translated the same warning used for the English speaking personnel or used a French Form. But as a French Form there is not hand writing adding. The prosecuting officer never proof which upheld that if a warning was given and Sgt Gauthier have no witness to prove that he gives a complete warning with the hand written lettering.

C.S.M. Jackson is present but he don't understand french

D.6.p5

This soldier enlisted 37 months ago, as clean record been in action for 60 days and he was evacuated to the hospital. He don't understand the English language and he said that I never received from Sgt. the time and date of the draft departure.

Sir, has nothing was proof that this soldier was duty and completely warned in the language he understand, I will ask this court to find him ~~this~~ not guilty

D6p6 E.D.

The Judge Advocate Sums up

The accused is charged with a special type of desertion - namely avoiding a draft after having been duly warned for said draft.

The criterion between desertion & A.W.L. is intent but the intent to be proved in this case is not whether the accused intended to return to the army but whether he intended to avoid the draft for which he was allegedly warned.

The court should carefully weigh all the evidence before it and decide on that evidence whether the prosecution has proved

(a) That the accused was warned for draft
(b) That the accused heard & understood the warning
(c) That the accused was A.W.L. with the intent to avoid proceeding on said draft
(d) That the draft proceeded without the accused.

The accused is presumed innocent until proved guilty. In other words it is for the prosecution to prove the accused guilty & not for the accused to prove himself innocent.

The accused is entitled to the benefit of any reasonable doubt. A reasonable doubt being a doubt which under similar circumstances any reasonable man would entertain & not an imaginary or fanciful doubt.

In this matter the court may find any one of the following verdicts

(a) not guilty of any offence, or
(b) not guilty of desertion, but guilty of A.W.L., or
(c) guilty of desertion

D6p7

That is all I propose to say unless the President, Pros or Def Officers desire me to advise the Court further on any matter

EE 8 E.3.

23 Plea in Mitigation

The accused has been in the army 37 months and spent 60 days in action & evacuated by reason of sickness. I ask the court to consider his previous good record, his service in action & the fact that he is ready to go into action again.

EXHIBIT "A" - D.3.

(i) "You have been selected to proceed on a draft, and you are now warned that you must be present and ready to go when the draft is despatched."

(ii) "Any unauthorized failure on your part to go with the draft when it leaves will result in you being charged with desertion on active service."

(iii) "At some time prior to the departure of the draft a parade will be called on which you must be present, and at which ~~xxxx~~ the exact date and time of departure will be told to you."

30 Oct 14.

This draft is "CD" until the area of draft leaves for its destination I have read and understand the above warning.

W J Martindale H-63684

[illegible] D81372

Dupont F E27007

Currie J J M107783

Harwell R C [illegible]

R J Goutouch D76619

Dennis J F D862 B

J O Stoart D82646

W Sargent H8804

[illegible] A[illegible]

R A Brown M104689

J Wales L74805

J Molder M1201

J Smith L-8880

Swatton W C65046

Renaud P. J. A102151

de Ellers A. CPh: D56410

G. G. Trivett D157498

M Lamoureux D157790

[illegible] Ferguson R J.

Bergen R C B133271

McGuigan D H M.10774

[illegible] A 67484

[illegible] J D B32483

witnessed by D.L. Stewart Capt.

This is Exhibit "A" referred to in the summary of Evidence of E23007 P Dupont F. taken before me this 2 day of Nov 197[illegible]

[illegible]

Exhibit B. E. 2

ARMY FORM B.296 (WAR). Kell

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
E-23007	Pte	Dupont, F.	(r. de Mais) II CBR Bn.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For No MFM 6 Available ..... times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. ~~Previous convictions of the accused by a court martial or a civil court [illegible] out in the schedule [illegible]~~

*Strike out if not applicable.

*3. ~~The accused at the present time [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]~~

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 14 days in military custody, i.e., nil days in open arrest, 14 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 27 yrs

6. The date of his attestation / ~~calling up for military service~~ is 9 Nov 41 ~~[illegible]~~ Kell

7. The service which the accused is allowed to reckon is 3 yrs

8. The accused is in possession of † C.V.S.M. & clasp

†State the military decorations (if any) held by accused.

9. (If the accused is a warrant officer or N.C.O.). The accused has served continously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of Pte	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Wt. 13479/2857 30,000 5/44 51-432 7 Ltd. Forms B 296 (War)

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 14 day of November

J Tomlinson Lt.

SUMMARY OF EVIDENCE

In the case of E-23007 Pte Fernand DUPONT (R de Mais) 52 Coy, 11 CBR Bn., a soldier of the Canadian Army Overseas charged with desertion.

By direction of the Commanding Officer the evidence is taken on oath.

Lieut. G.P. LEGERE having been duly sworn acted as interpreter.

FIRST WITNESS:

Capt. D.L. Stewart, 52 Coy, 11 CBR Bn having been duly sworn states:

"I am acting Coy commander of 52 Coy 11 CBR Bn. At approx 1415 hrs, 30 Oct 44, I called a muster roll of certain personnel who had been selected to proceed on draft. Pte Dupont whose name on that draft roll responded properly to the muster and fell in with draft party. I then warned this draft in the following terms: "You have been selected to proceed on draft and you are now warned that you must be present and ready to leave when the draft is despatched. Any unauthorized failure on your part to proceed with this draft when it leaves will result in your being charged with desertion on Active Service. At some time previous to the departure of this draft a parade will be called on which you must be present and at which the exact date and time of departure will told to you." I then warned this draft that they were confined to barracks until such time as their draft left and that they would parade at 0900 hrs, 31 Oct 44, ready to march out. In order to ensure understanding, I instructed Sgt Gauthier to repeat these warnings in French. This was done in my presence and Pte Dupont then signed the acknowledgement of the draft warning in my presence. This is the draft warning acknowledgment as singned by the accused which I now produce.

"At approx 0900 hrs, 31 Oct 44, I called the roll of this draft at the marching out parade for which they had been duly warned. Pte Dupont did not answer his name and was not present. A further check made as this draft moved off revealed that Pte Dupont still was not present and did not proceed with this draft."

.....
(D.L. Stewart) Capt.

RP 83(b) have been complied with.

The accused declines to cross-examine the witness.

The acknowledgment referred to in the evidence of the above witness is marked EXHIBIT "A" and attached hereto.

SECOND WITNESS:

R-130507 Sgt Gauthier, J. 52 Coy, 11 CBR Bn. having been duly sworn states;

"On 30 Oct 44 I was draft sgt for 52 Coy. At approx 1430 hrs, I was present when Capt Stewart read out the draft warning to the draft parade, on which Pte Dupont was present. This warning was in English. Under Capt Stewart's instructions I read the draft warning in French. Pte Dupont was the only French speaking soldier on the parade who did not understand English so I stood beside him and read the warning in French to him. Pte Dupont signed an acknowledgement of the draft warning.

.....
(R-130507 Sgt Gauthier J.)

RP 83(b) have been complied with.

The accused declines to cross-examine the witness.

In the case of B-23007 Pte Fernand DUPONT (R de Mais) 52 Coy, 11 CBR Bn. a soldier of the Canadian Army Overseas charged with desertion.

THIRD WITNESS:

K-62361 CSM Jackson, H. 52 Coy, 11 CBR Bn, having been duly sworn states:

"I am CSM of 52 Coy, 11 CBR Bn. On 30 Oct 44, at 1415 hrs, the accused soldier was warned for draft by Capt. Stewart. He then fell in with the draft party and Capt Stewart in formed the draft that they would be confined to barracks until the draft proceeded tothe forward Coy.

"On 31 Oct 44, at 0900 hrs I was present when the accused soldier's name was called for draft. The accused soldier was not present. He did not proceed with the draft.

"From then on, I called the roll of 52 Coy daily, and the accused did not answer his name on these roll calls until he was seen in bed at 2200 hrs 31 Oct 44. I ordered him to be placed under close arrest at 0700 hrs the following morning.

Cross examined by the accused.

Q. "Was I warned of the date and time of departure of the draft?

A. "Yes."

H. Jackson
(K-62361 CSM Jackson H.)

RP 83(b) have been complied with.

FOURTH WITNESS:

B-63755 Sgt Hemmings, F. 52 Coy, 11 CBR Bn, having been duly sworn states:

"On 31 Oct 44, I was draft sgt. I was present when the roll was called for the draft at approx 0900 hrs, Pte Dupont whose name was on this roll did not answer his name. I took the draft to the assembly area. Pte Dupont did not proceed with this draft.

F. Hemmings
(B-63755 Sgt Hemmings F.

RP 83(b) have been complied with.

The accused declines to cross-examine the witness.

FIFTH WITNESS:

K-65729 Sgt Barstow, C.A. 52 Coy, 11 CBR Bn. having been duly sworn states:

"At approx 0930 hrs 31 Oct 44 I searched the coy lines calling out number, rank and name of the accused. Pte Dupont did not answer to his number, rank and name.

C. A. Barstow
(K-65729 Sgt Barstow C.A.)

RP 83(b) have been complied with.

The accused declines to cross-examine the witness.

SUMMARY OF EVIDENCE

In the case of E-23007 Pte Fernand DUPONT (R de Mais) 52 Coy, a soldier of the Canadian Army Overseas charged with desertion.

SIXTH WITNESS:

D-56310 Cpl Blanchette, A. 52 Coy, 11 CBR Bn. having been duly swo. states:

"At approx 2200 hrs, 31 Oct 44, as I was checking on blackouts I saw the accused Pte Dupont in his bed. I immediately reported his presence to the CSM. The following morning at approx 0700 hrs, I placed the accused under close arrest.

Blanchette A.
(D-56310 Cpl Blanchette A.)

RP 83(b) has been complied with.

The accused declines to cross-examine the witness.

The accused was cautioned as follows:

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. "I wish to make a statement on oath."

The accused sworn states:

"When I returned from the hospital, I was put on sick parade. The next morning I reported to the M.O. and the M.O. asked me if I had just arrived back from the hospital. I answered "Yes". So the M.O. immediately dismissed me and returned to my quarters. The M.O. would not listen to anything I had to say. I was not warned by the sgt as to the day and time of the departure of the draft."

F. Dupont
(E-23007 Pte Dupont F.)

RP 83(b) have been complied with.

The accused does not call any witnesses.

I CERTIFY THAT THE FOREGOING SUMMARY OF EVIDENCE, CONSISTING OF THREE (3) PAGES WAS TAKEN DOWN BY ME IN THE PRESENCE AND HEARING OF THE ACCUSED AND THAT RP 4 (c)(d)(e) and (f) HAVE BEEN COMPLIED WITH.

C.C. Scott
(C.C. Scott) Lieut. OFFICER DETAILED TO TAKE SUMMARY OF EVIDENCE.

In the Field
2 Nov 44

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E.23007 Pte Fernand DUPONT, R de Mais, 11 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Sec 12(1)	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn b.)

At present serving sentence fm ~~beginning on (date)~~ (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo det for a period of nine months

(Sgd) "E.E. Pearlman" Capt — 14 Nov 44 — (Sgd) A.E. Kelsey" Major
Judge-Advocate, if any. — Date awarded. — President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be sent to ... (detention barracks unit) further orders.~~
(1. AA 57A. Delete if not used.)

(Sgd) "G Francoeur"
Brig
Date 15 Nov 44 — Commanding 2 CBRG
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
E.23007 Pte Fernand DUPONT R de Mais 11 CBR Bn	18 Nov 44	"PM Pardee" Capt Adjt 11 CBR Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4F.42

FIELD GENERAL COURT-MARTIAL

CFA86 (To Secy of AFA31 40 JP & RS 1908 (400))
4/38B

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 11 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, (fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt Rk (b) Apptmt, A/Rk or A/Apptmt	Full Christian Names.	Surname.	Unit
E.23007	Pte	Fernand	DUPONT	R de Mais, 11 CBR Bn

Certified True Copy
23 Nov 44 W.M. Waugh Capt
D.J.A.
Can Sec G.H.Q. 2

PROCEEDINGS REVIEWED
Date 21 Army Gp Sec GHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date) 14 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 13/89

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns. KOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 16, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (—) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (—) brought before the Court. At 1540 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (—) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of having result~~ ~~summarily by CO (Sec).~~ (2)
(1. KR Can 537. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to LT THIVIERGE JG as interpreter? Ans Yes Sir
~~The Interpreter is sworn.~~ (1)
~~Interpreter sworn at Court (2)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans Yes Sir (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A.E. Kelsey	CIC, OC 20 Cdn Spec Emp Coy
Member	Capt	D.E. Vermette	CIC, 11 CBR Bn
Member	Lieut	L.J.R. Levesque	CIC, 11 CBR Bn
Judge-Advocate	Captain	E.E. Pearlman	ADJA, HQ 2 CBRG
Prosecutor	Lieut	A.T. Mann	CIC, 11 CBR Bn
Defending Offr	Lieut	J.J.M.M. Allard	CIC, 11 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 61 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused E.23007 Pte DUPONT F. before arraignment makes(s) (no) (~~a~~) plea
(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13(C), RP 37), or by one of several accused charged jointly to be tried separately (RP fn 71), such plea, the addresses made in support or opposition, the evidence, if any, and Finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB note and name of the accused making the plea.)

A9. The accused is (—) arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does (~~does~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. 3. Where etc. Delete and make appropriate record per Notes.)

A10. The Court (~~adjourned and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2CBRG Vol 2 p 52

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 37(*B*) *fn* 2 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No Sir .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s)~~ :
(1. *Delete remainder of this para. If submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), *114, 115*.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. No Sir ..... Do you intend to call witnesses on your behalf ?
Ans. No Sir ..... Are they witnesses as to character only ? Ans. N/A .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. ~~The President announces the findings(1) of Not Guilty, and states to the accused that the findings of the Court on the ..... charge(s), being confirmed, will be promulgated later at the Proceedings terminate, and that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. *AA* 54(2) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No Sir .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses duly sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), ~~and certified true copy (copies) of Conduct Sheet(s)~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(*l*) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" ~~and Ex ..... respectively~~.(3)
(1. *MFR* 253 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the matter of previous Convictions and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. I do have witness but will deliver - see notes (2)
(1. *RP* 37(*C*), 44(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges or all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 128, 182, *RP* 46-50, 98, 118, 119(*A*), *KR Can* 308, 330, 363-366. *Overseas KO* 309, 1323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(*1*), *KR Can* 364. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 367. *As to assembly and disposal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

66A

CHARGE SHEET

The accused E.23007 Pte Fernand DUPONT (A de Mais)
52 Coy, 11 CBR Bn, a soldier of the Candian
Army Overseas is charged with.

FIRST CHARGE — WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE
A Sec 12(1)

in that he

IN THE FIELD at 0900 hours, 31 Oct 44, having been warned for draft to proceed to the field with intent to avoid so proceeding absented himself without leave until 2200 hours 31 Oct 44.

(Total time absent 13 hours)

"G.H. Logie"

(G.H. Logie)Lt-col
Commanding Officer
11 CBR Bn

In the field
2 Nov 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

"G Francoeur"

(G Francoeur)Brig
Comd
2 Cdn Base Aft Gp

In the Field
11 Nov 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E.23007	Pte		Fernand	DUPONT	R de Mais, 52 Coy, 11 CBR Bn.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 11 Nov 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(8), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 104(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	A.E. Kelsey (Must be named. RP 106.)	CIC	OC 20 Cdn Spec Emp (Unit.) Coy

MEMBERS.

Capt	To be detailed by OC 11 CBR Bn	11 CBR Bn
Lieut (Rank.)	To be detailed by OC 11 CBR Bn (Named or detailed. RP 106.)	11 CBR Bn (Unit.)

WAITING MEMBER.

Capt (Rank.)	To be detailed by OC 11 CBR Bn (Named or detailed, if any. RP 106.)	11 CBR Bn (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	E.E. Pearlman (Must be named, if any. RP 106.)	ADVA, HQ 2 CBRG (Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

"G Francoeur" (Signed personally. RP 105 fn 2.)

(G Francoeur)
Commanding 2 Cdn Base Rft Gp
Convening Officer.

Brigadier (Rank.)

Date 11 Nov 44

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined B.23007 Pte Dupont F, and in my opinion he is fit to undergo trial by Court-Martial.

Station Field

Date 14 Nov 44

"S. Segall" Capt RCAMC

11 CBR Bn

EEP D.3

1st Witness for Prosecution

Capt D.L. Stewart 11 CBR Bn - duly sworn states

At approx 1415 hrs 30 Oct 44 I called a muster roll of personnel selected for a draft - the accused was on this draft responded properly to the roll and fell in with the d aft party. I then warned them for draft as follows"you have been selected to proceed on draft and you are now warned that you must be present and ready to leave when the draft is despatched. Any unauthorized failure on your part to proceed with this draft when it leaves will result in a charge of desertion on active service - later you will be called on parade the the exact date and time of departure will be told to you. I then warned this draft they were confined to barracks and that they would parade at 0900 hrs 31 Oct 44 ready to march out. To ensure complete understanding I instructed Sgt Gauthier to repeat these warnings in French. this was done in my presence. After questioning to ensure that all present heard and understood these warnings the accused signed an acknowledgement of the draft - I produce original draft warning which the accused signed in my presence. The handwriting below the typewritten headnote is my handwriting. Draft Warning initialled & marked Ex 'A'. At approx 0900 hrs 31 Oct 44 I called the roll of this draft on their marching out parade. The accused whose name was on this roll did not answer his name. Just before this draft moved off a further check revealed the accused was still absent & he did not move off when the draft left at approx 0930 31 Oct 44.

Cross Exam - I instr Sgt Gauthier to repeat my warnings in French & this was done in my presence. I do not understand French very well. From my knowledge of previous warnings given in French I am satisfied that Sgt Gauthier carried out these instructions.

RP 83(B) complied with.

2nd Witness for the Prosecution

B.130507 Sgt Gauthier J - 11 CBR Bn duly sworn states.

At approx 1415 hrs 30 Oct 44 I was draft Sgt & was present when the draft was being warned by Capt Stewart. The accused was present on this draft parade. On instr from Capt Stewart I read the draft warning in French & the witness identifies Ex 'A' having exactly the same wording which was read by him in French. Pte Dupont was the only one on parade not understanding English. I stood beside him & read out the warning in French - and I warned him for a draft parade at 0900 hrs 31 Oct 44 and he understood the warning.

Cross Exam - I am not sure whether I read in English & translated it or whether I read a French warning but I am sure I warned the accused in French in the same words as in Ex 'A'. I cannot say it is in exactly the same wording. I read the warning as I was standing beside Pte Dupont.

By the Judge Advocate

In order to avoid any misunderstanding please state to the court the warning which you say you gave the accused on 30 Oct 44.

Ans. I warned the accused - "you have been selected to proceed on a draft - any unauthorized failure to be present when the draft is despatched will result in a charge of desertion W.O.A.S. Prior to the departure of the draft there will be a parade called & all personnel on draft must be on it. There will be a parade the next morning (~~six~~ Oct 31st) at 0900 hrs - a moving off parade with full pack ready to go". All this was said in French and I am sure the accused heard & understood it. I am sure of the wording of the draft generally as I am draft Sgt and give the same warning or words to the same effect at all draft parades.

RF 83(B) complied with.

3rd Witness for the Prosecution

K.62361 CSM Jackson H - 11 Bn
duly sworn states.

On 30 Oct 44 at 1415 hrs I was present when Capt Stewart warned the accused that he had been selected for draft & that the draft would proceed at 0900 hrs the following day. Capt Stewart instr Sgt Gauthier to translate the warning in French. On 31 Oct 44 at 0900 hrs, the draft was called to proceed forward - the accused's

name was called, he did not answer and he did not proceed with the draft. I then had a search made of the Coy lines for the accused but did not locate him. At 2200 hrs 31 Oct 44 the accused reported to me & I placed him under arrest the following morning.

Cross Exam - I do not understand French and I am not sure whether the warning which Sgt Gauthier gave the accused was the same warning as given by Capt Stewart in English

4th Witness for the Prosecution

B.63755 Sgt Hemmings F.

This witness is called by the Prosecution on the request of the accused and is cross-examined by the Def Officer.

Q. Were you present on the 30 Oct 44 when Capt Stewart warned the draft incl the accused
A. No sir.

The prosecution does not call the witness Sgt Barstow a witness in the summary & the Defence does not request that he be called.

EEP D.6 22

Prosecutor Address.

(in the case of E.23007 Pte Dupont P)

Mr President, Members of the Court:

You have just heard the evidence & are aware of the important facts that surround the case. What I wish to do is merely sum up these facts & bring up some points for consideration.

First of all - the accused is charged with desertion but it is a special type of desertion. It is not a question of leaving the army & intending never to return. This is a type of desertion where a soldier having been duly warned to proceed on a draft, absents himself without leave with intent to avoid proceeding on that particular draft. This type of desertion may not be as common but it is every bit as serious, and with the evidence that the court has before it I am certain that there can be no doubt that the accused is guilty of this type of desertion.

There is no doubt that the accused was warned for draft. He was warned by Capt Stewart & ~~the~~ by Sgt Gauthier. Being the only soldier on that parade who did not understand Eng Sgt Gauthier stood beside him & warned him personally - the accused heard & understood that warning & signed an acknowledgement of it.

Having been duly warned the accused absented himself without leave. When the draft parade was

called the following morning the accused was not present. An effort was made to locate him but he could not be found & the draft was taken to the assembly area without him. I maintain that the only reason he could not be found was because he intended to avoid proceeding with this draft.

The defence is dubious as to the exact words of the warning. To my mind the exact words of the warning are not important. I do not believe it makes any difference whether the warning was read or translated as long as the significance of the warning is made known to the accused.

Sgt Gauthier states beyond any dount that
1 the accused knew he was on draft, 2 that the accused was warned he would be charged with desertion if unauthorized he failed to proceed with the draft, 3 that the draft would parade at 0900 hrs the next morning 31st Oct ready to move off; 4, & that they were confined to barracks untill that time. Aware of all this the accused absented himself without leave & not only did not show up in the morning but stayed away untill night. I maintain that he stayed away all day in order to make certain that the draft for which he was warned moved off without him. The defence claims that

there is no witness to corroborate that Sgt Gauthier stated the time that the draft would move off. I would like to point out that Sgt Gauthier gave his evidence on oath & has nothing to gain by this evidence. The accused has a lot to gain. Moreover the accused was in a room with other personnel warned for same draft - they proceeded with this draft.

I am certain that there can be not doubt in the eyes of the court & that the court will find the accused guilty of the charge against him.

EEP

In the case of Pte Dupont.
The draft warning was given
in English and some
hand writing were added
to the draft warning and written
by Capt Stewart. Sgt Gauthier
is not sure if he translated
the same warning read for the
English speaking personnel ~~in~~or
used a French Form. But
in a French Form there is
not adding hand writing. The prosecuting
officer never proof which kind
of warning was given and
Sgt Gauthier have no witness
to prove that he gived
a complete warning with
the hand written adding.
C.S.M. Jackson is present
but he dont understand
french

this soldier enlisted 37
months ago. A clean record.
been in action for 60 days
and he was evacuated to
ths hispital. He don't
understand the English
language and he ~~s~~aid
that I never received from
Sgt the time and date of
the draft departure.
Sir, has nothing was
proof that this soldier was
duly and completely warned in the language
he understood, I ~~w~~ ll
ask the court to find him
not guilty.

EOP

The Judge Advocate Sums up

The accused is charged with a special type of desertion - namely avoiding a draft after having been duly warned for said draft.

The criterion between desertion & AWL is intent but the intent to be proved in this case is not whether the accused intended to return to the army but whether he intended to avoid the draft for which he was allegedly warned.

The court should carefully weigh all the evidence before it and decide on that evidence whether the prosecution has proved.

(a) That the accused was warned for draft.
(b) That the accused heard & understood the warning.
(c) That the accused was AWL with the intent to avoid proceeding on said draft.
(d) That the draft proceeded without the accused.

The accused is presumed innocent until proved guilty. In other words it is for the prosecution to prove the accused guilty & not for the accused to prove himself innocent.

The accused is entitled to the benefit of any reasonable doubt. A reasonable doubt being a doubt which under similar circumstances any reasonable man would entertain & not an imaginary or canciful doubt.

In this matter the court may find any one of the following verdicts.

(a) Not guilty of any offence, or

(b) Not guilty of desertion, but guilty of AWL, or

(c) Guilty of desertion.

That is all I propose to say unless the President, Pros or Def Officer desire me to advise the court further on any matter.

Plea in Mitigation

This accused has been in the army 37 months and spent 60 days in action & evacuated by reason of sickness

I ask the court to consider his previous good record, his service in action & the fact that he is ready to go into action again.

Exhibit 'A' D.3.

(i) You have been selected to proceed on a draft, and you are now warned that you must be present and ready to go when the draft is despatched.

(ii) Any unauthorized failure on your part to go with the draft when it leaves will result in you being charged with desertion on active service.

(iii) At some time prior to the departure of the draft a parade will be called on which you must be present, and at which the exact date and time of departure will be told to you.

30 Oct 44
This draft is 'CB' until the draft leaves for its destination
I have read and understand the above warning.

W.J. Martindale H.63084
Wood J.T. D.81372
Dupont P E.27007
Currie J.J. M.197783
Harvell R.C. G.53554
P.J. Goutouck D.76619
Dennenz J.P. D.86213
W. Sarpter H.8804
A Ridgen A.109330
R.A. Browning M.104689
F. Holey L.74805
J Nolder M.12011
F. Smith L.8890
Watson W. C65046
Renard P.J. A.102151
de Allersa Cpl D.56410
G.C. Wrivett B.137498
M Lamouraux D.157790
G.13048 Perguson R.J.
Berard R.C. B.133271
McGregor D.H. M.10774
Fisher W.T. B.67484
Dolle R.C. B.32483
Morin R.A. D.160993

Witnessed by
"D.L. Stewart"
Capt

This is Exhibit 'A'
referred to in the summary
of evidence of E.23007 Pte
Dupont P, taken before me
this 2 day of Nov 1944.

"G.C. Scott"

Exhibit B E.2

M.F.B. 355
22M—5-41 (372-4)
H.Q. 1772-39-620
A.F.B. 256

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E.23007	Pte	Dupont, F.	(R de Mais) 11 CER Bn

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	times	times
For No MFM 6 available	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

[illegible] Air Force Act A.F.A. 75 [illegible]

3. The accused is not under sentence at the present time.

or,

[illegible]

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 14 days in Air Force military custody, making a total of 14 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 27 yrs

6. The date of his commission specified in his record of service is attestation paper 9 Nov 41

7. The service which the accused is allowed to reckon towards discharge is 3 yrs

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military military possession of or entitled to). State any air force decoration or reward.

C.V.S.M. & Clasp

10. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held Air Force the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force unit ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Air Force Unit Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		Nil		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 14 day of November "J. Lowlensen" Lt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

SUMMARY OF EVIDENCE

In the case of E.23007 Pte Fernand DUPONT (R de Mais) 52 Coy, 11 CBR Bn., a soldier of the Canadian Army Overseas charged with desertion.

By direction of the Commanding Officer the evidence is taken on oath.

Lieut G.P. LEGERE having been duly sworn acted as interpreter.

FIRST WITNESS

Capt D.L. Stewart, 52 Coy, 11 CBR Bn having been duly sworn states :

I am acting Coy commander of 52 Coy 11 CBR Bn. At approx 1415 hrs, 30 Oct 44, I called a muster roll of certain personnel who had been selected to proceed on draft. Pte Dupont whose name on that draft roll responded properly to the muster and fell in with draft party. I then warned this draft in the following terms: "You have been selected to proceed on draft and you are now warned that you must be present and ready to leave when the draft is despatched. Any unauthorized failure on your part to proceed with this draft when it leaves will result in your being charged with desertion on Active Service. At some time previous to the departure of this draft a parade will be called on which you must be present and at which the exact date and time of departure will told to you. I then warned this draft that they were confined to barracks until such time as their draft left and that they would parade at 0900 hrs, 31 Oct 44, ready to march out. In order to ensure understanding, I instructed Sgt Gauthier to repeat these warnings in French. This was done in my presence and Pte Dupont then signed the acknowledgement of the draft warning in my presence. This is the draft warning acknowledgement as signed by the accused which I now produce.

At approx 0900 hrs, 31 Oct 44, I called the roll of this draft at the marching out parade for which they had been duly warned. Pte Dupont did not answer his name and was not present. A further check made as this draft moved off revealed that Pte Dupont still was not present and did not proceed with this draft.

"D.L. Stewart"
(D.L. Ste wart)Capt

RF 83(B) have been complied with.

The accused declines to cross-examine the witness.

The acknowledgement referred to in the evidence of the above witness is marked EXHIBIT 'A' and attached hereto.

SECOND WITNESS:

B.130507 Sgt Gauthier, J. 52 Coy, 11 CBR Bn having been duly sworn states:

On 30 Oct 44 I was draft sgt for 52 Coy. At approx 1430 hrs, I was present when Capt Stewart read out the draft warning to the draft parade, on which Pte Dupont was present. This warning was in English. Under Capt Stewart's instructions I read the draft warning in French. Pte Dupont was the only French speaking soldier on the parade who did not understand English so I stood beside him and read the warning in French to him. Pte Dupont signed an acknowledgement of the draft warning.

"J.B. Gauthier" Sgt
(B.130507 Sgt Gauthier, J)

RF 83(B) have been complied with.

The accused declines to cross-examine the witness.

In the case of E.23007 Pte Fernand DUPONT (A de Mais) 52 Coy, 11 CBR Bn a soldier of the Canadian Army Overseas charged with desertion.

THIRD WITNESS:

K.62361 CSM Jackson, H. 52 Coy, 11 CBR Bn, having been duly sworn states:

I am CSM of 52 Coy, 11 CBR Bn. On 30 Oct 44, at 1415 hrs, the accused soldier was warned for draft by Capt Stewart. He then fell in with the draft party and Capt Stewart informed the draft that they would be confined to barracks until the draft proceeded to the forward Coy.

On 31 Oct 44, at 0900 hrs I was present when the accused soldier's name was called for draft. The accused soldier was not present.

From then on, I called the roll of 52 Coy daily, and the accused did not answer his name on these roll calls until he was seen in bed at 2200 hrs 31 Oct 44. I ordered him to be placed under close arrest at 0700 hrs the following morning.

Crossexamined by the accused.

Q. Was I warned of the date and time of departure of the draft?
A. Yes.

"Hy Jackson"
K.62361 CSM Jackson H)

RP 83(B) have been complied with.

FOURTH WITNESS:

B.63755 Sgt Hemmings, F 52 Coy, 11CBR Bn having been duly sworn states:

On 31 Oct 44, I was draft sgt. I was present when the roll was called for the draft at approx 0900 hrs, Pte Dupont whose name was on this roll did not answer his name. I took the draft to the assembly area. Pte Dupont did not proceed with this draft.

"F. Hemmings"
(B.63755 Sgt Hemmings F)

RP 83(B) have been complied with.

The accused declines to cross-examine the witness.

FIFTH WITNESS:

K.65729 Sgt Barstow, C.A. 52 Coy, 11 CBR Bn having been duly sworn states:

At approx 0930 hrs 31 Oct 44 I searched the coy lines calling out number, rank and name of the accused. Pte Dupont did not answer to his number, rank and name.

"C.A. Barstow"
(K.65729 Sgt Barstow C.A)

RP 83(B) have been complied with.

The accused declines to cross-examine the witness.

in the case of E.23007 Pte Fernand DUPONT (" de Mais) 52 Coy, 11 CBR Bn a soldier of the Canadian Army Overseas charged with desertion.

SIXTH WITNESS:

D.56310 Cpl Blanchette, A. 52 Coy, 11 CBR Bn having been d uly swo rn states:

At approx 2200 hrs, 31 Oct 44, as I was checking on blackouts, I saw the accused Pte Dupont in his bed. I immediately reported his presence to the CSM. The following morning at approx 0700 hrs, I pla ced the accused under close arrest.

"Blan chette G"
(D.56310 Cpl Blanchette A)

RP 83(B) have been complied with.

The accused declines to cross-examine the witness.

The accused was cau tioned as follows:

Q. Do you wish to make any statement or to give evidence on oat h? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be ta ken down in writing and may be given in evidence.

A. I wish to make a statement on oa th.

The accused sworn states.

When I returned from the hospital, I was put on sick parade. The next morning I reported to the MO and the MO asked me if I had just arrived back from the hospital. I answered "Yes". So the MO immediately dismissed me and I returned to my quarters. The MO would not listen to anything I had to say. I was not warned by the sgt as to the day and time of the departure of the draft.

"F. Dupont"
(E.23007 Pte Dupont F)

RP 83(B) have been complied with.

The accused does not ca l any witnesses.

I CERTIFY THAT THE FOREGOING SUMMARY OF EVIDENCE, CONSISTING OF THREE (3) PAGES WAS TAKEN DOWN BY ME IN THE PRESENCE AND HEARING OF THE ACCUSED AND THAT RP 4 (c)(d)(e) and (f) HAVE BEEN COMPLIED WITH.

"G.C. Scott"

(G.C. Scott) Lieut OFFICER DETAILED TO TAKE SUMMARY OF EVIDENCE.

In the Field
2 Nov 44

40-7

Gen. Dupuis A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D118850 GNR A. DUPUIS

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		GUILTY.	GUILTY.	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence to~~ ~~undergo~~ ~~imprisonment~~ ~~detention~~ for ~~six months~~ ~~three months~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 34 days, of which 0 days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for Eighteen months.

(Sgd) Lt/Col Judge Advocate, if any. 6 FEB 1945 Date awarded. (Sgd) President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings and sentence of the Court, but I remit three months detention.

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) H. C. Hodges Brig.

Date 7 Feb 45. Commanding DDMS FIRST CDN ARMY Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
D118850 Gnr A DUPUIS HQ FIRST CDN ARMY	7 Feb 45	R. S. Turnbull CAMP COMMANDANT HQ FIRST CDN ARMY

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 104 42-7

FIELD GENERAL COURT-MARTIAL

(CF A86 (In lieu of AF A21) SD P.S. B/11606 (28624))

RECEIVED 8 MAR 1945 JAG BRANCH C.M.H.Q.

(Convening Offr) Order of BRIGADIER H.M. ELDER DDMS Comd FIRST CDN ARMY dated 3 FEB 45

ACCUSED.

(Where the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D118850	GNR	ARTHUR	DUPUIS	4 M & P COY HQ FIRST CDN ARMY

PROCEEDINGS REVIEWED 9 Mar 45

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 6 FEB 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 23/93

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by his CO.~~ (2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to an interpreter? Answer:~~

~~The interpreter is sworn (1). Do you object to an shorthand writer? Ans~~

~~The shorthand writer is sworn~~ (1).

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJ	RR MACDOUGALL	6 HUSSARS, CA BRANCH HQ FIRST CDN ARMY
Member	CAPT	RA WICKWARE	RCA, BRA BRANCH HQ FIRST CDN ARMY
Member	LIEUT	RFK ANTHONY	RCASC, SAT BRANCH HQ FIRST CDN ARMY
Judge-Advocate	LT-COL	GE TRITSCHLER.	ADJAG HQ FIRST CDN ARMY
Prosecutor	CAPT	HRG CAMPBELL	CAC, ADJT OFFR HQ FIRST CDN ARMY
Defending Offr	LIEUT	GMH HODGES	RMR FIRST CDN ARMY HQ DEP CAT (ARMY)

Questions by President: Is the Prosecutor a lawyer? Ans. No. Is the Defending Offr a lawyer? Ans. No. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 85 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment makes (no) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposit, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B&E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The ~~President or~~ JA, ~~if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)
(*1. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3. *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (3). The Court decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) to ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding to para C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charge(s) dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP* 155. 2. *RP* 40(*B*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*a*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 107. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No .
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)
(*1. MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes by way of defence counsel officer. (2)
(*1. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court must permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 162, *RP* 46-50, 98, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 109, 2323. *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(3), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No D-118850 Gnr Arthur DUPUIS, Headquarters First Canadian Army, a soldier of the Canadian Army Overseas, placed on Active Service, is charged with:

FIRST CHARGE SEC 15 (1) ARMY ACT

WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the field, absented himself without leave from 2200 hours 10th November 1944 until surrendering himself to 4543441 L/Cpl HOLMES A of 247 Headquarters Provost Company at CAEN, FRANCE, at 2135 hours on 2nd January 1945. (Total time absent 52 days 23 hours 35 minutes.)

(F L J Grout) Major
A/Camp Commandant
HQ First Cdn Army

~~TO BE TRIED BY FIELD GENERAL COURT MARTIAL~~

In the field
26 January 1945

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
3 Feb 45

(H.M.Elder) Brigadier
DDMS First Cdn Army

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-118850	Gnr		Arthur	DUPUIS	HQ First Cdn Army

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) this date endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	R. R. MACDOUGALL	6 Hussars, CA Branch HQ First Cdn Army

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	R. A. WICKWARE	RCA, BRA Branch, HQ First Cdn Army
Lieut	R. F. K. ANTHONY	RCASC, S & T Branch HQ First Cdn Army

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	E. BUGLASS	RCA, CA Branch, HQ First Cdn Army

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Lt-Col	G. E. TRITSCHLER	AJAG, Adm HQ First Cdn Army

On Active Service in the Fd

in Holland (Country.)

H. M. Elder (Signed personally. RP 105 fn 2.) (H.M. Elder)

Brigadier (Rank.)

Dat 3 Feb 45

~~Commanding~~ DDMS First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 90 (In lieu of AFA 3) 40/F & S/1607 (6143)

(See overleaf for oaths and notes for use on trial.)

I certify that I have this morning examined No D-118850 Gnr Arthur DUPUIS, HQ First Cdn Army, and that he is fit to undergo trial by court-martial.

J C Middlebro Capt

6 Feb 45

(J C Middlebro) Capt
Medical Offr

6 JAN 45.

E.3.

Plea of Mitigation of Punishment

of

D 118850 Gnr. Arthur DUPUIS.

1) The accused has been charged with being A.W.L for 52 days 23 hrs. 35 mins. and he pleads guilty to the charge.

2) Gnr. Dupuis realizes, that he will be punished and does not expect his personal reason for going A.W.L to excuse him, but would ask the court to consider it before passing sentence.

3) Prior to going A.W.L Gnr. Dupuis had received a letter from a young girl by the name of Mlle. Genevieve Voivenel of F 76 Rue de Caen, Lion Sur Mer. telling him that she was sick and as he had been on most intimate terms with her, he suspected that she was in the family way. This worried him a lot, he did not know what to do. He wanted to go down to see her but knew he could not get away.

While waiting at BRA Branch in Antwerp for an Officer to turn up so he could drive him to Eindhyke he went down town to see Antwerp. He went into a Cafe and had a few drinks, he met some English Soldiers who drank with him & they told him, they were going in the direction of Paris. He went along with them and went to see his girl friend at Lion Sur Mer. He found out that everything was alright with her, this relieved him greatly.

4) The above was quite a worry to Gnr Dupuis & that is the reason he went A.W.L in the first place, if he had asked for, or received proper advice all this would not have happened.

Lt G. M. H. Hodges
Defending Officer.

Summary of Evidence EXHIBIT A.

in the case of

No D-118850, Gnr. Dupuis, A., Royal Canadian Artill[illegible] on strength of Headquarters, First Canadian Army.

By direction of the Commanding Officer, the summary of Evidence is taken on oath.

Charge Section 15(1) Army Act. Whilst on Active Service is charged with Absenting himself without leave, in that he did absent himself without leave from 2200 hrs., 10 Nov 44 until 2135 hrs. 2 Jan 45

Total time absent - 52 days 23 hrs. 35 mins.

FIRST WITNESS Capt H. Barker, Asst Camp Commandant, H.Q. First Canadian Army, having been duly sworn states:

I am Capt H. Barker, Ass't Camp Commandant H.Q. First Canadian Army.

I submit the following documents in connection with the AWL of D-118850, Gnr. Dupuis A, whom I now recognize - Exhibit "A" Part II Order Extract form dated 6 Jan 45. ~~Exhibit "B" Army Form B-262~~, Exhibit "C" Certificate of Surrender

Not signed; Not admissible [illegible] AJAG

The accused declines to cross-examine this witness

H Barker
Capt. H. Barker.

The accused having been warned as follows:

"Do you wish to make any statements or to give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence", declines to make any statement

Certified that Rules of Procedure 4 (c) (d) (e) and (g) have been compiled with

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused on the 20th day of January, 1945.

J. Herring Lt
Officer detailed to take summary.

EXHIBIT "A"

HEADQUARTERS FIRST CANADIAN ARMY
Part II Orders issued by
CANADIAN SECTION GHQ 2nd ECHELON
21 ARMY GROUP

Last Order No 1 4 JAN 45

No 2 6 JAN 45

"B" OTHER RANKS

8 ABSENT WITHOUT LEAVE

(a) AWL from 2200 hrs 10 NOV 44 Still absent 2200 hrs 18 NOV 44 (8th day)

D118850 Gnr DUPUIS A

(b) AWL from 2200 hrs 10 NOV 44 Still absent 2200 hrs 2 DEC 44 (22nd day)

D118850 Gnr DUPUIS A

(Signed) RA Virtue
(R A VIRTUE) Captain
for Officer IC
CANADIAN SECTION GHQ 2nd ECHELON
21 ARMY GROUP

Certified true extract [signature] Major
Offr Having custody of Original.

(Exh. "B")

CERTIFICATE OF SURRENDER UNDER ARMY ACT SECTION 153(1)(i)

Capt E. Price (Rank & Name) certify that No. D 118850 Rank Gunner Name DUPUIS, A. of 1st CANADIAN HQ TRAMCH CANADIAN ARMY (Unit) surrendered himself to No. H5443441 Rank L/Cpl Name HEMMES, A. of 247 HQ Provost Coy (Unit) at S.P.E.M (Place) at 2135 hrs. on 2/1/45 (Date) as a deserter (or absentee without leave) he was dressed in Uniform.

(Signature) Capt. Commanding 247 H.Q. Provost Coy, (Unit).

Date 3/1/45

E3 Files written address.

adds/

accused realizes he was wrong in being AWOL. I just wanted in my address to explain why he went away in first place. once he found girl O.K. he was so relieved he decided he would stay over Xmas. Realizes he should have come straight back but as he knew he ~~should have come back~~ was AWOL he decided to stay over Xmas

Yes 1

Enclosure No

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D118850	Gnr	Dupuis, A.	HQ First Cdn Army

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL Sec 15 (1) AA four times.

For Sec 40 AA one times.

For ____ times.

For ____ times.

Date of first entry in Field Conduct Sheet 25 Dec 41

Date of last entry in Field Conduct Sheet 11 Oct 44

2. ~~Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.~~

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N/A

beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 20 days in military custody, *i.e.*, Nil days in open arrest, 20 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 24 yrs 11 mos

6. The date of his attestation is 8 Dec 41

7. The service which the accused is allowed to reckon is 3 yrs 1 month

*State the military decoration (if any) held by accused.

8. The accused is in possession of: CVSM & Clasp

9. *(If the accused is a warrant officer or N.C.O.).* The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of ____

In the war substantive rank of ____

In the acting rank of ____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

[21114] W.L.3670/888 100,000 4/41 A.& E.W.Ltd. Gp.698
[21439] W1.23020/1672 60,000 9/41 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		Nil		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 22 day of January, 1945

W. R. Campbell Capt
Offr having custody of regtl books

Exclusivy. [illegible]

No D118850 Name Dupuis, A. Old sheet destroyed 14 Jul 42 R.S. Cockburn Major RCA. Last entry 20 Nov 41

Date of last entry in Company Conduct Sheet: Na | Sqn, Battery, or Company: | Corps R.C.A. | Date of enlistment: 20-5-41 | GC Badges: | Service or Proficiency Pay: Na | MFM 6 (AFB 122) 40/PAS/136 (3438)

No and date of last drunk: Nil | Period not reckoning towards freedom from extra fine: Na | Sheet No 1 | Signature OC Company, etc: "F Bagler Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Petawawa	25-12 41	Gnr		1. When detailed for duty A.W.L. from 1530 hrs 25 Dec 41 to 0630 hrs 26 Dec 41. 2. A.W.L. from 1530 hrs 26 Dec 41 to 0815 hrs 14 Jan 42 AWL 2359 hrs 22 Aug 43 to 2340 23 Aug 43 (Abs 23 hrs 11 mins.)	Documentary	28 days detention	14 Jan 42	Col A.V. Tremaine	Forfeits 20 days pay F.R. &I 149(1)(a)
In the Field	22 Aug 43			WOAS Drove a WD vehicle while under the influence of liqueur A.A. Sec 40	Bdr Hale	7 days C.B. 1 days forf. pay	24 Aug 43	Mjr J.R. Hyde	
Field	11 Oct 44	Gnr		WOAS AWL Sec 15 (1) Absence 16 Hrs	Lt E.G. Patchel	Forf 21 Days Pay Automatic 1 Day pay	(A.O.HOOD)	Lt-Col	FR&I 149 (2)
Field	11 Oct 44	Gnr			Lt E.G. Patchel	Total Forf 22 Days Pay 17 Oct 44			FR&I 149 (1)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified True Copy		H. Barker (H. Barker) Capt Offr having custody of Regtl Books HQ First Cdn Army			

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D-118850 GRN A. DUPUIS

Charge. (Insert "alternative" where applicable)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 463 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~awg running on (date)~~ (1)RRM

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 34 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for fifteen months.

(Sgd)"G.E.Tritschler" Lt Col — Judge-Advocate, if any.
6 Feb 1945 — Date awarded.
(Sgd)"R.R.MacDougall" Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP (20)F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP (20)G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 63. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the findings[✓] and sentence set forth in Part I is :

I confirm the findgins and sentence of the Court, but I XXXXX remit three months detention.

I ~~direct that the accused be not committed to prison or detention barracks until further order~~.(1) HWE

(1. AA 57A. Delete if not used.)

(Sgd) "H. M. Elder " Brig

Date 7 Feb 45

Commanding DDMS FIRST CDN ARMY
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 57a, 577.)

Accused.	Date.	Signature of Offr.
D118850 GRN A DUPUIS HQ FIRST CDN ARMY	7 Feb 45	"R.D.King" Lt Col CAMP COMMANDANT HQ FIRST CDN ARMY

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

44-7

FIELD GENERAL COURT-MARTIAL

CFA69 (to be 1st of AFA2) 40/P & S/1666 (4870) 4/38B

Convened by Order of Brig. H. M. Elder Comd CDN ARMY dated 3 Feb 45

DDMS FIRST

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-118850	Gnr		Arthur	DUPUIS	HQ FIRST CDN ARMY

CERTIFIED TRUE COPY
Joyce Mangh Major

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 6 FEB 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~Reporter and Offrs under instr, if any~~, assemble, and the Court is closed. RRM

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet[✓] attached thereto.(1) RRM
The Court is satisfied that it is properly convened and constituted(2), accused is ~~now~~ amenable to military law, and RRM
each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~now~~ brought before the Court. At 0930 hours trial commences. RRM

A4. The Prosecutor produces a Medical Certificate that accused is ~~now~~ fit to undergo trial by court-martial.(1) RRM
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO/offr~~ RRM

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. ~~President to accused : Do you object to be interpreted to ? Ans~~ RRM
~~Do you object to be sworn(1) by interpreter ? Ans~~ RRM
~~(For shorthand writer to answer.)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, ~~Reporter, and Offrs under instr, if any~~, are sworn.(1) The following are the RRM
ranks, names and units of the offrs comprising the Court, etc :

President	Major	R. R. MacDougall	6 Hussar CA Branch HQ First Cdn Army	
Member	Capt	R. A. Wickware	RCA BRA Branch HQ First Cdn Army	
Member	~~XXXX~~ Lieut	R. F. K. Anthony	RCASC S&T Branch HQ First	
Judge-Advocate	Lt Col	G. E. Tritschler	AJAC ADM HQ, HQ FIRST ARMY	
Prosecutor	Capt	H. R. G. Campbell	CAC ADM OFFR HQ FIRST CDN ARMY (RWR)	
Defending Offr	Lieut	G. M. H. Hodges	RHR FIRST CDN ARMY HQ DEF COY	

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 84 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment makes[✓] (no) [✓] plea RRM
(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~now~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ RRM
not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 113. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The pro- RRM
ceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

VOL 1 P100

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

RAM

B1. The ~~President~~ or JA, ~~I am~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty to~~ charge(s). The accused is (are) so informed, and he (they) ~~changes (has (have) changed) plea(s) of~~ ~~(description). Para 2 of the Schedule is amended accordingly.~~ RAM
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~was~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1) RAM
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1) RAM
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para. If submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

RPM

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 495. *Evidence for accused as to his character should, on his interest, be given before the finding. See RP* 40(*A*) *fn* 1, 84(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3) RPM RPM
(1. *MFB* 103 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes My Commanding Officer (2) RPM
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(1. *When several accused tried substantially see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 40, 44 *and its* (*or their*) *total, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 128, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 340-344. *Overseas RO* 309, 1323, *MML p* 86, 737-739. *As to sentences consigned for civil offences by the law of England see AA* 41(3), *MML p* 1 *RO. When accused already under sentence of imprisonment or detention see AA* 44(*5*), 68(*1*), *KR Con* 304. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 347. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No. D-118850 Gnr Arthur DUPUIS, Headquarters First Canadian Army, a soldier of the Canadian Army Overseas, placed on Active Service, is charged with:

FIRST CHARGE:
A.A. Sec 15 (1) WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
A

in that he

In the Field, absented himself without leave from 2200hours 10th November 1944 until surrendering himself to 4543441 L/Cpl HOLMES A of 247 Headquarters Provost Company at CAEN, France at 2135 hours on 2nd January 1945. (Total time absent 52 days, 23 hours, 35 minutes:)

"F.L.J. Grant" Major

(F L J Grant) Major
A/Camp Commandant
HQ First Cdn Army

In the Field
26 January 1945

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

"H.M. Elder"

(H.M. Elder) Brigadier
DDMS First Cdn Army

In the Field
3 Feb 45.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-118850	Gnr	.	Arthur	DUPUIS	HQ FIRST CDN ARMY

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) this date endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).) "

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~"

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Unit.)
Major	R. R. MacDougall	6 Hussars, CA Branch HQ 1 Cdn Army

(Must be named. RP 106.)

MEMBERS.

(Rank.)		(Unit.)
Capt	R. A. Wickware	RCA BRA Branch HQ 1 Cdn Army
Lieut	R. F. K. Anthony	RCASC, S&T Branch, HQ 1 Cdn Army

(Named or detailed. RP 106.)

WAITING MEMBER.

(Rank.)		(Unit.)
Capt	E. Bugless	RCA CA Branch HQ 1 Cdn Army

(Named or detailed, if any. RP 106.)

JUDGE-ADVOCATE.

(Rank.)		(Unit.)
Lt Col	G. E. Tritschler	AJAG A/Am HQ 1 Cdn Army.

(Must be named, if any. RP 106.)

On Active Service in the Fd

(Country.)		(Rank.)
in HOLLAND	"H. M. Elder"	Brigadier

(Signed personally. RP 105 fn 2.)

Date 3 Feb 45 Commanding DDMS First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

I certify that I have this morning examined D-118850 Gnr Arthur DUPUIS, HQ First Cdn Army, and that he is fit to undergo trial by Court Martial.

"J. C. Middlebro" Capt.

(J C Middlebro) Capt
Medical Offr

6 Feb 45.

SUMMARY OF EVIDENCE

in the case of

D-118850 Gnr Dupuis A, Royal Canadian Artillery, on strength of Headquarters, First Canadian Army.

By direction of the Commanding Officer, the summary of evidence is taken on oath.

Charge Sec 15(1) Army Act — Whilst on Active Service is charged with Absenting Himself without leave, in that he did absent himself without leave from 2200 hrs 10 Nov 44 until 2135 hrs 2 Jan 45. (Total time absent 52 days, 23 hrs, 35 mins.)

FIRST WITNESS Capt H. Barker, Asst Camp Commandant, H.Q. First Canadian Army, having been duly sworn, states:

I am Capt H. Barker, Asst Camp Commandant H.Q. First Canadian Army. I submit the following documents in connection with the AWL of d-118850 Gnr Dupuis A, whom I now recognize - Exhibit 'A' Part II Order Extract form dated 6 Jan 45. Exhibit 'C' Certificate of Surrender.

The accused declines to cross examine this witness.

"H. Barker"

Capt H. Barker.

The accused having been warned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence. Declines to make any statement.

Certified that Rules of Procedure 4 (C) (D) (E) and (G) have been complied with.

I certify that the forgoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused on the 20th day of January 1945.

J. Herring Lt.
Officer detailed to take Summary.

"B" OTHER RANKS

8 ABSENT WITHOUT LEAVE

(a) AWL from 2200 hrs 10 NOV 44 Still absent 2200 hrs 18 Nov 44. (8th day)

D-118850 Gnr DUPUIS A

(b) AWL from 2200 hrs 10 Nov 44 Still absent 2200 hrs 2 Dec 44. (22nd day)

D-118850 Gnr DUPUIS A

Signed "RA Virtue"
(R. A. Virtue) Captain
for officer IC
CANADIAN SECTION GHQ 2nd ECHELON
21 ARMY GROUP.

Certified true extract "F.L.J. Grant" Major
Offr having custody of Original.

CERTIFICATE OF SURRENDER UNDER ARMY ACT SECTION 163 (1) (1)

I Capt. E. J Pierce certify that D-118850 Gnr DUPUIS A. of 1st Canadian H.Q. Branch, Canadian Army surrendered himself to 4543441 L/Cpl HOLMES A of 247 H.Q. Provost Coy at CAEN, at 2135 hrs on 2 January 1945 as a deserter (or absentee without leave). He was dressed in uniform.

Signature "E. J. Pierce"
Officer Commanding 247 H.Q. Provost Coy

Date
3-1-45

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-118850	Gnr	DUPUIS A.	HQ First Cdn Army

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL Sec 15 (1) A.A. four times.

For SEC 40 A.A. one times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 25 Dec 41

Date of last entry in Field Conduct Sheet 11 Oct 44

2. ~~Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.~~

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N/A beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 20 days in military custody, *i.e.*, nil days in open arrest, 20 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 24 yrs 11 mos

6. The date of his attestation ~~XXXXXXXXXXXXXXXXXXXX~~ is 8 Dec 41

7. The service which the accused is allowed to reckon is 3 yrs 1 month

‡State the military decorations (if any) held by accused.

8. The accused is in possession of‡ CVSM & Clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*[illegible]) Wt.[illegible] [illegible] [illegible] [illegible] Gp.[illegible]

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 22 day of January 1945

"H.R.G. Campbell" Capt.
Offr having custody

Files written address.

Adds/

Accused realizes he was wrong in being A.W.L. I just wanted in my address to explain why he went away in first place. Once he found girl O.K., he was so relieved he decided ~~kx~~ he would stay over Xmas. Realizes he should have come straight back but as he knew was A.W.L. he decided to stay over Xmas.

PLEA OF MITIGATION OF PUNISHMENT

of

D-118850 Gnr Arthur DUPUIS

The accused has been charged with being A.W.L. for 52 days, 23 hrs and 35 mins, and he pleads guilty to the charge.

Gnr Dupuis realizes, that he will be punished and does not expect his personal reason for going A.W.L. to excuse him but would ask the court to consider it before going passing sentence.

Prior to going A.W.L. Gnr Dupuis had received a letter from a young girl by the name of Mlle Genevieve Voivenel of P76 Rue de Caen, Lion sur Met, telling him that she was sick and as he had been on most intimate terms with her, he suspected that she was in the family way. He wanted to go down to see her but knew that he could not get away.

While waiting at D.R.A. Branch in Antwerp for an officer to turn up, so he could drive him to Eisendyke he went down town to see Antwerp He went into a cafe and had a few drinks, he met some English soldiers who drank with him and told him, they were going to the direction of Paris. He went along with them and went to see his girl friend at Lion sur Met. He found out that everything was alright with her, this relieved him greatly.

The above was quite a worry to Gnr Dupuis that is the reason he went A.WL. in the first place, if he had asked for, or received proper advice all this would not have happened.

Lt. G. M. H. Hodges,

Defending Officer.

5T-34

Ste Dupuis F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec 41 AA	Not Guilty	Not Guilty	
2nd	(Alternative) Sec 40 AA	Not Guilty	Guilty	
3rd	Sec 41 AA	Not Guilty	Not Guilty	
4th	(Alternative) Sec 40 AA	Not Guilty	Not Guilty	
5th	Sec 40 AA	Not Guilty	Not Guilty	
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for 2 yrs imp with H.L. beginning on (date) 18 Jan 45 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of nil days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be imprisoned with hard labor for a period of sixteen months (16 mos).

(Sgd) AVL Mills Capt , 30 Aug 45 (Sgd) A S Donald Lt Col

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 746.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~(*) DCS

(1. AA 57A. Delete if not used.)

(Sgd) D.C. Spry (D.C. Spry) Maj-Gen Cdn Corps Troops Cdn Army Overseas

Date 4 Sep 45 Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D 77629 Pte Dupuis, Fernando	8 Sep 45	"SS Grayson Lt Col.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Received 26 Sep 1945 JAG Branch CMHQ

Received at CMHQ in AB 160 ST-34

CFAB6 (In lieu of AFA3) 40/P & S/1698 (6144) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Maj-Gen D.C. Spry, DSO Comd Cdn Rst Units dated Aug 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D77629	Pte,	Fernando	DUPUIS	4 CMP HQ

Proceedings Reviewed 25 Sep 45 "J M Robinson Capt" Reviewing Officer, JAG Branch

Certified true copy of original proceedings hereto [illegible] 21 Nov 45 J M Robinson Capt

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*dates*) 30 Aug 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER. NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to~~ ~~or interpreter ? - Ans~~ The Interpreter is sworn.(1) Do you object to W3275 Sgt Spence W Jas shorthand writer ? Ans No Sir. The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No. Sir. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt. Col.	A.S. Donald, DSO	1 CORU
Member	Major	C.J. Atkins	4 Can Repat Depot
Member	Major	E.A. Kay	4 Can Repat Depot
Judge-Advocate	Capt.	A.V.L. Mills	HQ CRU
Prosecutor	Capt	S.C. Biggs (Lawyer)	2 CITR
Defending Offr	Major	J.M.J. Pelletier (Lawyer)	2 Can Repat Depot

Questions by President : Is the Prosecutor a lawyer ? Ans Yes Sir Is the Defending Offr a lawyer ? Ans Yes Sir (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See DI p 2.)

A8. The accused before arraignment makes(s) (no) ~~or~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A9(a) to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence,* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 37(D) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No, Sir.(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (~~no~~) opening address.(1) (Att)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) (Att)
(*1. RP 39(C), 114, KR Can 553. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st - - - - - - - charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ~~-~~.....charge(s); and allowed on the 1st.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (~~are~~) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. Give evidence. Do you intend to call witnesses on your behalf?
Ans. Yes. Are they witnesses as to character only? Ans. No.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), of ~~-~~, of Not Guilty, and states to the accused that the finding(s) of the Court on the 2nd.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be tried next by.....and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (d), RP 43, 120(A). 2. AA 54(3), RP 43, 117. This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. Neither
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes, Sir, by my def offr.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its premise, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-52, 69, 118, 119(A), KR Can 308, 330, 343-344, Overseas RD 309, 1323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(B), 68(C), KR Can 364. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of records after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"AS Donald Lt Col"
"AVL Mills"Capt

CHARGE SHEET

The accused, No.D77629 Pte Fernando DUPUIS, 4 Cdn Mil Prison & Detn Bks, a soldier of the Canadian Army Overseas, is charged with:

First Charge
Sec 41
Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ARSON, CONTRARY TO SECTION 5 OF THE MALICIOUS DAMAGE ACT, 1861,

in that he

at Headley, England, on 9th May, 1945, while a soldier undergoing sentence in No 1 Cdn Detention Bks, together with other soldier undergoing sentence in said Detention Bks, maliciously set fire to a watch tower, being part of the said Detention Bks.

Second Charge
(Alternative)
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

at Headley, England, on 9th May, 1945, while a soldier undergoing sentence in No 1 Cdn Detention Bks, was improperly concerned in a disturbance in said Detention Bks.

Third Charge
Sec 41
Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, RIOTOUS DAMAGE, CONTRARY TO SECTION 12 OF THE MALICIOUS DAMAGE ACT, 1861,

in that he

at Headley, England, on 10th May, 1945, while a soldier undergoing sentence in No 1 Cdn Detention Bks, and being riotously assembled together with other soldiers undergoing sentence in said Detention Bks, damaged the said Detention Bks.

Fourth Charge
(alternative to
third Charge)
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

at Headley, England, on 10 May, 1945, while a soldier undergoing sentence in No 1 Cdn Detention Bks, was improperly concerned in a disturbance in said Detention Bks.

"A S Donald Lt Col"
"AVL Mills Capt"

Fifth Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE?

in that he

At Headley, England, on 8th May, 1945, while a soldier undergoing sentencein No 1 Cdn Detention Bks, was improperly concerned in a disturbance in said Detention Bks.

"L S Grayson"

Reading, England,
14 Aug 45

(L.S. Grayson) Lt-Col
Officer Commanding,
No 4 Cdn Mil Prison & Detn Bks.

To be tried by FGCM

"D. C. Spry"

In the Field
15 Aug 45

(D.C. Spry) Maj-Gen
Comd,
Cdn Rft Units

"A S Donald Lt Col"
"AVL Mills Capt"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
D.77629	Pte	Fernando	DUPUIS	4 CMP&DB

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 Aug 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached thereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	A.S. Donald DSO	1 CORU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	C.J. Atkins	4 Cdn RepatDepot
Major	E.A. Ray	4 Cdn Repat Depot

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Major	W.O. Stockdale DSO	1 Cdn Repat Depot

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	A.V.L. Mills	HQ CRU

On Active Service in the Fd

(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)
England	"D. C. Spry" ("D. C. Spry")	Major General
Date 26 Aug 45	Commanding Cdn Rft Units.	Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"AVL Mills Capt"

MEDICAL OFFICER'S CERTIFICATE
(KR (Can) 557)

I certify that I have this morning examined

NO. D 77629 RANK Pte NAME DUPUIS, F. UNIT No 1 CITR

and in my opinion he is fit to undergo trial by Court Martial.

Station: Field

"P W Hudson Capt" Capt
(Medical Officer)
P.W. Hudson

Date: 30 August 45

No 4 Can Mil Prison & Det Bks
(Unit

TRANSCRIPT BY: W.3275 Sgt Spence M.E.

TRIAL OF

D.77629 Pte Fernando DUPUIS 4 CMP&DB

PROSECUTION

By way of an opening address I simply wish to point out that the disturbances at Headley Down continued for the 8th,9th and 10th of May this year, and these Charges are concerned with events on each of those three days.

With the consent of the Defence I will file the plan of the Detention Bks.

PLAN OF DETN BKS IS PRODUCED, ACCEPTED BY THE COURT, AND MARKED EXHIBIT "1"

The only alteration to bring the plan up to date is that the hut desi nated B2 is now used as a living hut, and at that time it was used for something else.

FIRST WITNESS for Prosecution: K.672056 Sgt GAVINS J. 4 Cdn Mil Prison and Detn Bks, being duly sworn, is examined by the Prosecutor:

Q Will you give the Court your number, rank, name and Unit?
A. K.671 67 Sgt Gavins J. on staff of 4 Cdn Mil Prison & Detn Bks sir.

Q Were you on the staff at Headley Down Detn Bks on 8th,9th and 10th May 45?
A Yes sir.

Q And had duties in "A" Compound?
A Yes sir.

Q Do you know the accused?
A Yes Sir.

Q Did you see him on 8th May 45?
A Yes sir.

Q. What time did you see him?
A At approximately 1800 hrs sir.

Q Where were you?
A At his cell door sir.

Q Which is where?
A Cell block 5 sir.

Q I believe that is on the north side of the parade square?
A This is correct sir.

Q What were you doing at that time?
A I was removing the equipment from the cells as ordered by one of our offrs.

Q Will you describe to the Court the set up in the cell block?
A You go in the front door of the cell block and there are two rooms, one on either side. One is a guardsmens room, where we keep our books, and the other is just a store room where we put the clothes of the GUF at night. On the left hand side you have cells 1 to 7 and immediately accross from 7 to 14.

Q They are individual cells?
A Yes sir.

Q I believe there is a corridor that runs between the cells?
A Yes sir.

Q What was it you were doing on this occasion?
Q We were removing everything but blankets and pallaisses out of the cells so the SUS could not use them for banging on the doors and windows sir.

Q Did you see the accused on this occasion?
A. Yes sir.

Q Where was he?
A He was in his cell sir.

Q Was there anything unusual when you saw him?
A When I opened the cell door and asked for his equipment he immediately started breaking his bed board to pieces and handing them out to me. The rest of his equipment was intact.

Q What exactly is his bed board?
A It is 6 ft long by 3½ to 4 ft wide, and stands 6" off the floor on legs.

Q Did you see him breaking this?
A Yes sir, he broke it right in front of me.

Q What was the condition of the rest of the cell block?
A The rest of the cell brlock was fairly quiet, nothing else was broken and everything was handed out intact.

Q Was everything normal in the rest of "A" Compound?
A Everything was quiet, except for some yelling. The first breakout had been calmed down and the second one had not started.

Q What time was the first break you mention?
A Approximately 1905 hrs sir.

Q Was it a break by the SUS?
A Yes sir, from the living huts.

Q Approximately how many were involved?
A Approximately 50 sir.

Q Then you mention another break - what time was that?
A About 1930 hrs sir.

Q How long before that one was it you were near the accused's cell?
A It was approximately 1800 hrs that I was in cell block 5 sir.

Q Did you see any other unusual thing happen around cell block 5?
A No sir nothing.

Cross-examined by the Defending Officer:

Q Is it not possible that the bed legs of the accused's bed were actually broke before you got into the cell?
A It is very unlikely sir.

Q But it might be possible?
A I might have been, but he should have reported it and had it fixed.

Q Suppose they might have been cracked?
A They may have been cracked, but they would still have been serviceable.

Q Did you see the accused on that evening cause any trouble outside of this incident?
A No sir.

Re-examined by Prosecutor:

Q Do you know if the accused in fact ever did report his bed being broken?
A No sir. I was 2 i/c and took over at 1700 hrs. Nothing was reported on the Count.

Questioned by the Court:

Q Just exactly was the extent of the damage - how thick is the bed board?
A It is similar to the floor, a half an inch thick and about 5 inches wide, there are about 9 or 10 of them.

Q They are separated?
A They form together just like the floor sir.

Q What did you see the accused do to the boards?
A He pulled off 3 or 4 slates and then I took the rest of them.

Q Is there any routine inspection of these cell blocks?
A No sir, except for the lay o-t they have, they have their beds laid out and we go along and check them.

Q When does that check take place?
A In the morning sir.

Q You do not check to see if there is any damage?
A No sir. The day staff does that, and when you take over at 1700 hrs you just count heads.

Questioned by Judge Advocate:

Q Did you accused hand you the articles that were broken, or throw them at you?
A He handed them to me sir.

Q To your knowledge he did not do any more damage that day?
A No sir, not to my knowledge.

In the opinion of the Court and Judge Advocate it is unnecessary to comply with RP 83(B)

The witness withdraws.

SECOND WITNESS for Prosecution: A.34001 S/Sft Semple P.J. of 1 Cdn Detn Bks, being duly sworn, is examined by the Prosecutor:

Q Will you give the Court your number, rank, name and unit?
A I am A.34001 S/Sft Semple P.J. on staff of 1 Cdn Detn Bks.

Q Were you on the staff at Headley Down Detn Bks on 8th,9th and 10th May 45?
A Yes sir.

Q Did you have duties in "A" Compound?
A Yes sir.

Q Do you know the accused?
A Yes sir.

Q Did you see him on 8th May?
A No sir, not on the 8th May.

Q Did you see him the 9th May?
A Yes sir.

Q What time did you see him?
A Between 0800 and 0900 hrs. He was in his cell at 0800 hrs.

Q Where were you at the time?
A I was in the cell block checking up on the staff and the books, and getting the count from the staff in charge. Everything was alright then.

Q Which cell block is that?
A Cell block 5 sir.

Q Did you see the accused after that on the 9th May,
A I did not see him until after they got out of the cell block. I did not see him come out, I saw him on the parade square.

Q What was he doing there?
A He was walking around the parade square when I saw him.

Q Was he carrying anything?
A Not at that time sir.

Q Did you see him later on the 9th May?
A [illegible] between the hours of 10 and 11, after I had returned to the Compound from the outside, after the escape.

Q At that time where was he?
A Walking around the cell blocks and on the parade square. He was alone at that time.

Q Was he carrying anything then?
A No sir, not then sir.

Q Were there other SUS about then?
A Shortly after there was a parade formed. I found out they were headed towards Kit stores. The accused was there just with the rest of the men - some 40 to 50 of them.

Q What time was it you saw that parade forming?
A About 1030 sir.

Q What happened then?
A Then men walked in a body towards the Kit Stores. That is where they keep all the kits of the SUS. I saw the accused in that gathering of men.

Q Will you point out on the plan where this Kit Storage is?
A (Witness indicates living hut in the S.W. part of the plan. One of a group of 3 huts, the right hand hut being designated as living hut.)

Q What happened after that?
A I spoke to two SUS outside 10 cell block and asked them where the men were parading to and they said to the Kit Stores. The accused was in the rear of the group at that time. He was carrying no weapons. I asked the two SUS to assist me, and they ran ahead of the men and spoke to them and managed to stop the parade. They then returned to the parade square. There was no damage done during that parade.

Q Did you see the accused again on the 9th May?
A I saw him shortly after dinner and periodically. Each time I saw him he was alone. He was walking around the square with his denim pants on and minding his own business, not mingling with any of the rest of the men.

Q Did you see him the 10th May?
A I saw him the 10th May shortly after the GOC's speech, that was the morning of the 10th.

Q Approximately what time did you see him?
A About 1000 hrs sir.

Q Where did the GOC speak to the men?
A He spoke to the men just opposite living hut 2 sir.

Q What did he say to the men?
A He had them all around, asking them their complaints and they said what they missed most was cigarettes and other privileges.

Q Did you see the accused after this speech?
A I did sir.

Q Where was he at that time?
A A body of men had broken off and formed a parade - 20 to 30 men in all. Some headed in the direction of the Sanitary block at the S.W. corner of "A" compound. (witness indicate building called Sanitary block at the S.W. corner of "A" compound)

Q How long after the General's speech was it when you saw this group?
A About ten minutes after the General had left the Compound.

Q Did you yourself go towards the Sanitary Block?
A I was opposite cell block 5 at that time looking towards the parade, and I headed around towards the sanitary block as I thought they were going to the fence.

Q What did you see?
A By the time I got there I could hear smashing and breaking of glass in the sanitary block.

Q What was inside that block?
A Urine bowls, and pipes and so on.

Q What sort of bowls - latrines?
A Yes sir, latrines.

Q About how many?
A About 15 to 20. I never took any count.

Q Do you know what condition that block was in before the General spoke?
A It was in fairly good condition. There was some damage done the night of the 8th. A little damage such as a few panes of glass broken, but after the speech there had been considerable damage done when I went in. It was alright in the morning when I inspected.

Q Did you inspect it that morning before the General spoke?
A Yes sir, we make occasional trips in there to see if anyone is in the place.

Q Did you go near this sanitary block after the General spoke?
A Yes sir, I went up the steps a short distance from it. The steps are outside living hut 1 and the latrine is only a short distance from it, about 20 ft. I was standing there at the time the men were in the sanitary block.

Q Where were you when you saw the accused?
A I was close to the sanitary block. The accused was on the outside he was not in it.

Q Then what happened?
A I heard some of the men call here's the staff and the smashing stopped. I shouted to the men to come out, and about half of them came out and the others stayed in.

Q How many would there be around the building?
A About 20 sir, some had iron bars, I could see them, but I could not identify anyone in there, it was dark.

Q Did you see the accused inside at any time?
A No sir.

Q Did you go inside the block yourself?
A I went inside afterwards, about 20 minutes after they had all

gone, and I saw considerable damage done to the windows which were smashed, there were several iron bars lying on the floor, and the place was flooded with water. The pipes had been broken and the water system was pulled down from the wall.

Q When you saw the accused there how close were you to him?
A Only a few feet from him at the time sir.

Cross-examined by Defending Officer:

Q When did you see the accused first on the morning of the 9th May 45?
A It would be between 10 and 11 hundred hours sir.

Q Where was he then?
A He was outside the cell block.

Q On the parade square?
A Just walking around idle sir.

Q You did not see him doing any damage to the cell block?
A No sir. The cell block was in good condition. The locks had been broken off with a screw driver. There are only four small screws holding the locks in place, and they can be taken off quite easily.

Q Did you see the accused trying to excite others on the 9th May to cause trouble?
A No sir, I did not.

Q What time was it on the 9th that you saw the accused with a bar?
A I saw him with what I thought was a bar, it might have been a piece of the window blackout, many of the men were carrying them in their hands.

Q Did you see him do any damage?
A No sir.

Q Was the accused just following the rest of the men?
A Yes sir, they were called by the leaders, and the others just followed along.

Q On the 10th May did you see the accused carrying a club or bar?
A No sir.

Q Did you see him doing any damage inside the sanitary block?
A No sir.

Q About what time did the GOC finish his talk?
A About ten o'clock, I am not certain sir.

Q Is ten o'clock not the time he started?
A About that time sir.

Q How long did the speech last?
A I was there for most of the speech, but I was not there at the start, I came shortly after.

Q Approximately how long would you say the GOC spoke?
A About 15 minutes sir.

Q You say you saw the accused on the 10th May outside the sanitary block, and that you saw him inside the cell block as well?
A I did not see him inside the cell block sir.

Q On the other hand in the Summary of Evidence you said you saw the accused inside the cell block?
A I know in the Summary of Evidence, but I did not see him inside the Sanitary block.

Q Since it happened a long time ago you cannot actually swear if you did see him there at all?
A I cannot swear to it, it is quite a long time ago, nearly three months sir.

Q If at that time you thought you saw him inside, and now you think it was outside, maybe you didn't see him at all?
A I did not see him inside at any time. I know the accused and never had any trouble with him.

The Prosecutor declines to re-examine.

Questioned by Judge Advocate:

Q Did the accused have any duty to do on the parade square the 9th May at any time?
A No sir.

Q Did you see him opening any cell blocks on the 9th May?
A No sir.

Q Do you recall saying previously that you did see him in a group assisting?
A I saw him in the group, but I did not see him open any of the cells.

Q Do you recall saying in the Summary "The accused was agitating and instigating as one of the leaders in bringing the group together"?
A He was among the party as the groups formed up to march around the west end of the fence. I spoke to the accused at one time along with Kelly and other SUS. They were calling for cigarettes, and I gave them a direct order to return to the parade square, which they did.

Q To your knowledge was there any additional damage done in the Sanitary block after the OC's speech when some personnel went inside?
A Yes sir. The damage of the latrines, the pipes and the water system.

Q Had they been damaged previously?
A No sir.

Q Did you actually see the accused go in?
A I did not see him go in sir.

Questioned by the Defending Offr through the Court:

Q Was it a fact that on the 9th May cell blocks 1,2,3 were opened and that the SUS were milling around the square?
A I got permission to let one cell out, cell block 3, to stop damages. I got permission from the Orderly Offr that day to open the cell blocks and when I returned at 1000 hrs from the outside there were a number of men still locked in 3 cell block. The SUS that were from the living huts were milling around with bars to do damage there, and I got permission to open the lock of the grill door to free the men.

Q During the day was there any interference by the staff regarding the SUS milling around the square if they were keeping quiet?
A No sir.

Q It was just taken for granted it was better they were out there?
A Everything was out of control, and nothing could be done, there was such a few staff.

Q You never saw the accused inciting others to cause trouble?
A I just saw him in the group with the leaders. I could not swear he was one of the leaders.

Q Was it proper for this body of SUS to be at the Sanitary Block at this time?
A No sir. The only time they go there is under escort from the staff from the living huts. That sanitary block is only for living huts 1,2 and 3, and they are paraded there 15 at a time, and returned to the living huts.

In the opinion of the Court and Judge Advocate it is not necessary to comply with RP 83 (B)

The witness withdraws.

THIRD WITNESS for Prosecution: H.16836 Sgt McCaffrey C.J. on staff of 3 Cdn Mil Prison and Detn Wks, being duly sworn, is examined by the Prosecutor:

Q Will you give the Court your number, rank, name and unit?
A H.16836 Sgt McCaffrey C.J. of 3 Cdn Mil Prison and Detn Wks.

Q Were you on the staff of Headley Down Detn Wks on 8,9, and 10th May 45?
A Yes sir.

Q Did you have duties in "A" compound?
A Not in "A" Compound sir.

Q Were you in "A" Compound on the 9th May?
A No sir, I was not down there.

Q Were you in "B" Compound?
A Yes sir.

Q Do you know the accused?
A Yes sir.

Q Did yo see him the 9th May 45?
A Yes sir.

Q What time?
A It was in the afternoon sir.

Q Where was the accused when you saw him?
A He was in front of the Guard room sir, right across from B2.

Q Will you indicate it on the plan exhibit "1"?
A The witness indicated that the accused was near the rectangular building shown as guard room, and that he was standing in front of the building designated as B2.

Q At that time was there anything going on in "A" or "B" Compound?
A The Gordon fire truck had just pulled in sir.

Q Where did it go?
A The truck drove in and parked in front of the Guard room. The truck and trailer.

Q That is the guard room you have already indicated?
A Yes sir.

Q Was the truck there when you saw the accused?
A Yes sir.

Q What did you see happen?
A There was quite a few of the SUS around in that locality and the accused, whom I now recognize, grabbed the nozzle of the hose that was on the reel of this said truck, and started to run with it at the same time unraveling the hose.

Q Which direction was he running in?
A Towards the rear of the vehicle, that would be towards the Main Gate.

Q Why did that fire truck come?
A They had been called to a fire sir.

Q Did you see the fire?
A Yes sir.

Q Where?
A It was down in "A" Compound in an observation tower.

Q When you saw the accused by the guard room was that before or after the fire?
A It was during the fire sir.

Q At the time you saw him take this hose was that before or after the fire?
A The fire had been under control then sir.

Q When the accused ran towards the Main Gate with the hose what happened then?
A When he got so far he dropped it and ran around to the other side of the trailer that was connected to the fire truck.

Q How far from him would you be?
A When he dropped the end of the hose I was about 10 ft from him.

Q What was done with the hose after he dropped it?
A The fire chief gave orders for it to be relled up again sir.

Q Is there a water supply near where the truck stopped that would be available for us?
A Yes sir.

Q Where is that water supply with reference to where the truck stopped?
A It would be just about 50 ft sir.

Q In which direction from the truck?
A The truck would have to pull around the guard room corner.

Q Was it in the direction which the accused took the hose?
A No sir, the accused would be running in the opposite direction sir.

Cross-examined by Defending Officer:

Q How long have you know the accused?
A I do not know him, just by sight since 9th May 47.

Q Just that very day?
A That is right sir.

Q Had you seen him previously?
A The day before running around "A" and "B" Compound.

Q Do you know that the accused was in his cell on the previous day?
A No sir.

Q How many SUS were around the fire truck at the time?
A Approximately 15 to 20 sir.

Q Since you did not know the accused before is it possible you could have mistaken him for someone else?
A No sir.

The Prosecutor declines to re-examine.

Questioned by the Court:

Q Were there any other fire trucks in the area at the time this Bordon truck came?

A That was the only one I saw sir.

Q Did this truck at any time go into operation to half the fire?
A No sir.

Questioned by Judge Advocate:

Q Was the point where the truck drew up the closest point to the water supply that could be used for the fire?
A Yes sir, with extensions.

Q Did you give any orders for the accused to drop the hose?
A No sir.

In the opinion of the Court and Judge Advocate it is unnecessary to comply with RP 83 (B)

The witness withdraws.

THE PROSECUTION IS CLOSED.

MOTION THAT NO PRIMA FACIE CASE WAS MADE OUT ON FIRST CHARGE:

The Defence submits there was no evidence brought up before the Court regarding the First Charge of Arson on the 9th May. Therefore the accused should be found Not Guilty and the Charge withdrawn.

REPLY BY PROSECUTOR:

On the evidence as it appeared in Court today as Prosecutor I agree it is not sufficient to support any conviction on that Charge, although the evidence at the Summary of Evidence was sufficient to the laying of the Chrage. So I cannot oppose the motion of the Counsel for the Defence as the evidence is not sufficient.

The Court is closed to consider the Motion.

The Court being re-opened, the accused is again brought before it.

President:

The Court upholds the submission of the Defence with respect to the 1st Charge, so you are therefore found Not Guilty on the 1st Charge. The trial will proceed with respect to the remaining Charges.

DEFENCE

FIRST WITNESS for Defence: The accused D.77629 Pte DUPUIS F. presently a soldier under sentence at 4 Cdn Mil Prison and Detn Bks, being duly sworn, is examined by the Defending Officer:

Q On the 8th May 45 will you tell the Court what Cell block you were in?
A Cell 6 cell block 5 sir.

Q That is not a cell facing the parade square?
A No sir.

Q On the evening of the 8th when Sgt Gavins ordered the NCS in the cell block to clear their equipment out of the cell what did you do?
A I picked it up and the board was loose and a board fell out from it.

Q What did you do with your equipment when you were ordered by Sgt Gavins to take it out of the cell?
A I put it outside.

Q Was there anything wrong with the legs of your bed?
A Yes sir.

Q Will you tell the Court what actually was wrong with the legs of your bed?
A There were a few nails loose and the legs came off the bed board.

Q To whom did you hand them?
A I gave them to the Sgt when he ordered me to take the equipment out.

Q Did you break anything in your cell on the afternoon or evening of the 8th May?
A No sir, he told me I was breaking it, but the board fell from the leg of the bed.

Q The morning of the 9th what time were you released from your cell?
A About quarter to ten sir.

Q By whom were you released?
A By 3 or 4 other SUS.

Q Did you help them in any way to release you?
A No sir.

Q Where did you go after your release?
A Out on the parade square with the rest of the boys.

Q Did you spend most of the day in "A" Compound parade square?
A Yes sir.

Q Do you recall sometime in the afternoon of the 9th going to "B" Compound?
A Yes sir, I went there.

Q About what time was that?
A About half past four sir.

Q Do you recall the fire truck coming into "B" Compound on the 9th May?
A Yes sir, it did.

Q Was there a fire going on at the time?
A It was pretty well out, just the bottom of the tower was burning.

Q Were there many SUS around the fire truck?
A About 75 to 100 sir.

Q Where were you standing?
A I was standing abo t 5 ft from the truck.

Q Was it near the hut?
A On the main road sir, outside living hut B2.

Q Did you see anything special happen while you were standing there watching the truck?
A I did no t see much.

Q While you were ouside B2 did you unreel a hose from the fire truck?
A No sir.

Q Did you interfere with the work of the truck personnel?
A No sir.

Q Did you see anyone else interferring?
A I saw someone running with the hose, but it was not me. I do not know the S/S.

Q What were they doing?
A Just running with the hose sir.

Q On the 10th May after the GOC's talk were you given any orders to proceed anywhere special?
A To go for dinner sir.

Q What actually did you do then?
A I went to the kitchen and helped to bring the meal over to the hut.

Q Will you point out on the plan where that kitchen is?
A The accused points out cook house south of the living hut.

Q After the GOC's talk the morning of the 10th did you go to the sanitary block?
A No sir.

Q Did you go before?
A No sir.

Q Did you go during the talk?
A No sir.

Q Do you recall having done any damage to the sanitary block?
A No sir.

Cross-examined by Prosecutor:

Q On the 8th May do you remember when you were in your cell block if there was quite a bit of commotion on during the afternoon?
A Yes sir, there was quite a bit of noise.

Q Did you hear at any time during the afternoon of the 8th that some SUS had broken out?
A No sir.

Q There was some shouting back and forth inside cell block 5, talking amongst the SUS inside the cells?
A I was locked up sir.

Q But there was nothing to prevent you from talking across the corridor or from window to window?
A We talked sir.

Q Did you know some SUS had broken out the afternoon of the 8th?
A They broke out from the house sir, not from the cell blocks.

Q It was shortly after that that Sgt Gavins came along to your cell?
A Yes sir.

Q Do you remember him asking you for your equipment and movables?
A Yes sir.

Q What did you give him?
A I have him my board and I picked up my bed board, and it was broke so I put it in the hall.

Q Do you remember him saying in evidence that you had pulled off 3 or 4 slats from your bed?
A I never did sir.

Q What about the legs of your bed?
A The legs of the bed were broke sir.

Q The boards were on trestles?
A Yes sir.

Q How many legs for each trestle?
A One at each end sir.

Q How many legs were broken?
A One set had a big crack in it.

Q One leg or two legs?

A One leg sir.

Q Did you report it?
A I did not have the chance sir.

Q I am suggesting the reason why you didn't have the chance was because you broke it yourself just before that?
A No sir.

Q You are quite sure of that?
A Yes sir.

Q When had these 3 or 4 slats been broken?
A They were not broken sir. I only have 3 bars to sleep on and they were in perfect shape.

Q On the 9th May you were in "as Compound that afternoon?
A Yes sir.

Q Do you remember when the fire engine came from Bordon?
A Yes sir.

Q There were quite a few SUS around the fire engine? Some were helping and some were not helping?
A I would not know that sir.

Q Were you close to the engine?
A About 5 ft from it sir.

Q You told your counsel that you saw someone take the hose and away with it?
A Yes sir.

Q It was one of the SUS?
A Yes sir.

Q He ran in the direction of the Main Gate?
A Yes sir.

Q Which is away from the water supply?
A Yes sir.

Q You saw this SUS do that?
A I was quite close, about 15 ft from him.

Q How many other SUS were around there at the time?
A 75 to 100 sir.

Q Were any other interfering with the work of the firemen?
A They were talking and asking for cigarettes.

Q Any other interference?
A No sir.

Q You agree that the person who ran away with the hose was interfering?
A I do not quite understand sir.

Q The person who ran away with the hose was interfering with the firemen?
A Yes sir.

Q On the 10th May do you remember being on the parade square when the General spoke?
A Yes sir.

Q After he spoke was there anything said as to what you were to do?
A Yes sir, to go for the meal.

Q What time was that?
A Ten past eleven sir.

Q Did some go over towards the Sanitary block?
A I did not see beca se I ran up to get the meal right away.

Q Where was it served?
A Huts 1, 2 and 3 sir.

Q Which on did you eat in?
A Hut 2 sir.

Q Is that the one you normally live in?
A No sir, I live in a cell block, but they told us to eat at the huts.

Q And you didn't see anyone go to the Sanitary block?
A I went to the kitchen.

Q Do you know S/Sgt Semple quite well?
A Yes sir.

Q He knows you quite well?
A Yes sir.

Q He saw you in the crowd outside the sanitary block?
A Yes sir.

Q He knows you well enough not to make a mistage?
A I do not know. I never went near "A" Compound latrine.

Q When you went into living hut 2 for your lunchdid you see any one there that you knew?
A Yes sir.

Q Any of the staff that you knew?
A Yes sir.

Q Who were they?
A Staff Wilson, that is the only one I knew in there.

Q And the SUS you knew?
A SUS Beebow sir.

Q Was there anyone else?
A I knew lots, but I forgot their names.

Q Do you deny you were ever near the sanitary block after the General spoke?
A Yes sir.

Re-examined by Defending Officer:

Q You said you went down to the cook house was it to get a meal for the other SUS to go up to the living huts?
A Yes sir.

Questioned by the Court:

Q I want you to tell me exactly the extent of the breakage to your bed? Can you explain exactly - when you lifted it up did it break apart?
A Yes sir, it broke off.

Q Did you sleep on that bed the night before?
A Yes sir.

Q It did not fall down?
A No sir, because they go in each other, they are showed together with a couple of nails.

Q In your evidence you said that on the 10th May you had not been at the sanitary block at any time during that day?
A That is right sir.

Q Is that the only sanitary block in "A" Compound?
A Yes sir.

Q Did you not have to relieve yourself all day?
A We use the one in our cell blocks.

Q Where is it?
A In cell Block 5 in the middle of the cell block sir.

Q Did you shave or wash that day?
A No sir.

Q What were the normal meal times before this disturbance?
A Eleven o'clock sir.

Q That was your normal lunch time?
A Yes sir.

Questioned by Judge Advocate:

Q Did you notice anything wrong with your bed before the 8th May?
A Yes sir.

Q When was that?
A That was the 7th May sir.

Q Did you report it to anyone?
A No sir.

Q Did it bear your weight alright the night of the 7th May?
A Yes sir, because as I explained they hold together.

In the opinion of the Court and Judge Advocate it is unnecessary to comply with RP 83(b)

SECOND WITNESS for Defence: B.59046 SUS SHIELDS G.F. presently a soldier under sentence at 4 CMP & DB, being duly sworn, is examined by the Defending Officer:

Judge Advocate to witness: I must warn you that you need not answer any questions, the answer to which may tend to incriminate you. Do you understand that? Answer: Yes sir.

Q Will you give the Court your number, rank, name and Unit?
A B.59046 Pte Shields G.F. presently SUS at 4 CMP&DB.

Q The afternoon of the 9th do you remember being in "B" Compound?
A Yes sir.

Q Do you remember the fire truck in "B" Compound?
A Yes sir, it came in and parked in front of hut B2.

Q Do you know the accused?
A Yes sir.

Q Did you see the accused at that time outside hut B2?
A Yes sir, he was talking to me.

Q Did you see the accused running with one of the hose from the truck?
A No sir.

Q Did you see anyone else running with the hose?
A Yes sir, I saw someone running with the hose, but it was not the accused.

Q In what direction was this SUS running with the hose?
A Towards the main gate sir.

Q Did you stay there until the truck left?
A No sir, the truck was still there when the accused I went walked off to the Compound.

Q While you were there id you at any time see the accused interfering with the hose?
A No sir.

Cross-examined by Prosecutor:

Q When you and the accused walked towards the Compound was the fire still going?
A No sir.

Q It had been put out?
A I do not know what time it was put out, but it was out when we got down there.

Q When you and the accused left the Bordon fire truck was the fire going at that time?
A I do not know, I could not see from where we were sir.

Q When you walked from Bordon fire truck to "A" Compound you could see the watch tower?
A Yes sir, As soon as we passed the kitchen.

Q Was the fire still going?
A It was out sir.

Q This person you saw unreeling the hose, were you pretty close to the hose?
A I was back on the lawn in front of B2. There were a lot of fellows in front of us.

Q What was "us"?
A The accused, he was talking to me.

Q All the time the truck was there?
A I met him up there when the truck came in and we left together.

Q When you say you met him there, do you mean you did not go there together?
A I just met him there sir.

Q He was there a little before you got there?
A I could not say. I just got there, I went to see another friend of mine, Edward Sellasney.

Q Was he there?
A He was in his hut. I was talking to him for a few minutes and then came out.

Q You saw this SUS run with the hose, and you said you were talking to the accused. Is this not the situation - that you were talking to the accused after you saw this person run and drop the hose?
A No sir, I was talking to him while the fellow run with the hose.

The Defending Offr Declines to re-examine.

Questioned by the Court:

Q How far were you two standing from the fire truck as you were talking?
A I could not say exactly, it was on the lawn in front of hut B2.

Q About how far?
A 10 to 15 ft sir.

Q How far were you from the man with the hose when you saw him running?
A We would be towards the front of the hut, and he went from behind it.

Q Where were the 75 to 100 SUS at the moment?
A I would not say how many were around the truck, there were some around the truck and oposite us, and around us.

Q Where as the reel on this fire truck?
A I did not take any particular notice, but presume it was on the back of the truck.

Q How far did you see this man running?
A I just saw a man running with the hose, I could not be definite on how far.

Q What time do you say is the normal meal time?
A 12 o'clock sir, and around 5 sir.

In the opinion of the Court and Judge Advocate it is unnecessary to comply with RP 73(3)

The witness withdraws.

THIRD WITNESS for Defence: D.77662 Pte BEECHOW K.G. presently a soldier under sentence at A CMP&DR, being duly sworn, is examined by the Defending Officer:

Judge Advocate to witness: I must warn you that you need not answer any questions, the answers to which may tend to incriminate you. Do you understand that? Answer: Yes sir.

Q On the 10th May after the GOC's speech where did you go?
A I went down to the cell block and shortly after we had an early dinner and I went up to help bring the dinner down.

Q Where did you go?
A Up to "A" Compound kitchen.

Q Would you show it on the plan?
A Indicates same kitchen as before.

Q When you arrived at the kitchen did you see the accused?
A Yes sir, I saw him. I noticed him because he had sort of a bald head, his hair was shaved off and I mentioned the fact that since we were going to prison he would be right at home.

Q What was he doing there?
A He was there with the other chaps, getting the dinner.

Q As helpers?
A Yes sir.

Cross-examined by Prosecutor:

Q What time was lunch after the General spoke?
A Right shortly afterwards. I could not say, I did not have a watch, but I would say about 15 minutes after. When he finished speaking we walked to the square and had early dinner because we were leaving that afternoon.

Q Where were you going?
A We were being transferred to Reading because the GOC said there was no room to hold us as the place was damaged.

Q Where did you eat your lunch?
A Down around the cell blocks sir.

Q Had you ever seen the accused before?
A Yes sir.

Q Where?
A I met him in Three Rivers in Canada before I came over, and I saw him again at Headley.

Q Had you seen him before this morning of the 10th?
A Yes sir, up in the cook house. I remember him distinctly because he had his hair shaved off, and I cracked a sort of joke that he would be a real convict when he got to prison.

Q What do you mean when he got to prison?
A We were going to Reading prison sir.

Q What about the others did they have their hair shaved?
A No sir, it was up to you, if you wanted your hair taken off you could. You had to keep your hair short anyway.

Q Are you suggesting that the accused only the only one with his hair cut short?
A Oh no, there were quite a number.

Q How many, ten?
A I could not say.

Q Was it at least ten?
A It is possible.

The Defending Offr declines to re-examine.

Questioned by the Court:

Q You mentioned you knew the accused in Three Rivers - for how long?
A 3 to 4 months sir.

Q Were you in the same Regt?
A Yes sir, we were reinforcements.

Q Were you pally?
A No sir, I just knew him.

Questioned by Judge Advocate:

Q Have you seen the accused since he has been at Reading?
A I have seen him around, not to talk to him.

Q You are not in the same cell block?
A I was for about a week, but I see him around working as an orderly.

In the opinion of the Court and Judge Advocate it is not necessary to comply with RP 83 (B)

The witness withdraws.

At 1210 30 Aug 45 the Court adjourns until 1330 hrs.

At 1330 hrs 30 Aug 45 the Court re-assembles, pursuant to minutes of adjournment, present the same members.

The accused is again brought before it.

CLOSING ADDRESS BY PROSECUTING OFFICER:

On the 2nd Charge alternative to the 1st one the Defence submits that the Prosecution failed to prove that the accused was improperly concerned in a disturbance on the 9th May. There is no evidence that the accused was a leader or was exciting other PWS to make trouble. On the other hand S/Sgt Semple said the accused never appeared to him to be a leader or instigator of the trouble. Also there is no evidence that he did do any damage to the buildings or property of the Cdn Detn

Bks on that same day. The evidence regarding the incident in the late afternoon near living hut B2 in connection with the fire truck is contradictory. Sgt McCaffery is not a very strong witness from the point of view of the Defence because he knew the accused only that day, and to prove that he says he remembers seeing the accused on the previous day roaming around the parade square of "A" Compound, while it has been brought up in Court that actually the accused was in his cell all day the 8th May. So Sgt McCaffery certainly mistook someone else on that day for the accused. If he did on the 8th there is no reason to believe he did not do the same thing the 9th May.

I wish to draw the attention of the court to para 19 Chapter 7 of MML page 108. (quotes) The Defence submits that the accused at no time on the 9th May encouraged a disturbance, and although he was like the rest of the SUS roaming around, he did not take any active part, and should not be found Guilty.

On the 3rd Charge the Defence submits the Prosecution has failed to prove that the accused was involved in riotous damage. There is no evidence that the accused did any damage to the sanitary block on the 10th May.

The 4th Charge which is alternative to the 3rd there is also no evidence that the accused was improperly concerned in a disturbance. The evidence discloses that the accused was near the cook house while the damage was done in the Sanitary block. Even if the accused was seen around the Sanitary block - and the Defence is not prepared to accept that - even that does not show the accused was a leader or damaged this building. He might have been there - but there is no evidence to show he took any active part.

On the 5th Charge the accused being charged with being improperly concerned in a disturbance on the 8th May the Defence submits the Prosecution failed to prove the accused was involved in any disturbance. There is contradictory evidence regarding the damage to the bed - the evidence of Sgt Gavins and the accused, and naturally if there is reasonable doubt in the mind of the Court is must be given in favour of the accused. I wish to draw the attention of the Court to the fact that the accused is not charged with damaging any building on the 8th May. For this reason the Defence submits that the accused should be found Not Guilty on the remaining 2nd, 3rd, 4th and 5th Charges.

CLOSING ADDRESS BY PROSECUTION:

May it please the Court. My first remarks are to submit that the Counsel for the defence has this case out of focus. This accused is not being charged as leader or agitator. To say that in everything that happened there, the Prosecution must find this man was leader or agitator is much more than the Prosecution has charged him with. But although he was not a leader or agitator he was not an innocent bystander and that is what the Prosecution's evidence has shown.

First the 3rd Charge of riotous damage - and that will clear the issue. I agree the evidence before the Court today does not establish riotous damage nor identify this accused in the riotous assembly sufficiently to justify a conviction on that Charge, so that I put to the Court that what we have left is the 5th Charge under Sec 40 on the 8th, and the 2nd Charge under sec 40 on the 9th, and the 4th Charge under Sec 40 on the 10th. I submit that the duty of the Prosecution is to establish to the satisfaction of this Court that there was a disturbance on each of these three days, and secondly that this accused was improperly concerned in this disturbance.

As to the disturbance on the 8th we have the evidence of Sgt Gavins that there had been a break out from the living huts, and sometime after that an order was given to remove the removables from the cells of the SUS in cell blocks, and when he went to the accused's cell the accused had pulled 3 or 4 slats from his bed and handed these to him along with one of the legs of his bed. Also there is evidence that

shortly after that time there was again a disturbance in "A" Compound, I submit that the question for the Court to decide is this - are we satisfied there was a disturbance among the SUS in "A" Compound, and are we satisfied this accused was improperly concerned in it. I put it to the Court that the disturbance should be viewed not in the same sense as a riotous assembly in which almost everyone in the group is doing the same thing. But a disturbance is the total of a number of isolated incidents. On this occasion the accused carried out along with other accused acts which were against prison regulations, and all these acts amounted to what this Court may consider to be a disturbance. The identify of this accused in breaking up his equipment and so contributing as part in this disturbance is before the court in the evidence of Sgt Gavins.

Now on the 9th May the disturbance is a fire. There is no question on this - it is very clear. The burning of the watch tower in "A" Compound is a disturbance within the meaning of this Charge, and all that is required is to show that this accused was connected with it in some way. If this accused is the one who ran away with that hose, then it is very clear, and whether that running away with the hose actually interferred with the putting out of the fire is irrelevant, the fact that a person ran away with the hose and thus interferred with the firemen is sufficient to show that he was improperly concerned in a disturbance. So it comes down to this - was the accused the one who ran away with the hose? He says he was not, and calls for his support the witness, Shields. And I think that Shields in part gave his evidence quite honestly. In fact he and the accused did walk away from hut B2 and they were talking as they walked away, but I think the evidence of Sgt McCaffery identifying the accused as the person who ran away with the hose can be accepted by the Court, and this conversation with Shields took place after the fellow had run away with the hose. The evidence of both witnesses can be reconciled that way, and the Court well knows they can accept or reject the whole or any part of any witness. In view of McCaffery's evidence and Shield's evidence in which he says he was with the accused at all times I think Shield's evidence can be rejected and Sgt McCaffery's accepted. He was quite close to him and identified him clearly in Court today.

On the 10th again the Charge calls for the prosecution to show a disturbance, and that this accused was improperly concerned in it. S/Sgt Semple clearly showed in the breaking of the latrines and pulling of the fixtures from the wall that there was a disturbance sufficient within the meaning of the words used in this charge. The question again comes down to one of identify. Was this accused among the group who were doing this damage around--the Sanitary block where it was not their proper place to be? It is not necessary to show that this accused had a bar in his hand and did smash something. But if he should have been having his lunch, as he suggested, then it was improper for him to be at the sanitary block, and we have evidence that the only time they should be there is under escort - and if he is there with the group of SUS then his is improperly there. So if he is there and contributes to their number when this disturbance takes place, then he is improperly concerned in it, and that evidence is before the Court. The evidence which is submitted in Defence is that he was not over there because Beebow saw him in the kitchen. It is well to remember that Beebow is a friend of the accused, who was in the same Regt and who was more or less happy to see him again in this Detn. So again I say to the Court that they can accept or reject all or any part of the evidence given by any witness, and S/Sgt Semple who had nothing against the accused and was well known to him, has identified him as being at the Sanitary block shortly after the General spoke. The accused says he went straight to the cook house. What I suggest is this - after the General spoke he went to the Sanitary block with that mob, and was there while the damage took place and after that when the mob was broken up he went to the cook house and then the times fit in with the proper serving of the meal at the proper time instead of 1100 hrs. There is no evidence submitted by the Defence that he went straight from the parade square to the cook house, other than the accused's own statement. Beebow may well have seen him there after he was at the Sanitary block.

So I say that the issues are plain before the Court. They must be

satisfied there is a disturbance on the 8th,9th and 10th May, and on each of these days this accused was improperly concerned in it.

In accordance with RP 86(d) the Second Witness, S/Sgt Semple P.J. is recalled, and still under oath is examined by the President:

Q What are the normal meal hours at Headley Detn Wks?
A The first meal in the morning is 0600 hrs until 0630 hrs, then again at 1100 to 1200 hrs, and again at 1600 hrs.

Q Was there any special meals laid on the morning that the GOC spoke?
A Not that day...but yes I believe they did have it early expecting the GOC. He was to have come at 9 in the morning, and he did not get there until between 10 and 11 o'clock.

Q What time was that meal laid on?
A Between 1115 and 1130 hrs.

Q Were any of the [illegible] utilized to go to the cook house?
A No sir, the only ones allowed in the kitchen were the SUS employed there. The men from the cell blocks all went to the living huts as the cell blocks were out of commission.

Q What was your system of feeding the men in the cell blocks?
A Each living huts sends out six men under escort who are paraded and marched up to the kitchen where they collect the meals for the cell blocks.

Q Did that system operate the morning the 10th May?
A No sir.

Q Can you tell me who was responsible for the feeding of the personnel in cell block 5 for that day?
A No sir, things were not organised that day sir.

Q Can you tell me if this accused was one of those detailed to collect the meals for this particular cell block on that day?
A I could not say sir. On that day owing to the circumstances they called for men for the kitchen, anyone at all.

Q Even though there was a lack of supervision was everyone paraded up to get the meals from the kitchen?
A Yes sir.

Q So people did not casually walk down to the kitchen and say "I am from the cell block" and get a meal?
A No sir.

Questioned by Defending Officer through the court:

Q Did you actually see these SUS detailed and paraded to the kitchen for this noon meal?
A I saw them paraded from the living huts - there was a mixture of men from both cell blocks and living huts who went up for the noon day meal.

Q Did you see if, the accused was in that lot or not?
A No sir, I didn't.

Q He may have been there?
A Yes sir, but I did not notice him.

Q Did you hear during that day of special meals being laid on for certain personnel who were being moved to Reading Jail?

A N o sir, I didn't hear of any special meals.

In the opinion of the Court and Judge Advocate it is unnecessary to comply with RP 83(B)

The witness withdraws.

SUMMING UP BY JUDGE ADVOCATE:

Since no prima facie case has been established on the 1st Charge the Court must consider as alternative to it the 2nd charge under Sec 40. On that Charge you have heard the witness Sgt McCaffrey and for the Defence two other witnesses, and with regard to this Charge you must decide whether at the time of the fire in the watch tower the accused was guilty of prejudicial conduct.

With respect to the 3rd Charge of riotous damage, the evidence is not very strong, but I feel that I must say something as to what constitutes riotous damage, since the charge is still before the Court. The Charge is laid under Sec 12 of the Malicious Damage Act 1861. The section reads as follows: (quotes: "If any persons....damage"....a number of structures as mentioned incl a house, outhouse...shall be guilty etc") The sanitary block alleged to have been damaged is a structure within the mean of this section. To support the charge of riotous damage there must first of all be a riot. I would refer to the Court the 31st Edition of Archibold page 1235 as to what constitutes a riot. I would point out that it is not necessary that the person actually do the damage himself to be guilty under this section. By Section 56 of the Malicious Damage Act a principal in the 2nd degree, that is one who is present aiding and abetting at the time of the commission of the offence, or an accessory before the facts, that is one who is at the time absent, but who nevertheless counselled or abetted the offender, can be likewise punished in the same way as the principal offender. Now it is for the Court to decide if a riot did take place, whether the accused was one of the rioters, and whether any damage was done in the curse of the riot.

As an alternative to this Charge there is the 4th Charge under Sec 40 alleging that at this time the accused was guilty of conduct to the prejudice within the meaning of Section 40.

The 5th Charge again is under Sec 40 and revolves about the incident on the 8th May when Sgt Gavins asked the accused for his equipment in his cell. In all these Charges under Sec 40 I would remind the Court that to convict they must find the conduct prejudicial both to good order and to military discipline.

The facts in this case are relatively simple, although not in accord, and it is within the function of the Court to believe or disbelieve what they see fit, and to rule on the credibility of the witnesses.

My function as J.A. is to advise regarding the law and to sum up the evidence, if necessary. You as a Court determine both the facts and law, although you should be guided by me with respect to the latter. The accused has come before this Court an innocent man, the onus is on the Prosecution to establish his Guilt, and such Guilt must be established beyond a reasonable doubt. A reasonable doubt is one arising out of gaps or loop holes in the evidence. It must be substantial doubt; one that would make a person willing to face the facts hesitate, and not merely an idle reflection. If you find any reasonable doubt with respect to any of the Charges you must give the benefit of such doubt to the accused when you make your finding from the evidence presented to the Court.

Is there anything further that the Prosecution or the Defending Officer wish me to say? Answer: No sir.

PLEA IN MITIGATION OF PUNISHMENT:

The medical category of the accused is M.4.S.5.

He enlisted in Sept 40 with the Royal Montreal Regt then proceeded in June 41 to Newfoundland as part of the Heavy Artillery Regt. He came back to Canada in June 42 and in Jan 43 proceeded overseas. In July 44 he went to N.W. Europe and joined the Royal Winnipeg Rifles and fought with this Unit until some time in Oct 44 when he went AWL until Dec 45. He was sentenced by FGCM to two years Detention.

He is not married and has a father back in Montreal to whom he has assigned $20.00.

This man is a nervous case and a report of a psychiatrist is submitted showing that he is m.4.S.5.

PSYCHIATRIC REPORT IS PRONOUNCED, ACCEPTED BY THE COURT, AND MARKED EXHIBIT "2"

He is a follower with his low state of will and stability. After several months in action, which certainly did not help his nervous state, he deserves a light punishment in view of his services as an infantryman in the Cdn Army.

I strongly recommend the leniency of the Court and trust that no further drastic punishment be awarded to him, as it will only tend to make this man a nervous wreck and a burden to society.

"B"

"AVL Mills Capt"

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A 77629	Rfn	DUPUIS, F.	1 Cdn Repat Depot

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number so entered in the conduct sheets, provisions being given in the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA 9 (2)	1 times	times.
For AA 12 (1)	1 times	times.
For AA 40	2 times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, ~~x~~

~~or~~

There are no entries in the conduct sheets of the accused. ~~x~~

2. ~~The accused has not been previously convicted, or~~

Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act and dispensations with trial under section Third the Army Act, except such as the schedule annexed to this statement ~~x~~

3. ~~The accused is not undergoing at the present time, or~~ The accused at the present time is under sentence for 2 Yrs Imprisonment with Hard Labour beginning on the 18 day of Jan 45

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and nil days in military custody, making a total of nil days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 28

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 25 Sep 40

7. ~~The service which the accused is allowed to reckon towards discharge or transfer to the reserve is x x x x x x x~~

8. ~~The accused is entitled to deferred pay or gratuity in respect of x x x x x x x x x x x x x x x x x service.~~ x

9. ~~The accused is entitled to reckon x x x x x x x x x x service for the purpose of determining his pension, etc.~~ x

10. The accused is in possession of, ~~or entitled to,~~ no military decoration or military award ~~or is in possession of or entitled to (state any military decoration or reward)~~. CVSM

11. ~~(If the accused is a warrant officer.)~~ The accused before he was made a warrant officer held the regimental rank of ~~x x x x x x x x x x x x x~~

12. ~~(In the case of an officer.)~~ The accused holds in the army the rank of ~~x x x x x x x x x x x x x~~ dated ~~x x x x x x~~ and in his regiment (or corps or department) the rank of ~~x x x x x x x x x x x x x~~ dated ~~x x x x x x x x x~~

(*[illegible]) W1.24/6305/1720 20,000 10/43 A.& E.W.Ltd. Gp.698
([illegible]) W1.24/6014/1420 12,500 5/44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D 77629 Rank Rfn Name DUPUIS, F. of Cdn Repat Dep Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30th day of August, 1945

(sgd) ?? Lt
for(J.H. FERRIS) Lieut.,
Records Officer, No. 1 Cdn Repat Depot

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of Pte , years, Since Enlistment

In the rank of , years

In the rank of , years,

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

"AVIM"

MFM 6
(AFB 122)
40/PAS/126 (3438)

No D77629 Name DUPUIS, F. | Sqn, Battery, or Company | Corps CIC | Date of enlistment 15 Sep 40 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot (Can)	30 Sep 43	Gnr		A.W.L. from 2359 hrs 30 Sep 43 to 1600 hrs 1 Oct 43.		Forf 1 days pay			Forf 1 days pay & A.
Field	17 Jan 44	Pte		A.A. Sec. 11		Forf 2 days pay			Forf 2 days pay
Field	17 Apr 44	Pte		A.A. 15(1) A.A. 40 (2)		14 days C.B.			Forf 24 days pay
Field	3 Sep 44	Rfmn		A.A. 9 (2)		28 day F/P			Forf 28 days pay.
Field	18 Jan 45	Rfmn		A.A. 12 (1) A.A. 40 (2 off)		2 years imprls with D.&.		F.G.C.M.	Total forf 779 days pay.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				(sgd) ?? Lt Compiled from MFM 2 Certified true copy for (J.H. Ferris) Lieut Officer i/c Records 30 Aug 45					

"C" "AVLMills Capt"

No D77629 Name DUPUIS, F. Sqn, Battery, or Company Corps CIC Date of enlistment 25 Sep 40 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/P&S/136 (9438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
6 D.D.	25 Aug 41	Gnr		A.A. 40 "Conduct to the prejudice"		14 days C.B.			
C/Spear	21 Feb 42	Gnr		A.A. 15 (1) A.W.L.		10 days C.B.			Forf 6 days pay FRO 149(1)a
C/Spear	10 Mar 42	Gnr		A.A.40 "Conduct to the prejudice"		14 days Detn			Forf 14 days pay.
C/Spear	9 Jun 42	Gnr		A.A. 15 A.W.L. 6 days-1 hr-45 mins)		14 days C.B.			Forf 7 days pay.
C/Spear	21 Jun 42	Gnr		A.A. 15 A.W.L. 8 days-14 hrs-45 mins)		28 days Detn			Forf 37 days pay plus Aprox costs $22.[illegible]

(PRO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
C/Spear	14 Oct 42	Gnr		A.A. 15 A.W.L.		14 days C.B.			
C/Spear	31 Dec 42	Gnr		A.A. 15 A.W.L. (17 hrs)		7 days C.B.			
C/Spear	26 Mar 43	Gnr		A.A. Sec. 40"Conduct to the prejudice"		7 days C.B.			
St.Johns	29 Apr 43	Gnr		A.A. 15(2) "Failing to appear at a place of parade" etc		14 days C.B.			
St.Johns	17 Jun 43	Gnr		A.A. 15(2) "Failing to appear at a place of parade" etc		21 days Detn			Forf 21 days pay.

EXHIBIT "1"

A PLAN

Ex 2.

1 CANADIAN REPATRIATION DEPOT
(Lorne Scots)

26 June 45

Medical Officer,
4 Cdn Mil. Prison & Detn Bks (B),
Cdn Army, ENGLAND

D-77629 SUB DUPUIS, P.

1. Please refer to your letter dated 22 June 45, filed Reading 4647.

2. According to Medical Repatriation Certificate, dated 8 June 45, the present PULHEMS of the m/n soldier are: M-4, S-5.

(sgd) W Martin Capt"
for (LOUIS KEENE) COLONEL,
OFFICER COMMANDING,
1 CDN REPAT DEPOT (Lorne Scots)

Exhibit 2
"AV1 Mills Capt"

Hospital A & D No. 1535/45

HOSPITAL DISCHARGE NOTIFICATION

To: Officer Commanding #1 C.I.T.R. (Unit)

It is notified for your information that the undermentioned was discharged from Basingstoke Neuro & Plastic Surgery Hospital, RCAMC, admitted on 19 May 45, Disch to #4 Military Prison Reading on 4 Jun 45.

He shall attend the first Unit Sick Parade after reporting to his Unit. The document must be passed to the Medical Officer of the Unit immediately.

Name DUPUIS, Fernando No. D.77629 Rank SUS.

Diagnosis Psychopathic Personality MO i/c case Capt R.A.Stanley, RCAMC.
Antisocial. (0611)
Mental retardation. (0622)

Precis Case History: Man of dull intelligence with life-long history of inadequacy, emotional instability, temper tantrums and antisocial behaviour. Familial and environmental predisposing factors. Extremely inadequate school record, age 14 to 17 in reform school. Two 1 year jail sentences before joining the army at age 20. Indefinite number of army crimes probably in the neighborhood of a dozen. In Jan/45 was sentenced to 2 years detention for A.W.L. in Europe. Soon into trouble and on bread and water. Violent temper outbursts admitted but described with complete memory and fair insight. He denies fits, faints or black outs. Neurological examination and x-ray of skull are negative. S.P.O. suggests M.4. Subject claims about 3 months heavy action with Winnipeg Rifles which he enjoyed.

It is considered that he is fit to stand trial and serve punishment, but that his new Pulhems grading be implemented immediately on completion of present legal situation.

BOARDED PULHEMS: M.4 - S.5 - HAMMOCK.

DISCHARGED TO:- #4 Military Prison, Reading Jail, Reading - UNDER GUARD

(Sgd) R D Appleford
Registrar
for Officer Commanding
Basingstoke Neurological &
Plastic Surgey Hospital RCAMC

Exh 2
"AVL Mills Capt"

In the case of D.77629 Pte Dupuis 4 CMP & DB
(Number - Rank - Name - and Unit of Accused)

Receipt for copy of Charge Sheet and Summary of Evidence

I have been given, free of charge, a copy of the Charge Sheet and Summary of Evidence in my case at 14 hrs this 15 day of Aug 1945.

(sgd) F Dupuis
(Signature of Accused)

Acknowledge of notice under RP 89(h) and request for Defending Officer

I have been warned at 1400 hrs this 15 day of Aug 1945, that the Prosecutor at my trial by Court Martial will be an officer having legal qualifications, and that I am entitled to 7 days notice of such fact. I expressly waive such notice.

I request that an officer having legal qualifications be appointed to represent me as my defending officer at my trial by Court Martial.

(sgd) F Dupuis
(Signature of Accused)

"AVIEW"

SUMMARY OF EVIDENCE

in the case of

D 77629 SUS DUPUIS, F.

No 4 Cdn Military Prison and Det Bks

By order of the Commanding Officer,
all evidence is taken on oath.

In the Field 14 July 45

"AVIM"

FIRST WITNESS:

A 34001, S/Sgt SEMPLE, F.J., of No 1 Cdn Detention Bks, Headley, having been duly sworn states:

I am A 34001, S/Sgt SEMPLE, on duty at 0740 hrs, morning of 9 May 45, till 1700 hrs in "A" Compound. After the SUS had broken out of the cell blocks I observed the accused at intervals during the day, he was in the group assisting with the opening of other cell blocks. I then saw the accused in "A" Compound with an implement believed to be a bar from one of the windows. Here the accused was agitating and instigating as one of the leaders in bringing the group together. From there the group with the accused mingled in and moved off to "C" Compound. From then I didn't see the accused until later when he was walking around "A" Compound with the groups by the fence, and encouraged them as a group to go to the parade square which they didn't heed.

On 10 May 45, after the GOC's address, on day duty, I observed a group of 30 to 40 SUS moving towards the latrine near the West end of Living Hut 1. I heard considerable damage being done. I went over and looked in a broken window and observed the accused inside. I told all the SUS inside to come out and quit doing any more damage, though I had not observed the accused doing destruction. When I moved away again damage was then resumed, but I did not notice the accused as one of the SUS with a club at that time. Shortly after I returned and cleared the SUS out of the latrines and noticed them to be badly damaged.

The accused questions this witness:

Q. 1. What time did you see me come out of the cell block?

A. 1. I did not see you coming out of the cell block, but saw you between 0930 and 1000 hrs.

The accused declines to question this witness further.

S/Sgt.

(A 34001 Semple F.J.)

SECOND WITNESS:

K 67057 Sgt GAVINS, J., on the staff of 4 Cdn Military Prison and Detention Bks, having been duly sworn, states:

I am K 67057, Sgt GAVINS, J., At 1630 hrs 8 May 45 I started duty as 2 i/c of 1, 2, 3, 4 and 5 cell blocks "A" Compound. At approx 1600 hrs I was ordered to have all cell blocks under me to be cleared of all equipment, other than blankets and palliasses. When I entered SUS DUPUIS cell, Block 5, he then commenced to break up the articles, bed legs, etc., and handed them out to me. The rest of his equipment was intact.

The accused declines to cross-examine the witness.

Sgt.

(Gavins, J.)

THIRD WITNESS:

H 16836, Sgt McCaffrey, C.J., of Cdn Military Prison and Detention Bks, Alton, having been duly sworn, states:

I am H 16836, Sgt McCaffery, C.J., on duty in "B2" Compound, 9 May. At approx 1845 hrs 9 May 45 a fire truck arrived to put out the fire at the watch tower. I saw the accused with a stick in his hand circling around the truck a few times, then grabbed the end of a hose the had been reeled up on the truck and ran away unreeling the hose when the truck was at "B" Compound. I did not see any further action of the accused that evening.

The accused declined to cross-examine the witness.

Sgt.

(H 16836, McCaffrey, C.J.

"AVIM"

FOURTH WITNESS:

13 Jul 45

SPECIAL INVESTIGATION SECTION
CDN. PROVOST CORPS, CMHQ

I, Regt. No. U-1889, S/Sgt NELSON, F.R., certify that Regt. No. D-77629, SUS DUPUIS, F., having been duly cautioned, made the statement which is attached on 18 JUN 45.

S/Sgt.
(Fred R. Nelson, S.I.S.)

I certify that this witness is not available owing to the exigencies of the service and that he is not required for the purpose of cross-examination (R.P. 4(G)).

LT.
(W. N. Campbell)

I certify that the statement referred to by this witness is marked Appendix "A" and attached hereto.

Lt
(W. N. Campbell)

"AVLM"

The accused having been cautioned according to R.P. 4(E) declines to make any statement or to give any evidence upon oath and reserves his defence.

D 77629 SUB DUPUIS, F.

I certify that this Summary of Evidence was taken down by me in the presence and hearing of the accused, and in accordance with R.P. 4(C), (D), (E), (F) and (G) this twenty-third day of July, 1945.

Lt
(W. N. Campbell)
Officer detailed to take the Summary.

"AVIM"

APPENDIX "A"

SPECIAL INVESTIGATION SECTION

CDN. PROVOST CORPS, CMHQ

Date 18 JUN 45

STATEMENT OF:

Regt. No. D 77629 SUS DUPUIS, F.
No. 1 Cdn. Det. Bks. (AC 5, Cell 8)

Having been cautioned by S/Sgt NELSON of S.I.S. that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence I wish to state:

On the evening of 8 MAY 45 in AC 5 when the Staff hollered for us to get everything ready to put out of our cells I did so without comment. One leg was already broken on my bed and it fell off when I put it out of my cell. Nothing else was smashed. During the afternoon Sgt GRANT saw my blackout come off. It was loose and fell off when I opened it. He tried to put it back, but it wouldn't go on. I was making and noise and hollering, but no more than anyone else in the Cell Block.

After breakfast at about 0800 hrs on 9 May 45 I was released by another SUS who unscrewed the lock. I don't know his name. I stayed in "A" Compound all that day, and did not go with the crowd to "C" Compound. Neither did I carry a club. S/Sgt ASTON, Sgt GRANT and S/Sgt THOROLD can all say this is true.

I did not commit any damage on 10 May 45 or at any time. I did not carry a club and I did not go near the SUS latrines between AH 1 and AC 1 that day. If they were smashed I don't know who did it.

I have read over the above statement which has been made voluntarily, and it is true.

(SGD) L. DUPUIS

(WITNESSED) Fred R. NELSON, S/Sgt., S.I.S.

"AVLM"

LIST OF WITNESSES

WITNESSES FOR PROSECUTION

1.	A.34001	S/Sgt	STEPLE PJ
2.	K.67057	Sgt	GAVINS J
3.	H.16836	Sgt	McCAFFERY CJ
4.	U.1689	S/Sgt	NELSON FR

WITNESSES FOR DEFENCE

Nil

In the Field
23 July 45

LIST OF EXHIBITS

1. Statement of Accused - Exhibit "A"

APPENDIX "A"

SPECIAL INVESTIGATION SECTION

CDN. PROVOST CORPS, CMHQ

STATEMENT OF: Date 18 Jun 45

Regt. No. D-77629 Name DUPUIS, F. Time 13:55

S.U.S. No.1 Cdn. Det. Bks Parent Unit: R. W. R.

Where Quartered A.C. 5 (Cell 8) (Period - 8, 9, 10 May 1945)

BEGINS:

I have been cautioned by S/Sgt. NELSON of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence. To show that I understand this caution, I sign my name here.

(SGD) F. Dupuis

1. What, in your opinion, lead to the trouble which occurred at No.1 Cdn Detention Barracks on 8, 9, and 10 May 45? VE-day news

2. Who were the instigators of this trouble? A Compound Huts

3. What did they hope to achieve? Don't know

4. Give the names of any S.U.S. you saw damaging property or disobeying orders? Can't say

5. Give the names of any S.U.S. you saw whose conduct was exemplary? Can't say

6. Did you refrain from all participation? Yes

7. Did you go with the crowd? No

8. Many S.U.S. were seen disobeying orders, damaging property, or trying to induce others to do so. Were you one of these? No

9. Do you wish to make a fuller statement on any of the above points? Yes (Contd Over)

(Date 18 June 1945 (SGD) F Dupuis

(WITNESSED) Fred R Nelson S/Sgt. S.I.S.

"AV13"

Having been cautioned by S/Sgt. NELSON of S.I.S. that I do not have to say anything unless I wish to do so but that whatever I do say will be taken down in writing and may be given in evidence, I wish to state:

On the evening of 8 May 45 in AC5 when the Staff hollered for us to get everything ready to put out of our cells I did so without comment. One leg was already broken on my bed and it fell off when I put it out of my cell. Nothing else was smashed. During the afternoon Sgt. GRANT saw my blackout come off. It was loose, and fell off when I opened it. He tried to put it back, but it wouldn't go on. I was making a noise and hollering - but no more than anyone else in the Cell Block.

After breakfast at about 0830 hrs on 9 May 45 I was released by another SUS who unscrewed the lock. I don't know his name. I stayed in "A" Compound all that day, and did not go with the crowd to "C" Compound. Neither did I carry a club. S/Sgt ASTON, Sgt. GRANT and S/Sgt. THOROLD can all say this is true.

I did not commit any damage on 10 May 45 or at any time. I did not carry a club and I did not go near the SUS Latrines between AH 1 and AC 1 that day. If they were smashed I don't know who did it.

I have read over the above statement which has been made voluntarily, and it is true.

18 June 1945 (sgd) F Lupuis

(Witnessed) Fred R Nelson S/Sgt.
S.I.S.

5 J - 67
Rfn. Dupuis F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 77629 Rfn Fernando Dupius

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 12(1)	Not Guilty	Guilty	
2nd AA 40	Guilty	Guilty	
3rd AA 40	Guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for 2 years

(Sgd) ..... 18 Jan 45 (Sgd) "H.D.Knox"

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.) Major

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) .....

Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be attained before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) JGS

(1. AA 57A. Delete if not used.)

(Sgd) "J.G.Spragge Brig" Brigadier

Date 25 Jan 45 7 Canadian Infantry Brigade

Commanding

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D 77629 Rfn Dupuis	26 Jan 45	"L R Fulton Lt-Col"

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Received 1 Jun 45 JAG Branch CMHQ

Recorded at CMHQ in AB 160 5J-67

FIELD GENERAL COURT-MARTIAL

CFAPO (To New or AFAS) 40/P & D/1098 (6144) 4/38B

Convened by Order of J.G.Spragge, Brig Comd 7 Cdn Inf Bde dated 15 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-77629	Rfn	Fernando	DUPUIS	R Wpg Rif

Proceedings Reviewed
6 June 45 EK Drynan Lt
Reviewing officer JAG Branch CMHQ

Certified true copy of original proceedings herein.
21 Nov 1945
J.M.Edmanson Major

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 16 Jan 45 to 18 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 19/149

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted;(2) accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1535 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5 - President to accused - Do you object to ..... as interpreter? - Ans~~

~~The interpreter is sworn.(1) - Do you object to ..... as shorthand writer? - Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nc (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H.D. Knox	R Wpg Rif
Member	Capt	J.D. Cameron	Regina Rif
Member	Lieut	C. Milton	1 C Scot R
Judge-Advocate			
Prosecutor	Lieut	W.R. Donogh	R Wpg Rif
Defending Offr	Lieut	C.E. Dyson	R Wpg Rif

Questions by President: Is the Prosecutor a lawyer? Ans ..... Is the Defending Offr a lawyer? Ans Nc (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment make(s) (no) ~~no~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsF cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~each~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 20, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C, D, and E and F.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)*

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement(s).~~ The Court decides (not) to advise accused to change his ~~(their)~~ plea(s) of Guilty to Not Guilty on both charge(s). ~~The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on the charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence ~~is marked Ex~~ and three appendices are marked A,B,C,D, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(C).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him ~~(them)~~ again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No.(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~(an)~~ (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is reopened, and the President announces that the submission is disallowed on the charge(s); and allowed on the charge(s); and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)*
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Yes. Do you intend to call witnesses on your behalf? Ans. No. Are they witnesses as to character only? Ans. N/A.
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if on his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s) being subject to confirmation will be promulgated later.(1) Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 44 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. E and Ex. F respectively.(3)
(1. *MFB 335 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 136, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-564. Overseas AO 209, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(15), 68(17), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-77629	Rfn		Fernando	DUPUIS	R Wpg Rif

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (*date*) 15 Jan 45 endorsed by me, ~~(or by an offr of my staff for me),~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court; (b) a Fd Offr as President; for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	H D KNOX	R Wpg Rif

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J D CAMERON	Regina Rif
Lt	C MILTON	1 C Scot R

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	E M FRASER	HQ 7 Cdn Inf Bde

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in (Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)
Holland	"J G Spragge" (J G Spragge)	"Brig" Brig

Date 15 Jan 45 Commanding 7 Canadian Infantry Brigade
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 95 (In lieu of AFA 3) 40/F & S/1697 (6143)

CHARGE SHEET

The accused, D77629 Rifleman Fernando DUPUIS, Royal Winnipeg Rifles, a soldier of the Canadian Army, Overseas, is charged with:

First Charge
Sec 12 (1)
Army Act

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he

in the field, when his unit was engaged in active operations against the enemy, absented himself without leave with intent to avoid such service with his unit from 0500 hrs 7 Oct 44 until surrendering himself at 1830 hrs 12 Nov 44.

Total Time Absent: 36 days, 13 hrs, 30 mins.

Second Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, was apprehended in Lille at 1000 hrs 12 Dec 44, dressed in plain clothes.

Third Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, having been previously apprehended as an absentee at 1000 hrs 12 Dec 44, was apprehended in Lille as an absentee at 1230 hrs 21 Dec 44.

In the Field

10 Jan 45

(sgd) L R Fulton

(L R FULTON) Lt-Col,
OC THE ROYAL WINNIPEG RIFLES

To be tried by Field General Court Martial:

Date:

13 Jan 45

"J G Sprague Brig"
Convening Officer

On being sworn, 1st witness states:

I am H 41406 Sgt A.F. Richardson Pl Sgt 7 Pl A Coy R.R.R. the accused whom I recognize is in my pl. On 7 Oct 44 while moving up to the Leopold Canal sometime before 0500 hrs we came under 88 MM and Mortar fire when across the Canal on checking my pl. I found that Rfn. Dupuis had left the Mortar Gp. to which he had belonged and disappeared. I checked my pl. from 7 Oct 44 on and Rfn Dupuis has not been present on parade and I have not seen him until this day. I chucked my pl. every day.

Cross-examination by Defending Offr.

Q. On the day in question was it dark or light

A. It was half light

Q. What was the pos. of your pl. in the Coy.

A. It was the rear Pl. followed by 'B' Coy.

Q. Was there any word of a withdrawal by anybody during the advance.

A. Not to my knowledge

Q. What did you do when you came under fire

A. I moved my sec. into the ditch in the same order as we were moving.

Q. Do you know what 'B' did

A. I heard later that they had moved back to the area of the bridge in our rear.

Question by Court

Q. Sgt Richardson can you tell the Court if the accused was in your pl. prior to moving off from the Assembly Area.

A. Yes, Sir

Q. Had your pl. been briefed in the operation they were going to take part in

Q. Yes, Sir.

Re-Examined by Prosecutor

Q. When you came under this mortar and 88 fire how close were you to Rfn Dupuis

Q. I was right beside him

Q. Did you at any time issue orders or hear of any orders to the effect you were to withdraw

A. No, Sir.

R. P. 83(b) Complied with

On being sworn, the second witness states:

I am Major J.S. Carwell, R.R.R. - 2i/c Bn. I was A Coy Cmdr on 6 Oct 44. 7 C.I.B. assaulted across the Leopold Canal on the 6 Oct 44. R.R.R. were to follow through the bridgehead formed by the other two Units. Their success was limited however and it was that night before it was decided to commit two Coy. Sometime shortly after 2300 hrs I left the Assembly Area with my Coy and 'B' Coy under Comd. Before leaving orders had been passed down through usual channels as to the situation on the other side of

the canal and it was common knowledge then and even before then because stories had been coming back and battle noise could be heard that the fighting across the Canal was very bitter. About 0130 hrs 7 Oct 44 we arrived at the Canal and came under heavy Arty fire. We effected a crossing during this in small groups and the remainder followed on when the shelling ceased. It was necessary then to reorganize on the far bank of Canal and when this had been completed at about 0300 hrs Lt. McSkimmings reported to me that two Rfn from his pl. were missing. One of these was the accused, Rfn Dupuis. We then went on and found our Assembly Area being attached by the enemy and we helped stem the attached and put in a counter attach with success and some casualties.

Cross-examined

Q. When you say crossed over in small groups what size groups did you cross in

A. In groups of 6-8

Q. Was it was a bit disorganized up until you formed up on the other side of Canal

A. No, the small groups crossed by Kapoh Bridge and despatched by pl. offs. were supervised by offs. and met on other side by a guide from Coy. H.Q.

R.P. 83(B) Complied with.

On being sworn, the accused states:

I am D77629 Rfn. Dupuis, F. of 7 Pl. A Coy in Pl. H.Q. when we started to go across the Canal we were stopped by SS and mortar fire we then scattered to the side of the road I was in the rear of 7 pl. I remained there for about 30 mins. when an order came to withdraw and B Coy commenced to withdraw and three or four men from A Coy started back and I went with them and crossed back over the Rear Canal and then a Sgt from B Coy told me A Coy was across the Canal and I recrossed the Rear Canal and found nobody there so I went in to a barn and slept there that night. Next morning I went across the Rear Canal again and saw the Sigs. I asked them if it was alright to go fwd to the Leopold Canal and they told me I would have to wait until that night before I could cross. I then went to a Bldg. and slept the remainder of the day. That afternoon I got a lift from a truck and went to Ghent and from Ghent I went to Lille and stayed there. I did not intend to desert His Majesty's Forces nor did I leave with intent to avoid operations against the Enemy.

Cross-Examination by Prosecutor

Q. When you came under Mortar fire who ordered the withdrawal

A. I do not know if it was a Sgt, an offr, or a Rfn, but I know it was someone from A Coy.

Q. Why didn't you follow your own pl. Sgt

A. I didn't see the Sgt as we were scattered on both sides of the road

Q. Did you try to find your Sgt.,

A. No Sir, I thought A Coy would be following.

Q. Did you try to find your Coy anytime after you withdrew

A. Yes Sir

Q. Why did you go to Ghent instead of going back to your Coy.

A. We were promised leave and didn't get it and I was fed up

Q. Did you know your Coy was across the Canal fighting

A. Yes, Sir.

R.P. 83(b) Complied with

HDK

Plea in Mitigation in Case of

D 77629 Rfn Dupuis, Fernando.

The accused has been in action continually since the last of the fighting at Caen. He first se ved with the A/T Pl. and then was transferred to a Rifle Coy 18 Aug 44.

Previous to joining the infantry he had spent 2½ years with the Artillery and was quite happy there. After that period he was re-mustered to Infantry against his will. However, on joining the Unit he found himself still working with guns Altho' they did not compare with Costal guns, and was moderately content. Eventually he was moved to a Rifle Coy where he stayed for two months.

Around the date in question there were many runours of coming rests floating around. The accused was becoming fed up with his lot and on the date mentioned after becoming lost thru' no fault of his own he decided he had had enough of the business and left.

He has served almost five years in the Army and during that time has had no crimes. That shows, I think that he does not misbehave without given provocation. The heavy fighting had tired him to such an extent that when he became lost he gave up trying and decided to take the rest he thought was due to him. He did not intend to desert as is shown by the fact that he surrendered himself.

With regard to the second charge, that of being apprehended in plain clothes. The accused had taken his uniform into a shop to be cleaned and pressed. The address is 66 Roy St. Lille. The proprietor told him it would take a couple of days for the job so the accused borrowed civilian clothes to wear in the meantime. He was picked up the next day by civilian police who turned him over to English M.P. The accused asked to be allowed to return for his uniform but was not given permission. He did the only thing possible and was later apprehended in uniform.

The first time he surrendered he had no money. The last time he was apprehended he had 5,340 francs. This money he had received from his girl friend. I suggest that he would have surrendered when this was spent. I also suggest that had a proper guard been placed on him when he surrendered there would have been no trouble. He and thirty odd other prisoners just walked out of the room and no one stopped them. The accused left at 2000 hrs which means he was influenced by the ease with which the other got away again. If there had been a proper guard on the accused would have been back with his Unit a month earlier.

With these points before them I beg the Court to be lenient in dealing with this case.

C.H. Dyson Lt.

R.P. 83(b) Complied with.

Ex A HDK

CERTIFICATE UNDER SECTION 163(1) (j) OF THE ARMY ACT

I, CAPTAIN H. JEFFERY certify that No D-77629 Rank PTE Name DUPUIS. F. of "A" COY. 7 BDE. THE ROYAL WINNIPEG RIFLES Regt. surrendered himself to No 5385968 Rank L/CPL. Name COOMBES.H. of 242 HQ. Provost Coy., C.M.P. at LILLE at 1830 hrs on 12/11/44 (date) as a deserter (or absentee without leave). He was dressed in uniform.

H Jeffery Capt.,

(H. JEFFERY)

Date 12/11/44 O.C. 242 H.Q. PROVOST COMPANY, C.M.P.

54 L

Summary of Evidence in the case of D??629 Rfn DUPUIS, F., 1st Battalion, Royal Winnipeg Rifles, a soldier of the Canadian Army, Overseas, charged with deserting His Majesty's Service, (AA Sec 12) (1), and two charges under AA Sec 40, conduct to the prejudice of good order and military discipline.

By direction of the Commanding Officer the evidence is taken on oath.

1st Witness — H41406 Sgt Richardson, A.F., R Wpg Rif, having been duly sworn states:

I am H41406 Sgt Richardson, A.F., Pl Sgt of 7 Pl, A Coy, R Wpg Rif and the accused, Rfn Dupuis, whom I recognize is in my pl. On 7 Oct 44, before 0500 hrs, while moving up to the Leopold Canal we came under fire from enemy SP's and mortars. After crossing the canal and checking my pl I found that Rfn Dupuis had left the mortar group to which he belonged and had disappeared. I checkd the pl each day from 7 Oct 44 on, and Rfn Dupuis has not been present on parade and I have not seen him until this date.
The accused declined to cross-examine this witness.

"A. F. Richardson"
.....
Signature of Witness

2nd Witness — Major J.T. Carvell, 2 IC R Wpg Rif, having been duly sworn states:

I am Maj J.T. Carvell, 2 IC R Wpg Rif. On 6 Oct 44 7 Cdn Inf Bde assaulted across the Leopold Canal with the R Wpg Rif in reserve. On the night of 6 Dec 44 I attended an "O" Group when I was placed in comd of two coys, my own "A" Coy and "B" Coy, and ordered to pass through the 1 C Scot R bridgehead and attack the village of Graf Jan with the object of linking up the two bridgeheads of the 1 C Scot R and the Regina Rif. Orders were passed on and we started our approach march about midnight. It was general knowledge that the fighting over the canal was very bitter. About 0200 hrs 7 Oct 44 we arrived at the crossing and came under heavy shell fire. We crossed under this fire as opportunity presented and therefore spent some time re-organizing on the far bank. At this point several men were reported to me as missing, among them Rfn Dupuis. Some of these were found among B Coy, but not Rfn Dupuis. About 0500 hrs we arrived at our FUP and the action went on successfully, but with a number of casualties.

The accused declines to cross-examine this witness.

(Sgd) John Carvell
.....
Signature of Witness

The Certificates of Appehension, produced as documentary evidence, were read over to the accused, marked Exhibits "A", "B" and "C", signed by me and attached hereto.

..(sgd).N..R..Donogh.Lt....
Officer taking Summary

The accused was cautioned as follows:

Question: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer: I do not wish to make a statement.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence consisting of two pages, was taken down by me in the present of the accused and that RP 4 (C), (D), (E), (F) and (G) have been complied with.

(sgd) N.R. Donogh Lt
(N R Donogh) Lt.,
R Wpg Rif

In the Field

10 Jan 45

CERTIFICATE OF ARREST IN ACCORDANCE WITH
ARMY ACT, SECTION 163(1) (ii)

I certify that No D 77629 Rank RFN. Name DUPUIS, F.E.
(3Cdn Inf Div.)
of "A" COY, THE ROYAL WINNIPEG RIFLES REGT (unit) was arrested at
LILLE (place) at 1000 hrs on 12 DEC 44 (date). He was dressed in plain
clothes.

Date 12 DEC 44

Signature of Provost Marshall,
APM or other officer into
whose custody the above-named
person was taken on arrest.

(sgd) H. Jeffery
Capt.,
(H. JEFFERY)
O.C. 242 H.Q. PROVOST COMPANY, C.M.P.

54H

Ex E

HDK

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D77629	Rfn	DUPUIS F	Royal Winnipeg Rifles

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of days in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with the statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number and nature of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions of the accused by court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 76 of the Army Act are as set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence of

4. The accused has been in confinement, awaiting trial on the present charges, for no days in civil custody, and 11 days in military custody, making a total of 11 days, of which no days were spent in hospital.

5. The present age of the accused according to his attestation paper is 26 years

6. The date of his attestation specified in his attestation paper is 25 Feb 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs, 10 mos

8. The accused is entitled to deferred pay or gratuity in respect of 4yrs, 10months service.

9. The accused is entitled to reckon 4yrs, 10 mos service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award *or is in possession of or entitled to the following military decorations or awards:* Canadian Volunteer Service Medal and Clasp

11. *If the accused is a warrant officer* The accused before the war held no substantive rank in the regimental

12. (*If thought fit, or if required.*) The accused holds in the army the rank of

and in his regiment (or corps or department) the rank of:

(75000) W1.34594/1730 80,000 10/43 A.& E.W.Ltd. Gp.698
(25000) W1.33974/1439 12,000 2/44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18th day of January 1945

(sgd) W F Aitken
(WF AITKEN) Capt,
Adjt, R Wpg Rif

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years. .....

In the rank of ..... years .....

In the rank of ..... years. .....

(Insert with—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

Ex F

No D77629 Name DUPUIS, F | Sqn, Battery, or Company | Corps INFANTRY | Date of enlistment 25 FEB 40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/138 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED TRUE COPY

(sgd) W F Aitken Adjt

Officer Having Custody of Regimental Documents

(PTO)

MEDICAL CERTIFICATE

18 Jan 45

I have this date examined D77629 Rfn DUPUIS F,
and have found him fit to undergo trial by
Field General Court Martial.

(sgd) R.W. Caldwell Capt.
Medical Officer

"I hereby certify that the findings conveyed from Brig. T.G. Gibson, Comd. 7 CIB to the effect that the conviction on the second and third changes in these proceedings is invalid and that the findings conveyed from Maj.-Gen. R.H. Keefler, GOC 3 CIDiv. to the effect that there be no mitigation of the punishment on the first change were duly promulgated to D-77629, Rfn. DUPUIS, F., on 28 JUN 45, at 4 Cdn. Mil. Prison and Detn. Bks.

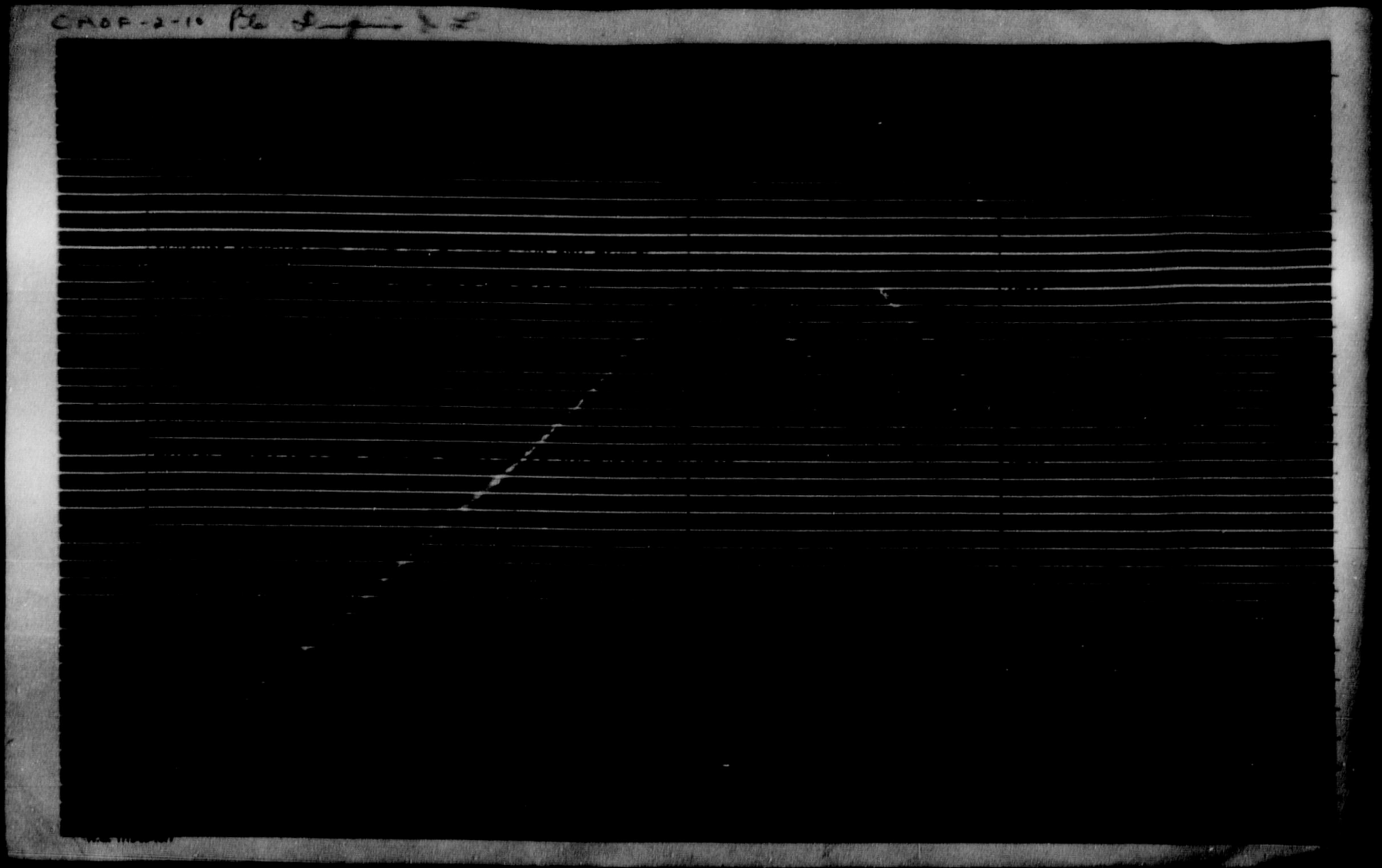
(sgd) C Wood
(C.Wood) Major, C Pro C
28 Jun 45 4 Cdn. Mil. Prison & Detn.Bks.

"The Deputy Judge-Advocate-General, Cdn Sec 1 Mch HQ 21 Army Group, having advised that the conviction on the second and third charges in these proceedings is invalid and involves substantial injustice to the accused, I hereby direct that the record of such conviction be and the same is hereby removed and the accused relieved from all consequences of his trial thereon."

(sgd) T G Gibson
In the Field (TG GIBSON) Brig
11 May 45 Comd 7 Cdn Inf Bde

"Upon it appearing to me, an authority having power to mitigate, remit or commute the punishment awarded by the sentence herein, that the findings upon the second and third charges are invalid and have been set aside, I, having regard to the finding on the first charge, do NOT mitigate the punishment as awarded by the Court and confirmed by the confirming Officer."

(sgd) R H Keefler
In the Field (RH KEEFLER) Maj-Gen
14 May 45 GOC 3 Cdn Inf Div



SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15 (1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for Nine months detention beginning on (date) 26 Jan 46 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of nil days, of which nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

Nine months detention

(Sgd) ..... 24 May 46 (Sgd) Paul E Amyot
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison for detention, but be released forthwith.~~ (1. AA 57A. Delete if not used.)

(Sgd) R. F. Johnson Lt. Col

Date May, 27-46. Commanding Comd R.C.E.M.E. 1 Cdn Inf Div
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 572, 573.)

Accused.	Date.	Signature of Offr.
D 139334 Pte Dupuis J J L	28 May 46	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED JUN 5 - 1946 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160. CAOF 2-10

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA9) 41/P.A.S. 1068 (2804)

Convened by Order of Lt. Col R.F. Johnson Comd CREME 3 Cdn Inf Div dated 21 May 46.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
D 139334	Pte	Joseph Jean Louis	Dupuis	2/3 Cdn Inf Div Tpt Coy RCASC, CAOF

PROCEEDINGS REVIEWED
5 Jun 46 C. H. Tait, Maj
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 24 May 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused : Do you object to ..... as interpreter ? Ans .....~~
The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Maj	PE Amyot MBE	3 Cdn Inf Div Sigs CAOF
Member	Capt	HT Biggar	HQ RCASC 3 Cdn Inf Div CAOF
Member	Capt	JC Warren	3 Cdn Inf Div Sigs CAOF
Judge-Advocate		Nil	
Prosecutor	A/Capt	AB McKinnon	HQ 3 Cdn Inf Div CAOF
Defending Offr	Capt	JE Cooley	HQ 3 Cdn Inf Div CAOF

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 2.)

A8. The accused D 139334 Pte Dupuis JJL before arraignment make(s) (no) plea (s) plea (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(D), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is cleared and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CAOF 2-10 p. 2

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans N.D.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on the charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(E). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A; initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by vir of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans.....Are they witnesses as to character only? Ans.....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (d), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans N.D.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that those documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(*1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans N.D.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 120. One sentence only, comprised of the punishment or punishments last down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2223, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 48(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RA

CHARGE SHEET

THE ACCUSED, D139334, PRIVATE JOSEPH JEAN LOUIS DUPUIS, 2/3 CANADIAN INFANTRY DIVISION TROOPS COMPANY, ROYAL CANADIAN ARMY SERVICE CORPS, CANADIAN ARMY OCCUPATION FORCE, A SOLDIER OF THE CANADIAN ARMY OVERSEAS IS CHARGED WITH

FIRST CHARGE
Section 15(1) Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, in Germany, when undergoing detention, absented himself without leave from 1455 hours 9 Mar 46 until apprehended at about 1900 hours 2 Apr 46. Total absence 24 days, 4 hours, 5 minutes).

(J.A. Thomson) Major
Commandant,
No. 2 Cdn Detn & Fd Pun Bks(CAOF)

In The Field
19 May 46.

To be tried by Field General Court Martial.

In the Field
in Germany
21 May 46

RA

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
D-139334		Pte	JOSEPH JEAN LOUIS	DUPUIS	2/3 Cdn Inf Div Tps Coy RCASC CAOF

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and ~~on~~ (date) 21 May 46 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	P.S. ANTOY MBE	3 Cdn Inf Div Sigs CAOF

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	H.P. BIGGAR	Hq RCASC 3 Cdn Inf Div CAOF
Capt	J.C. WARREN	3 Cdn Inf Div Sigs CAOF

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	F.D. HODGSON	2 Ech Hq CAOF

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Germany (Country.)

R. F. Jobson
(R.F. JOBSON) (Signed personally. RP 105 fn 2.)
C, RCEME

Lt-col (Rank.)

Date 21 May 46

Commanding Hq 3 Cdn Inf Div CAOF
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (Paras (In lieu of AFAS) 40/P & S/1697 (4931))

PLEA OF MITIGATION - Pte DUPUIS, J.J.L.

Before the Court closes to pass any sentence which they should consider appropriate for Pte DUPUIS' mistake, I would like to draw their attention to the fact that the accused committed such a mistake due to his stupidity and ignorance of the position he would be placed in as a result.

The inspection of his WFW 6 will show that DUPUIS has had, during his 3 years service with the Cdn Army, very few and minor offences recorded against him. His last offence was committed during occupational duties and cannot therefore be compared to such an act in the face of the enemy.

In passing sentence, would it please the court to keep in mind that a lenient sentence will allow DUPUIS a speedier return to civilian life, which the withdrawal of CAOF has instituted, therefore giving him a fair opportunity to re-establish himself again. I am quite sure that he realizes to what extent he could have been involved had his mistakes been deliberate and not the result of stupidity.

This is to certify that I have this date inspected D139334 Pte. Dupuis, J.J.L. and found him physically and mentally fit to undergo trial by Field General Court Martial.

Date 24-5-46

(Medical Officer)
No. 2 Cdn Detn & Fd Pun Bks(CAOF)

Summary of evidence in the case of
D139334 Pte. Dupuis J.J.S., 2/3 Cdn. Inf. Div. Tps. Coy. R.C.C.S.C. Ex A.
By direction of Commanding Officer all evidence is taken on oath.

First Witness

F86732 S/Sgt. Doucette G.C. of 2 Cdn. Det. and Fd. Pun. Bks. C.C.O.F. having been duly sworn states

I am F86732 S/Sgt. Doucette G.C. of 2 Cdn. Det. and Fd. Pun. Bks, on Sat. Mar. 9/1946 I was asst. compound commander at 2 Cdn. Det. and Fd. Pun. Bks at approx 1420 hrs. the gate-man inquired if Pte. Dupuis S.U.S. 145 was in the reception office as he had been signed out. I checked and when Pte. Dupuis was not found I sounded my whistle and took a check count I then found S.U.S. Dupuis was missing, a search party was organized and Pte. Dupuis could not be found. I did not see Pte. Dupuis again until I returned from leave on 26 Apr 46
The accused declines to cross examine

F86732
S/Sgt. G.C. Doucette

Second Witness

B163470 Cpl. Wagner B.E. of 2 Cdn. Det and Fd. Pun: Bks having been duly sworn states.

I am B163470 Cpl. Wagner B.E. of 2 Cdn. Det and Fd. Pun Bks.

On Sat Mar. 9/46 I was employed as gate guard of the camp compound, at 1415 hrs I checked Pte. Dupuis out. He was alone without escort. At approx 1420 hrs the alarm was sounded and a check count was made Pte. Dupuis could not be located. A search party was organized but failed to find Pte. Dupuis. I did not see S.U.S. Dupuis again until he was escorted back to this unit on or about 12 Apr. 46.

The accused declines to cross examine

B163470 B.E. Wagner Cpl.

Third Witness

B. 6866 R. A. M. S. Ballantyne J. T. of the 2 Cdn. Det. and F. d. Pen. Bks. C. A. R. F. having been duly sworn states.

I am B. 6866 R. A. M. S. Ballantyne J. T. of 2 Cdn. Det. and F. d. Pen. Bks. At approx 1115 hrs. I on Sat. Mar. 8/46 I left my jeep # C.M. 4233305 in the unit transport lines for repair with instructions that it was not to be removed by any of the staff. At approx. 1500 hrs. the alarm was sounded and I learned of the escape of two prisoners. My jeep # C.M. 4233305 was missing, I was informed afterwards that the S. U. S. who escaped were Sus 145 Dupuis and S. U. S. 110 Bordeleau.

The accused declines to cross examine

J Ballantyne R.A.M.S.
B. 6866

Fourth Witness

~~B~~ D 141781 S/Sgt Rhind D.H. of 2 Eds. Det and Fd. Pen. Bks having been duly sworn states.

At approx. 1450 hrs 9 Mar 46 S.U.S. Swant came to me near the transport lines and reported that a jeep belonging to the R.D.M.S. was missing, I could see there was no jeep in the transport lines at the time. At the same time the alarm sounded and I learned of the escape of two S.U.S. I reported the loss of the jeep to S/Sgt Van Hort who told me that the S.U.S. who had escaped were S.U.S. 110 Bordeleau and S.U.S. 145 Dupuis.

The accused declines to cross examine

D 141781 S/Sgt. Rhind D.H.

P.I.

Fifth Witness

I produce Certificate of Apprehension signed by Capt C. E. Stedman C.O. of 247 Provost Coy H.R.

The accused was asked Do you wish to make a statement or give evidence on oath. You are not obliged to say anything or give evidence unless you wish but any thing you say or any evidence you may give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence

I certify that the foregoing five pages of evidence was taken down by me in the presence of accused in the presence of the accused and that Rules of Procedure 4 C D E and F have been complied with.

[illegible] Capt.
3 S. D. & G. Hldrs.

16 May 46
In the Field
Germany

LIST OF EXHIBITS

In the case of D139334 Pte. Dupuis, J.J.L.

EXHIBIT "A"

Certificate of apprehension in accordance with Army Act Section 163 (i) (jj) showing the accused arrested in Mons Belgium at 1900 hours 2 Apr 46.

"This is to certify that I have received a copy of the Summary of Evidence and a copy of the charge sheet in respect to my pending trial by Field General Court Martial."

JJL Dupuis

(J.J.L. Dupuis)

STATEMENT IN ACCORDANCE WITH (R.P. 14(B)(h))

"I desire that an Officer be assigned by the convening Officer to represent me at my trial by Field General Court Martial."

JJL Dupuis

(J.J.L. Dupuis)

PEA

CERTIFICATE OF ARREST IN ACCORDANCE
WITH ARMY ACT, SECTION 163 (1) (jj)

I certify that No. D. 139334 Rank Pte. Name DUPUIS J.J.L.

of (Unit) 2/3 Cdn Inf Div Tps Coy RCASC. was arrested at MONS Belgium.

at 1900 hours on 2 April 46 (Date) He was dressed in Uniform

Date 5th May 46.

Signature of Provost Marshall, A.P.A. or other officer into whose custody the above named person was taken on arrest.

A.E. Steadman Capt
(Rank)
(Unit or Appointment)
247 Provost Company.

Notes.

1. This certificate MUST be signed personally by the officer concerned.

2. In no circumstances may it be signed by one officer "for" another, or by anyone who does not hold commissioned rank.

3. In no case should the place of apprehension be described as "In the Field" The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

Ex "B"

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

D139334 Pte. Dupuis, J.J.L. of the 2/3 Cdn Inf Div Tps Coy RCASC(CAOF)

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

† See Form 464, K.R., 1936.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

		*Within last 12 months.		*Since Enlistment.	
For	A.A. 15(1)	3	times	3	times.
For	A.A. 40	1	times	1	times.
For	A.A. 15(2)	2	times	2	times.
For			times		times.

Number of instances of gallantry or distinguished conduct,

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

[illegible]

Description of Court by which tried, or status of Officer dispensing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 19th day of May, 1946

J. A. Thomson
Major
Commandant,
No. 2 Cdn Detention & Pd Pun Bks (CAOF)

3. ~~The accused is not under sentence at the present time.~~

or,

The accused at the present time is under sentence for nine months detention beginning on the 26th day of January, 1946

4. ~~The accused has been in confinement awaiting trial on the present charge for days in Civil Custody, and days in Military Custody, total days, of which days were spent in hospital.~~

5. The present age of the accused according to his record of service is 24 Years 23 days.

6. The date of his ~~attestation~~ enlistment specified in his record of service is 9 Feb 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 years 3 months

8. The accused is entitled to deferred pay or gratuity in respect of three years' service.

9. The accused is entitled to reckon three years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward (or is in possession of or entitled to Canadian Volunteer Service Medal and Clasp.

11. *(If the accused is a warrant officer.)* The accused before he was made a warrant officer ~~not~~ held the regimental rank of

12. *(In the case of an officer.)* The accused holds in the army the rank of , dated , and in his regiment (or corps or department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date. Date of Promotion.

In the rank of years.
In the rank of years.
In the rank of years.

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked and annexed to the proceedings. signed by the president.

Schedule of Convictions by Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name D188334 Private. Dupuis, J.J.L. of the R/3 Cdn Inf Div Bde Coy RCASC(CAOF)

NOTE.— *A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
F.G.C.M.	28 Jan 46	Army Act Section 15(1) AWL from 58 days 3 hours, 30 minutes.	9 Months Detention	N/A

(continued overleaf.)

SUPPLEMENTARY

Ex "C"

No D139334 Name DUPUIS, J.L. Sqn, Battery, or Company Corps RCASC Date of enlistment GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/F&S/136 (3438)

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15Jul45	Pte		AA Sec 40.Neg to the prej etc. negligently operating W.D. Veh CL.4269073 so as to become involved in an accident.	Documentary	Stoppage of pay to the am't of £4-0-0	30 Jul 45	Maj H.C. Pattison	Stoppage of pay to the am't of £4-0-0 FR&I 158(2)
Field	7Sep45	Pte.		AA 15(2) Failing to appear at the place of parade appt by his CO. 2nd charge. AA 15(2) Failing to appear at the place of parade appt by his CO.3rd charge AA 15(1) AWL(1 hr 45 min)		28 days F.P.	10Sep45	Major HC Pattison	
Field	24Oct45	Pte.		AWL 45 Min A.A. Sec 15(1)		14 days C.B.	25Sep45	Major HC Pattison.	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field Germany	7Nov45	Pte		AA 15(1) AWL 68 days 3 hrs 30 min) tried by FGCM	Documentary	9 Months Detn.	F.G.C.M.		

CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT HELD IN MY POSSESSION

J. A. Thomson

(J.A. Thomson) Major
Commandant,
No. 2 Cdn Detn & Pi Pun Bks (CAOF)

C.A.O.F. - 1 - 87 Pts Dupuis J.J.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 139334 Pte Joseph Jean Louis Dupuis 2/3 C.I.B.T.Coy RCASC CAOF

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	GUILTY	GUILTY	
2nd AA 24(2)	NOT GUILTY	NOT GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p. 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ——— beginning on (date) ——— (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 22 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo nine (9) months detention

(Sgd) ——— Judge-Advocate, if any. 26 Jan 46 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ——— (Sgd) ——— Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the record be sent for the decision of the Chief of the General Staff.~~ (1. AA 57A. Delete if not used.)

(Sgd) W.H. Colling Lt Col

Date 21 Jan 46 Commanding H.Q. R.C.A.S.C. 3 Cdn. Inf. Div. (CAOF) Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D.139334 Pte DUPUIS J.J.L.	29 Jan 46	H.E. Sallmon Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 150 C.A.O.F. - 1 - 87

FIELD GENERAL COURT-MARTIAL (CFAFB (7th Unit of AFAS) 47-9-2-18 (1808) (2604))

Convened by Order of Lt Col W.H. Colling Comd RCASC - CAOF dated 24 Jan 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D139334	PROCEEDINGS REVIEWED 5 Febuary 46 J.D. Brady Major STAFF OFFICER, JAG BRANCH C.M.H.Q.	Joseph Jean Louis	DUPUIS	2/3 C.I.B. T.Coy RCASC - CAOF

PROCEEDINGS REVIEWED Date 30 Jan 46 [illegible]

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany at HQ 3 Cdn Inf Div (CAOF) on (date) 26 Jan 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see Form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereinafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~ brought before the Court. At 0935 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans ———

~~The Interpreter is sworn (1). Do you object to~~ as shorthand writer? Ans ———

~~The shorthand writer is sworn (1).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	C.M. Loughnan	2/8 C.I.B. Coy RCASC
Member	Capt	J.R. Armitage	2/7 C.I.B. Coy RCASC
Member	Lt	M.A. Berman	2/7 C.I.B. Coy RCASC
Judge-Advocate			
Prosecutor	Capt	F.A. Kavanagh	2/3 C.I.B.T. Coy RCASC
Defending Offr	Capt	R. Durand	2/8 C.I.B. Coy RCASC

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. ~~The accused before arraignment make(s) (no) (a) plea~~

(1. If a special plea is made for separate trial see one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or to one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~ arraigned (on ~~each~~ charge) on all charges in the charge sheet.(1) The accused does (~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form ———

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc., offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M ML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO (5)
(*1. RP* 27(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement (1) The Court decides~~ (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~charge(s)~~. The accused is (are) so informed, and he (they) ~~change(s)~~ his (their) plea(s) on ~~charge(s)~~. ~~Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making on appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO (1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~(his)~~ (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the SECOND charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is ~~disallowed on the charge(s), and~~ allowed on the SECOND charge(s), and that, accordingly, the trial will proceed on the former, but the accused is ~~acquitted~~ found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP* 155. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses' statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(3) (*d*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are proved Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~extract~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB* 353 *or MFB* 296. *2. MFM* 6. *3. RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES - Mitigation of Punishment only (2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to satisfy on with anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 122(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP* 120. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its purview, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 142, *RP* 46-50, 69, 108, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas, RO* 309, 2323, *MML p* 80, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 13*E. When accused already under sentence of imprisonment or detention see AA* 44(*B*), (*d*)(*i*), *KR Can* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

First Charge
Sec 15 (1)
Army Act

The accused D-139334 Pte Dupuis, J.L. of 2/3 Cdn Inf Div Tps Coy RCASC (CAOF) a soldier of the Canadian Army Overseas is charged with:

WOAS ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, in Germany, did absent himself without leave from 0630 hrs 7 Nov '45 until 1000 hrs 4 Jan 46. Total TIME ABSENT 58 Days 3 hrs 30 Mins.

Second Charge
Sec 24 (2)
Army Act

WOAS LOSING BY NEGLECT HIS EQUIPMENT AND REGIMENTAL NECESSARIES

in that he

in the field, in Germany, on 14 Jan 46, was deficient of:

B.D. Blouse	1	$6.50	$6.50
Boots Ankle	1	5.82	5.82
Caps Mechanic	1	.16	.16
Drawers Cellular	2	.43	.86
Gloves Knitted	1	.47	.47
Great Coat Drab	1	11.31	11.31
Jersey Pullover	1	1.71	1.71
Shirts Angora	1	2.03	2.03
Socks	3	.46	1.38
B.D. Trousers	1	6.55	6.55
Badges Cap	1	.09	.09
Bags Kit Universal	1	1.02	1.02
Braces	1	.32	.32
Brass Cleaning	1	.04	.04
Brushes Brass	1	.26	.26
Brushes Clothes	1	.48	.48
Brushes Hair	1	.34	.34
Brushes Shaving	1	.37	.37
Brushes Shoe	1	.28	.28
Brushes Tooth	1	.11	.11
Cap Comforter	1	.34	.34
Comb Hair	1	.04	.04
Discs Identity	2	.01	.02
Holdall	1	.19	.19
Housewife	1	.17	.17
Knife Clasp	1	.86	.86
Razor Safety	1	.06	.06
Patches	4	.03	.12
Towels Hand	2	.34	.68
Haversack	1	1.79	1.79
Pack W.E.	1	1.84	1.84
Straps W/Supporting	2	.13	.26
Blankets Single	4	3.07	12.28
Gloves M.T. prs	1	2.01	2.01
Sheet Ground	1	2.94	2.94
Total:			$63.78

H C Pattison Major
(H.C. Pattison), Major
Officer Commanding
2/3 Cdn Inf Div Tps Coy
RCASC (CAOF)

In the Field
17 Jan '46

To be tried by Field-General Court-Martial.

W H Collins
(W.H. Collins).

Field
Jan 46

3 Cdn Inf Di

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-139334	Pte.	JOSEPH JEAN LOUIS	DUPUIS	2/3 Div Tps Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 24 Jan 46 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that the delay which would necessarily take place in assembling such a Court would be prejudicial to the public service~~.

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~Lieut. C.J. Mycock 2/9 Coy is detailed as Judge-Advocate.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	C.M. Longbotham	2/8 Coy

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J.R. Armitage	2/7 Coy
Lieut	M.A. German	2/7 Coy

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	C.J. Mycock	2/9 Coy

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in GERMANY (*Country.*)

W.H. Colling (*Signed personally. RP 105 fn 2*) Lt.-Col. (*Rank.*)

(W.H. Colling)

Date 24 Jan 46

Commanding C,RASC - 3 Cdn Inf Div CAOF

Convening Officer

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FMS (TD SMS) OF AFMS) 40-7 & 8-1807 (4051)

(*See overleaf for oaths and notes for use on trial.*)

26 Jan 46

This is to certify that D-139334 Pte DUPUIS, J.J.L. was examined by me at 0900 hrs this date and has been found physically fit to stand trial by Court Martial.



(I. .N. Harper), Capt
Medical Officer

Evidence in the Case of.
D 139334 Pte Dupuis, J.J.L.

First Witness for the Prosecution, sworn, states:
L 108368 Pte Yont, W.H.

I am, L 108368 Pte Yont, W.H., of 2/3. C.I.D.T. Coy, R.C.A.S.C., C.A.O.F. When I checked the accused kit on 14 Jan 46, there was just the barrack box that was left with a small amount of web equipments which we turned in as neglected kit. It consisted of cross straps and attachments brace.

Quest I. In your opinion, Pte Yont, would you say that his personal kit was also gone?

Ans I. It was all gone.

Quest II. Was there a lock on the box?

Ans II. The lock was broken, sir.

Quest III. Was the lock itself broken, or just the hasp?

Ans III. Just the hasp.

Cross-Examination:

Quest I. Who handed over to you the barrack box of Pte Dupuis?

Ans I. QM Goodwin was to the inspection and he had the box when I got there.

Quest II. Could you say how long the box had been in stores before the inspection?

Ans II. It was in Div Tps billets.

Quest III. Did you have in your Q.M. Stores a duplicate copy of Pt III Pay Book of.

cont'd.

Pte Dupuis?

Ans 12 No Sir.

Quest 13 What scale of equipment did you use to charge Pte Dupuis with deficiencies as shown in the charge?

Ans 13 I don't know.

Quest 14 How did you check the equipment that Pte Dupuis was supposed to be charged with?

Ans 14 They are fully equipped through the QM Stores when they come here. RP 83(B) complied with. pte

Summary by Defence

Pte Dupuis, according to the first charge went A.W.L at 0630 hrs, 7 Nov 44. Before anyone in his Pl came into contact with his personal kit a considerable amount of time had elapsed. The prosecution has not proved that Pte Dupuis was charged with a full scale of equipment. Furthermore, the question of negligence for having lost these articles has never been brought up by the prosecution outside of the charge sheet. It has been established that when the box which was supposed to be the property of Pte Dupuis was turned in to the stores, the lock was broken. I put that there are all possibilities for Pte Dupuis' equipment to have been taken

Cont'd:
away from his room at anytime before the box was turned in to stores. I feel that a great deal of negligence in the way of recording and looking after Pte Dupuis' equipment has taken place on the part of the Administrators of the Pl. he was in. I feel that the negligence for which Pte Dupuis has been charged with hasn't been proved by the prosecution and that the charge laid down should be dismissed.

Plea in Mitigation:

When considering the punishment you will give the accused, I am asking you to check very closely his record of service. I also want you to consider that the ultimate job for which Pte Dupuis enlisted in the army is now over. I further ask you to consider the time that he has already spent in custody.

(I) EX "A"

Summary of Evidence in the case of D-139334 Pte Dupuis, J.L. of 2/3 Cdn Inf Div Tps Coy RCASC (CAOF)

The Officer Commanding directs that the evidence be taken on oath.

1st Witness

L-7124 Sgt Neill, R.W. of 2/3 Cdn Inf Div Tps Coy RCASC (CAOF) sworn states:-

I am L-7124 Sgt Neill R.W. of 2/3 CID Tps Coy RCASC (CAOF). On the morning of the 8 Nov 45 prior to proceeding on convoy B-119118 L/Cpl Bennett reported to me that he had checked the roll call and found D-139334 Pte Dupuis J.L. absent, On return from convoy I checked and found that all his kit including blankets had been taken. I did not see the accused again until 12 Jan 46.

R.W. Neill Sgt L-7124

The accused declines to cross question the witness.

2nd Witness

L-108368 Pte Yont W.H. of 2/3 Cdn Inf Div Tps Coy RCASC (CAOF) sworn states:-

I am L-108368 Pte Yont, W.H. 2/3 CID Tps Coy RCASC (CAOF) employed as assistant quartermaster during the absence of the C.Q.M.S.
On 14 Jan 46 I conducted a kit inspection on D-139334 Pte Dupuis, J.L. and found him deficient articles listed below.

B.D. Blouse	1	$6.50	$6.50
Boots Ankle	1	5.82	5.82
Caps Mechanic	1	.16	.16
Drawers Cellular	2	.43	.86
Gloves Knitted	1	.47	.47
Great Coat Drab	1	11.31	11.31
Jersey Pullover	1	1.71	1.71
Shirts Angora	1	2.03	2.03
Socks	3	.46	1.38
B.D. Trousers	1	6.55	6.55
Badges Cap	1	.09	.09
Bags Kit Univeral	1	1.02	1.02
Braces	1	.32	.32
Brass Cleaning	1	.04	.04
Brushes Brass	1	.26	.26
" Clothes	1	.48	.48
" Hair	1	.34	.34
" Shaving	1	.37	.37
" Shoe	1	.28	.28
" Tooth	1	.11	.11
Cap Comforter	1	.34	.34
Comb Hair	1	.04	.04
Discs Identity	2	.01	.02
Holdall	1	.19	.19
Housewife	1	.17	.17
Knife Clasp	1	.86	.86
Razor Safety	1	.06	.06
Patches Dist	4	.03	.12
Towels Hand	2	.34	.66
Haversack	1	1.79	1.79
Pack W.E.	1	1.84	1.84
Straps W/Supporting	2	.13	.26
Blankets Single	4	3.07	12.28

Additional Summary of Evidence in the case of D-139334 Pte Dupuis, J.J.L. of 2/3 Cdn Inf Div Tps Coy RCASC (CAOF).

The Officer Commanding directs that the evidence be taken on oath.

First Witness — Capt DeVenne 2/3 CID Tps Coy RCASC (CAOF).

I hereby procduce certified true copy of an extract of Part II Orders No 1 d/6 Jan 46, as issued by 2nd Echelon HQ CAOF pertaining to the absence of D-139334 Pte Dupuis, J.J.L. 2/3 CID Tps Coy RCASC (CAOF).

Extract certified as to correctness, read over to the accused, marked exhibit "C" and attached hereto.

The accused declines to cross examin the witness.

The accused was cautioned as follows:-

Q — Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do os, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A — I do not wish to make a statement.

The accused does not call any witnesses

signature J.L Dupuis. J.L Dupuis

I certify that the foregoing Summary of Evidence consisting of one page was taken by me in the presence of the accused and the RP (c) (d) (e) (f) have been complied with.

M.R. Watson

(M.R. Watson), Lt.,
2/3 Cdn Inf Div Tps Coy.,
RCASC (CAOF).

Exhibit "A"
MR [illegible]

CHARGE [illegible] 252
(See King's Regulations)

2/3 CDN DIV TRP COY ..... Regiment

R.C.A.S.C. ..... Battery / Squadron / Troop or Company

CHARGE against No. D.139334 ..... Rank PTE

Name DUPUIS J.L.

Place BRUSSELS, Belgium Date of Offence 4 JAN 46

OFFENCE W.O.A.S.

(1) WAS A.W.O.L.

[illegible] Lieut
NO 11 CDN PROVOST COMPANY

Names of Witnesses :—

C.5091 C. NEWMAN Sergeant

Signature of O.C. Battery, Squadron, Troop or Company .....

Punishment Awarded .....

By whom Awarded .....

..... *Adjutant.*

P.T.O

Statement of EVIDENCE in the case of:

D.139334 Pte Dupuis J.L.
2/3 Cdn Div Trp Coy
R.C.A.S.C.

Sir:

At approx 1000 hrs the 4 Jan 46 while on duty as guard commander, I was approached by a soldier who stated he was absent from his Unit and wished to surrender.

I took his particulars and found him to be the a/m . He was placed under close arrest, in the Coy guard room awaiting escort back to his Unit.

C Newman Sgt
(C.5091 C. Newman)

REMARKS

Exhibit "B"
M. R. Watson Lt.

CERTIFICATE OF ARREST IN ACCORDANCE
WITH ARMY ACT, SECTION 103(i) (jj)

I certify that No. D-139334 Rank Pte Name DUPUIS J.L.

of (Unit) 2/3 Cdn Div Trp Coy CAOF was ~~xxxxxxx~~ Surrendered at Brussels

at 10000 hours on 4-1-46 (Date). He was dressed in Uniform
~~xxxxxxxxxxxx~~

Date 8 Jan 1946

Signature of Provost Marshall, A.P.M. or other officer into whose custody the above named person was taken on arrest.

A.L. Brock Lieut
(Name) (A.L. Brock)
(Unit of appointment)
No 11 Cdn Provost Coy
(CAOF)

NOTES.

1. This certificate MUST be signed personally by the officer concerned.

2. In no circumstances may it be signed by one officer "for" another, or by anyone who does not hold commissioned rank.

3. In no case should the place of apprehension be described as "in the field". The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, any map reference should be given.

Exhibit "C"

EXTRACT FROM

2/3 CANADIAN INFANTRY DIV TROOPS COY RCASC CACF
Part II Orders issued by
2ND ECHELON HEADQUARTERS
CANADIAN ARMY OCCUPATION FORCE

Last Order
No 23
31 Dec 45

No 1
6 Jan 46

Para 6 (a) AWL from 0630 hrs 7 NOV 45
D139334 Pte Dupuis, J.J.L
E-14422 Pte Gagne, A.G.

(b) AWL from 0630 hrs 7 Nov 45 Still Absent 0630 hrs 15 Nov 45
(8th Day)
D-139334 Pte Dupuis, J.J.L.
E-14422 Pte Gagne, A.G.

(c) AWL from 0630 hrs 7 Nov 45 Still Absent 0630 hrs 29 Nov 45
(22 Day)
D-139334 Pte Dupuis J.J.L.
E-14422 Pte Gagne A.G.

Para 11 (j) SOS des 30 Nov 45 having been dec illegally absent by a Ct Inq from 0630 hrs 7 Nov 45. Deficiencies in kit $80.52

D-139334 Pte DUPUIS J J L

(k) SOS des 30 NOV 45 having been dec illegally absent by a Ct inq from 0630 hrs 7 NOV 45 Deficiencies in kit $81.29

E-14422 Pte GAGNE A.G.

CERTIFIED TRUE COPY FROM ORIGINAL HELD IN THIS HQ.

(P.C. DeVenne) Capt. A/O
2/3 Cdn Inf Div Tps Coy RCASC

Ex "B" [illegible]

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-139334	Pte	DUPIUS J.L.	2/3 CID Tps Coy RCASC (CAOF)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 40 NEGLECT TO THE PREJ etc. 1 times.

For A.A. Sec 15 (2) 1 times.

For A.A. Sec 15 (1) 1 times.

For _____ times.

Date of first entry in Field Conduct Sheet 30 July 45

Date of last entry in Field Conduct Sheet 25 Sept 45

2. ~~[illegible]~~ Nil.

*Strike out if not applicable.

*3. ~~[illegible]~~ Nil.

4. The accused has been awaiting trial on the present charges for ~~[illegible]~~ Nil. ~~[illegible]~~ in military custody, *i.e.*, ~~[illegible]~~ Nil. 22 days in close arrest; of ~~[illegible]~~ Nil.

5. The present age of the accused is 22 years

6. The date of his attestation is 9 Feb 43

7. The service which the accused is allowed to reckon is 2 Yrs 10 Months

8. The accused is in possession of: CVSM&C, France Germany Star 1939/45 Star Defence Medal.

‡State the military decorations (if any) held by accused.

9. ~~[illegible]~~ Nil. Nil.

~~[illegible]~~ Nil. Nil.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27883) Wt.24959/5404 24,000 7/44 A.& E.W.Ltd. Gp.498 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N/A		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 17th day of January 1946 H C Pattison Major

SUPPLEMENTARY

No D.13933 Name DUPUIS, J.L. Sqn, Battery, or Company Corps RCA/C

Ex "C" Date of enlistment [illegible] GC Badges Service or Proficiency Pay

MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15Jul 45	Pte		AA Sec 40 Neg to the Prej etc. negligently operatingW.D. Veh CL.4269073 so as to become involved in an accident.	Documentary	Stoppage of pay to the am't of £4-0-0	30 Jul 45	Maj H.C. Pattison	Stoppage of pay to the Am't of £4-0-0 FR &I 158 (2)
Field	7 Sep '45	Pte		(First Charge) AA SEC 15 (2) FAILING TO APPEAR AT THE PLACE OF PARADE APPT BY HIS CO	A-11812 L/Sgt McCarthy JW	28 Day Fd P.	10 Sep '45	Maj H.C. Pattison	28 Days Pay (FR&I 149 (2)
				(Second Charge) AA Sec 15 (2) FAILING TO APPEAR AT THE PLACE OF PARADE APPT BY HIS CO	B-160204L/Cpl Oldman, J.D.	28 Days Pay			
				(Third Charge) AA SEC 15 (1) WOAS AWL FROM 1845 hrs to 2030 7 Sep '45 (TTA 1 hr 45 mins)	K-70360 Cpl Perry, H.J.				

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field Germany	24 Oct '45	Pte		AWL from 2230 hrs 24 Oct 45 to 2315 hrs Oct 45 (TTA 45 mins AA Sec 15 (1)	B-160204 L/Cpl Oldman J.D. Documentary	14 Days CB	25 Sep 45	Major Pattison	

Certified True Copy (17 Jan 46)

(W.C. Pattison) Major
Officer Commanding
2/3 Cdn Inf Div Tps Coy
RCASC (CAOF)

S.C.M. A- 149
Capt. Dupuis, J. v. Y.

RECORDED AT CMHQ IN AB 160 GCM-A-149

A

Army Form A 9.

**Form of Proceedings for General ~~and District~~ Courts-Martial.

28 Sept 44

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

RECEIVED 9 OCT 1944 JAG BRANCH C.M.H.Q.

Proceedings of a General Court-Martial held at Cdn School of Arty (O) on the 28th day of September 1944 by order of Brigadier J.C. Stewart CBE DSO

A/ Commanding Canadian Reinforcement Units dated the 26th day of September 1944

President.

Colonel B.R. Ker ED Comd 1 CGRU

Members.

Major A. Morin CIC 6 CIRU

Major G.L. Taschereau CIC 6 CIRU

Major J.W. Watmore RCASC 1 Cdn Adm Tpt Coy

Capt W.C. Wilde RCCS 1 CSRU

Capt J.M. Robinson HQ CRU
Barrister-at-Law Judge Advocate.

Trial of*

Capt Joseph Vital Yves DUPUIS
RCA - 2 CARU, attached to Cdn
School of Artillery (O)

I have satisfied myself that none of the officers detailed as members of this Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charge(s) before this Court Martial.

PRESIDENT. Lt.

The order convening the Court, the charge-sheet and the summary (~~or abstract~~) of evidence are laid before the Court

~~The Court satisfy themselves that~~ ~~as not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt P.B. Reid, RCA, Cdn Sch of Arty (O)

~~Counsel) or~~ defending officer† Capt H.C. Rees, RCA, 2 CARU

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked X signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

PROCEED REVIEWED J.C. Campbell Maj'r 9 Oct 44 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

B

Do you object to Cpl Tingley as shorthand writer? No sir
G7394 Cpl Tingley E.W. is sworn as shorthand writer.
The President, members and judge-advocate are duly sworn

The following officers under instruction are duly sworn.

Capt J.C. Thompson RCASC 1 Cdn Adm Tpt Coy

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you which you have heard read? *Question to the accused.*

Not Guilty, sir. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to charge , the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty" until after the finding on that other charge.

3

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined Capt Joseph Vital Yves Dupuis, RCA, Cdn School of Arty (O) and that he is in a fit state of health to undergo trial by Court-Martial.

E. H. Cain Capt

(E. Cain) Capt, RCAMC,
Medical Officer,
Cdn School of Arty (O)

Date: 28 SEP 1944

J.A.

Capt Joseph Vital Yves DUPUIS - RCA - Att'd Cdn School of Arty (O) 'X'
Lt William Harold THOMPSON - RCA - Att'd Cdn School of Arty (O)
Lt Humphrey Campbell LOCKHART - RCA - Att'd Cdn School of Arty (O)

COURTS - MARTIAL ARMY FORM A-47

FORM OR ORDER FOR THE ASSEMBLY OF A GENERAL OR DISTRICT COURT MARTIAL

.....ORDERS BY .Brigadier J.C. Stewart CBE DSO.....

A/ Commanding the .Canadian Reinforcement Units.....

(Place & Date) .Farnborough, Hants - 26 Sep 1944.....

The detail of officers as mentioned below will assemble at .Cdn School of Arty (O)..... on the ..26th..... day of ..Sep 1944.... for the purpose of trying by a General Court-Martial the accused person (Persons) named in the margin (and such other person or persons as may be brought before them)

PRESIDENT

Colonel B.R. Ker ED — Comd 1 CGRU — is appointed president

MEMBERS

Major A. Morin	CIC	6 CIRU
Major G.L. Taschereau	CIC	6 CIRU
Major J.W. Watmore	RCASC	1 Cdn Adm Tpt Coy
Capt W.C. Wilde	RCCS	1 CSRU

WAITING MEMBERS

Major J.R. Barber ED		1 CGRU
Capt J.C. Thompson	RCASC	1 Cdn Adm Tpt Coy

JUDGE- ADVOCATE

Capt J.M. Robinson — Barrister-at-Law — HQ Cdn Rft Units — has been ~~(or where the convening officer has the appointment of a judge-advocate, is hereby)~~ appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to Col i/c Adm, HQ CRU

Signed this ,,26th..... day of .September..... 1944

(J.C. Stewart) Brigadier
A/Comd
Cdn Rft Units

CHARGE SHEET

The accused, CAPTAIN Joseph Vital Yves DUPUIS, Royal Canadian Artillery on strength of No 2 Canadian Artillery Reinforcement Unit, an Officer of the Canadian Army on Active Service with the Canadian Army Overseas is charged with:

FIRST CHARGE
Sec 15(1) Army Act

WHEN ON ACTIVE SERVICE ABSENT WITHOUT LEAVE

in that he absented himself without leave at Seaford, Sussex on 18 Sep 44 from 1330 hrs 18 Sep 44 to 1845 hrs 18 Sep 44. (Total Absence 5 hrs and 15 minutes).

(D.R. Corbett) Lt-Col, RCA,
Comd, Cdn School of Arty (O)

Seaford, Sussex,
20th September 1944

To be tried by General Court Martial.

(J.C. Stewart) Brigadier
A/Comd
Cdn Rft Units

Farnborough, Hants.
26 Sep 1944

C

*Instruction (See R. P. 39 (A))

Proceedings on Plea of Not Guilty.

Question

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No sir

~~The prosecutor makes an opening address (hands in a written address which is read, marked, signed by the President, and attached to the proceedings.~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. Capt D.F. Thomas, RCA, Cdn School of Artillery (O)

being duly sworn, is examined by the prosecutor.

Q 1 Capt Thomas, would you tell the Court what you know about the case of Capt Dupuis?

A 1 On Monday, 18 Sep 44 at 0830 hours I had a parade of all the officers of Q Bty. Capt Dupuis, whom I recognize there (Pointing to accused) was on that parade. I spoke to the captains on the parade separately and told them that I had no further duties for them that day but that a move was imminent and that they would remain in touch with me throughout the day, and that I was going down to HQ of the school rightaway to get further instructions on the move. At 1030 hours in the adjutants office I was given instructions to move the captains to Beachy Head range. After getting the details from the adjutant I went back to my battery office about 11 o'clock, and instructed the orderly officer to inform the captains to be ready to move, and he --------

J.A. "You can only tell us that you gave instructions, and not what was told to you by someone else".

A1 I was going to say what the orderly did, not what he reported to me. I knew he did go around and tell the captains, and he told --------

J.A. "All you can do is tell us what you yourself did, and not what was told you"

A 1 All right. I gave instructions to the orderly officer to notify the captains of this move. At 1345 hours I went back to the Q Bty and gave instructions to Lt Carmichael to take a roll call of the captains. When he called the roll, Capt Dupuis was not present.

J.A. Q 2 How do you know?

A 1 Lt Carmichael reported it to me, and he had searched the grounds and buildings.

J.A. Q 3 But do you know that he was not present from your own personal knowledge?

A 3 Yes sir. I was present when Mr. Carmichael took the roll call and Capt Dupuis was not there. I went to Capt Dupuis' quarters and could not find him. I instructed Mr Carmichal to search the grounds and buildings and report to me whether he found Capt Dupuis.

A 3 (Cont'd) Mr. Carmichale was not able to find Capt Dupuis. At 1440 hours when the captains left Q Bty to go to Beachy Head, Captain Dupuis was not present, but at 1645 hours I saw Capt Dupuis proceeding to Blachington school with other officers to a lecture. After the lecture I spoke to Dupuis in my office, and placed him under open arrest.

Cross examined

Q 4 Whereabouts do you say that the accused was absent from?
A 4 He was absent from the Mess Buildings, the Orderly Room, and his quarters.

Q 5 The Mess buildings, the Orderly Room, and his quarters?
A 5 And the grounds.

Q 6 What grounds?
A 6 The grounds around the buildings.

Q 7 Did you search the grounds yourself?
A 7 No

Q 8 What is the actual boundary of Q Battery?
A 8 There is nothing laid down in Q Battery Orders.

Q 9 Is this laid down at all?
A 9 Not to my knowledge.

Q 10 I understand that this battery is in the process of being formed?
A 10 It is in the process of being broken up.

Q 11 For re-formation?
A 11 The original intention was to make Q Bty a part of the school, and I was to be in charge. Then some of my officers went to infantry, and it was decided to amalgamate Q with P Bty.

Q 12 Q Bty had existed about a week?
A 12 A week, yes.

Q 13 And no boundaries laid down?
A 13 No, not that I know of.

Q 14 Then Q Bty was attached to the CSA?
A 14 Yes

Q 15 Part of the training establishment or a part of the school?
A 15 During the time that I was OC of the battery there was no training carried out.

Q 16 This group of officers came down to the school for training prior to this?
A 16 Not to my knowledge.

Q 17 How long have you been there?
A 17 Two weeks,

Q 18 You do not know what went on prior to that?
A 18 No

Q 19 In the previous week, did the 3 or 4 captains live around this bty?
A 19 Yes

Q 20 Was the accused one of them?
A 20 Yes

Q 21 Any training carried out that week?
A 21 No.

Q 22 Were the captains entitled to go where they liked?
A 22 No, not without my permission.

Q 23 They were entitled to go to Seaford?
A 23 Not without my permission.

Q 24 Was this laid down in orders?
A 24 No.

Q 25 Did they not go to Seaford every day?
A 25 I know some went.

Q 26 If they wanted to come to the school, would they go through Seaford?
A 26 Yes, normally.

Q 27 All the officers do not have batmen?
A 27 That is right.

Q 28 Who would get them stuff from the stores here at the school them?
A 28 They would speak to me, and I would arrange for them to get transportation.

Q 29 Get transportation to come here to the stores to draw, say a toothbrush?
A 29 Officers do not draw toothbrushes.

Q 30 Well, whatever they wanted then?
A 30 They would normally speak to me first.

Q 31 They must have your permission to go to the QM stores?
A 31 No

Q 32 But surely you would not give them transport every time they wanted to come to the stores?
A 32 It would depend on what they wanted. I would normally tell them to walk. There is normally a parade called for officers to go to the stores.

Q 33 These captains had been doing no training all the previous week to this incident of Capt Dupuis?
A 33 Thats right.

Q 34 They were left pretty much to their own devices?
A 34 Yes.

Q 35 This 0830 hrs parade on Monday morning, it was very informal, was it not?
A 35 On the contrary, it was very formal.

Q 36 How many captains were there in your battery at that time?
A 36 Seventeen.

Q 37 Were they all living in the same house?
A 37 No.

Q 38 Some in other places?
A 38 Yes

Q 39 How many were present on that Monday morning 0830 parade?
A 39 They were all present.

Q 40 Everyone was present then on the 0830 hrs parade?
A 40 I do not know for sure. All those who had returned from leave were there. I can get the names of the ones who were there if necessary.

Q 41 I suggest that there were three missing?
A 41 I would not be able to say without looking at the nominal roll.

Q 42 I further suggest that if someone was not present at the moment, someone would say he was in the kitchen or somewhere for a few minutes, and he could get away with not answering his name?

A 42 I deny that. If they were not there, and someone said they were just inside a building or something like that, I would send the orderly to find out where they were.

Q 43 To see if they were there?
A 43 Yes

Q 44 You would not hold up the parade until they got there?
A 44 No

Q 45 Then there were some missing, and you told them to report later?
A 45 There were no cpatains missing

Q 46 You are sure?
A 46 Yes, I took the roll call myself.

Q 47 Can you get this roll?
A 47 I think so.

Q 48 I would like to see it?

Prosecutor "Is this relevant?"
J.A. "I do not think we need the roll call".

Cross examination continues

Q 49 You do not go so far as to say that Capts Janette, Beaudoin and Therriault were or were not on this parade?
A 49 If not there, they were sent for.

Q 50 You sent somebody to tell them to report to you?
A 50 Not on that parade because everyone supposed to be there was present.

Q 51 What did you tell them about the move that morning?
A 51 I told them that there was a move coming up, that I did not know when the move was, or where it was to take place, but that I was going down to the school that morning to get further instructions.

Q 52 But the move you had was simply a move of billets?
A 52 No, Q Bty was being disolved, and I tried to keep them in the picture, and told them they were being moved to P Bty.

Q 53 You and the other officers were going there?
A 53 Yes.

Q 54 Was there some talk of a troop commanders course?
A 54 Yes. I did not know what they were going to do, but I told them Q Bty was being closed down.

Q 55 But the whole thing was only moving billets?
A 55 It was actually a transfer, or re-posting.

Q 56 There was no suggestion that morning of a move to Beachy Head?
A 56 No.

Q 57 You later found there was to be a shoot at Beachy Head at 1030 hrs, which you knew nothing about at 0830 hrs?

A 57 That is right

Q 58 Your statement was that you wanted these people to keep in touch with you?
A 58 Thats right.

Q 59 You did not tell them where they were to stay, or where to report to, where or how to report to you?
A 59 No.

Q 60 Whether to follow you, find you, or anything else?
A 60 No.

Q 61 You yourself came down to the school that morning and did not see any of them until lunch time?
A 61 Thats right.

Q 62 So you were out of touch with them all morning except for the phone, on which you could be called?
A 62 No, definitely not out of touch with them. I maintained close touch with them.

Q 63 But apart from the phone, you could not be in touch with them?
A 63 My officers were.

Q 64 Not you personally?
A 64 No.

Q 65 That morning when you talked about the move, was it not suggested that you would prefer to have the move the next day?
A 65 I told them that I had been informed that a move might take place that day but that I was going down to the school for further instructions but would endeavour to have it put off till the next day.

Q 66 Did you tell them that morning it was being called off that day and it would be the next day?
A 66 I don't remember.

Q 67 Did you tell them on parade that morning there would be no duties that day except to keep in touch with you?
A 67 Yes.

Q 68 I suggest that you told them to bugger off for the day?
A 68 I don't remember.

Q 69 You do not deny it?
A 69 No.

Q 70 You yourself did not search the buildings?
A 70 Just went to the accused's quarters.

Q 71 Did you look in the field immediately to the right of those quarters?
A 71 No.

Q 72 You did not go around and look in all the other buildings?
A 72 No, I did not.

Q 73 There are many buildings belonging to Q Bty are there not?
A 73 Only #4 3.

Q 74 Only 3?
A 74 Yes.

Q 75 The accused was previously quartered at another building, was he not?
A 75 I do not know.

Q 76 How many rooms are there in Bowen house, the house the accused is quartered in, 75 are there not?
A 76 I don't know, but I do not think it is 75.

Q 77 How many captains from your battery are quartered in this house?
A 77 Only one that I can think of.

Q 78 There are many small buildings around this house?
A 78 I suppose so.

Q 79 The technical stores and store rooms are there?
A 79 No, the building they were in is not used now.

Q 80 You do not know whether the tech store room is attached to Bowen House or not?
A 80 There is a building at the side of the field which used to be used for this, but has not been for a long time.

Q 81 But is there not a building near there which used to be used for technical stores?
A 81 That building is empty now.

Q 82 What about the fitter's quarters?
A 82 What do you mean?

Q 83 The fitters had quarters near that building, did they not?
A 83 I cannot remember.

Q 84 On the day of the alleged absence of the accused, where was it his duty to be?
A 84 In his quarters, the Mess, or the orderly room.

Q 85 But that had not been specified to him?
A 85 Idid [redacted]

Q 86 What was there against him being in any other part of the area of Q Battery?
A 86 He had no business being there. It is understood that officers do not go in the stores, mens quarters, etc, so there was no where else he could be except the orderly room, Mess, or his quarters.

Q 87 Is this laid down in writing?
A 87 It is that the kitchen is out of bounds. It is a matter of policy that officers do not go in Mens quarters.

Q 88 Very frequently these officers play tennis, swim and play golf?
A 88 I gave permission to Capt Beaton and 2 Lts to play golf as recreation, but no one else.

Q 89 You knew officers were going swimming?
A 89 No.

Q 90 You did not?
A 90 No. I gave2 Lts permission to go to the beach, but not to swim.

Q 91 You say you saw the accused at 1845 hrs that evening?
A 91 That is right.

Q 92 On his way to a lecture?
A 93 Yes

Q 93 It had been notified in orders that officers would attend that lecture?
A 93 Yes.

Q 94 The accused may have been in billets from 3 that afternoon. You searched the quarters at 1345 and not again until you saw him, did you?
A 94 No, I did not. I gave instructions for them to look out for him.

Q 95 As far as you personally know, you did not know how many times these officers had moved quarters in the prior two or three weeks?
A 95 Dupuis had not moved at all to my knowledge. I know within the past week he had not moved at all.

Q 96 There was a great deal of moving of quarters?
A 96 No. Only one building was closed down.

Q 97 You know nothing of the officers training at the school?
A 97 I had nothing to do with that.

Q98 The medium guns were kept here at the school then?
A 98 I do not know.

Q 100 Is the equipment room here at the school?
A 100 Yes.

Q 101 These officers, during that prior week, were quite at liberty to go to school for using equipment and stuff, were they not?
A 101 Yes, but they should get permission from me before leaving the area.

Q 102 If an officer came here to the school, would he have to come through the town?

(President asks to see location of Q Bty on map. Shown to him, and it is shown to him how officers from Q Bty could get to the school)

Q 103 What were the actual works you said about the captains keeping in touch with you?
A 103 I said, or words to the effect "I told the captains that "There was a move imminent, I think I have no further duties for you today, but remain in close touch with me, and I am going down to the school to get farther instructions on the move".

Q 104 You do not insist that you used the word "Close touch", it may have only been "Touch".
A 104 It may have been.

Q 105 It was to keep in touch with you. That was what you told them. You were coming to the school?
A 105 Yes.

Q 106 Q Bty is part of the school?
A 106 Yes.

Prosecutor re-examines

Q 107 What was your capacity here on the 16 September in Q Bty?
A 107 I was Acting OC of Q Bty, appointed by Col Corlett several days previous to that.

Defending Officer

Q 108 Is it quite permissible for officers to be sleeping in their quarters, and especially on that day?
A 108 Yes.

(In the opinion of the Court and the Judge Advocate it is not necessary to /comply with RP 93(b))

Second Witness Prosecution — Lt H.A. Carmichael, 1 CARU, attached Cdn School of Arty (O), having been sworn is examined by the Prosecutor:

Q 109 Mr Carmichael, will you tell the Court what you know about this case?
A 109 At 1345 hrs, on, I beleive 16 Sep 44, while acting in the capacity of bty captain of Q Bty, I was detialed by the Bty Commander Capt Thomas to check on the whereabouts of 13 captains, who were to proceed on a course to Beachy Head that afternoon. He told me to search the Mess and buildings, and report to him if they were all present or not. On doing so I found that 12 were present and that I could not find Captain Dupuis, and I reported this fact to Capt Thomas.

Q 110 You recognize Capt Dupuis?
A 110 I do (Points to accused).

Q 111 Did you make a thorough search of the buildings?
A 111 I searched the Mess, Mess buildings and the Bowen House, the grounds, and the buildings of Thyme Dean, as well as the grounds.

Cross examined

Q 112 You did not know anything about the morning parade at 0630 of the captains?
A 112 I was on parade at 0630 hours.

Q 113 With them?
A 113 Yes.

Q 114 The same parade?
A 114 The Lts were separated by about 3 paces from the captains?

Q 115 Did you hear the Captains roll call?
A 115 No, I was not listening.

Q 115 You did not know whether all the captains were present or not?
A 115 No, I do not.

Q 116 How thorough a search did you make of these buildings. Did you look in all the rooms of Bowen house?
A 116 No.

Q 117 There are some 75 rooms in that house, are there not?
A 117 Yes.

Q 118 Would it take about an hour to go through them?
A 118 No.

Q 119 You did not go through Cherry Cottage?
A 119 No.

Q 120 It is part of Q Bty?
A 120 Yes, and occupied by the C.Re.

Q 121 It used to be occupied by officers?
A 121 Yes, but not since these captains came here.

Q 122 Bowen House, it is officers quarters?
A 122 Yes.

Q 123 You did not go through all the rooms in your search?
A 123 I did not.

Q 124 There are other batteries in the neighbourhood, P Bty for example?
A 124 Yes.

Q 125 There are officers in Hemefield School?
A 125 Yes

Q 126 What Battery?
A 126 The A Tk Bty.

Q 127 Is it customary for officers to visit back and forth between batteries?
A 127 Yes.

Q 128 You made no attempt at any other battery to find him in the search?
A 128 No.

Q 129 You did not check in the field immediately beside Thyme Dean?
A 129 No.

Q 130 Is there a golf course near there?
A 130 Yes.

Q 131 And a club house near it?
A 131 Yes.

Q 132 The course comes right to the edge of the road?
A 132 Yes.

Q 133 Did you know what these officers had been doing the previous week?
A 133 No, I had been on leave.

Q 134 The practice was to come and go down to Seaford, was it not, on the way to the school here?
A 134 Thats right.

Q 135 Your search ended at what time, from your own personal knowledge, for the accused?
A 135 About 1400 hours.

Q 136 You were not asked to look for him until 1330 hours?
A 136 1345 hours.

Q 137 Your search lasted from 1345 hours until when?
A 137 1400 hours.

Q 138 From 1345 hrs to 1400 hours?
A 138 Yes.

Q 139 15 minutes?
A 139 Yes.

Prosecutor re-examines

Q 140 The practice was to come and go between Bowen House and Seaford between the school. Do you know about the practice regarding captains?
A 140 No, I could not definitely say about captains.

Judge Advocate

Q 141 Did you hear the instructions given to captains on the morning of the 18th?
A 141 No sir, I did not.

Q 142 When you made your search, did you search all the logical places where you thought that you might find the accused?
A 142 Yes, I considered I had. I asked everyone if they had seen him was told they had not.

Q 143 In your own opinion, you made a careful search?
A 143 Yes sir.

President

Q 144 You went to his own room?
A 144 Yes sir.

Q 145 You are sure of that?
A 145 Yes sir.

Q 146 You went to the Mess Room?
A 146 Yes sir.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with Rule of Procedure 83(b)

MOTION BY THE DEFENDING OFFICER

I would like to move that the Court dismiss this case. I submit that no prima facie case has been made out. The charge is absent without leave, and it is made to appear, it seems, it must be proved that the absence was from some particular place where he was supposed to be. I submit that there is confusion, and that the prosecution has the onus that he was supposed to be some particular place at some particular time. The accused is not charged with that at all, simply absence without leave. It is quite clear that he was not told where to be, how to be there, or how to keep in touch. The first witness says he told them to keep in close touch. In order to keep in close touch, the captains would have to follow him. When he left the parade, the captains had nothing to do but hang around in their billets. It was later that morning that they found out about going to the ranges. It is quite clear from the evidence that there is no intention on the part of anyone else that duty.

The prosecution is in a position where it must do one of two things. It must either show that the accused was to be in a certain place at a certain time, or in a place where he could be got in touch with at a certain time. This it has failed to do. I would like to refer you to the footnotes of Sec 15, on page 441 of the MML, 3rd para of the footnotes (Read to the Court by the Defending Officer)

I submit here that the prosecution must show that it was his duty to be in some particular place and they have not done so. The accused was within his rights if he was in some part of Q Bty area. The last witness said that he did not go in all the rooms of Bowen house. I submit that no case has been made out, that it was not established that the accused was to be in a particular place at any particular time, and it is not established that he was to keep in close touch in any particular time, and in any particular way. The basis of the charge is that he failed to keep in touch, instead of being in some particular place. The prosecution has not established that it was his duty to be in any one part of the camp or area. I submit that no case has been made out. The whole thing is frivolous. Nothing of importance going forward that day was contemplated early in the morning, and it was not until sometime later in the day that the shoot at Beachy Head was arrived at. I submit that if the accused had known of the shoot to be at Beachy Head, he would have been only too glad for the opportunity of going.

PROSECUTOR REPLIES TO THE SUBMISSION OF THE DEFENDING OFFICER

The evidence shows that Capt Dupuis was warned at the morning parade that a move was imminent. Nobody was able to contact him during the day. It would be reasonalbe that an officer warned to keep in touch with a superior officer would endeavour to make some contact during the day with him. The move to Beachy Head was called some hours after the morning parade, and Dupuis did not make any effort to contact Capt Thomas, and no one was able to contact him. The evidence, I submit sir, has been sufficient to show that the accused was absent without leave. No leave was granted to him, and he would normally be in the Mess or quarters, and he was not there.

Court closes to consider the motion of the Defending Officer

Court Re-opens

President of the Court to the Accused "The Court has considered your submission and agree that there is no case, and therefore your case is dismissed".

E

Finding.*

**To be struck out except in cases where trial has taken place on a plea of "Not Guilty."*

The Court is closed for the consideration of the finding.

The Court find that the accused Captain Joseph Vital Yves DUPUIS, RCA, 2 Cdn Arty Rft Unit, attached to Cdn School of Artillery (O) is not Guilty of the Charge.

(J.M. Robinson) Capt

(B.R. Ker) Colonel

28 Sep 1944

Proceedings on Conviction before Sentence.

**When the Court is already open this sentence will be struck out.*

Evidence of character, &c.

Question by the President.

*The Court being re-opened, the accused is again brought before it, is duly sworn,

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

Question by the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

SUMMARY OF EVIDENCE in the case of Capt. J.V.M. DUPUIS Royal Canadian Artillery, on strength of No 2 Canadian Artillery Reinforcement Unit, and attached to Cdn School of Arty (O) "Q" Battery, an Officer of the Canadian Army (Overseas)

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS for the prosecution

Capt. D.F. Thomas, on strength No 1 Canadian Artillery Reinforcement Unit attached to Canadian School of Artillery (Overseas) acting OC "Q" Bty having been duly sworn states:

" At 0830 hrs on Monday 18 Sep 44 I had a parade of all Officers of "Q" Bty Cdn School of Arty (O). Capt. Dupuis whom I now recognize was present. I spoke to all the Captains and told them that I had no further duties for them that day but that a move was imminent and that they would remain in close touch with me".
About 1030 hrs that morning I received instructions to move the Captains to Beachy Head Range. At 1345 hrs I instructed Lt. H.A. Carmichael to take a roll call of the Captains. Capt. Dupuis was not present. I went to Capt Dupuis' quarters and could not find him. I instructed Lt. Carmichael to search the mess and mess building. Capt Dupuis was not to be found. He was not present when the Captains moved at 1440 hrs 18 Sep 44 and did not move with them.
At 1845 hrs I saw Capt Dupuis marching along with the other Officers of the Bty who were proceeding to a lecture that was being given that night at Blachington School. After the lecture I spoke to Capt Dupuis in my Office and placed him under open arrest".

Cross examined by the accused:

Question: What is the approximate billeting area of the Cdn School of Arty (O)?
Answer: I do not know but I would say it is about two miles wide.
Question: When you came to my quarters did you look in the garden behind Thyme Dean house?
Answer: No.
Question: Is it possible that I was asleep behind that bldg when you came?
Answer: Yes.
Question: Did you give us definite orders that we were not to go to sleep?
Answer: No.
Question: Was the order definite on the morning parade as to when and where we were to move?
Answer: I did not know to where or when the move would take place and I informed the Captains so. I told them that I was going down to Cdn School of Arty (O) right away to get further instructions on the move.
Question: Did you use the word "close" whenyou said to keep in touch with you?
Answer: I do not know.
Question: Did you give us a special place and time to report or a place to stay?
Answer: No.
Question: What did the Captains normally do during the daytime for the last week?
Answer: As there were only about three Captains there and practically everybody else was on leave I had no duties for the Captains except to appear on parade in the mornings or when called.
Question: Was it possible for you to lose touch with them during that time?
Answer: Yes, if a Captain went away it was.

Exh 23

Question: Were the Captains confined to billets?
Answer: No.
Question: Did you mention Beachy Head at any time on the morning parade or when you saw me at 0930 hrs?
Answer: No, I did not know about it then.
Question: Was it not vaguely understood on the morning parade that as far as the Capts were concerned it was only a change from one building to another that was going to take place that day?
Answer: I tried to keep all Officers in the picture and had explained to them that so far as I had been informed the Battery might move to "P" Bty which is about two miles away but that I was not sure of that. I told them that to the best of my knowledge myself and the subalterns would be taken on strength of "P" Bty and that I did not know what the Capts would be doing as I understood there was a Tp Comds course coming up intthe near future.
Question: Did you tell me the night of 18 Sep 44 why I was being placed under open arrest?
Answer: I do not remember.
Question: During the time you were in charge of "Q" Bty did not any Officer leave the town of Seaford during parade hours?
Answer: To my knowledge no one left without permission from me.
Question: Was it possible for an officer to leave the town of Seaford several times while you were OC of "Q" Bty and get away with it?
Answer: Yes, I placed some of them on their honour.

(D.F. Thomas) Capt., RCA.

SECOND WITNESS for the prosecution

Lt. H.A. Carmichael, RCA, 1 Canadian Artillery Reinforcement Unit attached Cdn School of Arty (O)"Q" Bty having been duly sworn states:

At about 1345 hrs on 18 Sep 44 whilst acting in the capacity of Bty Captain of "Q" Bty, Cdn School of Arty (O) I was detailed by the Bty Comd, Capt D.F. Thomas to check the whereabouts of thirteen Capts and to ensure that they understood the arrangements for their move at 1436 hrs that day to Beachy Head. I was unable to locate Capt. J.V.Y. Dupuis who I now recognize, and reported this fact to Capt. Thomas. I also reported that I had seen Capt Dupuis on parade at 0830 hrs that day

Cross examined by the accused:

Question: Did you tell me personally if I was to go to Beachy Head?
Answer: No.
Question: When told to locate all the Captains did you know where they all were?
Answer: No, not at that time.
Question: Were the Captains to stay at any special place after the morning parade?
Answer: I do not know.
Question: How large was the billeting area of "Q" Bty?
Answer: I do not know.
Question: Where did you look for me at 1345 hrs on 18 Sep 44?
Answer: Throughout the mess and buildings and grounds occupied by "Q" Bty personnel.
Question: Did you personally look in the little Nissen Hut?
Answer: Yes.
Question: Did you go to Cherry Cottage?
Answer: No

Jack 25.

Question: Did you go to Thyme Dean house.
Answer: Yes.
Question: Did you look in the grounds behind Thyme Dean House?
Answer: Yes.
Question: Did you look in the field to the right of the main entrance to Thyme Dean House?
Answer: No.
Question: Is it possible that I might have been asleep on any part of the grounds of "Q" Bty area?
Answer: It is possible.

H.A. Carmichael Lt.

(H.A. Carmichael) Lt., RCA.

The accused was cautioned as follows:

Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused being a French Canadian was also cautioned in French in accordance with Cdn Army (Overseas) R.O.1424.

The accused declined to make a statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (C),(D),(E), and (F) have been complied with.

P B Reid

(P.B. Reid) Capt., RCA.

Seaford, Sussex,
20th September, 1944.

50-35

Pte Dupuis M.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : C-79217 Pte Michael Raymond DUPUIS SD&G Highrs att 1 Cdn Disciplinary Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 36, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under sentence for ... beginning on (dates) ... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 25 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : One yeat Detention.

(Sgd) ... 24 Feb 45 (Sgd) "Chas Lovat-Fraser" Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed.

I ~~direct that the accused be not committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.)

Date 24 Feb 45 (Sgd) "G.S.N. Gostling"
(G.S.N. Gostling) Brigadier
Commanding 2 Cdn Base Rft Gp
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
C-79217 Pte Dupuis, M.R.	1 Mar 45	"A.O. Hood"Lt Col Comdg 1 Cdn Disciplinary Centre

CR 144
4/28Feb45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

59-35

FIELD GENERAL COURT-MARTIAL

CFA66 (To take place of AFA3) 40/P & S/1000 (46060) 4/38B

Convened by Order of Brigadier G.S.N. Gostling ED Comd 2 CBRG dated 22 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 350.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C-79217	Pte		Michael Raymond	DUPUIS	SD&G Highrs 1 Cdn Disciplinary Centre

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 24 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 24/20

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn KOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1515 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The ~~Prosecutor informs the Court that accused elected to be tried by court martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President is satisfied the ... [illegible] ... should not be sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	J.C. Lovat-Fraser	RCE	13 CBR Bn
Member	Captain	J.G.G. Robichaud	CIC	" " "
Member	Lieutenant	J.L.A. Gautier	"	10 " "
Judge-Advocate				
Prosecutor	Lieutenant	T.W.R. Hubert	Regt de Chaud	10 CBR Bn.
Defending Offr	Lieutenant	J.W.A. Lalonde	CIC	13 CBR Bn

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See DI p 2.)

A8. The accused C-79217 Pte Michael Raymond DUPUIS before arraignment make(s) (no) (~~a~~) plea ... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A66 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"&"E"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 105; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc. see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s). He may call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No .(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement (1) The Court does not feel it can allow the accused to change his plea(s) of Guilty to Not Guilty on the charge(s). The document is certified informal and he (they) charged, and (after) plea(s) on the charge(s), Part I of the Schedule is amended accordingly.
(1. Court may be cleared to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not charged the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex. C, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (2).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by continuing with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, o.t the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not be given by the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. RP 115. 2. RP 40(A), see 40(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No .
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(s), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. D and Ex. ..... respectively.(3)
(1. MFB 355 or AFB 294. 2. MFM 9. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. No .(2)
(1. RP 27(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(a), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 1323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, C79217 Pte Micheal Raymond DUPUIS, Stormont Dundas and Glengarry Highlanders, presently attached to 1 Cdn Disciplinary Centre, a soldier of the Cdn Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, BELGIUM, did absent himself without leave from 0700 hrs 30 Oct 44 until apprehended at 0930 hrs 9 Feb 45 in GHENT, BELGIUM. (Total time absent 102 days 2 hrs 30 mins)

In the Field,
20 Feb 45.

"A.O. Hood"
(A.O. Hood) Lt-Col
Commanding Officer
No 1 Cdn Disciplinary Centre.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field,
22 Feb 45.

"G.S.N. Gostling"
(G.S.N. Gostling) Brigadier,
Comd
2 Cdn Base Rft Group.

CLF.

FIELD GENERAL COURT-MARTIAL CLF

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-79217	Pte		Michael Raymond	DUPUIS	SD & G Highrs 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~in this~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 22 Feb 45 endorsed by me, (~~a by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint~~ (a) three ~~Offrs to form the Court~~, (b) a ~~Fd~~ Offr as President, ~~for the reasons I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Major (*Rank.*)	J.C. Lovett-Fraser (*Must be named. RP 106.*)	RCE,	13 CBR Bn (*Unit.*)

MEMBERS.

Captain	To be detailed by OC 13 CBR Bn	13 CBR Bn
Lieutenant (*Rank.*)	To be detailed by OC 10 CBR Bn (*Named or detailed. RP 106.*)	10 CBR Bn (*Unit.*)

WAITING MEMBER.

(*Rank.*)	(*Named or detailed, if any. RP 106.*)	(*Unit.*)

~~JUDGE ADVOCATE~~

(*Rank.*)	(*Must be named, if any. RP 106.*)	(*Unit.*)

On Active Service in the Fd

in BELGIUM (*Country.*)

Date 22 Feb 45

"G.S.N. GOSTLING" (*Signed personally. RP 105 fn 2.*) Brigadier (*Rank.*)

(G.S.N. Gostling)
Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

CLF.

MEDICAL OFFICER'S REPORT

I certify that No. C79217 Pte DUPUIS M.R.

of 1 Cdn Dis Centre is a

of health and Able to undergo trial by Court Martial.

Station 1 Cdn Dis Centre

Date 24 Feb /45

"A.M. Davis" Capt
Medical Officer

M.F.R. 246
25M-6-41 (792)
H.Q. 1772-30 480

(1) EXHIBIT "C" CLF

Summary of Evidence in the case of C-79217 Pte DUPUIS M R of SD & G Regt, a soldier of the Canadian Army Overseas.

Charge - Absence without leave.

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copies of Extracts from Pt II Orders Nos 63 and 70 dated 12 Nov 44 and 3 Dec 44 respectively

Exhibit "B" - Certification of apprehension dated 9 Feb 45.

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you whish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP4(C) (D) (E) (F) and (G) have been complied with.

"J.F. Rutherford"
(J F RUTHERFORD) Capt
RC Signals
Officer detailed to take Summary of Evidence.

Dated in the Field
19 Feb 45

PART II ORDER EXTRACT FORM **Exhibit A CLF Capt R Sharpe**

99/20/SD&G/1(a5c)

TO: OC
1 CDN DISCIPLINARY CENTRE
CDN ARMY OVERSEAS

13 Feb 45 19.....

EXTRACTS FROM: UNIT S.D. & G. Highrs

Part II Order No ..... dated .....

C79217 Pte DUFUIS M.R.
ABSENT WITHOUT LEAVE Part II Order 63 para 5(a) d/12 NOV 44
AWL from 0700 hrs 30 OCT 44 Still absent 0700 hrs 6 NOV 44 (8th day)
STRENGTH DECREASE Part II Order 70 para 7(a) d/3 DEC 44
SOS as des wef 22 NOV 44 having been dec illegally absent by Ct of Inq
from 0700 hrs 30 Oct 44 Deficiencies in kit $7.14

Certified to be a true extract from the
Regimental books and documents in my
custody

"J.R. Fenelon" Capt
Officer IC Records 'C'
Cdn Sec CMQ 2 Ech 21 A Gp

The following documents are attached. Please ack receipt on att duplicate required. Please forward same.

Originating clerks initials .....

.....for
Officer in Charge
Canadian Section CMQ 2nd Echelon

Exhibit B. Capt R Shupe

CLF.

CERTIFICATE UNDER ARMY ACT. SECTION 63 (1) (1)

Certified that No C-79217 Rank Pte Name Dumuis, M.R.

of the SD & G Hqzhrs 3 Cdn Div Regt was apprehended by No L-2320

Rank Cpl Name Olson, J.C. of the 2 Cdn L of C Provost Coy

Detachment at Ghent Belgium at 0930 hrs, on the 9th

day of February as an absentee without leave.

He was wearing Military Uniform at the time of his Arrest.

Place Ghent Belgium
Date 9 Feb 45

"H.W. Mahaffy" Lieut
H.W. Mahaffy i/c Ghent Detach
Canadian Provost Corps.

EXHIBIT "D" CLF.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C-79217	Pte	DUPUIS M R	1 Cdn Disc Centre- SD&G Hights

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For ..... times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N/A beginning on the N/A day of .....

4. The accused has been awaiting trial on the present charges for N/A days in civil custody; and for ~~20~~ 25 days in military custody, *i.e.*, N/A days in open arrest, ~~20~~ 25 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 20 yrs

6. The date of his ~~attestation~~ record of service ~~calling up for military service~~ 5 May 42

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of‡

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of .....

In the war substantive rank of .....

In the acting rank of .....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(28094) Wt.42129/4399 42,000 11/44 A.& E.W.Ltd. Gp.698 Forms P.2 6/Warp4

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	France Aug 44	Drunkeness, Disobeying an Order Attempting to enter Civilian House	Papers destroyed by enemy action	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 20th day of Feb 45.

" A.O. Hood" Lt Col
Comdg 1 Cdn Disciplinary Centre

LIST OF WITNESSES CLF.

N/A

LIST OF EXHIBITS

Certified true copies of Extracts from Pt II orders Nos 63 and 70 dated 12 Nov and 3 Dec 44 respectively	"A"
Certification of apprehension dated 9 Feb 45	"B"

I, C-79217 Pte DUPUIS M R, hereby certify that I have received one (1) copy of charge sheet and one (1) copy of Summary of Evidence free of charge on 20 February 1945.

C-79217 Pte DUPUIS M R

Recommendation of Court

This Court recommends interview by Psychiatrist for this soldier. Claims Battle Exhaustion.

"Chas. Lavat-Fraser " Major

President.

COPY

RECORDED AT CMHQ IN AB 160 59-30

529/Dupuis MR/1 (DJA-REV)

Cdn Sec 1 Sch HQ 21 Army Gp
31 July 45

VJAG
1 Det (A)
Cdn JAG o/s
CMHQ (Attn: JAG-Rev 1)

FGCM - 4 Aug 44
C-79217 Pte Dupuis MR
SD&G Highrs

1. Enclosed, in duplicate, is certificate of President of the Court relating to m/n lost proceedings for custody.

(Sgd) W.H. WATSON, Major
DJA (Rev)
Cdn Sec 1 Sch
HQ 21 Army Gp

BIS

I CERTIFY that on the Fourth day of August 1944, C-79217 Pte DUPUIS, M.R., a soldier of the Stormont, Dundas & Glengarry Highlanders, Canadian Army Overseas, was tried in the Field by Field General Court-Martial, the members of which were:-

President:	Major T.R. Prest	HLI of C
Members:	Capt. W.A.E. Roelofson	HLI of C
	Lieut J.D. Spohn	HQ 9 Cdn Inf Bde

The charges on which the said soldier was tried were as follows:

1. Army Act Sec 19	Drunkenness
2. Army Act Sec 9(2)	Disobeying a lawful command given by his superior officer.
3. Army Act Sec 40	Attempting to enter a civilian house when the owner was trying to prevent entry.

The said soldier pleaded guilty to all charges, was found guilty on all and was sentenced by the Court to undergo detention for a period of 6 months.

Authenticated by:

W.A.E. Roelofson
Member

Member

I FURTHER CERTIFY that before confirmation and promulgation of the proceedings the same were destroyed by enemy action and the said proceedings were therefore never confirmed or promulgated.

In the Field
26 May 1945

T.R. Prest Lt-Col
President
(T.R. Prest) Major now Lt.-Col.

I ASSENT to the acceptance of the above record of Field General Court-Martial proceedings in lieu of the original proceedings.

In the Field
28 May 1945

Dupuis M.R.
C.79217 Pte Dupuis, M.R.

I, having accepted the foregoing record in lieu of the original Field General Court-Martial proceedings which I am satisfied have been destroyed by enemy action, do not confirm the findings or sentence.

In the Field
30 May 1945

Jeff Rockingham Brig
Confirming Officer
Comd 9 Cdn Inf. Bde

PROCEEDINGS REVIEWED
J. R. Miquelon Capt
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.
4 Aug 45

PROMULGATED AND EXTRACTS TAKEN

Accused	Date	Signature of Offr.
C79217 Pte Dupuis MR	25 Jul 45	W.D. Cain Capt.

RECEIVED
2 - AUG 1945
JAG BRANCH
C.M.H.Q.

No 1 CDN DETN & FP B.R.
20 JUN 1945
ORDERLY
CDN P.O.

56-87.

Pte. Dupuis, M. R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : C-79217 Pte Michael Raymond DUPUIS SD&G Highrs att 1 Cdn Disciplinary Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 25 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

One year's Detention.

(Sgd) ..... 24 Feb 45 (Sgd) Chas Lovett Fraser Major.
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I direct that the accused be ~~not committed to prison or detention barracks until further order(s).~~
(1. AA 57A. Delete if not used.)

(Sgd) (G.S.N. Gostling), Brigadier,
Date 24 Feb 45 Commanding 2 Cdn Base Rft Gp.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C 79217 Pte Dupuis, M R	28 FEB 45	[signature] Lt-Col. Comdg, 1 Cdn Disciplinary Centre

CR 144
28 FEB 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 468 (In lieu of AFAB1 40/1 & 2, 1000-44(44))

5C-87
4/38B

FIELD GENERAL COURT-MARTIAL

CMHQ 13 APR 1945

Convened by Order of Brigadier G.S.N. Gostling, EDComd 2 CBRG dated 22 Feb 45

ACCUSED.

(As to trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C-79217	Pte		Michael Raymond	DUPUIS	SD&G Highrs 1 Cdn Disciplinary Centre

PROCEEDINGS REVIEWED. K.M. Stevens 14 of 45.

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Held in the Fd in (country) Belgium on (date(s)) 24 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1215 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (or).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans .....
The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	J.C. LOVETT-FRASER	RCE 13 CBR Bn
Member	Captain	J.G.G. Robichaud	CIC " " "
Member	Lieutenant	J.L.A. Lauzon	" HQ " "
Judge-Advocate			
Prosecutor	Lieutenant	E.W.R. Hubert Reg de Chaud 10 CBR Bn	
Defending Offr	Lieutenant	J.M.A. Lalonde	CIC 13 CBR Bn.

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No.(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Canv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused C-79217 Pte Michael Raymond DUPUIS before arraignment makes(s) (no) (~~no~~) plea

(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 113. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A64 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 3 A E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vol XXX P 23.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (does not decide) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes (changes) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive : Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA 34(3) (d), RP 45, 120(A). 2. AA 34(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex ..... respectively.(3)
(*1. MFB 253 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. No.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 1323, MML p 60, 737-739. As to sentences assigned for civil offences to the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(8), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of records after trial see insstrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Recommendation of Court

This Court recommends interview by Psychiatrist for this soldier. Claims Battle Exhaustion.

Chas Lovett Lt Col Inf
President

CHARGE SHEET

The accused, C79217 Pte Michael Raymond DUPUIS, Stormont Dundas and Glengarry Highlanders, presently attached to 1 Cdn Disciplinary Centre, a soldier of the Cdn Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, BELGIUM, did absent himself without leave from 0700 hrs 30 Oct 44 until apprehended at 0930 hrs 9 Feb 45 in GHENT, BELGIUM. (Total time absent 102 days 2 hrs 30 mins)

In the Field,
20 Feb 45.

(A.O. Hood) Lt-Col
Commanding Officer
No 1 Cdn Disciplinary Centre.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field,
21 Feb 45.

(G.S.N. Gostling) Brigadier,
Comd
2 Cdn Base Rft Group.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-79217	Pte		Michael Raymond	DUPUIS	SD & G Highrs 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 22 Feb 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.C. LOVAT-FRASER	RCE, 13 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by OC 13 CBR Bn	13 CBR Bn
Lieutenant	To be detailed by OC 10 CBR Bn	10 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(G.S.N. Gostling)

Date 22 Feb 45 Commanding 2 Cdn Base Sft Gp. Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAGS (1b Dec of AFA) 40-7 & 8-1647 (M))

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICER'S REPORT

I certify that No. C 77217 PIE DU PIUS. M.R.

of 16DH DIS. CENTRE is in a fit state of health,

and able to undergo Trial by Court martial.

[signature] Capt.

Medical Officer

ORDERLY ROOM
16DH DISCIPLINARY CENTRE

Station 16 Cdn. Dis. Centre

Date [illegible]

M. F. B. 246

25M—6-41 (792)
H.Q. 1772-29 480

 EXHIBIT "C" ch9.

Summary of Evidence in the case of C-79217 Pte DUPUIS M R of SD & G Regt, a soldier of the Canadian Army Overseas.

Charge - Absence without leave.

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copies of Extracts from Pt II Orders Nos 63 and 70 dated 12 Nov 44 and 3 Dec 44 respectively

Exhibit "B" - Certification of apprehension dated 9 Feb 45.

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you whish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP4(C) (D) (E) (F) and (G) have been complied with.

J F Rutherford
(J F RUTHERFORD) Capt
RC Signals
Officer detailed to take Summary of Evidence.

Dated in the Field
19 Feb 45

Exhibit A. D Capt A R Shupe

PART II ORDER EXTRACT FORM

TO: OC
1 CDN DISCIPLINARY CENTRE
CDN ARMY OVERSEAS

99/20 SD&G/1(a5c)

13 FEB 45 19

EXTRACTS FROM: Unit S.D. & G. Highrs

Part II Order No. ..... dated .....

C79217 Pte DUPUIS, M.R.
ABSENT WITHOUT LEAVE Part II Order 63 para 5(a) d/12 NOV 44
AWL from 0700 hrs 30 OCT 44 Still absent 0700 hrs 6 NOV 44(8th day)

STRENGTH DECREASE Part II Order 70 para 7(a) d/3 DEC 44
SOS as des wef 2? NOV 44 having been dec illegally absent by Ct of Inq
from 0700 hrs 30 OCT 44 Deficiencies in kit $7.14

Certified to be a true extract from the regimental books, documents or [illegible] custody

Officer IC Records
Cdn Sec GHQ 2 Echn 21 A Gp

The following documents are { attached. Please acknowledge receipt on attached duplicate.
required. Please forward same.

Originating Clerk's Initials .....

..... for
Officer in Charge
Canadian Section, GHQ, 2nd Echelon

ECH - 6
40 P & S 1278 (4852)

Exhibit B. Capt L. Shupe

CERTIFICATE UNDER ARMY ACT. SECTION 53 (i) (j)

Certified that No. C.79217 Rank Pte Name Dupuis, M.R.

of the SD. & G Highrs 3 Cdn Div Regt., ~~[illegible]~~ No. L.2320

Rank Cpl Name Olson, J.C. was apprehended by 2 Cdn L of C Provost Coy

Detachment at Ghent Belgium at 0930 hrs, on the 9th

day of ~~[illegible]~~ February as an absentee without leave.

He was wearing Military Uniform at the time of his ~~[illegible]~~ arrest.

~~Civilian clothes.~~

GHENT DET. 2 Cdn. L. of C. PROVOST COY

H.W. Mahaffy Lieut.

H.W Mahaffy i/c Ghent Detach

Canadian Provost Corps.

Place Ghent Belgium

Date 9 Feb 45.

EXHIBIT "D" 82.

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C-79217	Pte	DUPUIS M R	1 Cdn Disc Centre- SD&G Highrs

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, no minutes being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for N/A beginning on the ____ day of ____

4. The accused has been in confinement awaiting trial on the present charges, for N/A days in civil custody, and 2075 days in military custody, making a total of 2075 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 20 yrs.

6. The date of his ~~commission~~ attestation specified in his ~~attestation paper~~ record of service is 5 May 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is ____

8. The accused is entitled to deferred pay or gratuity in respect of ____ service.

9. The accused is entitled to reckon ____ service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of ____

12. (*In the case of an officer.*) The accused holds in the army the rank of ____ dated ____ and in his regiment (*or* corps *or* department) the rank of ____ dated ____

(*21940) W.L.34004/1736 20,000 10/43 A.& E.W.,Ltd. Gp.698
(30906) W.L.30004/1499 12,000 2/44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	France Aug 44	Drunkeness, Disobeying an Order Attempting to enter Civilian House	Papers destroyed by enemy action	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 20 th day of Feb. 45.

[signature], Lt-Col.

Comdg, I Cdn Disciplinary Centre

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years .....

In the rank of ..... years, ...

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

Certified true copies of Extracts From Pl 11 orders Nos 65 and 70 dated 12 Nov 44 and 5 Dec 44 respectively "A"

Certification of apprehension dated 9 Feb 45 "B"

I, C-79217 Pte DUFOUR W H, hereby certify that I have received one (1) copy of charge sheet and one (1) copy of Summary of Evidence free of charge on 20 February 1945.

C-79217 Pte DUFOUR W H

132 S.

Gov. Hopkins, K.

1323.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this FIFTEENTH day of November, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 1st Canadian Division Royal Canadian Artillery, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

L.W.H. Randall Maj.

*[~~I am unable to appoint :—~~

*(~~1. Three Officers to form the Court.~~)

*(~~2. A Field Officer as President.~~)

~~for the following reasons, namely :—~~]

* Omit if not applicable.

Proceedings Reviewed

Reviewing Officer

9 Dec 42

25

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	L.W.H. Randall	1 Cdn Fd Regt

Members.

Rank.	Name.	Regiment.
Capt	D.M. Davies	3 Cdn Fd Regt
Lieut	R.F. Parker (waiting member)	1 Cdn Fd Regt
Lieut	A.A. Greenlees	

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] (A.E.D. Tremain) Brigadier

Commanding 1st Canadian Division, R.C.A.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
L154 Gunner Dupuis, Romain 2 Cdn Fd Regt R.C.A.	First Charge Sec 15(1) Army Act	Guilty	Guilty	Confirm the finding and sentence of the Court
	Second Charge Sec 15 (1) Army Act.	Guilty	Guilty	[illegible] Brigadier
			90 days detention Forfeits 40 days pay. F.R.I. 149(1) 2. 18 Nov. 42 [illegible] Randall maj.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :— No sir.

(Signed) [illegible] Brigadier (Signed) [illegible] Randall maj.
Commanding A.C.A. 1 Cdn Div 1st Fd Regt R.C.H.A.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the EIGHTEENTH day of November, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter)~~ [illegible]
*(4. ~~The officers under instruction)~~ [illegible]

were duly sworn.

* Omit if not applicable.

Signed this 18th day of Nov. 1942

[illegible] Randall maj.
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 18 day of Nov. 1942

[illegible] Brigadier.
Confirming Officer.

Promulgated and extracts taken in the case of L154 Gnr Dupuis R.

(a) (Dated) 19 Nov 42 (Signed) [illegible]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

4

CHARGE SHEET

The accused No.L154, GNR. ROMAIN, RUFUS,
7 Canadian Field Battery, 2 Canadian
Field Regiment, a soldier of the Canadian
Army Overseas
While On Active Service
is charged with:

FIRST CHARGE

SEC. 15 (1)
A.A

ABSENCE WITHOUT LEAVE

in that he

at EASTBOURNE, SUSSEX, was absent without leave from 2300 hrs., 7 Oct 42, until 1600 hrs., 21 Oct 42.
Total time absent 13 days & 17 hrs.

SECOND CHARGE

SEC. 15 (1)
A.A

ABSENCE WITHOUT LEAVE

in that he

at EASTBOURNE, SUSSEX, while under open arrest, was absent without leave from 2300 hrs., 23 Oct 42, until 1130 hrs 12 Nov 42.
Total time absent 19 days, 12 hrs & 30 mins.

.....Lt.-Col.
(T. M. Medland)C.O.
2 Canadian Field Regiment.

Dated in the Field
this 14th day of
november, 1942.

TO BE TRIED BY A FIELD GENERAL COURT-MARTIAL

15th Nov 42

.....Brig.
(A. E. D. Tremaine)C.R.A.
1st Canadian Division.

2

MEDICAL OFFICERS' CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have examined this morning

No L-154 Gnr. Dupuis, R.

of the 2nd Cdn Field Regiment and in my opinion he is

fit to undergo trial by a Field General Court-marital.

Station In The Field

Date 18 Nov 42.

(J.A. Bradshaw) Capt
M.O.,
2nd Cdn Field Regiment.

1

I have satisfied myself that none of the officers detailed as members of the Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charge(s) before the Court Martial.

W. T. Randall.

(Signature of the President)

(1)

Form "A" 3

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD IN THE FIELD
ON THE 18 DAY OF November 1942

Trial of No. L154 Gnr Dupuis, Romain.

Prosecutor: Lieut. W.A. Campbell. - 2 Cdn. Field Regt.

Defending Officer: ~~Lieut G. I. Smith - No Coy 1 Cdn Corps Recs~~ J.P. Mercier - 2nd Cdn Field Regt. W.R.

Officers under instruction: None.

1. The order convening the Court is read in the presence of the accused.

The accused is asked the following question:
"Do you object to be tried by the President or any Members of the Court whose names you have read over?"

Answer:

No.

2. The President, Members, ~~Judge Advocate, Officers under instruction, Shorthand writer and Interpreter~~ are duly sworn. W.R.

3. The accused answers to his name and number and is duly arraigned on the charges.
The accused having pleaded guilty to the 1st & 2nd charge(s) R.P.35(2) is complied with.

4. The accused is asked the question at the foot of page 2 of AF.3. and his answer is recorded beneath the question.

5. The Prosecutor makes (no) ~~(the following)~~ opening address: W.R.

W.R. Campbell Maj

Form "B"

9

DEFENCE

The accused is informed of his rights in accordance with R.P. 40(A) and Note 2 on page 644 of the Manual of Military Law, 1929 edition.

The accused is asked the following questions:

Q.1. Do you wish to give evidence as a witness?

A.1. yes - I wish to make a statement
(See Exhibit "A")

Q.2. Do you intend to call any other witnesses on your behalf?

A.2. yes - Capt. F.B. Ralph - 2nd Fd. Regt. R.C.A.
(see Exhibit "B")

Q.3. Are they witnesses as to character only?

A.3. yes.
(see R.P. 41)

W.W.S. Randall
maj

Statement of: (Exhibit "A") 10

2154 Gnr Dupuis Romain

In 1941 I was transferd from Division H.Q to 2nd Field Regt. RCA, not by my own choosing. I was not happy in the 2nd Field Regt. I have asked for transfer to No 1 Tunnelling Coy RCE because it is my job in civilian life as a hard rock miner.

when I joined the army I did not know that the Engineer branch of the army existed. After I joined the Artilley I found out I was not happy and wanted to transfer I was at the 3 Field Regt and had asked to transfer to the Engineers. They sent me to Div. H.Q.

I felt I could do more as an Engineer, and also keep up my civilian occupation as well for after the war. Also I can earn trades pay.

I applied to No1 Tunnelling Coy RCE. the CO. 2nd field Regt refused my transfer. I have put in 4 application for transfer the last one being defenitly refused.

the O.C No1 Tunnelling Coy RCE told me that the unit (2 field Regt) was holding my transfer back.

Q. In what way did this Absence without leave have a bearing on your desire to transfer.

A. I wanted to go AWL from this unit so that I would recive a sentence sufficient to be struck off strength of the unit and I could apply to be sent to No1 Tunnelling Coy RCE.

I have worked 4½ years in civilian life as a hard rock miner.

The 2nd field Regt had told me I would have

(Exhibit "A" Continued.)

to wait for a vacancy in No 1 Tunnelling Coy. RCE.
The OC No 1 Tunnelling Coy RCE had told me that only
the 2nd Field Regt were holding up my transfer.

[illegible] Randall
[illegible]

Exibit B 12

Evidence given by Capt. F. B. Rolph - 7th Bty. 2nd Fd. Regt. R.C.A. while under oath.

Q1. Before Being Bty Captain were you A Troop Commander IN 2nd field Regt.

A1 Yes That is correct.

Q2 while you were A Troop commander was Gnr. Dupuis in your troop.

A2 Yes.

Q3. Can you give evidence as to Dupuis Charater while he was under your command.

A3 - He was a part time ~~driver~~ driver and a part time ~~gunner~~ gunner. He was a fair driver and making out to be a fair gunner. When he was interested in a job he would do a good one. From the time he was first in the troop he stated to me he had been trying to get a transfer to the Engineers as he was a hard rock miner by trade ~~and~~ and ~~felt bid be more use there~~ as he knew that ~~wh~~ specialist work ~~and~~ felt bid be more use there. I tried to get him this transfer. As long as he felt it was trying to be arranged he worked well. It was during this period of waiting that I left the troop.

Q4. what was his discipline like.

A4 He was a fair soldier. as a general rule good natured and on the whole gave very little trouble.

Form "C"

AFTER FINDING

Capt. G.A. Edton, Adj. 2nd Fd. Regt. RCA.

IS SWORN AND STATES:

I produce a certified true copy of AFB 122 relating to the accused. (The said copy is marked , signed by the President, and attached to the proceedings). as Exhibit "C"

also A.F. B296 - as ~~Appendix~~ Exhibit "D"

QUESTION TO THE ACCUSED:

Do you wish to address the Court, or to call evidence as to character?

ANSWER: Yes Capt F.B Ralph. 2nd Field Regt RCA. To give Evidence as to character.

The (Accused) (Defending Officer) makes the following plea in mitigation of sentence:

No. Court now has all evidence.

SUMMARY OF EVIDENCE

IN THE CASE OF

L-154 Gnr. Dupuis, R. 7th. Field Battery R.C.A. a soldier in the Canadian Army.

By the direction of the Commanding Officer Lt.-Col. T.M. Medland E.D. 2nd. Field Regiment R.C.A. The evidence was taken on oath.

FIRST WITNESS

D-6502 TBSM Neale, F.W. 7th. Field Battery R.C.A. having been duly sworn states:

'I am the TBSM of 'A' Troop 7th. Field Battery R.C.A.. On the morning of 8 Oct.'42 Gnr. Dupuis, whom I recognize as the accused, was reported to me by Bdr. Walsh as being absent on Tattoo Roll Call 7 Oct.'42. He was also absent at Reveille Roll Call on the 8th. Oct.'42. He reported back to me on the 21 Oct.'42 and I turned him over to Bdr. Lemieux to be placed in the guardroom.

He was again absent on the morning of the 24 Oct.'42. He has not been present in the troop since that time.'

T.B.S.M. Neale F.W.
(D-6502 TBSM Neale, F.W.)

The accused declined to question the witness.

SECOND WITNESS

D-6669 Bdr. Walsh, J.F. 7th. Field Battery R.C.A. having been duly sworn states:

'I was Troop N.C.O. of 'A' Troop 7th. Field Battery R.C.A. from 4 Oct.'42 to 13 Oct.'42. At 2300 hrs. 7 Oct.'42 I called the Tattoo Roll and the accused, whom I recognize as Gnr. Dupuis, was not present. I reported this fact to the Battery Orderly Sergeant. The following morning I reported Dupuis' absence to TBSM Neale.'

J.F. Walsh
(D-6669 Bdr. Walsh, J.F.)

The accused declined to question the witness.

THIRD WITNESS

D-6541 L/Sgt. MacLean, M.A. 7th. Field Battery R.C.A. having been duly sworn states:

'I was Battery Orderly Sergeant from 1800 hrs. 7 Oct.'42 to 1800 hrs. 8 Oct.'42. As a result of information given to me by Bdr. Walsh, the 'A' Troop N.C.O., I reported the accused, Gnr. Dupuis as being absent from 2300 hrs. 7 Oct.'42.

M.A. MacLean
(D-6541 L/Sgt. MacLean, M.A.)

The accused declined to question the Witness.

L.W. Medland Lt-Col

FOURTH WITNESS

D-11524 BSM Turner, E.C. 7th Field Battery R.C.A. having been duly sworn states:

I am the BSM of the 7th. Field Battery R.C.A. Gnr. Dupuis, whom I recognize as the accused, was reported to me by the Battery Orderly Sergeant, L/Sgt. MacLean,M.A., as being absent at 2300 hrs. 7 Oct.'42. He was absent until reporting in to TBSM Neale of 'A' Troop on the 21 Oct.'42. TBSM Neale placed him under close arrest and sent him to the guardroom. Under instructions from R.S.M. Skidmore, I released him under open arrest and returned him to his billet at about 2130 hrs. 21 Oct.'42.

On the 23 Oct.'42 Gnr. Dupuis was again reported absent from 2300 hrs. 23 Oct.'42 by Bdr. Pinniger, who was Battery Orderly Sgt. He was not on parade from that time until 12 Nov.'42 at about 1130 hrs. when he reported to me at the Battery Office. I placed him under close arrest and turned him over to the Guard Commander.

E.C. Turner

.....

(~~XXX~~ BSM Turner, E.C. (D-11524)

The accused declined to question the witness.

FIFTH WITNESS

7th.Field Battery R.C.A.
D-11641 Bdr. Stiles, E.J. having been duly sworn states:

From 18 Oct.'42 to 25 Oct.'42 I was Troop N.C.O. of 'A' Troop 7th. Field Battery R.C.A.. At 2300 hrs. 23 Oct.'42 I called the Tattoo Roll and found Gnr. Dupuis, the accused whom I recognize, was absent. I reported this fact to the Battery Orderly Sergeant.

original signed by Bdr Stiles - name
typed - must be available at Trial
if required by Defence Counsel

.....

(D-11641 Bdr. Stiles, E.J.)

The accused declined to question the witness.

SIXTH WITNESS

H-5046 Bdr. Pinniger, R.J. 7th. Field Battery R.C.A, having been duly sworn states:

I was Battery Orderly Sergeant from 1800 hrs. 23 Oct.'42 until 1800 hrs. 24 Oct.'42. As a result of information I reported the accused Gnr. Dupuis, whom I recognize, on my Orderly Sergeants report as being absent from 2300 hrs. 23 Oct.'42.

R.J. Pinniger

.....

(H-5046 Bdr. Pinniger, R.J.)

The accused declined to question the witness.

The accused having been cautioned in accordance with R.P. 4 e declined to make a statement or to give evidence on oath.
I certify that R.P. 4 (c)(d)(e)(f) have been complied with.
Taken down by me in writing in the presence and hearing of the accused at Aldro School, Eastbourne this 13th. day of November 1942

W.A. Campbell

.....

(W.A. Campbell, Lieut. RCA)

W.A. Campbell
maj

STATEMENT BY THE ACCUSED AS TO WHETHER OR NOT HE DESIRES TO HAVE AN OFFICER ASSIGNED TO RESPRESENT HIM AT HIS TRIAL BY THE CONVENING OFFICER

TO THE CONVENING OFFICER:

It is my desire to have Lieut. G.J. Smith No. 2 Coy. 1 Cdn. Corps Sigs. R.C.C.S., or if not available such other Officer as the convening Officer may see fit, assigned to respresent me at my trial by Field General Court Martial.

R. Dupuis

(L-154 Gnr. Dupuis, R.)

L.W.H. Randall Maj

14

M.F.M. 6
(A.F.B. 177)
173M—7-41 (1219-20)
H.Q. 1772-39-1652

No. L-154 Name Dupuis, R. Sqn., Battery, or Company 7th.Fld.Corps C.A.G. Bty.R.C.A. Date of enlistment 24.9.39 G.C. Badges Service or Proficiency Pay

Field Date of last entry in ~~Company~~ Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Wheatley Oxfordshire	29 Jun 40	Gnr.	Nil	While on Active Service, failing to appear at the place of parade appointed by his C.O. in that he, at that place failed to appear for guard duty at 2100 hrs., the place of parade duly appointed by Lieut. H.Z. Palmer, his C.O.	L/Bdr. Nicholas W.E.	Forfeits 14 days pay	1 Jul 40	Major L.G.Clarke R.C.A.	
Nutfield Surrey	22 Nov. '40	Gnr.		A.A.15(1) WOAS, absent w/o leave at Nutfield Surrey on 22 Nov.40 absent himself w/o leave from 2230 hrs. until reporting in at 2300 hrs. (Absent 30 mins.)	Sgt.C.B.Elliott L/Bdr.H.Bojstie		D.K.Todd		Forfs 1 dy py FRAI 149(1)a

Exhibit "C"

[signature]

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
tfield	15 Mar '41	Gnr.		SEC.40 A.A. WOAS, Conduct to the prejudice of good order and military discipline in that he did operate W.D.Vehicle GM 4202042 in such a manner as to cause an accident.	Gnr.Pringle	Admonished Placed under stoppage of pay £1.10.0.	1 Apr '40	deL.H.M. Panet, Major	
In the Field	1 Jun	Gnr.		SEC.15(1)A.A. WOAS, a.w.l. from 2200 hrs 1 Jun'42 to 1600 hrs. 9 Jun'42 Total 7 dys 18 hrs.	L/Bdr. Hodge Sgt. Hainns	14 days C.B.	10 Jun'42	Major R.A. Murdoch	Auto forf 8 dy py FR&I 149(1)(a)
In the Field	5/7/42	Gnr.		SEC.15(1) A.A. WOAS, a.w.l.from 2200 hrs. 5/7/42 to 1000 hrs.7/7 42. Total 1 day 12 hrs.	Bdr.Kehoe	Forfs 8 dys py FR&I 149(1)(b)	10/7/42	Major R.A. Murdoch	Autoforfs 2 dy py FR&I 149(1)(a)
In the Field	19/7/42	Gnr		WOAS A.W.L. from 1700 hrs.19/7/42 till 0800 hrs. 20/7/42. Total 15 hrs. Sec. 15(1) A.A.	BSM.Skidmore	7 days F.P. 2 days pay	27/7/42	Major G.W. Hanna	Forfs 1 dy pay under F.R.& I.

CERTIFIED TRUE COPY.

[signature] Capt

Adjt. 2nd Field [illegible] R.C.A. C.A.C.

Exhibit "D"

15

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
L-154	Gnr.	DUPUIS, R.	2nd. Cdn. Fd. Regt., RCA

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this statement may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 471, K.R., 1929.

* The accounts below stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to non-recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is forgery, uttering the entries in misdemeanors must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A. W. L.	3 times	5 times.
For Failing to appare at parade place of	2 times	1 times.
For See 40 A.A. Involved in a Rd Accident 0	times	1 times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 72 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* [redacted] for [redacted]

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 26 days in military custody, making a total of 26 days, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 25 years

6. The date of his commission/attestation specified in his record of service/attestation paper is N. A.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 yrs 1 mo 20 days

8. The accused is entitled to deferred pay or gratuity in respect of 3 yrs 1 mo 20 days service.

9. The accused is entitled to reckon 3 yrs 1 mo 20 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award [redacted]

11. [redacted]

12. *(In the case of an officer.)* The accused holds in the army the rank of (dated) and in his regiment (or corps or department) the rank of (dated)

(Pt.6230) W.13681/144 125,000 5/41 A.G.R.P.Ltd. Gp.698

Witness

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. L 154 Rank Gnr. Name DUPUIS R. of 2nd Cdn Fd. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		Nil		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~14th~~ 18th day of November, 1942

Capt

Adjt. 2nd Field Regt. R.C.A. C.A.S.F.

F.A. Cannon Lt. for
T.A. Eastman Capt & Adj.
2nd Fd. Regt. R.C.A.

IV. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

5 P. 39.

Pte. Dupuis, R. J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C 37488 PRIVATE Royal Joseph DUPUIS, 3 CDN INF BDE coy R.C.A.S.C.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st CHARGE	GUILTY	GUILTY	
2nd CHARGE	~~GUILTY~~ GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MAML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MAML p 753, and in loss of kit see RP 44 fn 6.)

At ~~present~~ under sentence (or: ~~to be~~ beginning on (date) ~~today~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or MF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or MF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO UNDERGO 1 (ONE) YEAR DETENTION

(Sgd) ... Judge-Advocate, if any. 4 July 1945 Date Awarded. (Sgd) A. Simmonds Major President. (RP 45, 50.)

(See back of Convening Order as to disposal and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MAML p 760.)

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MAML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(6), RP 120(G). If not confirmed, accused may be tried again: AA 157, MAML p 64. Minutes of confirmation or non-confirmation may be altered before promulgation: RP 53, MAML p 62. Quashing after promulgation: KR Can 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally: AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed for trial or detention hereafter until further ordered.~~ (1)

(1. AA 57A. Delete if not used.)

Date 6 July 45. (Sgd) D. Rombulow Lieut-Col. Commanding C.R.C.A.S.C. 1 Can. Div. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 574, 577.)

Accused. Date. Signature of Offr.

C 37488 Pte. Dupuis, R.J. 9 July 1945 J. R. Bourque Lt. Cdr. 3 Cdn Inf Bde Coy R.C.A.S.C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECORDED AT CMHQ IN AB 160

21 JUL 1945 Directorate of Judge Advocate General C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col D. Ross-Smith Comd R.C.A.S.C. 1st Cdn Div dated 4 July 1945

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.37488	Private	Royal Joseph	DUPUIS	3 Cdn Inf Bde Coy. R.C.A.S.C.

PROCEEDINGS REVIEWED Ruly Wilson Capt 27 July 45

REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 4 July 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fwn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MAML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 8. 2. AA 49, 50, RP 105-107. 3. RP 41-43, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 543(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~as interpreter? Ans~~ ~~The interpreter is sworn.~~ ~~Do you object to~~ ~~as shorthand writer? Ans~~ ~~The shorthand writer is sworn.~~ (1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 78, MAML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Majors	R.R.MacDonald	R.C.A.S.C. 1 Cdn Inf Div
Member	Captain	W.W.Tytler	2 Cdn Inf Bde Coy. RCASC
Member	Captain	W.V.Hart	1 Cdn Div Tps Coy. RCASC
Judge-Advocate			
Prosecutor	Captain	H.C.Bower	3 Cdn Inf Bde Coy. RCASC
Defending Offr	Lieut.	G.J.Murphy	3 Cdn Inf Bde Coy. RCASC

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)

Q. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 26, 27 and fn 1 were not followed. (RP 26 fn 3.)

THE ACCUSED ~~are~~ is given in charge and ~~are~~ is/~~each~~ asked ~~their~~/his plea.

A8. The accused ~~are~~ is ~~severally~~ arraigned on the charge(s) ~~respectively~~ and ~~their~~/his ~~respective~~ pleas are recorded as in Part I of the Schedule.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 77), such plea, the addresses made in support or opposit, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~severally~~) on ~~all~~ the charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 113. See para 1 of Notes p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authority from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *securing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.~~(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~1~~ charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) to~~ charge(s). ~~Part I of the Schedule is amended~~ accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 17(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B on p 2.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereof proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. Do you intend to call witnesses on your behalf ?
Ans. Are they witnesses as to character only ? Ans.
(*1. RP 155. 2. RP 40(A), see 40(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 177(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part 2 of the Schedule is dated and signed.(2)
(*1. AA 54(2) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. YES, EVIDENCE
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 353 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. YES (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or add anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(4), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 80, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused Number C-37488 Private Royal Joseph DUPUIS, 3 Canadian Infantry Brigade Company, Royal Canadian Army Service Corps, a soldier of the Canadian Army Overseas (NWE), on Active Service, is charged with:

FIRST CHARGE
Section 8(2) Army Act

WHEN ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER,

in that he,

in the Field, in Holland, at approximately 0825 hrs on 29 Jun 45, struck with his fist in the face A93376 Sgt Brooks, G.E., 3 Cdn Inf Bde Coy RCASC, who at the time was checking sleeping quarters.

SECOND CHARGE
Section 40 Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, in Holland, at approximately 0825 hrs on 29 Jun 45 improperly had a female civilian in his bed in his tent in Unit lines.

In the Fd
29 Jun 45

(R.L.Mummery)Major
OC 3 Cdn Inf Bde Coy RCASC

To be tried by Field General Court-Martial.

In the Fd
4 July 45

(G.D.Ross-Smith) Lt-Col
CRASC 1 Cdn Inf Div

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/PA8/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.37488	Private		Royal Joseph	DUPUIS	3 CIB Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~the~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 4 Jul 45 endorsed by me, ~~[illegible]~~ To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~[illegible]~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~[illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~[illegible]~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Must be named. RP 106.	Unit.
Major	R.R. MacDonald	HQ RCASC 1 Cdn Inf Div

MEMBERS.

Rank.	Named or detailed. RP 106.	Unit.
Captain	J.L. Tytler	2 Cdn Inf Bde Coy RCASC
Captain	J.V. Hart	1 Cdn Div Tps Coy RCASC

WAITING MEMBER.

Rank.	Named or detailed, if any. RP 106.	Unit.
Captain	A.W. Edwards	1 Cdn Inf Bde Coy RCASC

JUDGE-ADVOCATE.

Rank.	Must be named, if any. RP 106.	Unit.

On Active Service in the Fd

in Holland (Country.) [signature] (Signed personally. RP 105 fn 2.) Lt col (Rank.)

Date 4 Jul 45 Commanding RCASC 1 Cdn Inf Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Ahm.

I certify that I have this date examined C 37488 Pte R.J.DUPUI and found him fit/ SA ~~unfit~~ to undergo trial by Field General Court Martial.

4 Jul 45

Albert Capt.
(S.S.Albert) Capt
R.M.C. 1 Cdn Inf Div RCASC

EVIDENCE BY THE ACCUSED

C.37488 Private Royal Joseph DUPUIS, 3 Cdn Inf Bde Coy RCASC, being duly sworn, states:

I am Private Dupuis, 3 Cdn Inf Bde Coy RCASC,

Question by Lt MURPHY : On the night of 28 Jun 45, on the evening before this, where were you?

ANSWER: I was in the tent lines all evening.

QUESTION: Were you drinking that evening?

ANSWER: Yes.

QUESTION: Do you remember going to bed at all ?

ANSWER: No, Sir, I don't remember anything.

QUESTION: When you woke up in the morning, how were you? Were you sober or drunk ?

ANSWER: Still drunk.

QUESTION: Do you remember striking Sgt Brooks ?

ANSWER: I don't remember striking him or why I struck him.

RP 83 (b) complied with.

STATEMENT BY LT MURPHY - DEFENDING OFFICER
IN MITIGATION OF PUNISHMENT & CHARACTER
WITNESS

The last crime for this man was on 2 Jan 44. This man has four and a half years of service now and he is at the present time only twenty years old. He came overseas a year a half ago and was in my platoon for a considerable time while in Italy employed as a DR. During that time he performed his duties well and did not cause any trouble. This man had no wilful intention of causing any trouble on the morning of the 29th. He didn't know or realize what he was doing and this is the first time, according to his records, that he has been drunk. I hope that the Court will take into consideration that he volunteered for overseas service when he was sixteen and that he hasn't been in any serious trouble and that he didn't realize what he was doing on the morning of the 29th.

Evidence

Pt Dupuis, having been duly sworn

states

Mr. Murphy. (Q) On the night of the 28th of June, on the evening before that where were you?

Ans. I was in the tent lines all evening.

(Q) Where you drinking that evening?

(A) Yes

(Q) Do you remember going to bed at all.

(A) No sir I don't remember anything.

(Q) When you woke up in the morning how were you? Were you sober or drunk?

(A) Still drunk

(Q) Do you remember striking Sgt. Brooks

(A) I don't remember striking him, or why I struck him

Mr. Murphy (Q) That's all the questions that I have sir.

R P E & B complied

Statement of Character by H. Murphy ~~and~~ in mitigation of punishment also.—

~~This is~~ The last crime for this man was in 2nd January 944. This man has 4½ yrs of service now and he is at the present time only 20 years old. He came overseas 1½ years ago and he was in my pl for quite a while in Italy as a D.R. During that time he performed his duties well and didn't cause any trouble. This man had no wilful intention of causing any trouble on the morning of the 29th. He didn't know or realize what he was doing, and this is the first time that he has been drunk according to the Army Records, and I hope that the court will take into consideration that he volunteered for overseas service when he was 16, and that he hasn't been in any serious trouble, and that he didn't realize what he was doing the other morning. That is all, sir.

EXHIBIT 'A'

SUMMARY OF EVIDENCE IN THE CASE OF C37486 PTE DUPUIS, R.J., 3 CANADIAN INFANTRY BRIGADE COMPANY, RCASC, A SOLDIER OF THE CANADIAN ARMY (OVERSEAS), NORTH-WEST EUROPE.

By Order of the Officer Commanding, this Summary of Evidence is taken on oath.

FIRST WITNESS FOR PROSECUTION:

A9376 Sgt Brooks, G.E., of 3 Cdn Inf Bde Coy RCASC having been duly sworn states:-

"On the morning of 29 Jun 45 at approximately 0825 hrs I was checking the tents of our platoon and calling the men out for parade at 0830 hrs. On coming to one tent I discovered a female civilian in this tent in bed. I asked who lived in the tent. Pte Dupuis who was standing by the tent said it was his. I ordered him to remove the woman from the tent at once. He told me to mind my own business. I then told him he was under open arrest. He then approached me and struck me in the jaw with his fist. Pte Kemp who had just come out of [illegible] over and grabbed Pte Dupuis around the shoulders and arms and held him. I then told Pte Dupuis he was under close arrest and fell in two men to guard him. I gave the guards instructions that he was to be held in close arrest until further instructions.

G. E. Brooks
A9376 Sgt Brooks, G.E.

SECOND WITNESS FOR PROSECUTION:

B62837 L/Cpl Mitich, A., of 3 Cdn Inf Bde Coy RCASC having been duly sworn states:-

"On the morning of 29 Jun 45 at approximately 0825 hrs, Sgt Brooks, our platoon Administration Sgt came along the line of tents calling the men out on parade. I was sitting in the doorway of my tent and heard Sgt Brooks tell Pte Dupuis to get rid of a girl that was in his tent. Pte Dupuis told Sgt Brooks to mind his own business. Pte Dupuis came over to Sgt Brooks and struck him on the jaw with his fist. Pte Kemp then came out and grabbed Pte Dupuis by the arms and held him until Sgt Brooks called two men as a guard. Sgt Brooks told Pte Dupuis that he was under close arrest. That is all I know sir.

QUESTION: Did you see a girl in Pte Dupuis' tent on the morning of 29 Jun 45?

ANSWER: Yes sir, I saw a girl in his tent after our parade and I told her to get out of our camp at once, which she did.

A. Mitich
B62837 L/Cpl Mitich, A.

.....2

EXHIBIT 'A'

SUMMARY OF EVIDENCE - C37488 Pte DUPUIS, R.J. - Sheet 2

THIRD WITNESS FOR PROSECUTION

F35316 Pte Kemp, J.W., 3 Cdn Inf Bde Coy RCASC, having been duly sworn states:-

"On the morning of 29 Jun 45 at approximately 0815 hrs Sgt Brooks came along the tent lines calling us for our 0830 hrs parade. I saw Sgt Brooks talking to Pte Dupuis and then saw Pte Dupuis strike Sgt Brooks with his fist towards Sgt Brooks jaw. I went over and grabbed Pte Dupuis by the arms to stop him. I held him and Sgt Brooks told him he was under close arrest and Sgt Brooks called two men as a guard. That is all I know sir.

QUESTION(By accused) Where were you when you saw me talking to Sgt Brooks?

ANSWER: I was about 50 yards away along our line of tents.

J J Kemp
F35316 Pte Kemp, J.W.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Statement by C37488 Pte Dupuis, R.J., 3 Cdn Inf Bde Coy RCASC, not on oath:-

"Sir. On the evening of 28 Jun 45 I was drinking and got drunk. When I woke up in the morning I was still drunk.

R J Dupuis
C37488 Pte Dupuis, R.J.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence of the accused and that R.P. 4 (c), (d), (e) and (f) have been complied with.

W M Bower Capt
(W.C.Bower) Capt
3 Cdn Inf Bde Coy RCASC

Field
29 Jun 45

EXHIBIT 'B'

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
C57486	Pte	Royal Joseph DUPUIS	3 CIB Coy RCASC Field

1. The following is a fair and true summary of the entries in the [redacted] conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be omitted from the field conduct sheet.

The number sheet(s) mentioned should be produced in court with this statement but not inserted in the proceedings.

† See para. 677, K.R., 1923.

* The number sheet(s) should correspond with the entries or parts in the conduct sheet(s) produced from above to the same effect as if each entry and its date were repeated against each of subsequent entries of unblemished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AWL(Sec 15 (1)AA	NIL times	Five times.
For Neglect to the Proj(Sec 40 AA)	times	One times.
For Refusing to obey an order(Sec 9(2)AA)	time	One times.
For	times	times.
For	times	times.

[redacted]

2. The accused has not been previously convicted [redacted]

[redacted]

3. The accused is not under sentence at the present time. [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 5 days in military custody, making a total of 5 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 20 years

6. The date of his [redacted] attestation specified in his record of service is 26 Mar 1941

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is NIL

8. The accused is entitled to deferred pay or gratuity in respect of NIL service.

9. The accused is entitled to reckon NIL service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, [redacted] (*state any military decoration or reward*) Can Voluntary Service Medal & Clasp

11. [redacted]

12. [redacted]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. G 37488 Rank Pte Name DUPUIS, R.J. of 3 CIB Cay. RCASC Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		N/A		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 4th day of July 1945

[signature]
Adm. Offr.
3 Cdn. Inf. Bde. Cay. R.C.A.S.C.

IV. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of N/A years,

In the rank of years,

In the rank of years,

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

Exhibit C

No C37488 Name Dupuis, R.J. | Sqn, Battery, or Company | Corps RC A&SC | Date of enlistment 26 Mar 41 | Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 50/PRS/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc J.G. Graham Lt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	Sheet	destroyed		9 Sept. 43	No cases of drunkeness				
Debert N.S.	6-7-41	Dvr		AWL from 2200 hrs 6-7-41 to 0900 hrs 7-7-41(total absence 11 hrs)	L/Cpl. Bebeau L/Cpl. Royes,	u.V. 1 days W.L. pay 14 days C.B.	7-7-41		
Debert N.S.	19-7-41	Dvr		Refuse to obey command of a NCO refuse to return to duty	MSM Booth Sgt Wallace	14 days pay 1 days pay	19-7-41		
Ottawa	25-11-41	Pte		AWL from 1800 hrs to 2000 hrs	CSM Curran	14 days C.B.	1-12-41	Lt.Col.C.D.Gillis	
Ottawa	9-6-42	Pte		AWL from 0745 hrs 9.6.42 to 1100 hrs 10-6-42	Cpl Simard	4 days pay	10.6.42	Capt Meadows	
Borden, Ont	13-12-42	Pte		AWL from 1300 hrs 8-12-42 until 1600 hrs (absent 6 days 3 hrs (A.A. Sec 15(1)	Cpl Lalonde	Cpl.L. Lalonde 7 days pay	9-12-42		

(PTO)

EXHIBIT 'C'

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden Ont	11-1-43	Pte		Neglect to the prejudice of good order and military discipline (A.A.Sec 40) wilfully damaging, government property(A.A.Sec. 24(4)	Pte.Cosburn,J.R. Cpl.Ingeberg,T. Pte Dworchuck,T.R. Pte Rebouin,R.	14 days detention	13-1-43	Major W. Copeland	Forfeits 1 days pay FRzI
TOS /1 G.T. on post from				Petrol Coy RCASC Debert, N.S.		Effect 23 Feb 43 Ft II D.C. # 1/ d/23 Feb 43.			
S.O.S. No. /1 Gen.Tpt Coy				RCASC Debert,N.S. on transfer to		No. 3 Inf Trg Bn Debert, N.S. W.E. F. 11 Nov 43.			
Debert Camp	2 Jan 44	Pte		AWL from 0600 hrs 2 Jan 44 until 2300 hrs 2 Jan 44 (Total absence 16 hrs)	Cpl Quinn	7 days C.B.	3 Jan 44	Lt G.A. Matthewson	Forf 1 days pay FRzI

Certified true copy of Original AFW 6 in my possession.

C.L.Walker Lt.
(C.E.Walker)
Lt & Adjt Offr

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : C37488 Private Royal Joseph DUPUIS, 3 Cdn Inf Bde Coy R.C.A.S.C.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Charge	Guilty	Guilty	
2nd Charge	~~XXX~~ Guilty RRM	Guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence to~~ RRM ~~, beginning on (date)~~ RRM (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

TO UNDERGO 1 (ONE) YEAR DETENTION

(Sgd) ..... Judge-Advocate, if any. RRM (See back of Convening Order as to assembly and disposal of record after trial.) 4 July 1945 Date awarded. (Sgd) "RR MacDonald" Major President. (RP 45, 50.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 63. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) DRS

(1. AA 57A. Delete if not used.)

(Sgd) "D Ross-Smith" Lieut Col

Date 6 Jul 45 Commanding C.R.C.A.S.C. 1 Cdn Div

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C37488 Pte Dupuis R J	9 July 45	"J F Benson" Capt 3 Cdn Inf Div Coy RCASC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5P-89 RRM

FIELD GENERAL COURT-MARTIAL

CFAMR (To take place of AFA31 40/P & R/1698 (40/01) 4/38B

Convened by Order of Lt-Col D Ross-Smith Comd 1st Cdn Div R.C.A.S.C. dated 4 July 1945

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.37488	Private	Royal Joseph	DUPUIS	3 Cdn Inf Bde Coy, R.C.A.S.C.

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL

Held in the Fd in (country) Holland on (date(s)) 4 July 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 35/114

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed. RRM

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~are~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3) RRM RRM

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At ..... hours trial commences. RRM

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ RRM

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to ..... as interpreter ? Ans .....~~

~~The Prosecutor is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....~~ RRM

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ? Ans .....(2) RRM

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 22, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc : RRM

President	Major	RR	MacDonald	HQ RCASC 1 Cdn Inf Div
Member	Captain	JL	Tytler	2 Cdn Inf Bde Coy RCASC
Member	Captain	JV	Hart	1 Cdn Div Tps Coy RCASC
Judge-Advocate				
Prosecutor	Captain	WC	Mower	3 Cdn Inf Bde Coy RCASC
Defending Offr	Lieut	GJ	Murphy	3 Cdn Inf Bde Coy RCASC

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 26 (B) and (c) 2 were not followed. See Qu' p 2.)

~~The accused pleads~~ RRM ~~to the charge(s) (and to the additional charge(s)) (each the plea of accused to each charge).~~ RRM (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AE rank and name of the accused making the plea.)

A8. The accused is ~~are~~ arraigned ~~(and additional charge(s) thereon)~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. RRM RRM

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF AF6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A9. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB 160 Vol "H" pg 138

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans NO (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty as to charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) as to charge(s). Part I of the Schedule is amended accordingly.~~ RAM RAM
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(E). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3.* RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1) RAM
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 90(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF AF5. Evidence for accused as to his character should, if in his interest, be given before the Finding. See FP 40(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans YES, EVIDENCE
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Age, Character and Particulars of Service(1), and certified true copy ~~record~~ of Conduct Sheet(2) supporting the latter to the accused, which he submits to the Defending Offr for examination ~~RAM~~ RAM then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)
(*1. MFB 255 or AFB 296. 2. MFM 6. 2. RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(1) and Conduct Sheet(2) and in mitigation of punishment ?(3) Ans YES
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 1323, MML p 80, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"BRM"

I certify that I have this date examined C 37488 Pte R J DUPUIS and found him fit/ ~~UNFIT~~ to undergo trial by Field General Court Martial.

4 Jul 45

"S S Albert" Capt
(S.S.Albert) Capt
R.M.O. 1 Cdn Inf Div RCASC

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(6).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C37488	Private	Royal Joseph	DUPUIS	3 CIB Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet DRS attached and on (date) 4 Jul 45 endorsed by me, [illegible] DRS "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

[illegible] DRS

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

[illegible]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	R.R. MacDonald		HQ RCASC 1 Cdn Inf Div

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	J.L. Tytler		2 Cdn Inf Bde Coy RCASC
Capt	J.V. Hart		1 Cdn Div Tps Coy RCASC

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Captain	A.W. Edwards		1 Cdn Inf Bde Coy RCASC

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in	Holland (Country.)	"D Ross Smith" (Signed personally. RP 105 fn 2.)	Lt Col (Rank.)
Dat	4 Jul 45	Commanding	RCASC 1 Cdn Inf Div Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (AFA 98, (In lieu of AFA 3) as V as to 105(1) (b)(ii))

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused Number C-37488 Private Royal Joseph DUPUIS, 3 Canadian Infantry Brigade Company, Royal Canadian Army Service Corps, a soldier of the Canadian Army Overseas (NWE), on Active Service, is charged with:

FIRST CHARGE
Section 8(2)
Army Act

WHEN ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER,

in that he,

In the Field, in Holland, at approximately 0825 hrs on 29 Jun 45, struck with his fist in the face A9376 Sgt Brooks, G.E., 3 Cdn Inf Bde Coy RCASC, who at the time was checking sleeping quarters.

SECOND CHARGE
Section 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, in Holland, at approximately 0825 hrs on 29 Jun 45 improperly had a female civilian in his bed in his tent in Unit lines.

In the Fd
29 Jun 45

"R L Mummery" Major
(R.L.Mummery) Major
OC 3 Cdn Inf Bde Coy RCASC

To be tried by Field General Court-Martial.

"G D Ross-Smith"
(G.D.Ross-Smith) Lt-Col
CRCASC 1 Cdn Inf Div

In the Fd
4 Jul 45

Evidence

Pte Dupuis, having been duly sworn states -

Mr Murphy.

(Q) On the night of the 28th of Jun, on the evening before this where were you?

(A) I was in the tent lines all evening.

(Q) Where you drinking that evening?

(A) Yes.

(Q) Do you remember going to bed at all?

(A) No, Sir. I don't remember anything.

(Q) When you woke up in the morning how were you? Were you sober or drunk?

(A) Still drunk.

(Q) Do you remember striking Sgt Brookes?

(A) I don't remember striking him, or why I struck him.

Mr Murphy That's all the questions that I have sir.

R P 83 B Complied with

(2)

Statement of Character by Lt Murphy in Mitigation of punishment

The last crime for this man was in 2nd January 1944. This man has 4½ hrs of service now and he is at the present time only 20 hears old. He came overseas 1½ hrars ago and he was in my pl for wuite a while in Italy as a DR. During that time he performed his duties well and didn't cause any trouble. This man had no wilful intention of causing any trouble on the morning of the 29th. He didn't know or realize what he was doing, and this is the first time that he has been drunk according to the army records, and I hope that this court will take into consideration that he volunteered for overseas service when he was 16, and that he hasn't been in any serious trouble, and that he didn't realize what he was doing the other morning. That is all, sir.

SUMMARY OF EVIDENCE IN THE CASE OF C37488 PTE DUPUIS, R.J., 3 CANADIAN INFANTRY BRIGADE COMPANY, RCASC, A SOLDIER OF THE CANADIAN ARMY (OVERSEAS), NORTH-WEST EUROPE.

Exhibit 'A' RRM

By Order of the Officer Commanding, this Summary of Evidence is taken on oath.

FIRST WITNESS FOR PROSECUTION

A9376 Sgt Brooks, G.E., of 3 Cdn Inf Bde Coy RCASC having been duly sworn states:-

"On the morning of 29 Jun 45 at approximately 0825 hrs I was checking the tents of our platoon and calling the men out for parade at 0830 hrs. On coming to one tent I discovered a female civilian in this tent in bed. I asked who lived in the tent. Pte Dupuis who was standing by the tent said it was his. I ordered him to remove the woman from the tent at once. He told me to mind my own buisness. I then told him he was under open arrest. He then approached me and struck me in the jaw with his fist. Pte Kemp who had just come out from his tent came over and grabbed Pte Dupuis around the shoulders and arms and held him. I then told Pte Dupuis he was under close arrest and fell in two men to guard him. I gave the guards instructions that he was to be held in close arrest until further instructions.

"G E Brooks"

A9376 Sgt Brooks, G E

SECOND WITNESS FOR PROSECUTION:

B82837 L/Cpl Mitich, A., of 3 Cdn Inf Bde Coy RCASC having been duly sworn states:-

"On the morning of 29 Jun 45 at approximately 0825 hrs, Sgt Brooks, our platoon Administration Sgt came along the line of tents calling the men out on parade. I was sitting in the doorway of my tent and heard Sgt Brooks tell Pte Dupuis to get rid of a girl that was in his tent. Pte Dupuis told Sgt Brooks to mind his own business. Pte Dupuis came over to Sgt Brooks and struck him on the jaw with his fist. Pte Kemp then came out and grabbed Pte Dupuis by the arms and held him until Sgt Brooks called two men as a guard. Sgt Brooks told Pte Dupuis that he was under close arrest. That is all I know sir.

QUESTION: Did you see a girl in Pte Dupuis' tent on the morning of 29 Jun 45?

ANSWER: Yes sir, I saw a girl in his tent after our parade and I told her to get out of our camp at once, which she did.

"A Mitich"

B82837 L/Cpl Mitich, A.

.....2

SUMMARY OF EVIDENCE IN THE CASE OF C37488 PTE DUPUIS, R.J., 3 CANADIAN INFANTRY BRIGADE COMPANY, RCASC, A SOLDIER OF THE CANADIAN ARMY (OVERSEAS), NORTH-WEST EUROPE.

Exhibit 'A' RRM

By Order of the Officer Commanding, this Summary of Evidence is taken on oath.

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"G E Brooks"

A9376 Sgt Brooks, G E

SECOND WITNESS FOR PROSCUTION:

B82837 L/Cpl Mitich, A., of 3 Cdn Inf Bde Coy RCASC having been duly sworn states:-

"On the morning of 29 Jun 45 at approximately 0825 hrs, Sgt Brooks, our platoon Administration Sgt came along the line of tents calling the men out on parade. I was sitting in the doorway of my tent and heard Sgt Brooks tell Pte Dupuis to get rid of a girl that was in his tent. Pte Dupuis told Sgt Brooks to mind his own business. Pte Dupuis came over to Sgt Brooks and struck him on the jaw with his fist. Pte Kemp then came out and grabbed Pte Dupuis by the arms and held him until Sgt Brooks called two men as a guard. Sgt Brooks told Pte Dupuis that he was under close arrest. That is all I know sir.

QUESTION: Did you see a girl in Pte Dupuis' tent on the morning of 29 Jun 45?

ANSWER: Yes sir, I saw a girl in his tent after our parade and I told her to get out of our camp at once, which she did.

"A Mitich"

B82837 L/Cpl Mitich, A.

.....2

SUMMARY OF EVIDENCE - C37488 Pte DUPUIS, R.J. - Sheet 2

THIRD WITNESS FOR PROSECUTION

F35316 Pte Kemp, J.W., 3 Cdn Inf Bde Coy RCASC, having been duly sworn states:-

"On the morning of 29 Jun 45 approximately 0815 hrs Sgt Brooks came along the tent lines calling us for our 0830 parade. I saw Sgt Brooks talking to Pte Dupuis and then saw Pte Dupuis strike Sgt Brooks with his fist towards Sgt Brooks jaw. I went over and grabbed Pte Dupuis by the arms to stop him. I held him and Sgt Brooks told him he was under close arrest and Sgt Brooks called two men as a guard. That is all I know sir.

QUESTION (By accused)

Where were you when you saw me talking to Sgt Brooks?

ANSWER:

I was about 50 yards away along our line of tents.

"J W Kemp"

F35316 Pte Kemp J.W.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Statement by C37488 Pte Dupuis, R.J., 3 Cdn Inf Bde Coy RCASC, not on oath:-

"Sir. On the evening of 28 Jun 45 I was drinking and got drunk. When I woke up in the morning I was still drunk.

"R J Dupuis"

C37488 Pte Dupuis R.J.

I certify that the foregoing summary of evidence, consisting of two pages, was taken down by me in the presence of the accused and that RP 4 (C)(D)(E)(F) have been complied with.

"W C Bower" Capt
(W.C. Bower) Capt
3 Cdn Inf Bde Coy RCASC

Exhibit "B"

RRM

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Court-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
C 37488	Private	Royal Joseph Dupuis	3 CIR Coy RCASC

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

* Strike out if not applicable

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For AWL (Sec 15 (1)AA) ~~xxxx~~ five times

For Neglect to the prejudice ..... one times

For Refusing to obey an order, One times
AA Sec 9(2)

For .... times

2. Previous convictions of the Accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* The Accused at the present time is under sentence for .....nil.....

beginning on the ..... day of .....

4. The Accused has been awaiting trial on the present charges for ..Nil.. days in civil custody; and for ...5.. days in military custody, making a total of ...5.. days of which ..nil.. days were spent in hosp.

5. The present age of the Accused is ..20 yrs...

6. The date of his attestation is ..26 Mar 41

7. The service which the Accused is allowed to reckon is ...nil.....

8. The Accused is in possession of #

CVSM & Clasp

State the military decorations (if any) held by Accused.

9. (If the Accused is a warrant officer or NCO). The Accused has served continuously, without reduction, N/A to the present date -

Date of Promotion

In the substantive rank of ....

In the war substantive rank of ....

In the acting rank of ....

IMPORTATION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Army Form B.296 (War)

No. C37488 Name Dupuis R J | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 26 Mar 41 | OC Badges | Service or Proficiency Pay | 3/1[illegible]M 6 (XFB 122) 40/P&S/136 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | "J.G.Graham" Lt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed 9 Sept 43					No cases of drunkeness				
Debert	6-7-41	Dvr		AWL from 2200 hrs 6-7-41 to 0900 hrs 7-7-41 (Total absence 11 hrs)	L/Cpl Bebeau V L/Cpl Royes WL	1 days pay 14 days CB	7-7-41		
Debert N.S.	19/7/41	Dvr		Refuse to obey command of a WO refuse to return to duty.	MSM Booth Sgt Wallace	14 days pay 1 days pay	19- 7-41		
Ottawa	29-11-41	Pte		AWL from 1600 hrs to 2100 hrs	CSM Curran	14 days CB	1-12-41	Lt Col C D Gillie	
Ottawa	9-6-42	Pte		AWL from 0745 hrs 9-6-42 to 1100 hrs 10-6-42	Cpl Simard	4 days pay	10-6-42	Capt Meadown	
Borden Ont	13-12-42	Pte		AWL from 1300 hrs 2-12-42 until 1600 hrs (absent 6 days 3 hrs	Cpl Lalonde (AA Sec 15(1)	Cpl L			

(PTO)

Exhibit "B"

RRM

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
C 37488	Private	Royal Joseph Ruswia	3 CIR Coy RCASC

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For AWL (Sec 15 (1)AA) ~~xixx~~ five times

For Neglect to the prejudice one time

For Refusing to obey an order, AA Sec 9(2) One time

For .... times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* The accused at the present time is under sentence for .....nil.....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for ..Nil.. days in civil custody, and for ...5.. days in military custody, making a total of ...5... days of which ..nil. days were spent in hosp.

5. The present age of the accused is ..20 yrs...

6. The date of his attestation is ..26 Mar 41

7. The service which the accused is allowed to reckon is ...nil.....

8. The accused is in possession of #

CVSM & Clasp

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, N/A to the present date -

	Date of Promotion
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

* Strike out if not applicable

State the military decorations (if any) held by accused.

Army Form B.296 (War)

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
		N/A		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ....4th.... day of ...July 1945....

"C Walker" Lt
Adm Offr
2 Cdn Inf Bde Coy R.C.A.S.C.

No. C37488 Name Dupuis R J | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 26 Mar 4[illegible] | CC Badges | Service or Proficiency Pay | 3/[illegible] M 6 (AFB 122) 40/PAM/156 (5418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc "J.G.Graham" Lt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed 9 Sept 43					No cases of drunkenness				
Debert	6-7-41	Dvr		AWL from 2200 hrs 6-7-41 to 0900 hrs 7-7-41 (Total absence 11 hrs)	L/Cpl Bebeau V L/Cpl Royes WL	1 days pay 14 days CB	7-7-41		
Debert N.S.	19/7/41	Dvr		Refuse to obey command of a WO refuse to return to duty.	MSM Booth Sgt Wallace	14 days pay 1 days pay	19- 7-41		
Ottawa	29-11-41	Pte		AWL from 1600 hrs to 2100 hrs	CSM Curran	14 days CB	1-12-41	Lt Col C D Gillie	
Ottawa	9-6-42	Pte		AWL from 0745 hrs 9-6-42 to 1100 hrs 10-6-42	Cpl Simard	4 days pay	10-6-42	Capt Meadown	
Borden Ont	13-12-42	Pte		AWL from 1300 hrs 2-12-42 until 1600 hrs (absent 6 days 3 hrs	Cpl Lalonde AA Sec 15(1)	Cpl L			

(PTO)

Exhibit C RRM

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden Ont	11-1-43	Pte		Neglect to the prejudice of good order and military discipline (A.A.Sec40) wilfully damaging, government property(AA Sec 24(4)	Pte Cosburn, J.R. Cpl Ingeberg T Pte Dworchuck TR Pte Rabouin R	14 days detention	13-1-43	Major W Copeland	Forfeits 1 day pay FR&I
TOS 71 GT on post from Petrol Coy RCASC Debert, N.S. Effect 23 Feb 43						Pt II D.O. # 19 d/23 Feb 43.			
SOS No. 71 Gen Tpt Coy RCASC Debert N.S. on transfer to No. 3 Inf Trg Bn Debert N.S.							W.E.F. 11 Nov 43		
Debert Camp 2 Jan 44		Pte		AWL from 0600 hrs 2 Jan 44 until 2300 hrs 2 Jan 44 (Total absente 16 hrs).	Cpl Quinn	7 days C.B.	3 Jan 44	Lt G A Matthewson	Forf 1 days pay FR&I

Certified true copy of OriginalmFM 6 in my possession

"C E Walker" Lt
(C E Walker)
Lt & Adm Offr

VV-69 (cont'd)

PTE DUPUIS T.

See LL-119 for lot case

JAG BRANCH - REVIEW RECORD

Accused

D 83065 Pte. Dupuis. T.
Cdn Scot. Regts.

Remarks	Date
Trial in (Country) Eng	11 Nov.
Charges 9(1)	
Sentence 60 dys.	11 Nov.
Rec'd from CR at JAG Branch	27 Nov.
To Inch. for (~~pre~~)(post) rev and draft ruling requested by HQ First Cdn Army	27 Nov
Recommendations by	
(1) Pass and record.	
(2) ~~Ltr on irregularities~~	
(3) ~~Quash~~ charge(s).	
(4)	
Ret'd to JAG Rev 1 by [signature]	30 Nov.
Passed to	
Passed to	
To AG 5 for	
Ret'd from AG 5 to JAG Rev 1	
Instrs by JAG Rev 1 on disposal Record & Ltr [signature]	1 Dec 43
Instrs completed by	

Exhibit "A"
VV-69 Roberts major

Army Form A.3.

Correspondence to be PRINTED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Tenth day of November, 19 43

Whereas it appears to me, the undersigned, an officer in Command of 7 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ ccy

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*~~[I am unable to appoint :—~~

*~~(1. Three Officers to form the Court.)~~ ccy

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely :—]~~

Proceedings Reviewed

Reviewing Officer (J.A.G. F.C.M.H.Q.)

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initiated by him.

President.

Rank.	Name.	Regiment.
Major	V Roberts	Regina Rif

Members.

Rank.	Name.	Regiment.
Capt	E.G. English	1 C Scot R
Lt	W.C. White	Regina Rif
Waiting Member Lt	E.L. Alexander	1 C Scot R

*Signed [signature]

Commanding (C.C. Mann) Brigadier, 7 Canadian Infantry Brigade

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D 83065 Pte DUFUIS, Theodore 1 C Scot R	First Charge A.A. Sec 9 (1) (Alternative) Second Charge A.A. Sec 9 (2)	Not Guilty Not Guilty	Guilty To be severely reprimanded & 60 days Detention Not Guilty / Robertson major Robertson major [illegible]	Confirmed C.C. Mann Brigadier 13 Nov 43.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) C.C. Mann
(C.C. Mann) Brigadier,
Commanding 7 Cdn Inf Bde
Convening Officer (c)

(Signed) Robertson major
1 Regiment Pte
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10th day of November, 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~ N/A
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this eleventh day of November 1943.

Robertson major
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

Signed this day of 19 .

N/A.
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ C.M.G.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 13 day of Nov 19 43

C.C. Mann
(C.C. Mann) Brigadier,
Confirming Officer.
7 Canadian Infantry Brigade

Promulgated and extracts taken in the case of D83065 Pte. Dufuis T.

(a) (Dated) 15th November 1943 (Signed) (F.N. CASTELDU) Lt.-Colonel O.C., 1st Bn. C.Scot.R. (AF)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(84) Wt. 46[illegible] 1918 Pads 1,000 W. & Co. Ltd. Gp. 748.2

B2

C H A R G E S H E E T

The accused, D83065 Private Theodore DUPUIS, 1st Battalion The Canadian Scottish Regiment, a soldier of the Canadian Army (Overseas), being on Active Service, is charged with:-

1st Charge
Army Act
Section 40(1)

DISOBEYING IN SUCH A MANNER AS TO SHOW A WILFUL DEFIANCE OF AUTHORITY, A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER IN THE EXECUTION OF HIS OFFICE AS A N.C.O. IN THE SAME COMPANY AS THE ACCUSED

in that he

in the Field, at approximately 0330 hours on the 4th November 1943, when personally ordered by K57500, Cpl. Courtenay, A.F. to clean a shower, refused to do so, saying "I will not do it as someone else has used it before me, but if you get them I will help clean it out," and on being asked if his intention was to not obey the order, replied "I will not clean it. You are a N.C.O. - go ahead and peg me."

Alternative Charge
Army Act
Section 40(2)

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

in the Field, at approximately 0330 hours on the 4th November 1943, when personally ordered by K57500, Cpl. Courtenay, A.F. to clean a shower, refused to do so, saying "I will not do it as someone else has used it before me, but if you get them I will help clean it out," and on being asked if his intention was to not obey the order, replied "I will not clean it. You are a N.C.O. - go ahead and peg me."

In the Field
6 Nov. 1943.

(F.N. CABELDU) Lt.-Colonel
O.C., 1st Bn. C.Scot.R. (AF)

To be tried by Field-General Court Martial.

Date: 10 Nov 43

Place: In the field

.....
Signature of Convening Officer.

MEDICAL OFFICER'S REPORT

I certify that No. D83065 Pte Dupuis T.
of 1 C Scot R is in a fit state of health,
and able to undergo Trial by Court Martial.
The above named soldier was examined by me 11 Nov 43

H.E. Young Capt
Medical Officer

Station Field

Date 11 - Nov - 43

M F B. 246

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a FIELD GENERAL Court-Martial held at

on the 11th day of November 1943 by order of

Brigadier C. C. Mann, DSO

Commanding 7th Canadian Infantry Brigade

dated the 10th day of November 1943

President.

Maj. J. Roberts, 1 Regina Rif.

Members.

Capt. E. G. English, 1 C. Scot. R.

Lt. W. C. White, 1 Regina Rif.

~~, Judge Advocate.~~ Sh

Trial of*

D 83065 Pte Bochum, Theodore, 1 C. Scot. R.

The order convening the Court, the charge-sheet and the summary (~~or abstract~~) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~ Vsh

~~, waiting member takes his place as a member of the Court.~~ Vsh

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt. S. R. Ross, 1 C. Scot. R.

1st ~~Counsel‡ or~~ defending officer† Lt. P. Barot, Fus. M. Rotal

At 10 o'clock the Trial commences.

The order convening the Court is read, and is marked "Exhibit A", signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible] K. & H., Ltd. [illegible] Form A 9/35

B

The President, members and ~~judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

LT. J. W. McNINCH, REGINA RIF.
LT. J. G. BAIRD, REGINA RIF.
LT. H. S. CORSON, I.C. SCOT R.
LT. D. A. HAY, I.C. SCOT R.
LT. H. L. ALEXANDER, I.C. SCOT R.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 40 (8), the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

NOT GUILTY *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

NOT GUILTY *Answer.*

~~Are you guilty or not guilty of the third charge against you, which~~ you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.~~

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No.

~~The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. K57500 Cpl. Courtney A.T. 1st Bn, C Scot R. (A.T.)

being duly sworn, is examined by the prosecutor.

Prose. - Cpl Courtney will you tell in your own words what you know of this case.

Ans. Sir - on the 4 Nov 43 at approx 0830 hrs Pte Dupuis had just had a shower and had returned to his barracks I noticed the plug in the shower had not been pulled out and the bowl was full of dirty water. I ordered Pte Dupuis to go and clean the shower and he replied "I will not do it because someone has used it before me, but if you will get them I will help clean it out" I did not know who had used it before hand, and as he was the last man it should not have been left that way. I ordered him a second time, and he answered "I will not clean it" Then I asked him if he was refusing to obey my order and he replied "I will not clean it, you are a N.C.O. go ahead and peg me" The water was not drained nor was the shower cleaned at any time afterwards by Pte Dupuis.

Witness is cross examined by the Defence.

Quis - At that time were you an N.C.O. in Pte Dupuis platoon?

Ans No sir, I was not

Quis Did you address him in the shower

Ans No sir not directly.

Quis You say that you asked him if he intended to refuse your order, was it at the same time as your first order

Ans I asked him the second question approx 15 mins after the first

Quis What were your exact words of (2) your order

Ans "Are you refusing to obey my order"

Quis Can you tell me if it were dirt or rubber plug in drain

Ans It was a rubber plug sir

Ques. He did not intend to impede any military proceedings.
Ans No sir he did not.

Prosecution
I don't feel that the last Ques should be asked this witness

Def Ques. Were the lights out the first time you asked accused.
Ans No sir the lights were not out.
Ques were they out the second time.
Ans No sir, not the second time either.

Question by the Court
To your knowledge is there a Bn or Coy order which states that showers have be cleaned after use.
Ans Not to my knowledge sir.
Ques Is it customary for the last man to clean the tub
Ans Yes Sir!

R.P. 83 (B) was confirmed with Robert [illegible]

2nd Witness:- K 57599 Cpl Clarke A. 1st Bn C. Scot R (A.F.) having been duly sworn is examined by the prosecutor.

Ques Will you tell the court in your own words what you know about the "~~accused~~" case. 1st

Ans. Sir on Nov 4 1943 at approx 0330 hrs I was in the barrack room, when Cpl Courtney A.F. ordered Pte Dupuis to clean the shower. Pte Dupuis said "I will not clean it" Cpl Courtney then asked him if he refused to obey his order and Pte Dupuis answered "I will not clean it, you are a HCO - peg me.

Def questions witness
Ques. Were all those orders given at the same time.
Ans I heard Cpl Courtney order him to clean the showers, in my barrack room.
Ques. When Cpl Courtney asked him if he refused to obey was that same time he asked him to clean the shower.
Ans Apparently Cpl Courtney had ordered him to clean up the shower in the ablution room. I first heard him give the order when I was in my barrack room. Pte Dupuis answered "I will not clean up the shower." Cpl Courtney left the room and came back later. That is when he asked him if he refused to obey his order. Sir!
Ques Did you hear Cpl Courtney address the accused in the shower?

[illegible]

C3

Ans No sir I did not

Ques Was accused in bed when first order was given.

Ans No sir he was not in bed. When Cpl Courtney gave him an order in the barrack room to clean out the shower after he had used them.

But he went to bed after that. Then Cpl Courtney asked him - if he refused to obey his order.

Pte Dupuis answered "I will not clean the showers"

Sir! RP 83(B) was complied with [illegible]

3rd Witness ~~having being duly sworn is examined by the pros~~

Ques - K57492 Cpl. Jobes E. 1st Bn. C. Scot. R. (A.F.) having been duly sworn is examined by the prosecutor.

Ques Tell the court your evidence.

Ans. Sir on 4 Nov 48 at approx. 0830 hrs, when Cpl Courtney ordered Pte Dupuis to go back to his shower and clean it. Pte Dupuis answered "No I am not going to clean it - and as you are a N.C.O. peg me."

Defense questions witness:

Ques. Were you in the same room as Pte Dupuis.

Ans Yes Sir!

Ques - Was there any lapse of time between any of Cpl Courtneys orders.

Ans Yes sir a few minutes.

Prosecution questions witness:

Ques Are you clear on the point the def is bringing out in regard to time between orders and action carried out

Ans Cpl Courtney entered the room and ordered the accused to pull plug and clean shower bath. There was a lapse of a few minutes and Cpl Courtney asked accused if he was going to comply with his order. Accused replied - "I will not do it, you are an NCO go ahead and peg me."

RP 83(B) was complied with [illegible]

15h

[illegible]

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. yes

Question. Do you intend to call any other witness in your defence?

Answer. No

Question. ~~Is he a witness as to character only?~~ *Answer.* N/A

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. ~~Have you anything to say in your defence?~~

Answer. The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

1st Witness

D 83065 Pte Dupuis T. 1st Bn C. Scot. R (A.F.)

having been duly sworn is examined by the defense.

Ques by Def.

Pte Dupuis, could you tell the court what happened in the shower and your own version of what happened afterwards.

Ans Sir - I've been only a short time in A Bay of 1 Bn C Scot R.

On Wed we had a night scheme at 6 o'clock we left. I do not know what time we got back. At that time I was having a shower. Cpl Courtney - I did not know who he was walked in shower room; and he was mad, because I was taking a shower and another soldier ~~on my left~~ was taking a shower. He said nobody should take a shower because there was not enough water for the men to wash up when they came back from the night scheme. So, myself being new in A Bay did not ~~say~~ not know anyone. I did not say a word, Then I went to bed. I was in bed 15 mins, and this Cpl - I did not know he was a cpl at the time came up to my bed and ordered me to go and clean the showers Sir! I told him some other men had used it before me, to get them and I would help clean the shower - but I would not do it alone. Then I went to bed. That is all I remember, then the light went off. That is all I remember - Sir!

Ques Was there anyone left in the wash room when you left the place.

Ans There was quite a few men washing up and using basins.

Prosecution cross examined witness:

— You stated that when Cpl Courtney ordered you to clean out the shower, you were in bed and nearly asleep and later you stated "I went to bed" were you or were you not in bed

Ans When he came up to me I was in bed sir!

Ques At any time during this conversation were you aware that you were speaking to Cpl Courtney?

Ans I arrived to Bay Thurs. I did not know he was a Cpl or Pte.

Ques When you were asked if you intended to refuse Cpl Courtney's order - did you know then he was a N.C.O.?

Ans Sir I do not remember being asked again.

RP 831 (B) was [illegible]

[illegible]

— 1 — Nov. 11th 1943

Mr. President & members.

I would like the Court to consider that there is a doubt as to "the lawful command" being a lawful command or not. Since it did not seem to tend to impede, delay or prevent a military duty or proceeding.

Furthermore his superior officer in this case Cpl. Cunningham proved not to be in execution of office since he was not on duty or a member of his platoon staff.

The accuse himself state that he did not know Cpl. Cunningham for a N.C.O. It is upon his being asleep and just woke up being still

F.V.B.

Nov. 11th 1943

Drowsy with sleep, did not intend to answer back if he did answer back. Even if he may have known that he was talking to an N.C.O.

So I ask the court to consider these points which prove the accuse of no wilful intent to disobey in such a manner as to show wilful defiance. And shows that the lawful command may not have been lawful in itself.

Jim F. Barot sient officer assisting the accused in his defence.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused is Guilty of the First Charge & Not Guilty of Second Charge.

V Roberts maj

11 Nov 43.

V Sh

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lt S.R. Ross 1 C Scot R is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* YES MFB 355 MFM 6

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked Exhibit 4 signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* YES

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* YES

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* YES

~~Cross-examined by the accused.~~ V Sh

(Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

"Sir, I was in the American Army on and off since 1929, and received an honorable discharge. Since joining the Canadian Army I have tried to do my job. I have also tried to get into the American Army but appear to be getting no where. I will take my punishment

V Roberts major

F

Sentence.

The Court sentence the accused to 60 days detention Sentence.

Robert
major
11 Nov 43, Regina Pref.

15R

Summary of Evidence in the Case of D83065, Pte. Theodore DUPUIS, 1st Bn., C. Scot. R.,(A.F.)

By direction of the Commanding Officer the Summary of Evidence is taken under oath.

1st Witness for the Prosecution

K57500, Cpl. COURTNEY, A.F., 1st Bn., C. Scot. R.,(A.F.) having been duly sworn states:

"Sir, on the 4 Nov 43, at approx 0330 hrs, Pte. DUPUIS had just had a shower and had returned to his Barracks, I noticed that the plug in the bowl of the shower had not been pulled out and that the bowl was full of dirty water. I ordered Pte. DUPUIS to go and clean the shower and he replied, "I will not do it as someone has used it before me but if you will get them I will help clean it out." I did not know who had used the shower beforehand, and as he was the last man, it should not have been left that way. I ordered him a second time and he answered, "I will not clean it." Then I asked him if he was refusing to obey my order and he replied, "XXXXXXXXXXXXXX I will not clean it - you are a N.C.O. - go ahead and peg me." The water was not drained nor was the shower cleaned at any time afterwards by Pte DUPUIS.

The accused declined to cross-examine the witness.

A.F. Courtney Cpl.
Signature of Witness.

2nd Witness for the Prosecution

K57599 Cpl. CLARK, A., 1st Bn. C. Scot. R.,(AF) having been duly sworn states:

"Sir, on 4 Nov 43 at approx 0330 hrs I was in the barrack room when Cpl. COURTNEY, A.F. ordered Pte. DUPUIS to clean the shower. Pte. DUPUIS said, "I will not clean it." Cpl. COURTNEY then asked him if he refused to obey his order and Pte DUPUIS answered, "I will not clean it - you are a N.C.O. - p eg me."

A. Clark Cpl.

The accused declined to cross-examine the witness.

3rd Witness for the Prosecution

K57492 Cpl. JOBES, E., 1st Bn., C. Scot. R.,(AF) having been duly sworn states:

"Sir, on 4 Nov 43 at approx 0330 hrs when Cpl. COURTNEY ordered Pte. DUPUIS to go back to his shower to drain and clean it, Pte. DUPUIS answered, "No I am not going to clean it and as you are a N.C.O. - peg me."

The accused declined to cross-examine the witness.

E. Jobes Cpl.
Signature of Witness

The accused, D83065, Pte. DUPUIS, T., 1st Bn., C. Scot. R., (AF). having been duly warned in accordance with Rule of Procedure 4 (e), reserves his defence.

Certified that Rules of Procedure 4 (C)(D)(E)(F)&(G) have been complied with.

This summary of evidence taken by me in the presence of the accused this 5th day of November, 1943, In the Field.

[illegible]
Signature of Officer taking Summary.

No. D83065 Name DUPUIS T. | Sqn., Battery, or Company | Corps CIC | Old Sheet destroyed, 2 April 42. Last Entry 13 Feb 42.

Date of last entry in Company Conduct Sheet: N/A | No. and date of last drunk: n-a | Period not reckoning towards freedom from extra fine | Sheet No. (1) | Date of enlistment | O.C. Badges | Signature O.C. Company, etc. | Service or Proficiency Pay | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	3 Jan 43	Pte	-	AA15(1)WOAS AWL, in that he, was absent from 1800hrs 3 Jan 43 until 2200hrs 5 Jan 43.(Absent 2d.4hrs)	Sgt.Baddeley, L/CPL.T.C. Bilkington.	10 days C.B.	7 Jan 43	Lt./Col. W.Coutts	Forf 3 days P. FR&I 149(1)(a)
In the Field	15 Apr 43	Pte	-	(1)WOAS AWL from 0600hrs 15 Apr 43 to 1445hrs 5 May 43.Total absence 20 days 12hrs 45mins. AA15(1).	CSM DARWIN SGT ALLAN	28 days Pay FR&I 149(2)	6 May 43	Lt.-Col.GF Clingan	21 dys p.FR&I 149(1)(a).Total 49 dys Pay.
	5 May 43			(2)WOAS Act to the Prej of good order etc.(inpossesion of Documents he knew to be false-two passes) AA40	Documentary		6 May 43		
In the Field	7 May 43	Pte	-	WOAS,is charged with Neglect of good order etc.-after being duly warned to parade-neglected to do so.	Lt Scott RB Sgt.Muncey	14 days C.B. 14 days Pay 149(2)	8 May 43	Col.A.S. Pearson	Forf.14 d.Pay FR&I 149(2).

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	20 May 43	Pte	-	WOAS, AWL from 0800hrs 20 May 43 till 1350hrs 25 May 43 (Total ab. 5 dys. 5 hrs 50mins.) AA15(1)	C&M DARWIN	18 days F.P. 18 days Pay	26 May 43	A.B. Noble Lt.-Col.	Forf 6 dys pay FR&I 149(1)(a) 18days pay FR&I 149(1)(c). Total 24 days pays.

No. D83065 Name DUPUIS T. Sqn., Battery, or Company — Corps C.I.C. — Date of enlistment 20-10-41 — G.C. Badges — Service or Proficiency Pay N/A

A.F.M. 6
(A.F. B.122)
40/P & /8136 (2268)

Date of last entry in Company Conduct Sheet: N/A — No. and date of last drunk: N/A — Period not reckoning towards freedom from extra fine: N/A — Sheet No. (2) — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	22 Jun 43	Pte	-	WOAS, AWL after being warned for duty from 0900 hrs 22 Jun 43 till 1145hrs 22 Jun 43. Total absence 2 hrs, 45mins. A.A.15(1)	Sgt. Lawford Cpl. Demerse	5 days F.P. 5 days Pay	23 Jun 43	Lt.-Col. G.F. Clingan	Forf 5 days P. FR&I 149(1)(b) Total forf 5 days pay.
In the Field	July 43	Pte	-	WOAS, Sec9(1)-Disobeying a Lawful Command given by his superior Officer.	F.G.C.M.	90 d. Det'n.	31Jul43 DO 131-7 d/3 Aug 1943.	F.G.C.M.	Forf90dys.FR&I 1(b).5dys.FR&I 149(1)(c).Total 95 days pay.
In the Field	17 Oct 43	Pte	-	(1)AA15(3)was found in Guildford Documentary without written authority to be in Guilford from his Comd.Officer. (2)AA40-Conduct to the Prej.etc.-Documentary did in Guilford at 0150hrs 17Oct43 threaten to tear up a receipt for a passgiven to him by Cdn Prov.		7 days C.B.	20 Oct 43	Lt.-Col. R.W. Abraham	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified true Copy

Captain

Adjutant 1st Bn.

Canadian Scottish Regt., A.

Exhibit "G" Roberts

M.F.B. 355

22M—5-41 (372-5)
H.Q. 1772-99-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D83065	Private	DUPUIS, T.	1st Bn.C.Scot.R.,(AF)

1. The following is a fair and true summary of the entries in the Field [redacted] Regimental and Squadron, Battery Conduct sheets [redacted] of the accused, exclusive of convictions by a Court-Martial or a Civil Court, [redacted] of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For AA15(1) AWL	four times	four times
For AA15(3) Beyond Limits set without a pass.	one times	one times
For A.A. 40	one times	one times
For A.A.9(1)	one times	one times

Number of instances of gallantry or distinguished conduct - nil

[redacted]

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. [redacted]

or

Previous convictions of the accused by a court-martial or a civil court, of summary awards under [redacted] Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for no days in civil custody, and 2 days in military custody, making a total of 2 days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 33 yrs 8 mos

6. The date of his [redacted] specified in his [redacted] attestation paper 2 Oct 41

7. The service which the accused is allowed to reckon towards discharge is 2 yrs 4 days

8. The accused is entitled to reckon 2y 4d service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no [redacted] decoration, or [redacted] reward [redacted]

[redacted]

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N.A.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit ..... dated N.A. ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of N.A. ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number D83065 Rank Private Name DUPUIS T of 1st C. Scot. Regt.,(A.F.) Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	In the Field Jul/43	A.A.9(1) Disobeying in such a manner as to show a wilful defiance of authority, a lawful command given by his superior officer, in the execution of his office.	90 days det'n	nil

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 6th day of November 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked [illegible] signed by the president, and annexed to the proceedings.

(F.N. CABELDU)Lt.-Col.
O.C., 1st Bn. C. Scot. R.,(A.F.)

LL-119
PTE DUPUIS T.

D-83065 Pte. Theodore DUPUIS
R.H.C. - 5 C.I.R.U.
LL-119

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 30th day of JULY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "G" GROUP CANADIAN REINFORCEMENT UNITS C.A.(O), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer]~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* ~~I am unable to appoint:—~~

*(1. ~~Three Officers to form the Court.~~)

*(2. ~~A Field Officer as President.~~)

~~[or the following reasons, namely:—]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

*Omit if not applicable.

Proceedings Reviewed
Sd/Ltle Dom Pat Comptr
Reviewing Officer
17 Sep 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
LT/COL	D.L. REDMAN, V.D.	Calg Highrs

Rank.	Name.	Regiment.
A Captain	to be detailed by O.C.	7 C.I.R.U.
A Lieutenant	to be detailed by O.C.	7 C.I.R.U.

*Signed J. Stewart Hugh
Commanding "G" Gp Cdn Rft Units, Brigadier
Convening Officer. C.A.(O)

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-83065 Pte. Theodore DUPUIS R.H.C. - 5 C.I.R.U.	First Charge A.A. Sec 9(1)	Guilty	Guilty	Confirmed
	SEE CHARGE SHEET ATTACHED			
			Sentence To undergo 4 detention for a period of ~~three~~ ~~(3)~~ Ninety (90) days. 31st July 1943	

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) J. R. Stewart Lough Brigadier (Signed) [signature]
Commanding "G" Group Cdn Rft Units
Convening Officer (e) C.A.(O) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 31st day of July 1943 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
~~2. The witnesses~~
~~3. The Interpreter~~)
~~4. The officers under instruction~~)
were duly sworn.

*Omit if not applicable.

Signed this 31st day of July 1943

[signature]
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 7[illegible] M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 1st day of Aug 1943.

J. R. Stewart Lough Brigadier
Commanding "G" Gp Cdn Rft Units
Confirming Officer.

Promulgated and extracts taken in the case of D.83065 Pte DUPUIS, T. Authority D.O. # 131 d/3 Aug 43
(a) (Dated) 2 Aug 43 (Signed) [signature] Col. Comd. 5 Cdn. Inf. Rft. Unit.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Do 131 d/3 Aug 43
EDB

CHARGE SHEET

The accused No. D-83065 Private DUPUIS, Theodore, The Black Watch (R.H.R.) of Canada, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Army Act
Sec. 9 (1)

WHEN ON ACTIVE SERVICE, DISOBEYING IN SUCH MANNER AS TO SHOW A WILFUL DEFIANCE OF AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER, IN THE EXECUTION OF HIS OFFICE,

in that he,

at Tournay Barracks Farnborough Hants, on the 27th day of July 1943, when personally ordered by A/Major G.L. Stuart, The Black Watch (R.H.R.) of Canada, Officer Commanding Draft Company, 5 Canadian Infantry Reinforcement Unit, to proceed to be medically and dentally inspected for draft, did not do so, saying, "I won't go", "I won't go on draft to the field", "I won't soldier", or words to that effect, and he did not proceed to be medically and dentally inspected and he did not go on draft.

(A.S. Pearson) Colonel
Commander
5 Cdn Inf Rft Unit

In the Field,
27th day of July,
1943

To be tried by Field General Court Martial.

(J.R.Stewart Lough) Brigadier,
Commanding,
"G" Gp Cdn Rft Units, C.A.(O).

30 July 1943.

Convening Officer.

MEDICAL CERTIFICATE

This is to certify that I have this date examined D.83065 Pte. Dupius, T. (R.M.C.) 5 Cdn Inf Reinf Unit.

and found him fit to undergo trial by Field General Court Martial.

DATE: 31 July 43.

.....Capt.
R.C.A.M.C.
5 Cdn Inf Reinf Unit.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Leipzig Bks. Enschot Hants
ON THE 31st DAY OF July 1943

D-83063 Pte

The accused...Theodore..Dupuis..Unit.B.H.C.....S..C.I.R.U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lieut Col. D.L. Redmon V.D. Unit. H.Q. C.R.U.....

Members. Capt. H.A. Dickson..Unit. 7. C.I.R.U...

Lieut. E.P. Cofr.....Unit. 7 C.I.R.U...

The officers under instruction are duly sworn:-

.....Unit.....

.....Unit.....

Prosecutor Lieut. D.A. McAlpine.Unit. 5. C.I.R.U.....

Defending Officer Lieut. J.C. Kirby..Unit. 5. C.I.R.U....

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
TM The Prosecutor produces MFB 355, ~~AFB 296~~ and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

TM (a) Makes a statement in mitigation of punishment. attached
TM ~~(b) Calls witnesses as to character.~~
TM ~~(c) Calls witnesses in mitigation of punishment.~~
TM (d) Addresses the Court by his Defending Officer. attached

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

[signature] Lt Col

Re: D.-83065 Pte. Dupuis, T.
and A.A. Sec 9(1).

Thirty-three years ago I was born in the Province of Quebec. At the Age of two my family moved to Rhode Island, U.S.A. About 12 years ago my parents became naturalized citizens of U.S.A. I joined the American Regular Army in August, 1935, and remained there until August, 1940, when I was honorably discharged because I had completed my full time of service. During the years of 1936, 1937 and 1938, I was stationed at Honolulu, Hawaii with the 27th Infantry. While stationed at Honolulu I became a fully naturalized citizen of the U.S.A in 1938. In that same year I returned to the U.S.A and in 1939 was stationed at the Panama Canal Zone, where I stayed until December 1940. Then I was honorably discharged with the option to re-enlist in the American Army. Instead I enlisted with the Canadian Army because I was born in Canada and because I wanted to see action. Of my 5½ years in the American Army I was a Corporal for 4 years and I was honorably discharged as a Corporal with a clean sheet. I enlisted in the Canadian Army on Oct. 2, 1941 at Montreal. In the Spring of 1942 there appeared in Part I Orders a notice that an arrangement had been made between U.S.A. and Canada for the transfer of U.S. citizens in the Canadian Army to the American Army. Because I had been anxious to return to the American Army ever since the attack on Pearl Harbor I immediately filled out the application and handed it in to my Company Orderly Room. A week later I was put on draft overseas. I was immediately paraded before the C.O. of Farnham Camp and I told him about the transfer. He said that there was nothing to worry about and that I would get my transfer on the British Isles because the American troops were stationed there.

I arrived overseas in the latter part of April, 1942, at #2 C.I.R.D. After one month I was made L/Cpl and later Corporal. In the month of October I again made enquiries with regard to my

(Cont

transfer to the American Army from the O.C. of my Company. He said that he would let me know. Two weeks later in the same month I went to the American Army Recruiting Station and I explained my case to the Sargeant there. He gave me an application which I filled out. A certificate was needed by the Recruiting Station that there were no crimes against me. I requested the certificate from my Company Commander, but he refused and referred me to the Commanding Officer, and he also refused to give me such a certificate. I still see no reason why this certificate should have been refused me, because there were no crimes whatsoever against my name. In November, 1942, I went to the American Embassy at London and explained my whole case to one of the staff. He told me to report to the American Army Recruiting Station again, and there I told my whole story again from the beginning, which was taken down and signed by me. I was told that I would be notified if anything happened. I was also advised that it would be a good thing if I wrote the Adjutant General at Washington, D.C., which I did. In January, 1943, I received a reply from the Adjutant General explaining that I should immediately see my Commanding Officer and explain my case to him and to take proceedings through the proper channels. I then saw my Company Commander who obtained the proper forms which I filled out and attached the letter from the Adjutant-General. In April of this year when I was in A. Coy of S.C.I.R.U., I enquired from the C.S.M. about my transfer and he advised me that my transfer had been disapproved. I requested to see the letter of disapproval and I was told to see the Adjutant. I immediately went to the B.O.R. and the sargeant on duty told me of the disapproval. I requested to see the letter and I was told

(Cont)

to come back in an hour. I returned a couple of times, but no letter was shown to me. On the same day I explained my whole case to the ~~C.O.~~ O.C. "H" Wing. Two weeks later I went H.W.L. for 21 days in disgust because I was not getting anywhere. On or about the 5th May I returned & was punished. The next day I refused to go on parade and was brought before the C.O. of the unit to whom I explained my whole case and I made a written statement to him regarding my transfer, ~~that I wished to leave~~ and he said that he would see about the transfer. Last month I was warned for draft in the field and I said to the officer present that what was the use of sending me in the field when I am waiting for my transfer. I was afraid that once I was moved to the field I would lose all the progress, if any, I had made with regard to the transfer. I ~~was~~ asked to be paraded before the C.O. and I was advised by him that communication had been made to the American Army ~~and that it was now up to the American Army.~~ I received a 48 hour pass in the beginning of June for the purpose of going to "London" Recruiting Station of the American Army. There I was told to go to C.M.H.Q. I was told at C.M.H.Q. that because my first application ~~was~~ in Canada was made before the dead line that my application was still valid. They told me that I would be advised in the near future. A week later I was summoned to the B.O.R. and filled out some more forms. On July 27th I was again warned for draft into the field and I told the officer in charge that I would soldier in camp but absolutely refused to soldier in the field and ruin my chances for the transfer and instead I would rather be locked up. Whereupon I was escorted to the guardroom

(cont)

(4)

At present I have a brother in the American Army who is in Australia and I want to join him. Since the U.S.A entered the war as a result of the attack on Pearl Harbor my heart is with the American Army and I want to fight with my countrymen. To date I have not been advised whether my transfer has been accepted or refused. All this is absolutely the truth, so help me God.

D. 83065, Pte Theodore Dupuis

Witness:
J. Kirby, Lieut.
S.C.I.R.U.

Plea in Mitigation by Defending Officer
re: D. 83065 Pte Dupuis T.
and A.A. Sec. 40.

Sir:

As the accused unfolded his story I am sure that there is one impression which was left with you and that is that the accused is obviously the victim of "red-tape", inefficiency and uncooperation. Encountering the red tape and legal technicalities of one country is bad enough, but where, as in this case, a man is forced to encounter the technicalities and red-tape of two countries, and of their respective armies at that, I submit that he must have great persistence and patience. This man is hindered by his inability to speak and write the English language as we know it as fluently as can be desired. Consequently a man in his position invariably eyes with suspicion the numerous forms and red tape which assail him, and of those who occupy official positions. This is particularly so in the case of this man who has tried for almost 1½ years to obtain a transfer to the American Army. The irritating part of it is that anyone tells him anything, gives him any definite and satisfactory reason. To this day he does not know whether his application for transfer will be accepted or refused. In his way of thinking he cannot afford to prejudice his position any further by soldiering out in the field - although he is willing to do so in camp. Any man of weaker character or less bravery would have become resigned to his misfortune. But the accused is a fighter. He prides himself on his

physical fitness and at prowess at boxing. An astounding fact is that he does not smoke. There is no doubt whatsoever that this man wants to fight as is shown in his eagerness to join the Canadian Army rather than take advantage of his option to join the American, because Canada was at war and U.S. was not. As soon as the U.S. entered the war after Pearl Harbor in Dec. 1941, this man wanted to fight alongside his countrymen. Sir, please do not forget that this man is an American Citizen and is such is imbued with the spirit of the Constitution of the U.S. He has taken the famous American Oath of Allegiance to the American Flag.

The Court and other officers and other men concerned in this case are no doubt astounded at the attitude taken and the method adopted by the accused to attain his ends as a result of his failure of almost 1½ years of trying to get back into the ~~Canadian~~ American Army. We are all aware that the Americans have a distinctly abrupt and straight forward manner of accomplishing things — the "I got my rights" attitude. This man was subjected to the American way of life since the age of 2 — for 31 years. Taking cognizance of this fact it is now easier to understand the downright manner the accused adopted. Such penalties and bravery should not go unrewarded. I ask the Court to have compassion with the accused.

J. P. Kirby
Defending officer.

SUMMARY OF EVIDENCE

In the case of No. D-83065 Private DUPUIS, Theodore, The Black Watch (R.H.R.) of Canada, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

FIRST WITNESS FOR THE PROSECUTION

A/Major C.L. Stuart, The Black Watch (R.H.R.) of Canada, Officer Commanding "P" Company, 5 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am A/Major C.L. Stuart, The Black Watch (R.H.R.) of Canada, Officer Commanding "P" Company (Draft Company) 5 Canadian Infantry Reinforcement Unit. At about 1330 hours of the 27th day of July 1943 I ordered D-83065 Pte. Dupuis, T., a member of my Company upon I had previously warned for draft, to proceed with Col. McGinness to be medically and dentally cleared for draft. Pte. Dupuis answered, "I won't go", or words to that effect. I repeated the order to Pte Dupuis and he answered, "I won't go on draft to the Field," or words to that effect. I repeated the order a third time and Pte. Dupuis answered, "I won't soldier," or words to that effect. As Dupuis still showed no sign of complying with my order, I had him placed in the Guard Room pending the laying of a charge. Immediately before giving Dupuis the original order I told him that I understood he had refused to obey a similar order during the morning and proposed now to repeat the order. This evidence pertains to the accused whom I now recognize. The accused was offered ample opportunity to comply with my order by did not in fact comply with my order.

C.L. Stuart 1 May
(C.L. Stuart) Major

The accused declines to cross examine this witness.

SECOND WITNESS FOR THE PROSECUTION

Lieut. H.S. Duffield, The Black Watch (R.H.R.) of Canada, Administrative Officer of "P" Company, 5 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am Lieut. H.S. Duffield, The Black Watch (R.H.R.) of Canada, Administrative Officer of "P" Company (Draft Company) at 5 Canadian Infantry Reinforcement Unit. I was present at 1330 hours on the 27th day of July 1943 when I heard Major C.L. Stuart give Pte. Dupuis the following order. "You will report to the M.O. now." I heard Dupuis reply, "No, I won't go," or words to that effect. Major Stuart then said," For the second time, report to the M.O. now." To this Dupuis replied, "I don't want to go on draft to the Field," or words to that effect. Major Stuart then said, " This is the third time. Report to the M.O. now." Dupuis replied, "I don't want to soldier," or words to that effect. The attitude of Dupuis during this period was sullen and obstinate.

During the morning I had warned Pte. Dupuis for draft according to C.R.O.R.O. 542 and at that time he told me he wouldn't go on draft. I therefore had him placed under close arrest as I thought he may have gone A.W.L. This evidence pertains to the accused whom I now recognize.

H.S. Duffield
(H.S. Duffield) Lieut.

In the case of No. D-33065 Private DUPUIS, Theodore, The Black Watch (R.H.R.) of Canada, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

SECOND WITNESS FOR THE PROSECUTION (Continued)

The accused declines to cross examine this witness.

THIRD WITNESS FOR THE PROSECUTION

C-21166 Cpl. McGuinness, P.S., Cameron Highlanders of Ottawa, on the strength of 5 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am C-21166 Cpl. McGuinness, P.S., Cameron Highlanders of Ottawa, 5 Canadian Infantry Reinforcement Unit. I am a member of "A" Company. On the 27th day of July 1940, I was ordered by the A/C.S.M. of the Company to get Pte. Dupuis from the Guard Room and see that he passed his kit inspection, also his medical and dental inspection. I got Dupuis and took him to his quarters and made him get his kit to lay out for inspection. He said quite a few times that he did not want any part of this Army. After we got his kit down he refused to lay it out until the C.S.M. gave him the order. When the C.S.M. gave him the order he said he would lay it out just to be a good fellow. Afterwards I told him he was to come with me for his medical and dental. He said he would not pass no medical or dental and I could give him to the Guard Room and look after him. He said he did not care what happened to himself. He said he did not want to get out of this Army. I then took him back to the Guard Room at about 1000 hours. At about 1400 hours Major Stuart asked for Pte. Dupuis who came out. Major Stuart ordered him to go with me to get his medical and dental. He reply was, "No, I don't want to medical or dental," or words to that effect. Major Stuart ordered him for the second time to go and receive his medical and dental and Dupuis answered, "I don't want to go on draft," or words to that effect. Major Stuart gave him the order for the third time and Dupuis answered, "I don't want to soldier," or words to that effect. Major Stuart then returned him to the Guard Room. This evidence pertains to the accused whom I now recognize.

T. McGuinness

.....

(T.S. McGuinness) Cpl. C-21166

The accused declines to cross examine this witness.

FOURTH WITNESS FOR THE PROSECUTION

Acting Captain J.L. Henslowe, Canadian Scottish Regiment, Records Officer, 5 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am Acting Captain J.L. Henslowe, Canadian Scottish Regiment, employed as Records Officer 5th Canadian Infantry Reinforcement Unit.

My

In the case of No. D-83065 Private DUPUIS, Theodore, The Black Watch (R.H.R.) of Canada, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

FOURTH WITNESS FOR THE PROSECUTION (Continued)

In my official capacity of Records Officer, I checked the departure of 2nd Echelon Draft Demand Number 4140 dated 25 July 1943 to The Black Watch (R.H.R.) of Canada, which left 5 Canadian Infantry Reinforcement Unit at 0805 hours on the 28th day of July 1943, and I hereby state that No. D-83065 Private DUPUIS, Theodore, did not depart on the draft. This evidence pertains to the accused whom I now recognize.

J. L. Henslowe
(J. L. Henslowe) A/Capt.

The accused declines to cross examine this witness.

The accused having been warned according to Rules of Procedure 4 (E), reserves his defence.

I certify that the foregoing Summary of Evidence consisting fo three pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with.

J. H. Ackerman
(J. H. Ackerman) Lieut.
Officer detailed to take Summary of Evidence.

In the Field
28th day of July
1943.

OLD SHEET DESTROYED, 2 APR. 42.

M.F.M. 6
(A.F. B.122)
40/P & 8146 (2965)

No. D-83065 Name DUPUIS, THEODORE | Sqn., Battery, or Company | Corps CDN. INF. CORPS | Date of enlistment 2-10-41 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	3 JAN/43	PTE.		AA.15 (1) W.O.A.S., A.W.L., in that he was absent from 1800 hrs. 3 Jan 43 until 2200 hrs. 5 Jan 43. ABSENT – 2 DAYS 4 HRS.	D-81417 SGT. BADDELEY C. D-82328 L/CPL PILKINGTON T.C.	10 DAYS C.B.	7 JAN/43	S.D. CANTLIE LT. COL.	FORF. 3 DAYS PAY (F.R.I. 143 (1)(a)
FIELD	15 APR/43	PTE.		FIRST CHARGE W.O.A.S., A.W.L. from 0600 hrs 15 Apr. 43 to 1445 hrs 5 May 43. ABSENT - 20 DAYS 12 HRS. 45 MIN. (A.A. SEC. 15 (1).)	CSM. DARWIN SGT. ALLAN				21 DAYS PAY (F.R.I. 143 (1)(a)
	5 MAY/43			SECOND CHARGE W.O.A.S. Conduct to the prejudice, etc., etc., (in possession false docs.)	DOCUMENTARY	28 DAYS PAY	6 MAY/43	G.F. CLINGAN LT. COL.	
FIELD	7 MAY/43	PTE.		A.A. SEC. 40 W.O.A.S. Neglect of good order and military discipline, etc. (duly warned to parade 7 MAY (neglected to do so.)	LT. SCOTT B.B. SGT. MUNLEY J.	14 DAYS C.B. 14 DAYS PAY (F.R.I. 143 (1)	8 MAY/43	A.S. PEARSON COL.	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	20 MAY/43	PTE		W.O.A.S., A.W.L. from 0800 hrs 20 MAY 43 till 1350 hrs 25 May 43 (ABSENT 5 DAYS 5 HRS, 50 MIN.) A.A. 15 (1)	C.S.M. DARWIN	18 DAYS F.P. 18 DAYS PAY	26 MAY/43	A.B. NOBLE Lt.	FORF 6 DAYS PAY (F.R.I. 143 (1)(a)
FIELD	22 JUN/43	PTE		W.O.A.S., A.W.L. after being warned for duty from 0900 hrs 22 Jun 43 till 1145 hrs 22 Jun 43 ABSENT 2 HRS 45 MIN. (AA. 15 (1))	SGT. LAWFORD CPL. DEMERSE	5 DAYS F.P. 5 DAYS PAY	23 JUN/43	G.F. CLINGAN Lt.	TOTAL FORF 5 DAYS PAY (F.R.I. 143 (1)(a)

Certified true copy from documents in my custody

25 July 43 J.H. Henslowe Records officer S.C.R.U.

M.F.B. 155
(23M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D 38065	Pte.	DUPUIS, T.	(R.H.C.) 5 C.I.R.U.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Army Act~~ Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. 15(1)	Four (4) times	A.A. 15(1)	Four (4) times
For	A.A. 40	Two (2) times	A.A. 40	Two (2) times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct Nil.

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of ~~summary awards under~~ A.F.A. 73 Air Force Act Section 47 of the ~~Army Act~~ and dispensations with trial under A.A. 73 are set out in the Schedule ~~annexed~~ to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in ~~Air Force~~ civil custody, and 4 days in military custody, making a total of 4 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service or~~ attestation paper is 33 years

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 20 Oct. 41.

7. The service which the accused is allowed to reckon towards discharge is 1 3/4 years

8. The accused is entitled to reckon 1 3/4 yrs service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~or is in possession of or entitled to~~. State any ~~air force~~ military decoration or reward. Nil.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer ~~last held~~ Air Force ~~the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force ~~the rank of~~ ~~Permanent Force~~ unit ~~dated~~, and in his regiment (or corps), the rank of ~~dated~~.

12. The accused has served as a non-commissioned officer ~~continuously, without reduction, to the present date:—~~

10 June 42 Date of promotion.

In the rank of Acting L/Cpl. 5 mos. ~~years.~~

In the rank of Acting Cpl. 1 month ~~years.~~

~~In the rank of~~ ~~years.~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank ..... Air Force

Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 31 Jul 43 ~~[illegible]~~ [illegible]

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

[illegible]

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Tournay Barracks, Farnborough Hants on the 28th day of July 1943, preliminary to My Court Martial.

I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

D83065 T. Dupuis
(D.83065 Pte. Dupuis, T.)

Dated at Tournay Barracks
this 28th day of July 1943.

I hereby request that the Convening Officer appoint an Officer to represent me at my trial. I desire the services of if he is available.

Lt J C Kirby - 5 CIRU

D83065 T. Dupuis
(D.83065 Pte. Dupuis, T)

Dated at Tournay Barracks
this 28th day of July 1943.

LIST OF WITNESSES

In the case of D-83065 Private DUPUIS, Theodore, The Black Watch (R.H.R.) of Canada, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

(For the Prosecution)

1. A/Major C.L. Stuart, The Black Watch (R.H.R.) of Canada, Officer Commanding "F" Company, 5 Canadian Infantry Reinforcement Unit.

2. Lieut. E.S. Duffield, The Black Watch (R.H.R.) of Canada, Administrative Officer of "F" Company, 5 Canadian Infantry Reinforcement Unit.

3. C-21196 Cpl. McGuinness, Cameron Highlanders of Ottawa, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

(For the Defence)

NIL

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 390

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D 38065	Pte.	DUPUIS, T.	(R.H.C.) 5 C.I.R.U.

1. The following is a fair and true summary of the entries in the Regimental ~~and Squadron, Battery~~ ~~Service and General~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. 15(1)	Four (4) times	A.A. 15(1)	Four (4) times
For	A.A. 40	Two (2) times	A.A. 40	Two (2) times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct Nil.

~~or~~,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~,

Previous convictions of the accused by a court-martial or a civil court, of summary awards ~~under~~ A.F.A. 73 Air Force Act Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or~~,

~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 4 days in ~~military~~ Air Force custody, making a total of 4 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 33 years

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 20 Oct. 41.

7. The service which the accused is allowed to reckon towards discharge is 1 3/4 years

8. The accused is entitled to reckon 1 3/4 yrs service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~or is in possession of or entitled to~~. State any ~~air force~~ military decoration or reward. Nil.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held ~~the regimental~~ Air Force rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force ~~the rank of~~ Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer ~~continuously, without reduction, to the present date:—~~

10 June 42 Date of promotion.

In the rank of Acting L/Cpl. 5 mos. ~~years.~~

In the rank of Acting Cpl. 1 month ~~years.~~

~~In the rank of ..... years~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank ..... Unit Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 31 Jul 43 [illegible]

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Tournay Barracks, Farnborough Hants on the 28th day of July 1943, preliminary to My Court Martial.

I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

D83065 T. Dupuis
(D.83065 Pte. Dupuis, T.)

Dated at Tournay Barracks
this 28th day of July 1943.

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Lt J C Kirby - 5 C IRV
if he is available.

D83065 T. Dupuis
(D.83065 Pte. Dupuis, T.)

Dated at Tournay Barracks
this 28th day of July 1943.

LIST OF WITNESSES

In the case of D-83065 Private DUPUIS, Theodore, The Black Watch (R.H.R.) of Canada, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

(For the Prosecution)

1. A/Major C.L. Stuart, The Black Watch (R.H.R.) of Canada, Officer Commanding "F" Company, 5 Canadian Infantry Reinforcement Unit.

2. Lieut. E.S. Duffield, The Black Watch (R.H.R.) of Canada, Administrative Officer of "F" Company, 5 Canadian Infantry Reinforcement Unit.

3. C-21196 Cpl. McGuinness, Cameron Highlanders of Ottawa, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

(For the Defence)

NIL

B88-91
PTE DUPUIS W.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B134970 Pte (A/L Cpl) Wilfred Joseph Lupien

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 19	Not guilty	Not guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MAML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~(name)~~ beginning on ~~(date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial: a total of ... days, of which ... days were spent in hospital.~~ (2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

~~Sentence Awarded by the Court:~~

(Sgd) ... Judge-Advocate, if any. 17 Jan 44 Date awarded. (Sgd) CC Hunter Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 562-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) ...

Date ... Commanding ... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

B134 91

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P/S/1808 (2604)

Convened by Order of Maj Gen Charles Foulkes Comd 2 Can Div dated 15 Jan 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B134970	Pte	A/L Cpl	Wilfred Joseph	Lupien	2 Pro Coy

PROCEEDINGS REVIEWED
Blackwood Capt.
15 Feb 44
REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS REVIEWED
Date 31 Jan 44
A Dennistoun Lt Col
JAG
FIRST CDN ARMY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 17 Jan 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see fmn for GCM in MAML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted;(2) accused is (are) amenable to military law, and each charge disclosed an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1005 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ... as interpreter? Ans ...~~

~~The Interpreter is sworn.~~ (1) ~~Do you object to ... as shorthand writer? Ans ...~~
The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	C C Hunter	1 Fd Pk Coy RCE
Member	Lt RN	Mc Kay	6 Fd Regt RCA
Member	Lt	J M Moss	Western Regt (Mtd) att 1 R Regt Canadian Army
Judge-Advocate			
Prosecutor	Lt S C	Embury	2 Pro Coy Can Pro Corps
Defending Offr	Lt	H W Mole	69 Can LAD att 2 Canadian Armd Regt

Questions by President: Is the Prosecutor a lawyer? Ans (2) Is the Defending Offr a lawyer? Ans (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ... before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (AA 55(E), 128), or as to the jurisdiction of the Court (RP 34, 35(A)), or as bar of trial (RP 36), or as to accused's unfitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For form of record see references in fns to RP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 30, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he has pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 102 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) in one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. nil.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~no~~ (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does ~~not~~ establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para. if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. Yes
Do you intend to call witnesses on your behalf ?
Ans. Yes
Are they witnesses as to character only ? Ans. no
(1. *RP ~~115~~ 114.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 45(A) fn 1, B6(C). Make the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and ~~that~~ (as) the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (a), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

~~D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A.A 146(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 255 or MFB 294.* 2. *MFM 6.* 3. *RP 44. Do not mark Court's above documents not produced, see RP 44 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. .....(2)
(1. *RP 37(C), 44(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 104(f). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 1-8, 119(A), KR Can 529, 530, 563-566, Overseas RO 109, 2323, 2324, p 662, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44A (8), 56E(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see notice on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"THE ACCUSED HAS ELECTED TO BE TRIED BY COURT MARTIAL PURSUANT TO ARMY ACT Sec. 46(2)"

CHARGE SHEET

The accused No. B.134970 Pte (A/L/Cpl) Wilfred Joseph DUPUIS, No. 2 Provost Company, Cdn Provost Corps, a soldier of the Cdn Army Overseas, is charged with, When On Active Service:

FIRST CHARGE:
A.A. Sec 15

DRUNKENNESS

In that He

In the Field, on 10 Jan 44, at approx 2240 hrs was Drunk.

Field,
13 Jan 44

(J. S. PLATT) Capt.,
Commanding Officer,
2 Provost Coy, 2 Cdn Inf Div.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
15 Jan 44

Maj-Gen
Comd 2 Cdn Div

COH

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/F&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.134970	Pte	(A/L/Cpl)	Wilfred Joseph	DUPUIS	2 Pro Coy Cdn Pro Corps

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 15 Jan 44 endorsed by me, ~~for by an offr of my staff for me~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[illegible]~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I do appoint a Judge-Advocate thereof the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	C.C. HUNTER	1 Cdn Fd Pk Coy RCE

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lt	To be detailed by CRA 2 Cdn Inf Div	6 Cdn Fd Regt RCA
Capt or Lt	To be detailed by ADMS 2 Cdn Inf Div	18 Cdn Fd Amb RCAMC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	To be detailed by CRCASC 2 Cdn Inf Div	6 Cdn Inf Bde Coy RCASC

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in United Kingdom
(Country.)

Charles Foulkes
(Signed personally. RP 105 fn 2.)

Maj-Gen
Comd 2 Cdn Inf Div

Date 15th January AD1944

Commanding

15 JAN 1944

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

dcH

MEDICAL OFFICER'S CERTIFICATE

2 Provost Coy

I certify that No B134970 Pte (A/L/Cpl) DUPUIS, Wilfred Joseph Regiment,

is* fit. to undergo trial by Court-Martial.

Capt.,

Signature of the Medical Officer.

*Insert "fit" or "unfit."

21 F.D.S., RCAMC

Q. ① Depuis. L/Cpl. Depuis. W.J.
B-134970

Lt. H.C. Forbes, having been duly sworn:
recognizes accused & is present in room.
2230-2240 hrs 10 Jan 44. - Tommy Cottage, Henfield.
heard noise & saw two soldiers wrestling.
Saw L/Cpl. Depuis lie down on road, sit up &
roll over through mud puddle. Repeated performance
& much noise - Threw caps on sidewalk and
engaged much noise.
I heard Depuis say "Here's a house - lets go in."
2 Boyd "No, lets go home." Depuis "Here's a Henfield
house - lets go in."
Depuis laid down on grass & said "Lets sleep here"
& Boyd agreed.
"Overheard remarks "fucking" & "J.C."
I got orderly Sgt. Oakes and went after accused
whom we overtook in Chinchyard.
Just before ratching up heard accused say "Who goes there".
The accused staggered, had no hat on & smelled
strongly of alcohol.
I escorted him to guard house, Cpl. ~~Pell~~ Pelg
and turned him over. He was drunk.

~~Cross~~ Xam accused P.
How could you see accused - by moon thru clouds
Was his dress dirty on wet - yes - to the neck.
Pte Boyd - what happened. Changed with Sunshine

Cross/D. Did you see both wrestling on ground? Did
you see Boyd through him to ground. Saw larger
fall & roll to ground.
Noise of caps attracted attention because so unusual.
Can you be sure that accused said certain words?
Yes. by voice. Did Boyd push Depuis in puddle - no they

Cott

(2)

were several yards apart. Depuis was enjoying himself.
Churchyard route is shortcut to billets.
Who seemed to be in charge. Boyd seemed to be leader.
Do not know who was using obscene language.
Accused showed no resistance to arrest other than
failing to comply by putting on hat.
~~Did~~ Did not know if guard sender had any trouble.

Re Exam — Could you identify who said certain words
outside — no. Loud voices.
Was Depuis surprised or shocked? Do not know. Guard
room 350x from spot of arrest.

2nd Witness
Sgt. Oakes — K-24055 having been duly sworn.
Recognizes accused. Was orderly Sgt. — Mr Fuller
was orderly officer. Was ordered by O.O. to assist him
in arresting these men. Came up with two men —
one of whom was Depuis. Depuis was improperly
dressed — a battle dress was met. Placed them under
close arrest.

Xmination — Their conversation was loud enough to
attract attention. Became quiet on being arrested.
Spot approx 300x from guard room.

Cross Exam — Had no trouble with Depuis & no trouble
with Depuis in guard room.

3rd/ Cpl. Pell, H.B. A-27119 having been duly sworn.
Recognizes accused — 10 fm was guard under. At
2255 hrs. O.O. & O.S. turned over accused under close
arrest. Ordered him to remove boots & passed offends.

CCH

Xam — Time was undone and cap & tunic were met. It was
not raining. Accused had been drinking. Accused
was not dazed or shocked.

Cross Xm — Accused was capable & did carry out all
instructions. Hung up clothes & cap properly without
being instructed.
Showed no tendency to wearing about.

3/

A/L/Cpl. Laporte, J.W. C-102890, having been duly sworn:

10 Jan. 44 - at 22 15 hrs. in Cpls. room & was told a couple friends in room - & found Depuis & Boyd. They had dropped in for visit on way home. Boyd apparently drunk & Depuis in centre of room. Talked 10-15 min. & Boyd left. Depuis stood steady & talked sensibly. Said he would go & take Boyd home. We left together & Boyd was sitting on last step on front floor. Depuis said he would take him home. I walked with them to entrance of Martin Lodge.

Xam. Depuis spoke with Laporte quite sensibly. Laporte had not been drinking.

Cross Xm. Depuis said he had been drinking. Was surprised to see him as he had never done so before. Could he have sat on bed? No - [illegible] with equipment but stood at ease in room.

Depuis. B-130970 in own defence, having been duly sworn:

10 Jan 44. went out with Boyd for [illegible] evening. We played darts & had some beer. We were playing darts at closing time - came down street passing Martin Lodge & decided to see Laporte, who is a new friend. Boyd arrived on being called for & we talked 10-15 min. Boyd left room & said he would wait. I told Laporte that I would look after Boyd & I did.

Headed towards church yard & Kinfield home. Boyd started to fall & I played with him. Off Tommy cottage we got wrestling. Boyd put me down in a puddle of water. I was wet through & jumped up & took it in friendly terms. Cap. had fallen in water & was wet. We slapped them on ordinally to dry them left imprint. Several yards further I saw another puddle & I decoyed beside the puddle & I said to Boyd

"Here is another puddle, why not put me in this", B. stepped towards me & pushed me back in water around time. All done in fun. We were not again and had to stay cap again.

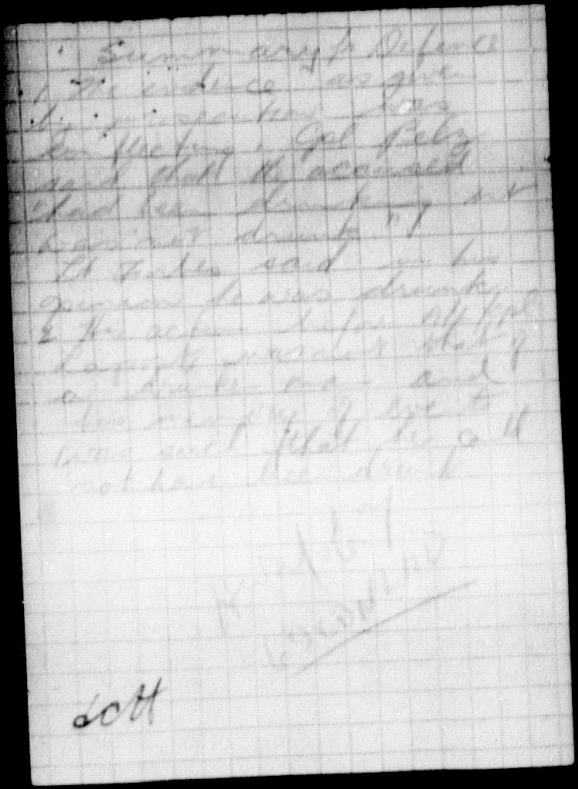
On near lawn - I said to Boyd "My wife won't like me this way so I better bunk here for the night". Then we got up and left - slapping our caps. We went through shrubbery and laughing & talking & then I heard someone running behind us & we were placed under open arrest by Sgt. Oakes. Lt. Forbes said I see arrest. My hat in right hand - time unbuttoned at rather. My handkerchief was losing used to dry off mind.

At guardhouse we were turned over to Cpl. Poly and I followed her instruct'ions & drying my clothes. We were shown our beds.

Cross Tunnel Went out about 1820 hrs. & went to Pub to closing time. We drank erroneously. I could never hope to keep up drinking with Boyd. Thought it would do no harm to stop cap about.

Would not normally wrestle, laughter make noise & play about.

Cott



THE ACCUSED ELECTS TRIAL BY COURT MARTIAL

(1)

SUMMARY OF EVIDENCE In the Case of:

B.134970 Pte. (A/L/Cpl) Wilfred Joseph DUPUIS,
No. 2 Coy, Cdn Provost Corps, a soldier
in the Cdn Army Overseas.

THE ACCUSED is informed of his rights.

THE ACCUSED demanded that the evidence be taken on Oath:

FIRST WITNESS For the Prosecution:

Lieut. H. C. Forbes,
No. 2 Provost Coy, Cdn Provost Corps, Sworn, states:

"At approx 2230 hrs to 2240 hrs 10 Jan 44, I was in "Tannery Cottage", Church Street, preparing to go to bed, when I heard men's voices in the street below. I heard a lot of noise and thought someone was trying to get into the house so I put out the light and drew the blackout aside. I saw two soldiers wrestling in the street below. They were laughing and talking much louder than ordinary conversation. They were creating a lot of noise by throwing their caps down on the street. I saw one, whom I later identified as L/Cpl. Dupuis, lay down on the road, he then sat up and rolled over backwards through a puddle of water, he repeated it, and then got up and staggered over against a hedge. The other one whom I later identified as Pte. Boyd, went over to the hedge. There was some discussion about going somewhere and making 'whoopee'. Pte. Boyd said to L/Cpl. Dupuis, "You're a crazy bugger, you're crazy." They then got out on the sidewalk and threw their caps down loudly again. They made a lot of noise as they were wet. L/Cpl. Dupuis discovered another puddle of water and immediately sat down and rolled over backwards through it. He then got up and staggered over around the corner of the house beyond my vision. I heard a loud bang as if a wet cap had been thrown against a wall. I heard L/Cpl. Dupuis say "Let's go in the house." Boyd said, "No, let's go home." Boyd was laughing loudly. Pte. Dupuis said, "Here's a Henfield house, let's go in a Henfield house." I then saw the two of them stagger up the sidewalk towards the church. It appeared as if Boyd was leading Dupuis away from the house. They then stopped and threw their caps down a few times more, I heard Dupuis say "Some of the boys think I'm stupid, I'm not stupid I just have no sense." Boyd laughed loudly. Finally Dupuis laid down on the grass beside the sidewalk and said, "Let's sleep here." Boyd said, "O.K. we'll sleep here," and laid down beside him. They were quiet for a minute or two, they got up again and continued to make a lot of noise just outside the houses there. I heard the word "Fucking" and the words "Jesus Christ" used, so decided to take action.

I proceeded to Martyn Lodge and got the Orderly Sergeant, Sgt. Oakes to go with me. We went through the church yard to the lane that leads to Henfield House. As we neared the foot of the hill leading from the church we heard voices and loud laughing. I said to Sgt. Oakes, "That's them." When we were about fifteen or twenty yards away Dupuis said, "Who goes there?" We approached them and I said, "Alright come along with me." Sgt. Oakes said, "You are both under 'Open arrest'." I said, "No, Sgt. they are both under 'Close arrest'." We started back to Martyn Lodge, Sgt. Oakes and Pte. Boyd walking ahead, L/Cpl. Dupuis and myself following behind. Neither Boyd nor Dupuis had their caps on. I ordered them to put their caps on. Neither did at that time. Both men were unsteady on their feet, Dupuis particularly so. I noted that Dupuis' uniform was all wet on the back, both men's F.S. caps were wet. I could smell liquor very strongly. After I had placed the two men under arrest and started to the guardroom, Boyd started to sing as we were passing some houses and only quietened down when I told him to shut up. Boyd finally put his cap

(Page 2 Follows)

CC44

on when we were passing the church. I looked at my watch and it was 2250 hrs. Boyd stopped at the exit to the church and I heard Sgt. Oakes saying, "Come along, don't be a fool." Boyd said to me, "Have you got a match Sir?" Sgt. Oakes persuaded him to go along. We took them to the Guardroom and handed them over to the Guard Commander, Cpl. Pelz, H. V. In my opinion L/Cpl. Dupuis was drunk."

H C Forbes
(H. C. Forbes) Lieut.,

THE ACCUSED Elects to question the witness:

Q.1 When I laid down, can you tell me where that was?
A.1 Halfway between "Tannery Cottage" and the entrance to the Church-yard.

Q.2 How long would you say I was laying there?
A.2 Approximately 1 or 2 minutes.

Q.3 Did I roll backwards through the water purposely?
A.3 Yes, I believe so. It seemed to be a great joke and was done I believe to amuse Pte. Boyd.

Q.4 Do you suppose we were throwing our caps down just to make a noise?
A.4 I don't know. It appeared to me as if it were done for your own entertainment.

Q.5 When you finally caught up to us, did you notice where I had my hat?
A.5 Yes, you had your cap in your right hand, and the front portion was hanging straight down.

H C Forbes
(H. C. Forbes) Lieut.,

OND WITNESS For the Prosecution:

K.24055 Sgt. Oakes, G.W.
No. 2 Provost Coy, Cdn Provost Corps, Sworn, states:

"On the 10 Jan 44 I was Orderly Sgt. At about 2230 hrs . Forbes entered my room and ordered me to accompany him to estigate two soldiers creating a disturbance. I accompanied though the Church-yard and on passing through the far gate ard loud voices. Mr. Forbes said, "There they are". On oaching these soldiers I recognized them to be Pte. Boyd and L/Cpl. Dupuis. L/Cpl. Dupuis was improperly dressed at he was not wearing a Field Service cap and his tunic was at the neck. His battledress was wet and he smelled ly of liquor. These men were both placed under close arrest corted to the guardroom by Mr. Forbes and myself, where re turned over to Cpl. Pelz, H.V."

H Oakes
(K. 24055 Sgt. Oakes.

ects to cross-examine the witness:

ld you say that I was drunk?
I would not put you on duty in y

you give any reason for me no

as my hat?
t see it at the time.

C04

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H C Forbes
(H. C. Forbes) Lieut.,

THE ACCUSED Elects to question the witness:

Q.1 When I laid down, can you tell me where that was?
A.1 Halfway between "Tannery Cottage" and the entrance to the Church-yard.

Q.2 How long would you say I was laying there?
A.2 Approximately 1 or 2 minutes.

Q.3 Did I roll backwards through the water purposely?
A.3 Yes, I believe so. It seemed to be a great joke and was done I believe to amuse Pte. Boyd.

Q.4 Do you suppose we were throwing our caps down just to make a noise?
A.4 I don't know. It appeared to me as if it were done for your own entertainment.

Q.5 When you finally caught up to us, did you notice where I had my hat?
A.5 Yes, you had your cap in your right hand, and the front portion was hanging straight down.

H C Forbes
(H. C. Forbes) Lieut.,

SECOND WITNESS For the Prosecution:

K.24055 Sgt. Oakes, G.W.
No. 2 Provost Coy, Cdn Provost Corps, Sworn, states:

"On the 10 Jan 44 I was Orderly Sgt. At about 2230 hrs Mr. Forbes entered my room and ordered me to accompany him to investigate two soldiers creating a disturbance. I accompanied him though the Church-yard and on passing through the far gate I heard loud voices. Mr. Forbes said, "There they are". On approaching these soldiers I recognized them to be Pte. Boyd E.K. and L/Cpl. Dupuis. L/Cpl. Dupuis was improperly dressed in that he was not wearing a Field Service cap and his tunic was undone at the neck. His battledress was wet and he smelled strongly of liquor. These men were both placed under close arrest and escorted to the guardroom by Mr. Forbes and myself, where they were turned over to Cpl. Pelz, H.V."

G W Oakes
(K. 24055 Sgt. Oakes, G.W.)

THE ACCUSED Elects to cross-examine the witness:

Q.1 Would you say that I was drunk?
A.1 XXX. I would not put you on duty in your condition.

Q.2 Can you give any reason for me not wearing a hat?
A.2 No.

Q.3 Where was my hat?
A.3 I didn't see it at the time.

G W Oakes
K.24055 Sgt. Oakes, G.W.

(Page 3 Follows)

CCA

THIRD WITNESS For the Prosecution:

A.27119 Cpl. Pelz, H.V.
No. 2 Provost Coy, Cdn Provost Corps, Sworn, states:

"On the 10 Jan 44 I was the Guard Commander. At 2255 hrs Lieut. Forbes and Sgt. Oakes entered the Guard House and handed over to me L/Cpl. Dupuis who had been placed under close arrest by Lieut. Forbes. I ordered Dupuis to remove his boots and personal effects which he did. He had been drinking but was not drunk.

A.27119 Cpl. Pelz, H.V.

THE ACCUSED Elects to cross-examine the witness:

Q.1 How did I hand over my personal effects?
A.1 Promptly and in an orderly manner.

Q.2 Did you notice my tunic and hat were wet?
A.2 Yes, they were wet.

Q.3. What did I do with them.
A.3 Hung the tunic on a nail behind the stove and laid the hat on a ledge behind the stove.

Q.4 Did I do this without being told?
A.4 Yes.

A.27119 Cpl. Pelz, H.V.

FIRST WITNESS For the Defence:

C.102890 Pte (A/L/Cpl) Laporte, J.W.
No. 2 Provost Coy, Cdn Provost Corps, Sworn, states:

"At about 2215 hrs on the 10 Jan 44 I was in the Corporal's room when I heard someone saying there are a couple of friends to see you. I walked into my room and there was Boyd and Dupuis. Boyd was standing against the wall apparently drunk and Dupuis was standing in the centre of the room. I asked them what they wanted at this hour and Dupuis told me they were just dropping in for a visit on their way home. We talked for about 10 minutes and then Boyd left the room and Dupuis told me that he had better go along and take him home. I know Dupuis had been drinking because he told me so himself, but in my opinion he was not drunk because while he was in the room he talked very sensibly and stood with his hands behind his back without staggering at all.

Q.1 Have you known Dupuis Long?
A.1 About two months.

C.102890 L/Cpl. Laporte, J.W.

THE ACCUSED Declines to cross-examine the witness:

THE ACCUSED having been duly warned in accordance with R.P. 4(E), says,

"I do not wish to make a statement at this time."

E.134976 L/Cpl. Dupuis, W. J.

CERTIFIED THAT the above Summary of Evidence has been taken by

(Page 4 Follows)

dcrg

me, this 13th Day of January, 1944, in the field,

G. Wilkinson

(G. WILKINSON) Lieut.,
2 Provost Coy, Cdn Provost Corps,
Officer Detailed to Take Summary.

/L

SCH

LIST OF WITNESSES

In the Case of

B.134970 Pte. (A/L/Cpl) Wilfred Joseph DUPUIS, 2 Provost Coy

WITNESSES FOR THE PROSECUTION:

First: Lieut. H. C. Forbes,
2 Provost Coy, 2 Cdn Inf Div.

Second: K.24055 Sgt. Oakes, G.W.
2 Provost Coy, 2 Cdn Inf Div.

Third: A.27119 Cpl. Pelz, H.V.
2 Provost Coy, 2 Cdn Inf Div.

WITNESSES FOR THE DEFENCE:

First: C.102890 L/Cpl. Laporte, J.W.
2 Provost Coy, 2 Cdn Inf Div.

Y 15
PTE DUQUETTE, R

Y.15.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 9th day of JANUARY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 1 CANADIAN ARTILLERY GROUP, on active service, that the person named in the annexed Schedule, being subject to Military Law, has committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer;]

I hereby convene a Field General Court Martial to try the said person and to consist of the Officers appointed or detailed hereunder.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

*[I am unable to appoint (1)

*(1) Three Officers to form the Court.)

*(2) A Field Officer as President.)

for the following reasons, namely:—]

*Omit if not applicable.

President.

Rank.	Name.	Regiment.
Major	A. C. Mallock	2 Cdn Army Grd Wksp, RCOC

Members.

Rank.	Name.	Regiment.
A Captain	(To be detailed by)	C.C., 1 Cdn Army Grd Wksp, RCOC
A Lieutenant	(To be detailed by)	C.C., 6 Cdn Sub-Pk Armd Corps Fd Pk, RCOC.
A Lieutenant	(To be detailed by)	C.C., 1 Cdn Army Tank Grd Wksp, RCOC.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (A. C. MALLOCK) Brigadier
Commanding 1 Cdn Army Troops
Convening Officer.

Proceedings Reviewed 15 Feb 1943

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-95 Pte. DUQUETTE, R., No. 5 Section, Canadian Armoured Corps Ordnance Workshop, R.C.O.C.	FIRST CHARGE A.A. Sec. 15(1) See Charge Sheet attached.	Not Guilty	Not guilty of desertion but is guilty of absence without leave (A.A. 36(b))	
	SECOND CHARGE A.A. Sec. 24(1) See Charge Sheet attached.	Guilty	Guilty	Confirmed K.H.
	THIRD CHARGE A.A. Sec. 24(2) See Charge Sheet attached.	Not Guilty	Guilty except that he was not deficient in Brushes, shaving Combs, hair Brushes, Cheap & Lanyard.	
			124 days' Detention and to be put under stoppage of pay in amount of $2-11-0½	
			~~Forfeited for one day his Good Conduct Pay~~ Forfeited for one day his Good Conduct Pay. 19 Jan 1943.	

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) R. J. Leach (R. J. LEACH) Brigadier
Commanding 1 Cdn Arty Group

(Signed) A.C. Malloch. (A. C. Malloch) Major
2 Cdn Army Grd Wksp, RCOC.
Convening Officer (c) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 19th day of January, 1943, and duly tried the person named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. ~~The officers under instruction~~)

*Omit if not applicable. were duly sworn.

Signed this 20th day of January 1943.

A.C. Malloch.
(A.C. Malloch) *President of the Court Martial.* Major
2 Cdn Army Grd Wksp, RCOC.

C. Certificate in case of death sentences.

*See footnote (b) on page 562 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this ____ day of ____ 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further ordered~~

Signed this 24th day of Jan 1943

R. J. Leach
(R. J. LEACH) *Confirming Officer.* Brigadier
Comd, 1 Cdn Arty Group.

Promulgated and extracts taken in the case of D95 Pte Duquette R.

(a) (Dated) 27 Jan 43 (Signed) W.R. Sogan Lt Col
OC. 5 Sec Armd Cmds Ord W/S RCOC

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(20704) W1-47523 (34) 25/500 2-42 A.S.R.W.Ltd. Gp.A/R
(31700) W1-50000 (34) 40/500 7-42

No.5 SECTION ARMOURED CORPS ORDNANCE WORKSHOP, R.C.O.C.

5 Jan 43

CHARGE SHEET

The accused, No.D-95 Pte Robert DUQUETTE, No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C., a soldier of The Canadian Army Overseas is charged with:-

First Charge Sec 12(1) Army Act — When on Active Service — Deserting His Majesty's Service

in that he
In the Field, absented himself without leave from No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C. from roll call at 2230 hours 9 Nov 42 until apprehended, dressed in civilian clothes, at 2250 hours on 17 Dec 42. Time absent, thirty eight days and twenty minutes.

Second Charge Sec 24(1) Army Act — When on Active Service — Making away with his Equipment, Clothing and Service and Pay Book,

in that he
In the Field, on 12 Nov 42 did give his battle dress tunic and trousers, respirator and Service and Pay Book to George William Pearson, at that time a deserter from His Majesty's Merchant Marine, in exchange for clothing of the said Pearson.

Third Charge Sec 24(2) Army Act — When on Active Service — Losing by Neglect his Clothing and Equipment

in that he
In the Field on 4 Jan 43 was deficient in Clothing and Equipment to a value of £2-17-9, as follows:

		Vocabulary Price £ s d	Value £ s d
Braces, pairs	1	1 - 3½	1 - 3½
Brushes, shaving	1	1 - 4	1 - 4
Brushes, hair	1	1 - 1	1 - 1
Brasses, button	1	2	2
Combs, hair	1	2	2
Discs, identity, sets	1	1½	1½
Dressings first field	1	1 - 1	1 - 1
Jackets, sweater	1	5 - 6	5 - 0
Knives, clasp, & lanyard	1	5 - 2½	5 - 2½
Shirts, flannel khaki	2	12 - 4	12 - 0
Socks, woolen, pairs	3	5 - 0	5 - 0
Mugs, tin	1	5	5
Shoes, canvas, pairs	1	8 - 6	8 - 6
Blankets, G.S.	1	16 - 4½	16 - 4½
		£3 - 7 - 7	£ 2-17 - 9

(W.L. SAGAR) Lt.-Col.
Officer Commanding, No.5 Section
Armoured Corps Ordnance Workshop,
R.C.O.C.

In the Field
5 Jan 43

MEDICAL OFFICER'S REPORT

I certify that No. D-95 Pte. Duquette, Robert
No.5 Sec Armd Corps
of Ord W/Shop RCOC is in a good state of health,
and fit to undergo Trial by Court martial.

Medical Officer

Station In the Field

Date Jan 19-42

M. F. B. 246

PAGE I

Accused D-95 (Number) Pte. (Rank) Robert (Christian Names) Duquette (Surname) No 5 Section Arm'd. Corps Ord. Workshop R.C.O.C. (Unit)

Held in the Field in England (Country) on 19 January 1943 (Date)

	Rank	Name	Unit
PRESIDENT:	Major	Allan Clyde Malloch,	No 2 Cdn. Army Ord. Workshop, R.C.O.C.
MEMBERS:	Capt.	J.C. Martin,	No 1 Cdn. Army Ord. Workshop, R.C.O.C.
	Lieut.	J.B. Pennefather,	No 5 Cdn. Sub-Park Arm'd Corps O.F.P. R.C.O.C.

JUDGE-ADVOCATE (if any):

OFFICERS UNDER INSTRUCTION:

PROSECUTING OFFICER Capt. L.P. Baker, # 5 Sec. Armd Corps Ord W/S. R.C.O.C. Lawyer? Ans No.

DEFENDING OFFICER: Capt. W.G. Guihan, 2nd Btn. R.C.E. Lawyer? Ans No.

(The following procedure must be equally carried out)

The President produces the Convening Order, Charge Sheet(s) and Summary of Evidence, (Rs P 17 (B), 22 (A).

The President, in closed court (R.P.22, fn 1), reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P. 105) and constituted that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P.106).

The accused is ~~(are)~~ brought before the Court, and at 1045 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can)557 (See CMHQ Circular Letter 173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President, and attached to the Proceedings.

~~President to accused:~~
~~Do you object to _____ as interpreter? Ans. _____~~

~~The interpreter is duly sworn.~~

Do you object to L/Cpl. Grimmette as shorthand writer? Ans. No

The Shorthand writer is duly sworn. (Forms of Oath on Page 'D'.
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (R.P.110)

President to accused:
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans No

The President, Members, ~~Judge Advocate, Officers under Instruction~~ are duly sworn (R.P. 26-27) (Forms of Oath on Page 'D')

The Charge Sheet(s) is ~~(are)~~ initialled by the President.

The Prosecuting Officer informs the Court that the accused [redacted] (has not) elected trial by court martial (A.A. 46(8).

President to accused:
Do you wish to make any special pleas before arraignment, that is to say, before you plead guilty or not guilty? Ans No

(If special plea(s) is (are) made for separate trial on one or more charges (Rs P 62(E), 108; or as to the jurisdiction of the Court (R.P. 34); or in bar of trial (R.P. 36); or as to accused's mental fitness to stand trial (A.A. 130, R.P. 57), record such pleas and evidence (if any) on separate sheet(s) to be initialled by the President and attached to the proceedings)

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P. 132). He pleads as follows: First Charge Second Charge Third Charge Fourth Charge

Not Guilty Guilty Not Guilty

Fifth Charge Sixth Charge Seventh Charge Eighth Charge

(For procedure on alternative charges, see R.P. 37, fn 2)

Further proceedings are recorded on pages hereto attached.

[signature]

PAGE 'C'

(For use when there are pleas of 'Guilty' and 'Not Guilty')

(All printed matter not applicable to be struck out and all alterations erasures and additions to be initialled by the President)

1. R.P.35(B) is complied with, in respect to 'Guilty' pleas, by the President ascertaining that accused understands the nature of the charge(s) (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P.37(B)) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:
Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby or that you have not had sufficient time for preparing your defence? (R.P.39(A). Ans No

3. The Prosecutor's opening address (if any) (R.P.39(B) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto. (See Record of Evidence on Page D)

4. The Prosecution is closed. (If submission that no prima facie case established, see R.P. 40 fn 1; R.P. 70 fn 1)

5. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination. (R.P.40, fn 2) or that he may, if he wishes make an statement upon which he can not be cross-examined (R.P. 40(D)(1)(a))

6. President to accused:
Q. Do you apply to give evidence yourself as a witness? Ans Yes
Q. Do you intend to call any other witness in your defence? Ans No
Q. Is he a witness as to character only? (R.P. 40(B) Ans N.A.

7. The evidence for the defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

8. The closing addresses of the Prosecutor and Defending Officer and ~~[illegible]~~ are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses, see Rs P.40, 41 and 42)

9. The Court is now closed to consider the finding. (Rs P 43 and 117) (Record Finding on Page 2 of A.F.A.3)

10. The Court being re-opened, the accused is again brought before it and the findings of 'Not Guilty' (if any) are pronounced. (R.P.117 (B))

11. The charge/, to which the accused pleaded 'Guilty' is read to the accused.

12. President to accused:
Q. Do you desire to make any statement of the circumstances in reference to the charge(s) to which you have pleaded 'Guilty'? (R.P.37(B) Ans No

(Statement (if any) not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon)

13. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such Summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheets, initialled by the President and attached to the proceedings) (R.P.37(B)).

PAGE 'C' CONTINUED

14. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (R.P.37(C)) Ans No
No cross-examination.
(Statement (if any) is recorded on separate sheet, initialled by the President and attached hereto)

15. President to accused:
Q. Do you wish to give evidence yourself or call witnesses as to character? (R.P.37(C)) Ans No

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto)

16. Capt. L. P. BAKER, #5 Sec. Arm'd Corps Ord. W/S. (RANK) (Christian Names) (Surname) (Unit) produces Statement of Character and Service, and Field Conduct Sheet, duly certified by the Officer having custody of the Regimental Books, certifying as such. The said documents are read, marked 'K', 'L', initialled by the President and attached to the proceedings (R.P.46)

17. President to accused:

Q. Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of punishment? (R.P.46(D). Ans No. No cross-examination.
(Record address (if any) on separate sheet, initialled by the President and attached hereto)

18. The Court is now closed to consider the sentence. (Record on Page 2 of A.F.A.3)

(Punishments, A.A. 44, K.R.(Com) 63 - Note one sentence only awarded, R.P. 48. Sentence should be dated)

The sentence is not announced to the accused by the Court.

C. C. Knalloch, major
(Signature of President)

- OPENING ADDRESS -

By Prosecutor, Capt. L.P. Baker, No.5 Sect. Armd.Corps Ord.W/S. R.C.O.C.

Mr. President, members of the Court:--

The accused, No. D-95. Pte. Robert Duquette, No. 5 Section Armoured Corps Ordnance W/S. R.C.O.C. is charged with, when on Active Service:-

1. Sec. 12(1) A.A. - Deserting His Majesty's Service, in that he, In the Field, absented himself without leave from No.5 Section Armoured Corps Ordnance W/S. R.C.O.C. from roll call at 2230 hrs. 9 Nov 42 until apprehended, dressed in civilian clothes, at 2250 hrs. on the 17 Dec 42. Time absent, thirty eight days and twenty minutes.

2. Sec. 24(1) A.A. - Making away with his Equipment, Clothing and Service and Pay Book, in that he, In the Field, on the 12 Nov 42 did give his battle dress tunic and trousers, respirator and Service and Pay Book to George William Pearson, at that time a deserter from His Majesty's Merchant Marine, in exchange for clothing of the said Pearson.

3. Sec. 24(2) A.A. - Losing by Neglect his Clothing and Equipment, in that he, In the Field, was deficient in clothing and Equipment to a value of £2-17-9 as follows:-

		Vocabulary Price	Value
Bracers, pairs	1	1-3½	1-3½
Brushes, shaving	1	1-4	1-4
Brushes, hair.	1	1-1	1-1
Brasses, button.	1	-2	-2
Combs, hair.	1	-2	-2
Discs.,Identity,sets.	1	-1½	-1½
Dressings, First Field.	1	1-1	1-1
Jackets, sweater.	1	6-6	6-0
Knives, clasp & lanyard.	1	5-2½	5-2½
Shirts, flannel khaki.	2	18-4	12-0
Socks, woollen, pairs.	3	5-0	5-0
Mugs, tin.	1	-5	-5
Shoes, canvas,pairs.	1	8-6	8-6
Blankets, G.S.	1	18-4½	16-4½
		£3-7-7	£2-17-9

On the 1st charge - that of Desertion - I intend to prove the accused "Guilty". Firstly, by physical witnesses - his absence from his Unit for a period of thirty eight days and twenty minutes, and secondly by documentary evidence, consisting of Police Reports, Naval Ship passes, etc., his intention to remain absent from H.M. Services.

- OPENING ADDRESS -

By Prosecutor, Capt. L.P. Baker, No.5 Sect. Armd.Corps Ord.W/S. R.C.O.C.

Mr. President, members of the Court:--

The accused, No. D-95. Pte. Robert Duquette, No. 5 Section Armoured Corps Ordnance W/S. R.C.O.C. is charged with, when on Active Service:-

1. Sec. 12(1) A.A. - Deserting His Majesty's Service, in that he, In the Field, absented himself without leave from No.5 Section Armoured Corps Ordnance W/S. R.C.O.C. from roll call at 2230 hrs. 9 Nov 42 until apprehended, dressed in civilian clothes, at 2250 hrs. on the 17 Dec 42. Time absent, thirty eight days and twenty minutes.

2. Sec. 24(1) A.A. - Making away with his Equipment, Clothing and Service and Pay Book, in that he, In the Field, on the 12 Nov 42 did give his battle dress tunic and trousers, respirator and Service and Pay Book to George William Pearson, at that time a deserter from His Majesty's Merchant Marine, in exchange for clothing of the said Pearson.

3. Sec. 24(2) A.A. - Losing by Neglect his Clothing and Equipment, in that he, In the Field, was deficient in clothing and Equipment to a value of £2-17-9 as follows:-

		Vocabulary Price	Value
Bracers, pairs	1	1-3½	1-3½
Brushes, shaving	1	1-4	1-4
Brushes, hair.	1	1-1	1-1
Brasses, button.	1	-2	-2
Combs, hair.	1	-2	-2
Discs.,Identity,sets.	1	-1½	-1½
Dressings, First Field.	1	1-1	1-1
Jackets, sweater.	1	8-6	5-0
Knives, clasp & lanyard.	1	5-2½	5-2½
Shirts, flannel khaki.	2	18-4	12-0
Socks, woollen, pairs.	3	5-0	5-0
Mugs, tin.	1	-5	-5
Shoes, canvas,pairs.	1	8-6	8-6
Blankets, G.S.	1	14-4½	16-4½
		£3-7-7	£2-17-9

On the 1st charge - that of Desertion - I intend to prove the accused "Guilty". Firstly, by physical witnesses - his absence from his Unit for a period of thirty eight days and twenty minutes, and secondly by documentary evidence, consisting of Police Reports, Naval ship passes, etc., his intention to remain absent from H.M. Services.

On the 3rd charge - that of Losing by Neglect his Clothing and Equipment to a value of £2-17-9, I intend to prove the accused "Guilty". Firstly by witnesses who physically checked the accused's kit at the time of Court of Inquiry, and also the items returned by No.6 Provost Coy. (Additional witness acceptable to Court due to fact of original witness being in hospital).

Owing to the exigencies of the Service, and the expense and the loss of time involved, I trust that the above mentioned Documentary Evidence will be accepted without substantiation by physical witnesses.

~~(cont'd)~~

The prosecutor proceeds to call witnesses.

M-62358 S/Sgt. Tose, C.D., No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C., being duly sworn is examined by the prosecutor.

Q. Give evidence in your own words.
A. On the morning of 10 Nov 42 I called the roll at 0730 hrs and continued doing so until 23 Dec 42, with the exception of the period when I was on leave from 28 Nov until 6 Dec 42, at which time S/Sgt. O'Hara, 21/c, called the roll. He was still absent when I came back from leave on 6 Dec 42. Had he been in camp during this period it would have been known.

The accused declined to cross-examine the witness.

In the opinion of the Court it is unnecessary to comply with R.P. 83(8)

K-47080 A/Sgt. Lucas, J.L., No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C., being duly sworn is examined by the prosecutor.

Q. Do you recognize the accused, D-95 Pte. Duquette, R.?
A. Yes, sir.
Q. Whatare your duties?
A. Orderly Sergeant of No.5 Section Armoured Corps Ordnance Workshop.
Q. Give evidence in your own words.
A. During my tour of duty on Nov 9th, 1942, I checked hut No.7, the one occupied by the accused, Pte Duquette, at approximately 2230 hrs. Pte Duquette was absent. I checked the hut again at reveille on 10 Nov 42 and the accused, Pte. Duquette, was still absent. He was reported absent on the 0830 parade, 10 Nov 42. I entered his name on the absentee report and as he was reported absent daily, I continued doing so until 2 Dec 42, at which time he was struck off strength this unit by a Court of Inquiry.
Q. How was Pte. Duquette reported absent?
A. By morning roll call, taken by S/Sgt Tose, Coy N.C.O., who in turn reported him absent to me after the 0830 parade. Reported daily by S/Sgt Tose, or S/Sgt O'Hara.
Q. How was Pte. Duquette returned to unit.
A. Turned over by Provost Corps dressed in civilian clothes to Sgt. Jeanes.
Cross-Question by the Defending Officer: Had he any form of identification?
A. No, sir.
Question by the Defending Officer: Just civilian clothes?
A. Yes,sir.
Question by the Court: Was Pte Duquette wearing identity discs when turned over?
A. I don't know, sir.

~~Rule of Procedure 36(8) is hereby complied with~~

In the opinion of the Court it is unnecessary to comply with R.P. 83 (8)

K-70644 L/Cpl. Anderson, J.L., No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C., being duly sworn is examined by the prosecutor.

Q. Give evidence in your own words.
A. I submit as evidence a true copy of the Declaration of the Court of Inquiry held at 1400 hours on 2 Dec 42.

Copy of the Declaration of the Court of Inquiry is submitted to the court and attached to the proceedings as Exhibit "A".

The accused declined to cross-examine the witness.

~~Provost Report submitted to court and attached to the proceedings as Exhibit "B".~~

In the opinion of the Court it is unnecessary to comply with R.P. 83(8)

Court adjourned until 1330 hours.

(cont'd)

(cont'd)

Court declared open at 1340 hours.

~~Exhibits "D" and "B" are submitted to the court and attached to the proceedings.~~ & "C" both.
Case for Defence is opened & R.P. 40 complied with both.

The accused, D-95 Pte. Duquette, R., No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C., being duly sworn is examined by the Defending Officer.

Q. Have you ever wanted to join any other service beside Army?
A. Yes, sir, I transferred from 6th Huzzars, was sent back to #4 Depot and then I asked to be transferred to the R.C.N. They didn't give me any answer and put me in the R.C.O.C.
Q. Were you given any chance to join the Ordnance Corps?
A. No, sir.
Q. Have you made any effort since that time to join the Navy?
A. No, sir, except when I tried here.
Q. Was it in trying to carry on original plan of joining the Navy that you made the effort to join the Merchant Marine?
A. Yes, sir.
Q. Since coming overseas have you been satisfied in the R.C.O.C.?
A. No, sir.
Q. Give details.
A. On 23 Apr 42, I asked to go to hospital and then I asked the M.O. if it made any difference to me to work in kitchen and he said no and I asked to go into kitchen and he said no. A fatigue man was sent on a cook's course and I asked for one for me and they put me on general duty. When we come in Field I asked Colonel for cook's course and didn't get no answer. That's why everything happened.
Q. Did your wish to join Merchant Service have anything to do with employment as cook?
A. No, sir.
Q. What effort did you make to join the Merchant Service?
A. Was supposed to see John Seabrook but did not see him after that.
Q. Was the vessel still in port?
A. No sir, that vessel was no good to get out of port with.
Q. In connection with the pass, how did you manage to get a pass to S.S. Boreas?
A. It was in the wallet.
Q. Please explain how you got the wallet.
A. I had a blue navy coat and Terry Watts came to me and asked me to lend him my jacket for 24 hours. He gave me 5 bob and his wallet containing S.S. Boreas pass and guarantee of another 5 bob when he gave me back my jacket. I never see Watts again.
Q. In an effort to join the Merchant Marines, did you have any form of identity?
A. No, sir, only identification I had was Canadian identity card and registration card.
Q. Did you throughout your absence have with you those identity cards?
A. I had them all the time with me when I was absent.
Q. What effort besides the one at Liverpool did you make to join the Merchant Service?
A. At Manchester.
Q. Have you any further statements you would like to make?
A. No, sir.

Cross-examined by the Prosecutor.

Q. Pte. Duquette, you say you have always wanted to join the Merchant Navy, are you aware of the fact that the Merchant Navy is not a branch of H.M. Forces. Why did you want to join the Merchant Navy?
A.
Q. You state you asked for a course since joining this unit.
A. Twice - In June I asked Capt. Donald. I asked again in July.
Q. What qualifications have you for cook's course?
A. I always worked in kitchen, from December to April last year as

(cont'd)

Capt L.P. Baker, No.5 Sec Armd Corps Ord Wksp RCOC, being duly sworn;
Produces to the Court, Certificate in accordance with P.C.2797 as to
the accused; Certificate of costs of apprehension and wallet found in
possession of accused, marked respectively Exhibits 'B', 'C', and 'D',
signed by the President and attached.
The Defending Officer declines to cross-examine this witness.
In the opinion of the Court, it is unnecessary to comply with R.P.83(B)

(Cont'd)

cook's helper.
Q. To whom did you place request?
A. To Colonel Sagar about 15 Jul 42.
Q. What were your duties prior to going A.W.L.?
A. General duty.
Q. With reference to question by Defence - Manchester Canal Pass was no good - you mentioned that you tried to join the Merchant Navy at Manchester Did you not have to present a pass at Manchester docks to get onto the docks?
A. I did not get onto the docks.
Q. Why did S.T. Watts give you 5/ and promise you another 3/.?
A. Because I lent him my jacket, he had to go see a girl he knew.
Q. Was wallet supposed to be additional collateral?
A. Guarantee to give me back my jacket.

Question by the court: Why did Watts need this jacket?
A. He had a brown one but this one was better because he had to go to dentist.
Q. Did you know in attempting to get into Merchant Navy that you were leaving H.M. Forces?
A. I always thought Merchant Navy was part of Forces. Did not know I was trying to leave Forces.
Q. You didn't have any particular ship in mind. You just wanted to get into something. Had you any reason to suspect that this man Watts wasn't coming back?
A. No, sir.
Q. You were quite confident in giving you 5/ he would come?
A. Yes, sir.
Q. Have you ever been on a ship before?
A. Just on lakes transporting fruit.
Q. How long had you been there?
A. Six months.
Q. Did you go to any Company's shipping office to get a boat?
A. No, sir.
Q. You made no attempt to see any civilians to get a ship?
A. I just thought I had to get a discharge from one boat to go to another boat.

Cross-examined by the Prosecutor.

Q. Did you ever try while with this unit, through the proper channels, to get a transfer to the R.C.N.?
A. No, sir.
Q. Did you know that while overseas a transfer from army to R.C.N. is impossible, except for certain high qualifications?
A. No, sir.

Cross-examined by the Court.

Q. Why did you leave Liverpool for London?
A. I had more chance of trying to get a ship.
Question by the Defending Officer: How long were you in London before being caught?
A. 7.30 a.m. until 11.50 p.m.
Question by the Court: Did you make any attempt in London to join the Merchant Navy?
A. No, sir, I didn't have time.

Defence Closed

Court closed to consider findings

Court opened & charge 2 read to accused. RP 37 (a) complied with.

L-9757 Cpl. MacDonald, J.H., No.5 Section Armoured Corps Ordnance Ordnance Workshop, R.C.O.C., being duly sworn is examined by the prosecutor.

Q. Do you recognize the accused, D-95 Pte. Duquette, R.?
A. Yes, sir.

(cont'd)

(cont'd)

Prosecuting Officer reads the list of equipment missing.

Q. Will you, in your own words, give evidence?
A. I was present when the kit of Pte. Duquette was checked. On 4 Jan 43 the Provost Corps kit, that was the balance of his kit. I also checked this and made a note of it and deducted articles sent back, from original list.
Q. Do you recognize this list?
A. Yes, sir, I recognize the list. It is a list of clothing and equipment which was sent to unit by Provost Corps and which we checked.
Q. Do you know whether this kit is the kit from the Provost Corps
From whom did you receive the kit, finally?
A. From the Orderly Room
Q. This list was made up and boots were omitted.
A. Yes, sir.

List of clothing & equipment, marked Exhibit "J", signed by the President attached

K-47080 A/Sgt Lucas, J.L., No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C., is recalled as witness.

The Prosecuting Officer reads the third charge to the witness.

Q. Do you know anything about this kit?
A. Sir, I saw a kit returned by the Provost Coy and turned over to Cpl. Wall. I checked the clothing myself looking for paybook which was not there.
Q. Could you recognize list of equipment as belonging to Pte. Duquette?
List submitted.
A. Yes, that is the list, sir. List marked Exhibit "K", signed by President attached
Q. From whom did you receive the equipment?
A. From S/Sgt. Britt who turned it over to me in the Orderly Room.
Question by the Defending Officer: Was there any note or tag to denote it was Pte Duquette's.
A. No, sir.
Q. How did you know it was Pte Duquette's?
A. The Provost Corps phoned that it was his kit coming in.

The accused, D-95 Pte. Duquette, R., No.5 Section Armoured Corps Ordnance Workshop, is recalled and questioned by the Defending Officer.

Q. Pte. Duquette, will you read out articles from charge sheet which you have in your possession now?
A. Brushes shaving - combs hair - dressing first field - 1 shirt flannel khaki - woolen socks 3 pairs - mugs tin. My knife clasp and lanyard taken from me before I went to the field punishment camp.
Q. Could you produce these articles?
A. Yes, sir.

K-47080 A/Sgt. Lucas, J.L., No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C., is recalled as witness, and questioned by the Prosecuting Officer.

Q. Were you on duty when Pte Duquette was returned?
A. Yes, sir.
Q. Did you see Pte. Duquette when he was returned?
A. Yes, sir.
Q. How was he dressed?
A. Civilian clothes - civilian pants and coat not matched and civilian shoes on.
Q. Did he have any army equipment on him?
A. None that I saw - no, sir.

Re-examined by the Defence.
Q. The accused, on appearing in guard room, what action was taken?
A. I took his personal belongings.
Q. Did you find any army equipment?
A. Yes, sir - anti-gas wallet.

(cont'd)

(cont'd)

Q. Did he have any brushes shaving?
A. No, sir.
Q. Did he have any combs hair?
A. Yes, sir.

M-62360 Sgt. Lynn, J., No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C., being duly sworn is examined by the Prosecutor.

Q. What are your duties?
A. I am Q.M.S. in charge of stores.
Q. Can you state whether values are correct on list?
A. Yes, sir.
Q. How many pairs of socks are issued to privates?
A. Four pairs, sir.
Q. Did you at any time receive knife and lanyard from Pte Duquette?
A. Yes sir - prior to his attempt at desertion.
Q. Was he ever issued with a Knife after that time and before his attempt at desertion.
A. I don't know, sir.

Prosecuting Officer's closing address.

Charge 1. Deserting His Majesty's Services. I contend the accused deserted His Majesty's Forces and had no intention of returning and have established the fact that he travelled to Manchester, Liverpool, Edinburgh and was apprehended in London, dressed in civilian clothing. I also wish to point out, in the defence Pte. Duquette stated that he always wanted to join some branch of the Marines, but he made no attempt to transfer while in this unit. Relative to statement of defence, Pte. Duquette was a cook and requested a cook's course. I don't think that a strong enough reason to desert. The evidence thus summarized carries out my contention that the man tried to desert.

With reference to third charge, it has been established that the majority of these items have been admittedly lost.

The Defending Officer, ~~in mitigation of punishment~~, says:

In cross-examination and in placing the accused on the stand, I have brought out points of his wanting to join the Navy which is only natural as a result of his civil experience. Later his transfer to Ordnance Corps against his wishes. Thirdly his employment as a cook's helper, which, shall we say, was in the form of an apprenticeship, leading to it's logical conclusion, a cook's course, which he was not able to obtain. His late employment at sanitary fatique and refusal upon request of re-employment as cook, the only trade at which he had any knowledge, which might subsequently lead to trades pay. His ignorance of the fact that the Merchant Service was not one of H.M. Forces and his continual effort at joining the Merchant Marine, while absent without leave. His efforts to join a service which offers a little excitement and a change from his present employment. I have proved that the pass issued by Manchester Ship Canal Co. was out of date and that the pass to the S.S. Boreas was an item of insignificance in the wallet left as security for his jacket. Throughout all the above he maintained in his possession his civil identity card. In summing up, I therefore submit that Pte Duquette had no intentions of shirking his duties nor, indeed, in deserting.

As far as the third charge is concerned, the plea of not guilty was rendered because of the inaccuracy of the lists concerned. I submit that the amount of deficiencies should be

Court closed at 1630 hours.

EXHIBIT - A

RECORD of the Declaration of a Court of Inquiry assembled at 1400 hours **on the** Second **day of** December **1942, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.** D-95 Private Duquette, Robert.

DECLARATION

The Court declare that No. D-95 Private Duquette, Robert No 5 Section Armoured Corps Ordnance Workshop. R.C.O.C. illegally absented himself without leave at 2230 hours on the Ninth day of November 42; and that on the Second December he was deficient, and that he is still deficient of the following articles:—

ARTICLES		Vocabulary Price £ - S - D	VALUE £ - S - D	ARTICLES		Vocabulary Price £ - S - D	VALUE £ - S - D
Badges Cap. R.C.O.C.	1	5½	5½	Jackets Sweater	1	8 - 8 - 8½	7 - 0 - 5½
Battle Dress Blouses	1	1 - 7 - 8	1 - 1 - 0	Knives Clasp & lyd	1	8 - 6	3 - 0
Battle Dress Trousers	1	1 - 7 - 11	1 - 1 - 0	Razors Safety Sets	1	5 - 2½	5 - 2½
Boots Ankle Pairs	1	1 - 1 - 6	12 - 6	Shirts Flannel Khaki	1	1 - 10½	1 - 10½
Braces Pairs	1	1 - 3½	1 - 3½	Socks Woollen Prs.	3	18 - 4	12 - 0
Brushes Cloth	1	1 - 1	1 - 1	Towels Hand	2	5 - 0	5 - 0
Brushes Shaving	1	1 - 4	1 - 4	Vests Gym	1	1 - 11	1 - 11
Brushes Hair	1	1 - 1	1 - 1	Drawers Collular Short	1	1 - 6	1 - 6
Brushes Tooth	1	- 4½	- 4½	Mugs Tin	1	2 - 0½	2 - 0½
Brasses Button	12	2	2	Shoes Canvas Prs	1	- 5	- 5
Caps Field Service	1	3 - 8	1 - 6	Haversacks W.E. Pt 137	1	8 - 6	8 - 6
Combs Hair	1	- 2	- 2	Straps Shoulder	2	10 - 5	10 - 5
Discs Identity Sets	1	- 1½	- 1½	Blankets G.S.	1	6 - 8	6 - 8
Greatcoats Drab	1	3 - 17 - ½	3 - 17 - ½	Respirators A.G. Comp	1	16 - 4½	16 - 4½
Dressings First Field	1	1 - 1	1 - 1	Eyeshields A.G.	6	1 - 1 - 0	1 - 1 - 0
Holdalls	1	9	- 3	Ointment A.G. No 2 Vase	2	2 - 3	2 - 3
				Total		1 - 7	1 - 7
		£ 8 - 5 - 8½	7 - 0 - 5½			£ 13 - 17 - 3½	12 - 2 - 2½

[redacted]

(SIGNED) R.A. REAGH CAPT **President**

(SIGNED) J.P. SHERREN LIEUT **Member**

Signed at In the Field

Member

this Second **day of** Dec **19**42

Signature of Commanding Officer (Signed) W.L. Sagar Lt.-Col.

Certified true extract from Regimental Books in my custody.

~~Certified True Copy~~

Mil. Bk. 60
5500 Bks.—4-43 (940)
H.Q. 1772-42-43

(G.A. Donald) Captain
Regimental Officer

[illegible] Capt
5 Section [illegible]

"B"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 APR 42

I CERTIFY that No D-95.... Rank Pte. Name Duquette R.....

Unit #5 Sect.Cdn.Arm'd Corps Ord.W/shp. was arrested at London....(Place)

at 22.50 (Hour) on 17-Dec-42.....(Date) and that at the time of his arrest he was wearing (~~Hxxxxxxxxxxxxxxxx~~) or (Civilian Clothes) Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable)'

.....Lieut.
Officer i/c Detention Room,
No. 6 Cdn. Provost Coy.

DEC 20 1942

Expense Voucher Re—: Ref: K.R. & O. (Can) 539 "G"

Reg. No. U-95 Rank Pte. Name Huquette, B. Unit 5 Sec. Armd Corps O W/S

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
20 Dec 42	Escorts return fare from LONDON To Redhill		3	4
	Prisoners single fare to LONDON From —			
	Prisoners fare from London To Redhill		1	8
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		5	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

G.M.H.Q. 1000:55
[illegible]/P & S/483

Exhibit "H"

"Keep in touch with the folks at home" [illegible]

THE SALVATION ARMY

ON ACTIVE SERVICE
WITH THE
CANADIAN FORCES

_____ 194

D95. Pte. Duquette. R.
Personal affects. taken from above Mentioned:-

~~Combs.~~ — 2. 5-1-43
~~Address Book.~~ — 1. 5-1-43
Autograph Book. — 1
Purse. — 1.
Identification Case. — 1
Clasp knife Small. — 1
1 Wallet Anti Gas — 1 [illegible]
~~Shaving Mush~~ — 1.
~~Razor Blades.~~ — 1

M408H. L/C Berg S.F.
Guard Commander.
20-12-42.
at. 13:30 hrs. P.M.

	£	S	D.
1-Cheque for	10	0	00
Cash	10		00.

R. Duquette
Sgt Lucas Jr.

3.17 Charge — Exhibit "J" C.O.M.

		Vocabulary Prices.	Value. £ s D
Greatcoats Drab	1	3- 17- 0 ½	3- 17- 0 ½
Battle Dress Blouses	1	1- 7- 8	1- 1- 0
Battle Dress Trousers	1	1- 7-11	1- 1- 0
Haversacks W.E.Patt.37	1	10- 5	10- 5
Straps Shoulder " "	2	6- 8	6- 8
Respirator A.G.Complete	1	1- 1- 0	1- 1- 0
Eyeshields. A.G.	6	2- 3	2- 3
Ointment A.G.No.2	tins2	1- 7	1- 7
Caps Field Service	1	3- 8	1- 6
Badges Cap R.C.O.C.	1	5 ½	5 ½
Razors Safety Sets	1	1-10 ½	1-10 ½
Brushes Tooth	1	4 ½	4 ½
Holdalls	1	9	3
Towels Hand	2	1-11	1-11
Drawers Cellular Short	1	2- 0 ½	2- 0 ½
Vests Gym.	1	1- 6	1- 6
Brushes Cloth	1	1- 1	1- 1
	Total..	£ 9- 8- 2 ½	£ 8- 11-11 ½

12-6
£ 9-4-5½

Certified that the above is a list of equipment and clothing, the property of D-95 Pte. Duquette, R. received from No.6 Provost Coy on 4 Jan 43 and checked by me.

L.L. Hall cpl
M-62322 Cpl. Hall, L.L.

Include
Boots, ankle, pair 1 — 0-12-6
Reference, evidence given by Cpl Mac Donald

[illegible] Capt

[illegible] Capt.

EXHIBIT "K"

M.F.H. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-95	Private	DUQUETTE, Robert	No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C.

1. The following is a fair and true summary of the entries in the Regimental ~~and Summary~~ Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For A.W.L.	three	times	four	times
For Sec 40	four	times	five	times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct N/A

~~There are no entries in the conduct sheets of the accused.~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted.

~~Previous convictions of the accused by a court-martial or civil court of summary awards under Air Force Act Section 47 of the Army Act and cases in which trial was dispensed with are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence for beginning on the~~

4. The accused has been in confinement awaiting trial on the present charges, for ~~32~~ days in civil custody, and ~~32~~ days in military custody, making a total of ~~32~~ days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 20 yrs

6. The date of his attestation specified in his attestation paper is 3 MAY 41.

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or military reward ~~in possession of or entitled to~~). State any military decoration or reward. N/A

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated N/A, and in his regiment (or corps), the rank of dated N/A

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A Date of promotion.

In the rank of years.

In the rank of N/A years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name N/A of Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	N/A			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Fifth 15th day of January, 1943 (G.K. [illegible]) Capt Regt'l Officer

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

EXHIBIT "L"

No. D-95 Name DUQUETTE, R. Sqn., Battery, or Company Corps R.C.O.C. Date of enlistment 3-5-41 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 175M—7-41 (1214-26) H.Q. 1773-39-1652

Date of last entry in Company Conduct Sheet 21 Aug 41 No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet Destroyed on Completion of 6 mths. Service.					
Camp Borden	25-11-41	Pte		Conduct to prejudice etc: Neglect to obey Garrison Orders, Failed to report at reveille parade. Also left quarters in untidy condition.	S/Sgt Britt, J. Cpl Champagne E.T.	7 days C.B.	26-11-41	C.B.Pitt	
Waterloo E.	2-1-42	Pte		AWL from 1330 hrs to 2200 hrs 2-1-42, (Absent 9 hrs 30 mins)	S/Sgt Brooke J.F.	3 days C.B.	3-1-42	G.H.Parker Capt.	Forfeits 1 days pay.
Waterloo E.	29-1-42	Pte		Failed to appear at place of parade appointed by his C.O. Failed to appear at 1630 hours 29-1-42 for guard mount.	L/C Skoropada, S. S/Sgt. Stainton, S. S/Sgt. Britt, J.	6 days F.P.	2-2-42	G.H.Parker Capt.	
In the Field	18-4-42	Pte		AWL in that he was absent from 0600 hrs to 0830 hrs 18-4-42	CSM Corfe C.	7 days C.B.	18-4-42	G.H.Parker Capt.	Forfeits 1 days pay.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	17-7-42	Pte		Conduct to the prejudice: on 17-7-42 at 0645 hrs did fail to get out of bed when ordered to do so by 861918 L/C Skoropada S. Sec.40.AA	L/Cpl Skoropada,S.	2 days C.B.	17-7-42	C.B.Pitt Capt.	
In the Field	19-7-42	Pte		A.W.L. absent from his duty as Kitchen Fatigue thereby causing another soldier to perform his duty (Absent from 1100 hrs 19-7-42 until 1900 hrs. 19-7-42.Absent 8 hours)	L/C Pratt,J. L/C Wheatley, A.S.	Remanded to C.O. 20-7-42		C.B.Pitt Capt. W.L.Sagar Lt.Col.	Forfeits 1 days pay.
In the Field	16-7-42	Pte		Conduct to the prejudice: on 16-7-42 at about 1900 hrs was in improper possession of property belonging to a comrade. Open arrest Sec.40A.	Pte Hefford,H Pte Hawkins,E.C Pte Cole,G.B. A.Sgt. Hubbard,J Pte Manning,E.C. Sgt.Lynng,J.	28 days F.P.	20-7-42	W.L.Sagar Lt.Col.	
In the Field	21-8-42	Pte		Conduct to the Prejudice etc:in that he at about 2115 hrs 21-8-42 whilst a sleeping picquet did absent himself and did so construct his bedding as to make it appear that he was present. Sec 40 A.A.	L/Cpl Ablett,G.H L/Cpl Hogg R. Pte Fleett,D.	15 days F.P.	24-8-42	W.L.Sagar Lt.Col	

No. D-95 Name DUQUETTE, R. Sqn., Battery, or Company Corps R.C.O.C. Date of enlistment 3-5-41 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 175M—7-41 (215-20) H.Q. 1772-39-1632

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 3 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	20-9-42	Pte		A.W.L. absent from duty from 1200 hrs1 20-9-42 until 0730 hrs 21-9-42 (Absent 19 hrs 30 mins)Sec.15A.A.	Sgt Collier, G.		23-9-42	W.L.Sagar Lt.Col.	Automatic forf. 1days pay. Awarded forf. 6 days pay
								Total forf.	7 days pay.

Certified True Copy: [signature]
Regimental Officer
No 5 Sec Arm'd Corps Ord W/Shop RCOC

[signature] (P.T.O.)

SUMMARY OF EVIDENCE

No.5 SECTION ARMOURED CORPS
ORDNANCE WORKSHOP, R.C.O.C.

In the Field

5th January, 1943

Summary of Evidence in the case of D-95 Pte. Duquette, Robert, No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C.

Charged with:-

1. Desertion. Sec 12(1)A.A.
2. Fraudulently disposing of Clothing, Equipment and Paybook. Sec 24(1)A.A.
3. Losing by Neglect His Clothing and Equipment Sec 24(2)A.A.

The Commanding Officer directs that all evidence be taken on oath.

1st Witness

K-47080 A/Sgt Lucas, J.L., No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C., having been duly sworn, states:-

I am the Permanent Orderly Sergeant of No.5 Section Armoured Corps Ordnance Workshop. On the night of 9 Nov 42 at approximately 2230 hours, during my tour of duty as Orderly Sergeant, I checked Hut number seven, the one occupied by the accused, D095 Pte. Duquette, R., and he was absent. I checked it again at reveille on 10 Nov 42 and he was reported absent to me on the 0830 parade on 10 Nov 42. I put his name on the absentee report and continued doing so, as he was reported absent daily until he was S.O.S. this unit by a Court of Inquiry on 2 Dec 42.

The accused declined to cross-examine the witness.

A/Sgt Lucas. J.L.
.....
K-47080 A/Sgt Lucas, J.L.

2nd Witness

M-62358 S/Sgt Tose, C.D., No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C., having been duly sworn, states:-

I am the N.C.O. in charge of No.3 Coy. I called a roll of No.3 Coy on parade at 0830 hours on 10 Nov 42, at which time I found that the accused, Pte Duquette, was not present. I called the roll each morning on parade until 17 Dec 42. During all that time, the accused, Pte Duquette, was absent. If he had been present I would have known but I did not see him in the lines during that time.

The accused declined to cross-examine the witness.

C. Tose S/Sgt
.....
M-62358 S/Sgt. Tose, C.D.

3rd Witness

K-70644 L/Cpl. Anderson, J.L., No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C., having been duly sworn, states:-

I am senior clerk in the absence of the Orderly Room Sergeant. I hereby submit **in evidence** a true copy of the Declaration of a Court of Inquiry assembled at 1400 hours on the second day of December, 1942, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipment, Instruments, Regimental Necessaries or clothing of the accused, D-95 Pte. Duquette, R.

The accused declined to cross-examine the witness.

K-70644 L/Cpl. Anderson, J.L.

4th Witness

M-62322 Cpl. Hall, L.L., No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C., having been duly sworn, states:-

I am the Senior Corporal in the Q.M. Stores of No.5 Section Armoured Corps Ordnance Workshop. I made a check of the accused Pte Duquette's kit on his return to this unit on 20 Dec 42. He was found to be still short the items listed by Court of Inquiry less one pair of boots ankle, valued at 12/6. On 4 Jan 43, I checked the kit of the accused, Pte Duquette, which had been returned by the S.I.S., No.6 Cdn Provost Coy, of which a list is submitted. I have deducted these items from the original list referred to above and find that to the best of my knowledge the total depreciated value of the remaining shortages is £2-17-9.

The accused declined to cross-examine the witness.

L.L. Hall Cpl.

M-62322 Cpl. Hall, L.L.

4th Witness

Abstract of Evidence to be given by undermentioned witness conforming to R of P 76

L-9757 Cpl. MacDonald, J.H., No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C.

I checked Pte. Duquette's kit on 4 Jan 43 when articles were returned by Provost Corps, of which a list is submitted. In addition there were a pair of Boots ankle to the value of 12/6. I have deducted these items from the original list referred to above and find that to the best of my knowledge the total depreciated value of remaining shortages is $2-17-9.

J. H. MacDonald

L-9757 Cpl. MacDonald, J.H.

Note. This to replace evidence of Cpl. Wall, who was admitted to hospital between the end of Inquiry and hearing of the case.

4th Witness

Abstract of Evidence to be given by undermentioned witness conforming to R of P 76

L-9757 Cpl. MacDonald, J.H., No.5 Section Armoured Corps Ordnance Workshop, R.C.O.C.

I checked Pte. Duquette's kit on 4 Jan 43 when articles were returned by Provost Corps, of which a list is submitted. In addition there were a pair of Boots ankle to the value of 12/6. I have deducted these items from the original list referred to above and find that to the best of my knowledge the total depreciated value of remaining shortages is $2-17-9.

J. H. MacDonald

L-9757 Cpl. MacDonald, J.H.

Note. This to replace evidence of Cpl. Hall, who was admitted to hospital between the Court of Inquiry and hearing of the case.

Original attached as Exhibit "G"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 APR 42

I CERTIFY that No.D-95 Rank Pte. Name Duquette, R.

Unit No.5 Sec Cdn Armd Corps Ord W/Shop was arrested at London

at.2250.hours.on 17 Dec 42... and that at the time of his arrest he was wearing (~~Military uniform~~) or (Civilian Clothes) Signature of Provost-Marshall, Assistant Provost-marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable)

(signed)

.....Robert.Wurfy..Lieut.
Officer i/c Detention Room,
No.6 Cdn Provost Coy.

Certified True Copy.....

Expense Voucher Re-: Ref: K.R.& O (Can)539

Reg. No. D-95 Rank Duquette, R. Unit #5 Sec Armd Corps Ord W/S

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From LONDON

Date	Particulars	Amount £	s	d
20 Dec 42	Escorts return fair from LONDON to REDHILL		3	4
	Prisoners single fare to LONDON From		-	-
	Prisoner fare from LONDON to REDHILL		1	8
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		-	-
	TOTAL	£ -	5	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

(signed)

.....T.D..Gerson...Lieut.

Officer Issuing Railway Warrant and Expense monies
No.6 Provost Company, Canadian Provost Corps, London.

C.M.M.Q.1000:55
40/P & S/463

Certified True Copy.....

CMHQ 1000:74
40/P & S/605

Original attached as Exhibit "F"
C.G.H.

CANADIAN PROVOST CORPS

Company S.I.S. Formation C.M.H.Q. Corps

Location London Date 28 Dec 42

SUBJECT: Reg.No. D-95 Pte DUQUETTE, Robert
5th Sec Cdn Arm'd Corps Ord. Wksp., R.C.O.C.

UNLAWFULLY DISPOSING OF ARMY CLOTHING AND PAY & SERVICE BOOK, MASQUERADING AS MERCHANT SEAMAN.

File Nos.
42/SIS/D-7/96

C.I.D.Liverpool
19 Nov 42
22236 A.C.

42/SIS/D-7/85

Previous Report

S.I.S. First

Diary Date

Nil

1. With reference to the above and marginally-noted, a report dated 19 Nov 42 was received from the Chief Constable, Liverpool, with covering memo. Report reads as follows:

"I beg to report that at 1530 hrs. on Thursday, the 12 Nov 42, L/Cpl.John Ford MORLEY, attached to the Military Police stationed in Liverpool, saw the accused - George William PEARSON, 17 yrs, Seaman, c/o Dr. Barnardo's Home, Stepney Causeway, London, or 29 Clare Street, Cardiff - in Dale Street, Liverpool, wearing the battle-dress of a Pte. in the Royal Canadian Ordnance Corps.

"L/Cpl. Morley stopped PEARSON and asked him for his pass, and after feeling in his pockets PEARSON said "I've lost it." When asked for proof of his identity PEARSON produced a Canadian Militia Soldier's Pay Book and Service Book, both in the name of D-95, Pte. Robert DUQUETTE of the Royal Canadian Ordnance Corps, and stated that they were his. He was detained and then stated to L/Cpl MORLEY that he was an absentee from the R.C.O.C.

'It was later ascertained that he was not Pte. R. DUQUE-TTE, and at 1400 hrs on the 14th instant, I interviewed PEARSON at Argyle Street Military Bridewell. I told him who I was and asked him for his name and address and he said "George William PEARSON, 17 yrs, c/o Dr Barnardo's Home, Stepney Causeway, London. I deserted a ship in Bramley Dock about 2 weeks ago." I asked him to account for the battle-dress which he was wearing and he said, "Me and a Canadian Soldier who is a deserter, swopped uniforms, and papers in the Y.M.C.A. Church Street, last Wednesday". I cautioned and told him that I was going to arrest and charge him with Unlawful Possession of the Battle-dress, respirator Pay Book and Service Book, and he said, "Yes". When formally cautioned and charged he said, "Yes".

"On Monday, the 14th instant, PEARSON was remanded in custody for 7 days until the 23rd instant.

"I made immediate enquiries in the Y.M.C.A. Church St., and other Service Clubs, with a view to tracing Pte. R. DUQUETTE, but without result. I have learned that he did stay at the above Y.M.C.A. on the 10th and 11th instant, and his Army Overcoats and haversack are in the Left Luggage Office at the Y.M.C.A. and should he call for them we will be notified immediately.

'I have also notified the Board of Trade and the Shiping Pool to keep a look-out in case DUQUETTE tries to get away to sea in PEARSON'S name, with the papers he got from PEARSON, and they have promised to inform me at once if he did so.

'PEARSON, who informed me that he has recently been before the Courts at Leeds and Kingston-upon-Hull for theft

(cont'd)

D-95 Pte. DUQUETTE, Robert - R.C.O.C.

Para 1. (Police Statement Cont.).....states that about the end of September 1942 he signed on the s.s."Venus" at Barry Dock, Cardiff, and sailed to Bramley Dock, Birkenhead, where he borrowed £2 off the Captain and then deserted.

'I suggest that a copy report be forwarded to the Chief Constable of Cardiff with a view to obtaining the antecedent history of the accused from Dr. Barnardo's Home, 29 Clare Street, Cardiff: also regarding PEARSON deserting the s.s."Venus" (the agents for this ship are, I believe, C.Downing, West Bute Street, Cardiff).

'I also suggest that a copy of this report be forwarded to the Officer Commanding Canadian Provost Corps, H.Q., No.6 Co'y.,St. Peters's Hospital, Henrietta Street, London, and that he be asked for further particulars regarding the absentee Pte. D-95 Robert DUQUETTE.

(Sgd) R.Gardner, Sgt. 36 "F"

2. All available information regarding DUQUETTE was passed to the Liverpool Police and instructions were forwarded by Officer i/c S.I.S. to No.6 Provost Company to have his kit picked up by the first available escort and sent to his unit. This was done.

3. On 17 Dec 42 Pte. DUQUETTE was apprehended by No.6 Provost Company in London. He was dressed as a merchant seaman and was in possession of a Manchester Ship Canal Company Pass No.133136 in the name of J SEABROOK and a typewritten note reading as follows:

"SS. Boreas.
Please allow bearer to pass as he is a member of the above crew."

(signed) ????????????
Chief mate.

4. The above mentioned articles together with other property which has been held for enquiry are listed on attached Exhibit and property Report No.73. Thorough enquiry has been made and Pte. DUQUETTE is not wanted by the civil police for questioning or other-wise.

5. On 18 Dec 42, Sgt. CARRIERS, J.R., S.I.S., interviewed the above named soldier, in custody at No.6 Prov. Coy Detention Cells and he made the following voluntary statement:-

D-95 Pte. DUQUETTE, Robert, R.C.O.C., 5th Sec Cdn Arm'd Corps Ord Wksp states:

I have been cautioned and I understand that I need not say anything unless I wish to do so, and that this can be used as evidence.

(Sgd) R. Duquette.

On Nov 9,1942 I left my unit at Godstone and proceeded to Euston Station, London, and then went to Liverpool by truck, arriving at about 9.30 p.m. 11 Nov 42. On the 12 Nov 42 during the afternoon I met George PEARSON. He told me he was a merchant seaman, this was at the Y.M.C.A. He told me that he had been in the Cdn. Ordnance at Barriefield, Ont., and had been discharged from the Army because he was under age. During our conversation it came out that PEARSON wanted to get in the army (Cdn) and I wanted to get in the Merchant Navy; so he asked me to change clothes, and we did. I did not get his identity papers, but I gave him all my Army Pay Book. I was supposed to meet him later to get my shaving kit but I did not see him again.

Around 16 Nov 42, when I was in Manchester, I met S.T. WATTS a man who said he was in the U.S. Merchant Navy. I loaned him my

(cont'd on Page 3)

D-95 Pte. DUQUETTE, Robert - R.C.O.C.

4. (Statement of Pte Duquette Continued).....jacket and took his. He gave me 5/- and all his papers and guaranteed another 5/-. I did not see this man again. This took place in the Y.M.C.A. Manchester - Peter Street. He gave me one wallet containing photos and a couple of Merchant Navy papers, one a pass to s.s. Boreas.

The Manchester Ship Canal Pass No. 133136 was given to me by John SEABROOK so that I could find him if I came back to Manchester. He gave me this at the same Y.M.C.A. in Manchester.

During the time that I was away I stopped in Wigan and Edinburgh. I sent home for some money and asked that £10.0.0 be sent to G.P.O. Manchester, but I did not get it, and for all I know this money might be there for me.

(signed) R. Duquette
Friday, 18 Dec 42. (Witness) J.R. Carriers, Sgt.

5. The above-named was returned to his unit by escort on 18 Dec 42.

6. It now appears probable that Duquette was never in possession of the Merchant Seaman's papers thought to have been given him by PEARSON since these were found in the possession of another absentee, now apprehended and subject of a separate report.

7. In view of the forgoing it is requested that a copy of this report and attached Exhibit together with the property listed thereon be forwarded to Officer Commanding the unit concerned and this file concluded as far as this section is concerned.

(Sgd) H.W. Chester S/Sgt.
B-76047 (H.W. Chester) S.I.S.
Cdn Provost Corps, C.M.H.Q.

CONCLUDED

O.C.
5 Cdn Sec Armd Corps Ord Wkshop, R.C.O.C.

1. Forwarded for your information, with Exhibit Report No.73 together with exhibits listed thereon attached.

2. It is regretted that this report was delayed so long, but the operative who made the investigation was admitted to No.5 Cdn Gen Hosp and this matter was not brought to my attention.

3. May one copy of the attached Exhibit Report be completed, acknowledging receipt of exhibits, and returned to this office, please.

London.
29 Dec 42

(Sgd) (R.C. Risley) Major.
A.P.M. - C.M.H.Q.

Owing to the exigencies of the service and the expense and loss of time involved, the attendance of the above witnesses was not required at the taking of the Summary of Evidence.

(G.A. DONALD) Capt.

Certified True Copy
(G.A. DONALD) Capt.

Q. - No. D-95 Pte Duquette, Robert, do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything, or to give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be used in evidence.

The accused did not desire to make statement or give evidence. The accuded declined to call any witness on his behalf.

Rules of procedure 4 (c) (d) (e) (f) (g); have been complied with.

Taken before me at (In the Field), this 5th day of January, 1943

(G.A. DONALD) Captain
Regimental Officer
No.5 Section Armoured Corps Ordnance
Workshop, R.C.O.C.

YYY-50

Pte Duquette R.E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B 112899 Pte RICHARD EDWARD DUQUETTE

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 482 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 8.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

TO SUFFER FIELD PUNISHMENT FOR
90 DAYS

(Sgd) ..... Judge-Advocate, if any. 28 Aug 44 Date awarded. (Sgd) ..... President. (RP 45, 50.)
(See back of Convening Order as to custody and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(1), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed EWH

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) E.W. Haldenby, Brig
COMMANDER
CDN BASE RET GROUP

Date 30 Aug 44 Commanding .....

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

B 112899 Pte Duquette RP 2 Sept 44 [illegible]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 160. VV-50

CPA66 (To 3rm) (if AFA81) 40: P 25-8/1698 (40/00) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of E.W. Haldenby MC VD Cond 1 CMHQ BASE dated 26 Aug 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B 112899	Pte	RICHARD EDWARD	DUQUETTE	CONV. DP 1 CMHQ

Name and Fn in (cavalry)

PROCEEDINGS OF TRIAL.

PRESIDING OFFICER, JAG BRANCH C.M.H.Q.

Opened at [illegible] on (date) 28 Aug 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number therein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1700 hours trial commences.

~~The Prosecutor produces a Medical Certificate that accused is not fit to undergo trial by court-martial.(1)~~ ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 69(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	A.M. RUSSELL (CIC)	1 BN H CAMD
Member	CAPT	R.F. POTTIN MC (CIC)	1 CDN CMHQ
Member	LIEUT	R.P. COLLINS (CIC)	1 CDN CMHQ
Judge-Advocate			
Prosecutor	LIEUT	J.R. REID (CIC)	1 CDN CMHQ
Defending Offr	LIEUT	W.A. CANESTON (CIC)	1 CDN CMHQ

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 2.)

A8. The accused B 112899 Pte Richard Edward DUQUETTE before arraignment makes(s) (no) ~~his~~ plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP* 103 *; duty of Prosecutor see RP* 60(*A*) (*b*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. ..., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. Do you intend to call witnesses on your behalf ?
Ans. Are they witnesses as to character only ? Ans.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 66(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (b), RP 45, 122(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 4. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(2), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. ... and Ex. ... respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 122(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (2). Give sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, as is to be awarded to cover all charges in all charge sheets on which accused found guilty. FP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-346, Overseas KO 309, 1323, MML p 66, 737-739. As to sentences assigned for civil offences see the law of England see AA 41(3), MML p 136. When accused already under sentence of imprisonment or detention see AA 44(3), 98(1), KR Can 564. 2. RP 50. As to reviews from arrest for Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

B. 2

CHARGE SHEET

The accused, B-112839 Private Richard Edward Duquette, Carlton and York Regiment, presently a convalescent at 1 Canadian Convalescent Depot, a soldier of the Canadian Army Overseas is charged with

FIRST CHARGE
Army Act
Sec 11

WHEN ON ACTIVE SERVICE, NEGLECTING TO OBEY CAMP ORDERS

in that he

In the Field, in Italy, on 18 August 1944 sold cigarettes to Albate Alberta, an Italian civilian, contrary to 1 Canadian Convalescent Depot Part I Daily Order No. 464 prohibiting, amongst other things, the sale of such cigarettes.

In the Field
22 Aug 44

Lieut-Colonel
(F.F. NORTHUP)
Officer Commanding
1 Canadian Convalescent Depot

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
26 Aug 44

(E. W. HALDENBY) Brigadier
Comd 1 Cdn Base Mft Gp
Cdn Army-CMF

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B112839	Pte		Richard Edward	DUQUETTE	1 Cdn Conv Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on *(date)* 26 Aug 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~I also appoint an Judge Advocate thereat the Offr mentioned hereunder~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	A M RUSSELL (CIC)	1 Bn 1 CHRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC 1 Cdn Conv Depot		
" " " " " " " " " " "		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC 1 Cdn Conv Depot		

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

Dated and duly (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(E. W. HALDENBY)

Date 26 Aug 44

Commanding 1 Cdn Base Rft Gp - CMF

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FP 205 (1st Impn of AFA2) 40-7 & 8-1941 (4401))

(See overleaf for oaths and notes for use on trial.)

I hereby certify that I have this morning examined R.E. Duquette B112839

and find him fit to undergo trial by

by Court Martial

Date 28/8/44

W Pascoe Maj

Medical Officer

Plea in mitigation of sentence in the case of B112839 Pte. Duquette, R.E. by Lt. W. B. Langston defending officer

The accused pleads guilty of the charge against him being fully aware that he has committed a serious offence against military law and is ready to serve whatever sentence the Court may award him, as the good soldier he normally is. His record of continuous service since the date of his enlistment in May 1942 speaks for itself. He proceeded overseas in Mar 1943, joining the C&M Regt in Jul 43, serving with that unit through Sicily & Italy until wounded 25 May 44.

Since the date of his enlistment the accused has had only two very minor offences recorded against him & since proceeding overseas, none.

This is surely the record of a good soldier and I therefore request that when considering the punishment to be awarded the accused, the Court be extremely lenient and award only a minimum sentence.

W. B. Langston
Lt.
Defending Officer.

B. 5.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B-112839 Private Richard Edward Duquette, Carlton and York Regiment, presently a convalescent at 1 Canadian Convalescent Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

First Witness for the Prosecution

D-61790 Pte. Ledaux, R. 1 Canadian Convalescent Depot having been duly sworn states as follows:-

At approximately 1800 hours 18 Aug 44 I was on Regimental Police duty in company with Tpr. Mehlenbacker. I saw the accused whom I recognize crossing the railroad track, just outside the camp in company with some Italian civilians. We went after them and followed them into a corn field. I saw some soap and cigarettes on the ground in the centre of the group and there seemed to be a slight argument going on between the accused and the Italian civilians. I waited until I saw some money pass from one of the Italian civilians to the accused. At this time I was standing practically shoulder to shoulder to the accused and he did not appear to know that I was on Regimental Police duty. I asked him if he was selling the cigarettes and he replied "Yes". I took the money from his hand and found it totalled Five hundred and sixty (560) lire. I counted the cigarettes and found there were two hundred and eighty cigarettes and five cakes of Lifebuoy soap. I then arrested the accused and the two Italians and conducted them to the Guard Room of the Conv. Depot and I reported this matter.

The accused declines to cross-examine this witness.

R Ledoux

Second Witness for the Prosecution

B-68579 Tpr. Mehlenbacher, A.L. 1 Canadian Convalescent Depot having been duly sworn states as follows:-

At approximately 1800 hours 18 Aug 44 I was on Regimental Police duty in company with Pte Ledaux when we saw the accused whom I recognize walking down the railroad tracks just outside the camp area. He the accuses was accompanied by two Italian civilians. Ledaux and I followed them to a tomato patch and corn field. We came right up to the group. Ledoux stood shoulder to shoulder to the accused and I stood just off and to the side of Ledoux. We saw some soap and cigarettes on the ground and there was a conversation going on between the accused and the two Italians. I then saw one Italian pass some money to the accused. Before the money was passed Ledaux asked the accused if he was selling the cigarettes and the accused replied, "Yes". After the money had passed Ledaux took the money from the accused and he counted it. I saw him count the money and I added it up to Five hundred and sixty (560) lire. Subsequently I counted the cigarettes and soap and found there were two hundred and eighty English cigarettes

Second Witness for the Prosecution

and five cakes of Lifebuoy soap. We took the accused and the two Italian civilians to the Guard Room and reported this incident.

The accused declines to cross-examine this witness.

J.L. Mehlenbacher

Third Witness for the Prosecution

Capt. J.O. Howitt, Adjutant, 1 Canadian Convalescent Depot having been duly sworn states as follows:-

I am the Adjutant of 1 Canadian Convalescent Depot. I produce Daily Order Part One dated 2 Aug 44 and specifically Order No. 464 which, amongst other things prohibits the sale of cigarettes to any person. (Part 1 Daily Order dated 2 Aug 44 and containing said order No. 464 is admitted in evidence and marked Exhibit "A").

This order has been posted prominently throughout the unit in Divisional, Company and Unit lines and the accused is in a position to be acquainted with their contents.

The accused declines to cross-examine this witness.

The accused was asked, "Do you wish to make a statement or to give evidence? You are not obliged to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make any statement and reserves his defence.

Taken down by me in the Field in the presence of the accused this 21st day of August 1944. I hereby certify that R.P. 4 (c)(d)(e)(f) and (g) have been complied with.

In the Field
21 Aug 44.

W.S. Berman Capt.
(W.S. BERMAN)
Officer detailed to take
Summary of Evidence.

EXHIBIT "A"

NO. 1 CANADIAN CONVALESCENT DEPOT, CANADIAN ARMY, C.M.F.

DAILY ORDERS PART I ISSUED BY

LIEUT-COL. F.F. NORTHUP, ED. COMMANDING OFFICER

NOS. 461-464 Wednesday 2 August 44

NO. 461 ORDERLY OFFICER:
From 0830 hours 2 August 44 to 0830 hours 3 August 44

LIEUT C.O.R. KING

NEXT FOR DUTY:

LIEUT C.O.R. KING

DEPOT DUTY MEDICAL OFFICER:
From 0800 hours 2 August 44 to 0800 hours 3 August 44

CAPT I. LEVY

NEXT M.O. FOR DUTY:

CAPT H.N. KLINE

DUTY OFFICERS - INSTRUCTORS:
The following officers will report to their respective Divisions at 0830 hours 2 August 44

"A" Div. CAPT C.F. SMITH
"B" Div. CAPT H.V. YELOW

NEXT FOR DUTY:
The following officers will report to their respective Divisions at 0830 hours 3 August 44

"A" Div. CAPT P.F. POTVIN
"B" Div. CAPT H.H. AGNEW

DEPOT ORDERLY N.C.O.
From 0830 hours 2 August 44 to 0830 hours 3 August 44

SGT VOORTHUIN W.

SUPERNUMERARY:

SGT TERLECKI W.

NO. 462 PROPHYLACTIC STATION:
1. A Prophylactic Station is now available for this Unit. It is situated just inside the main gate near the Guard Room.

2. At present all those in need of Pro. Treatment will report to the M.I. Treatment Room and a trained attendant will look after them in the Pro. Station.

3. As the time interval between exposure and prophylaxis should be as short as possible, it is urged that any soldier exposed to V.D. in Salerno or its immediate vicinity should report at once to the Salerno Pro. Centre. If the Conv. Depot Pro. Station is nearer he should report here.

E. 2 Can 2

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B12859	Pte	Duquette	Carleton and York

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced by court with the statement but not annexed to the proceedings.

† See para. 427, K.R., 1940.

* The numerical figures stated should correspond with the words used in the entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recorded special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA 15(1)	times 2	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct~~

or

~~There are no entries in the conduct sheets of the accused.~~

~~2. The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

~~3. The accused is not under sentence at the present time, or The accused at the present time is under sentence for~~ _____ ~~beginning on the~~ _____ ~~day of~~ _____

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 10 days in military custody, making a total of 10 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 27 yrs 169 days

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 15 May 44

~~7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve~~ _____

~~8. The accused is entitled to deferred pay or gratuity in respect of~~ _____ ~~service~~

~~9. The accused is entitled to reckon~~ _____ ~~service for the purpose of determining his pension, viz.~~

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or award*) Canada Volunteer Service Medal and Clasp

~~11. (In the case of a warrant officer.) The accused believes he was made a warrant officer (on acting or substantive rank) on~~ _____

~~12. (In the case of an officer.) The accused holds in the army the rank of~~ _____ ~~and in his regiment or corps or department) the rank of~~ _____ ~~dated~~

[illegible] 50,000 6/41 A.R.C.W. Ltd. Gp.A58

EXHIBIT "A"

NO. 1 CANADIAN CONVALESCENT DEPOT, CANADIAN ARMY, C.M.F.

DAILY ORDERS PART I ISSUED BY

LIEUT-COL. E.F. NORTHUP, ED. COMMANDING OFFICER

NOS.461-464 Wednesday 2 August 44

NO.461 ORDERLY OFFICER:
From 0830 hours 2 August 44 to 0830 hours 3 August 44

LIEUT C.O.R. KING

NEXT FOR DUTY:

LIEUT C.O.R. KING

DEPOT DUTY MEDICAL OFFICER:
From 0800 hours 2 August 44 to 0800 hours 3 August 44

CAPT I. LEVY

NEXT M.O. FOR DUTY:

CAPT M.W. KLEIN

DUTY OFFICERS - INSTRUCTORS:
The following officers will report to their respective Divisions at 0830 hours 2 August 44

"A" Div. CAPT G.W. SMITH
"B" Div. CAPT R.W. PILOT

NEXT FOR DUTY:
The following officers will report to their respective Divisions at 0830 hours 3 August 44

"A" Div. CAPT R.F. POTVIN
"B" Div. CAPT R.B. ACHIN

DEPOT ORDERLY M.C.O.
From 0830 hours 2 August 44 to 0830 hours 3 August 44

SGT VOORTHUYSEN W.

SUPERNUMERARY:

SGT TERLECKI V.

NO.462 PROPHYLACTIC STATION:
1. A Prophylactic Station is now available for this Unit. It is situated just inside the main gate near the Guard Room.

2. At present all those in need of [illegible]. Treatment will report to the M.I. Treatment Room and a trained attendant will look after them in the Pro. Station.

3. As the time interval between exposure and prophylaxis should be as short as possible, it is urged that any soldier exposed to V.D. in Salerno or its immediate vicinity should report at once to the Salerno Pro. Centre. If the Conv. Depot Pro. Station is nearer he should report here.

NO.463 PROMOTIONS:
Extract from Supplement to Canadian Army Overseas Routine Orders No.4842 dated 21 July 44

ROYAL CANADIAN ARMY PAY CORPS

GEN LIST -

To be A/Major: Capt C.Y. Donaldson, E.D. (1 Cdn Conv Depot). 15 Jun 44.

NO.464 CIGARETTES AND TOBACCO:

1. Cigarettes and tobacco which are being transported to this theatre in ships which are urgently required for other uses are being used for improper purposes by certain personnel of the Cdn Army Overseas.

2. Subject to para 3 hereof, the sale, exchange, disposal or attempted sale, exchange or disposal, directly or indirectly, of cigarettes or tobacco by any member of the Cdn Army Overseas to any person is prohibited.

3. Nothing in this order is to be construed as prohibiting the free sharing, nor free distribution, by Commanding Officers of tobacco or cigarettes to any personnel of the Cdn Army Overseas.

(J.C.Hewitt) RCA Capt./Adjutant
No. 1. Cdn. Convalescent Depot
Canadian Army O.M.F.

JCH/AT

EDUCATIONAL SERVICES - LIBRARY BOOKS:

The Educational Library will be closed until further notice. All books on loan are to be turned in, immediately.

T. V. Cmp 1.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B112837	Pte	Duquette	Carleton and York

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheets.

The conduct sheet(s) mentioned should be produced in court with this statement but not marked for the proceedings.

† See para. 677, K.R., 1940.

* The column blank should correspond exactly with the entries in the conduct sheets produced, and no entry should be altered in the column which is not blank, and no unrecorded entry made in either column.

Instructions.—If the charge is for desertion, give the dates of absence in each case separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA 15 (1)	times 2	times.
For	times	times.
For	time	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

~~2. The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

~~3. The accused is not under sentence at the present time~~, or ~~The accused at the present time is under sentence of imprisonment for a period of ... commencing on the ... day of ...~~

4. The accused has been in confinement, awaiting trial on the present charges, for No days in civil custody, and 10 days in military custody, making a total of 10 days, of which No days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 27 yrs 16 days

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 15 May 44

~~7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is ...~~

~~8. The accused is entitled to deferred pay or gratuity in respect of ... service~~

~~9. The accused is entitled to reckon ... service for the purpose of determining his pension, etc.~~

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*) Canada Volunteer Service Medal and Clasp

~~11. (*In the case of a warrant officer.*) The accused before he was made a warrant officer was and has ... rank of ...~~

~~12. (*In the case of an officer.*) The accused holds in the army the rank of ... dated ... and in his regiment (or corps or department) the rank of ... dated ...~~

(71/2222) W1—(3000) 144 [illegible] A.G.R.P.Ltd. Gp.688

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer dispensing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28th day of August 1944

[signature] Capt. A. Signal, Sec.

[illegible] Regiment

[illegible] Regiment

[illegible] The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(Instructions.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph constructed amended accordingly.)

No. B/12739 Name Duquette | Sqn., Battery, or Company HQ Coy | Corps C.A.C. | Date of enlistment 15 May 42 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.127) 40/P & /5136 (2965)

Date of last entry in Company Conduct Sheet 8 Aug 42 | No. and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Kingston	26 Dec 42	Bdsmn		A.W.L.		5 days C.B.	30 Dec 42	Col Fg Walker	Forfeits 2 days pay
Kingston	19 Mar 43	Pte		A.W.L.		7 days C.B.	23 Mar 43	J.H. Sanderson	Forfeits 2 days pay

E. 3

Certified true copy from records available

(P.T.O.)

GGG-88

PTE DURANT A

ENTERED IN RECORDS OF C.M.

GGG 88

E 18

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty Third day of February, 1944.

Whereas it appears to me, the undersigned, an officer in Command of West Nova Scotia Regt, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [I am unable to appoint :—

*(1. ~~Three Officers to form the Court.~~)

*(2. A Field Officer as President.)

for the following reasons, namely :—] Because in my opinion a field officer is not available.

PROCEEDINGS REVIEWED
R. Deanhills Capt.
11 Apr 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Capt	A M McMillan	West N.S.R.

Members.

Rank.	Name.	Regiment.
Lieut	D. R. Bowe	West N.S.R.
Lieut	D. G. Kirk	West N.S.R.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed Katerman Lt Col

Commanding West N.S.R.

Convening Officer.

..., and ...cted, ...ce (d)	How dealt with by Confirming Officer (d)
...TY ...ARS ...ARE ...TH ...ABOR ... Capt.	Confirmed N Kilibron Brig

...of the rules relating to procedure ...judiced thereby, or on the ground ...

...Capt.

President.

...be stated in brackets after the ...ered on one form, and in serious ...lumn.

...in this column. Initials are sufficient. ..., and all alterations in the first two

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23rd day of February, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

~~*(3. The Interpreter)~~ ~~*(4. The officers under instruction)~~

were duly sworn.

*Omit if not applicable.

Signed this 23rd day of February 1944.

[signature] Capt.

President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 24 day of Feb 1944.

N Kilibron Brig

Confirming Officer.

Promulgated and extracts taken in the case of B 22621 Pte. Allison Durant West Nova Scotia Regt

(a) (Dated) 25 Feb 44 (Signed) [signature] Capt. Adjt West Nova Scotia Regt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible]

COUNTER NUMBER 562807

HOUR 1740

OPERATOR'S INITIALS E. M.

RELIEVING OPERATOR _____

Affidavit

PROVINCE OF ONTARIO
COUNTY OF CARLETON
TO WIT:

I, Edna M. McDaw
of the City of Ottawa, in the County of Carleton, an employee of the Department of National Defence, make oath and say:

1. THAT I am presently employed as a camera operator making microphotographic copies of Departmental documents for the purpose of providing a permanent record of same.

2. THAT on the date indicated therein I did make microphotographic copies of files listed in Appendix "A" hereto and of all documents contained thereon.

3. THAT the said microphotographic copies may be identified from the indexing data and the job and reel numbers contained in Appendix "A".

SWORN before me at the City of Ottawa, in the County of Carleton, this day of A.D. 19

CAMERA OPERATOR

A NOTARY PUBLIC

Dated

NOV. 25 19 52

APPENDIX "A" TO THE AFFIDAVIT

CAMERA OPERATOR'S REPORT

		JOB NO. 44	REEL NO. 19
		BOOK NO. 12-1 CAMERA 78	
PRODUCTION DATA		44-19A	INDEXING DATA 44-19B
	DATE	HOUR	BEGINS WITH DUBEAU L. DUGUAY L.
STARTED			1. DUBLEY A.B.C. DUNBAR G.P.
FINISHED			2. DUFFY A.E. DUNCAN J.D.
TOTAL NO. OF HOURS		6 5-12	3. DUFRESNE L. DUNNING E.R.
TOTAL NO. OF IMAGES		5154	ENDS WITH DUGUAY J.B. DUQUETTE.R.E.

J.B.

END

SECOND

SIDE

44.19